

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 351 OF 2023

IN THE MATTER OF:

Raja Muzaffar Bhat

...Applicant

Versus

Union territory of Jammu & Kashmir and Ors.

...Respondents

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**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
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IN THE MATTER OF:

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Union Territory of Jammu & Kashmir and Ors.

...Respondents

**REJOINDER TO REPLY OF RESPONDENT NO. 5 DATED
14.12.2023 AND REPLY OF RESPONDENT NO. 6 DATED
14.12.2023**

MOST RESPECTFULLY SHOWETH:-

1. That the above-titled Application was filed under Section 14, 15 read with 20 of the National Green Tribunal Act, 2010 raising the issue of mining activity in violation of conditions in the Environmental Clearances granted by Jammu & Kashmir Environment Impact Assessment Authority (JKEIAA) under the EIA Notification, 2006 (issued under Rule 5(3) of Environment (Protection) Rules, 1986). The Environmental Clearances have been granted to the Respondents No. 5 and 6 for undertaking mining of boulders, gravel, sand and other minor minerals (Riverbed material) in Doodhganga River flowing through Budgam district of Jammu & Kashmir.
2. That Respondent No. 5 and Respondent No. 6 (project proponents) have filed their Reply to the Original Application dated 14.12.2023.

Respondents No. 5 and 6 have filed identical replies to the Original Application, raising grounds that do not even pertain to the said Respondents. The Replies raise the following common grounds:

- i. That heavy machinery such as JCBs were used for removing heavy boulders, as allowed under the Mining Plan;
- ii. That no evidence has been provided to show illegal mining;
- iii. That the GPS coordinates have not been disclosed intentionally to avoid verification of the authenticity of the image;
- iv. That presence of heavy machinery at a distance of 300 metres from the mining lease area does not prove that the Respondent is undertaking illegal mining.
- v. That as per the letter dated 27.12.2022 of the District Mineral Officer, Respondents No. 5 and 6 have not been found involved in illegal mining and only the tractor/ tipper/ machine owners which were doing illegal extraction were fined.
- vi. That the present Original Application is not filed within limitation.

**REJOINDER ON BEHALF OF THE APPLICANT TO THE REPLY
OF RESPONDENT NO. 5 AND RESPONDENT NO. 6**

3. That the contents of the Reply of Respondent No. 5 and Respondent No. 6 are denied in entirety, unless specifically admitted or are of matter of record. The Replies of Respondents No. 5 and 6 are

identical and therefore, a common Rejoinder to them is being filed by the Applicant.

4. That the contents of the Original Application and Response to Joint Committee Report are part of record and may be read as part and parcel of this Rejoinder.

PRELIMINARY SUBMISSIONS

A. No response has been given by the Respondents on the issues of in-stream mining within active water channels and conducting mining without prior replenishment studies

5. That the Applicant had raised multiple issues in the Original Application such as in-stream mining by the Respondents within active water channels which is affecting the hydrology of the rivers and undertaking mining without prior replenishment studies.
6. That the Joint Committee Report dated 08.08.2023 submitted before this Ld. Tribunal also states that in-stream mining is being conducted by the Respondents.
7. That however, the Replies filed by Respondents No. 5 and 6 are silent on this aspect and have failed to provide a response to these violations. Para No. 13-14 of the Original Application states the violation relating to conducting in-stream mining and Para 40-47 states that mining is being undertaken without undertaking prior replenishment studies. The Replies of Respondent No. 5 and 6 provide vague responses to these paragraphs such as "*not admitted*

in the manner stated by the applicant" and "contents of para 40-44 of the original application need no reply". The Respondents have failed to provide any response to the averments made in the Original Application and therefore are admitted by implication.

B. The Joint Committee Report dated 08.08.2023 also notes violation in illegal mining of Respondents No. 5 and 6

8. That the Joint Committee constituted by this Hon'ble Tribunal submitted its Report dated 08.08.2023. This Report had also noted the violations of the Specific Conditions No. 53, 56 and 65 of the Environmental Clearances by Respondents No. 5 and 6. These Specific Conditions pertain to usage of heavy machinery and conducting in-stream mining.
9. That the Report clearly notes that the District Mining Officer, Geology & Mining Department had provided information to the Joint Committee that JCB loaders were used for loading of heavy boulders, which was in violation of the conditions of the Environmental Clearance.
10. That the Report also notes that mining activities are being undertaken within active water channels because there is no scope of mining outside the stream.
11. It is submitted that these statements clearly show that Respondents No. 5 and 6 are undertaking mining in violation of the conditions of the Environmental Clearances.

Rejoinder to the Reply of Respondents No. 5 and 6

A. Contention (i) of the Respondents that heavy machinery is allowed to be used for mining, as per the Mining Plan is misleading

12. At the outset, it is submitted that Respondents No. 5 and 6 have admitted to the fact that illegal mining was being undertaken by use of heavy machinery such as JCBs (Para 20 of Reply of Respondent No. 6 and Para 20 of Reply of Respondent No. 5).
13. That Specific Condition No. 53 of the Environmental Clearances dated 06.07.2021 granted to Respondent No. 5 and 6 prohibit usage of heavy machinery for mining. Specific Condition No. 53 is reproduced below:

"Mining shall be done manually minimally supported by semi-mechanized methods. Heavy machinery like JCBs, L&T hydraulic excavators etc. should not be allowed."

14. That mining is being conducted in clear violation of the conditions of the Environmental Clearances granted to Respondents No. 5 and 6.
15. That the Respondents have stated that use of heavy machinery to remove big boulders has been done in accordance with the mining plan.
16. It is the submission of the Applicant that the provisions of the Environmental Clearances granted to Respondents No. 5 and 6 will

prevail over the mining plan of the Respondents. The Environmental Clearances have been issued under the EIA Notification, 2006 which is notified under the Environment (Protection) Act, 1986. Section 24 of the Environment (Protection) Act, 1986 makes it clear that the Act has overriding powers over any other laws:

*"24. Effect Of Other Laws.- (1) Subject to the provisions of sub-section (2), **the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.**"*

(Emphasis supplied)

17. That the Environmental Clearances granted to Respondents No. 5 and 6 also state that the mining has to be undertaken as per mining plan submitted, however, the same is to subject to the Specific Conditions of the Environmental Clearance. Standard Condition of the Environmental Clearances, Para (e) (1) (at Page 55 and Page 123) states the following:

"e) Mining Plan

*(1) The Project proponent shall adhere to the working parameters of mining plan which was submitted at the time of EC appraisal wherein year-wise plan was mentioned for total excavation **subject to changes recommended in the specific conditions herein below.**"*

18. That a combined reading of the above excerpt and the Specific Condition of the Environmental Clearances that prohibit mining with

heavy machinery, it is clear that no mining in violation of the Specific Conditions of the Environmental Clearance can be undertaken, even if the same is allowed as per the mining plan.

19. That the Standard Condition, Para (e) (1) further states that in future, if any change in mining proposal has to be done, the same cannot be done until an approval from MoEF&CC is obtained, even if it is a part of approved mining plan:

(2) No change in basic mining proposal like mining technology, total excavation, mineral & waste production, lease area and scope of working (viz. method of mining overburden & dump management, O. B. & dump mining, mineral transportation mode, ultimate depth of mining etc.) shall be carried out without prior approval of the Ministry of Environment, Forest & Climate Change, which entail adverse environmental impacts, even if it is a part of approved mining plan modified after grant of EC or granted by State Govt. in the form of Short Term Permit (STP), Query license or any other name."

(Emphasis supplied)

20. That therefore, no usage of heavy machinery to undertaking mining can be done, since the same is prohibited under the provisions of the Environmental Clearances.

B. The contention (ii) that no evidence has been put on record to show illegal mining by Respondents No. 5 and 6 is incorrect and misleading

21. That the Respondents No. 5 and 6 have stated in their Replies that no evidence has been provided in the Original Application to prove that they were conducting illegal mining and evidence has only been provided for the Respondents against whom the Original Application was withdrawn.
22. That at the outset, it is clarified that the Original Application was withdrawn against the original Respondents No. 6, 7 and 9 as per the Order of this Hon'ble Tribunal dated 29.05.2023.
23. That the Applicant has provided evidence in the form of photographs and Google Earth images to show the illegal mining conducted by Respondents No. 5 and 6.
24. That photographs of illegal mining by using heavy machinery by Respondent No. 5 are annexed at **Page 135** and Google Earth image showing presence of heavy machinery is at **Page 137** and mining outside the prescribed lease area at **Page 149**. It is clarified that the Google Earth images annexed with the Original Application are the KML files that were uploaded by the project proponents themselves along with the Application for grant of Environmental Clearance.

25. That with respect to Respondent No. 6, photographs are annexed at **Page 135**.
26. Therefore, the averment by Respondents that no evidence has been annexed against them is baseless and misleading.
27. It is also pertinent to note that the Joint Committee Report has corroborated the violations of Respondents in its Report dated 08.08.2023 wherein it is clearly mentioned that heavy machinery was being used to undertake in-stream mining.

C. The contention (iii) that the Applicant has not disclosed the GPS coordinates intentionally to avoid verification of the authenticity of the image is incorrect

28. That Respondents No. 5 and 6 (at Para 22) have stated that the GPS coordinates have not been disclosed by the Applicant intentionally to avoid verification of the authenticity of the Google Image showing illegal mining by the Respondents.
29. It is submitted that the Google Earth images annexed with the Original Application have not been prepared by the Applicant, but are KML files uploaded by the Respondents along with their application for grant of Environmental Clearance. Therefore, there has been no concealment by the Applicant with respect to GPS coordinates.

D. Contention (iv) that presence of heavy machinery at a distance of 300 metres from the mining lease area does not prove that the Respondent is undertaking illegal mining is incorrect

30. That Respondents No. 5 and 6 have stated in Para 44 that presence of heavy machinery at a distance of 300 metres from the mining lease area does not prove that the Respondent is undertaking illegal mining.
31. It is the submission of the Applicant that Google earth image annexed at Page 149 of the Original Application shows presence of heavy machinery near the mining lease area of Respondent No. 5, approximately at a distance of 300 metres. This clearly shows that Respondent No. 5 has exceeded its mining area and undertaking mining outside the prescribed area, in complete violation of Specific Condition No. 22 of the Environmental Clearances granted to Respondent No. 5.

E. Contention (v) that Respondents No. 5 and 6 have not been found involved in illegal mining as per the letter dated 27.12.2022 of the District Mineral Officer is misleading

32. That the Respondents No. 5 and 6 rely on a letter dated 27.12.2022 of the District Mining Officer (at para 20) that states that Respondents No. 5 and 6 have not been found to be involved in illegal mining. However, fines have been realized from the tractor/

tipper/ machine owners which were found indulging in illegal extraction/ transportation of minerals from Doodhganga stream.

33. It is submitted on behalf of the Applicant that as per the letter dated 27.12.2022, fines have only been realized from the tractor/ tipper/ machine owners which were found indulging in illegal extraction/ transportation of minerals from Doodhganga stream, however, the project proponents were not imposed any environmental compensation.
34. That therefore, environmental compensation should be imposed on Respondents No. 5 and 6 for undertaking mining in violation of the conditions of the Environmental Clearances.

F. Contention (vi) that the present Original Application is not filed within limitation is incorrect

35. That the Respondents have stated that the Original Application has not been filed within limitation.
36. It is submitted that the Original Application was filed under Section 14, 15 read with Section 20 of the National Green Tribunal Act, 2010 highlighting non-compliance with the conditions of the Environmental Clearances granted to Respondents No. 5 and 6.
37. It is submitted that this forms a continuous cause of action as per ***Forward Foundation v. State of Karnataka (Original Application No. 222 of 2014)*** and is therefore the Original Application has been filed within the period of limitation.

38) Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.

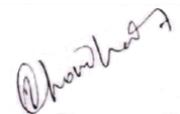


APPLICANT

THROUGH



RITWICK DUTTA



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VERIFICATION

Verified by Raja Muzaffar Bhat, S/O Bashir Ahmed Bhat, R/O 64, Alamdar Colony, Gopalpura, District Budgam, Jammu & Kashmir- 191193 do hereby verify that the contents of Paragraphs 1 to 38 are true to my personal knowledge and nothing material has been concealed therefrom.



APPLICANT

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 351 OF 2023

IN THE MATTER OF:

RAJA MUZAFFAR BHAT

...APPLICANT

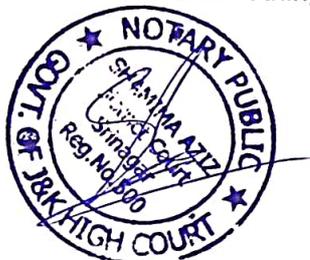
VERSUS

UNION TERRITORY OF JAMMU & KASHMIR & ORS. ...RESPONDENTS

AFFIDAVIT

I, Raja Muzaffar Bhat, S/O Bashir Ahmed Bhat, R/O 64, Alamdar Colony, Gopalpura, District Budgam, Jammu & Kashmir- 191193 do hereby solemnly affirm and declare as under:

1. That I am Applicant in the above titled Application, and hence well conversant with the facts and circumstances described in the present case and as such competent to swear this Affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.



Raja Muzaffar
DEPONENT

VERIFICATION

Verified on this 16 day of December 2023 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing material is concealed therefrom.

Certified that the statement declared

on oath before me at Srinagar on this

day of 16 Dec 23

by Raja Muzaffar Bhat

who is identified by Adv. Shamima

SHAMIMA AZIZ
NOTARY PUBLIC

Raja Muzaffar
DEPONENT