

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Original Application No. 462/2023

In the matter of:

Raja Ram Singh

Vs.

Applicant

State of U.P. & Ors.

WITH

Respondents

Original Application No. 481/2023
(I.A. No. 93/2024 and I.A. No. 70/2024)

Balbir Sandhu & Ors.

Vs.

Applicants

State of U.P. & Anr.

Respondents

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Nazimuddin
Scientist 'F'

Central Pollution Control Board

Place: - Delhi
Dated: 08.08.2024

**Response of Central Pollution
Control Board in order dated-
24.04.2024 in the matter of OA
No. 462/2023 (with OA No.
481/2023)**

1. Background (OA NO. 462/2023):

Hon'ble NGT (PB) vide order dated-**02.08.2023** in the matter of OA No. 462/2023 constituted a joint committee as below:

“

3. 3. In view of the averments made in the application, we consider it appropriate that a Joint Committee be constituted to verify the factual position and take appropriate remedial action. Accordingly, we constitute a Joint Committee comprising of Ministry of Environment, Forest and Climate Change (MoEF&CC), Central Pollution Control Board (CPCB), National Mission for Clean Ganga (NMCG), Uttar Pradesh Pollution Control (UPPCB) and District Magistrate, Gonda and direct the same to meet within one week, undertake visits to the site, look into the grievances of the applicant, associate the applicant and representative of the concerned project proponent, verify the factual position and take appropriate remedial action by following due course of law and giving opportunity of being heard to the project proponent. The Committee may particularly clarify on compliance with Sustainable Sand Mining Management Guidelines, 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020 including remediation/rehabilitation of mined areas and damage caused to river Saryu. The State PCB will be the nodal agency for coordination and compliance. ... ”

In compliance of the order dated-02.08.2023, the report of joint committee was submitted to Hon'ble NGT (PB) through e-mail dated-30.10.2023 by nodal agency in the matter. The case was heard on **07.11.2023** and Hon'ble NGT (PB) directed as under:

“

9. However, in view of the precautionary principle embodied in Section 20 of National Green Tribunal Act, 2010, we consider it appropriate to direct that till the next date of hearing fixed no short term permit for mining of minor mineral (sand, Morrum etc.) be granted in the State of Uttar Pradesh without EC from SEIAA and consent from UPPCB and without following Sustainable Sand Mining Management Guidelines, 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020 in this regard....”

The case was further listed/heard on **01.12.2023** and **21.12.2023**, and vide order dated-21.12.2023, Hon'ble NGT (PB) impleaded MoEF&CC and CPCB as respondents and directed to submit reply/response with respect to **the permissibility of short term permits and environmental requirements/safeguards**, and listed the case for hearing on 23.02.2024.

In compliance of above order dt.-21.12.2023, CPCB submitted its reply on **22.02.2024** to Hon'ble NGT (PB). The case was listed/heard on **23.02.2024** and adjourned to 02.04.2024. The case was further heard on **02.04.2024** and Hon'ble NGT (PB) directed as below:

“...

*5. Short reply has been filed by respondent no.7-CPCB vide email dated 22.02.2024 without giving any specific response to the question of **permissibility of short term mining permit and environmental safe guards relating to the same.***

11. Replies/reports be filed by respondents no. 2 (the Director, Geology and Mining, U.P.), 3 (the District Magistrate, Gonda) , 4 (UPPCB), 7 (MoEF&CC) and 8 (CPCB) as directed vide order dated 21.12.2023

12. List for further consideration on 24.04.2024.

...”

In compliance to above order dated-02.04.2024, CPCB submitted its reply on **22.04.2024** with respect to **the permissibility of short-term mining permit and environmental safeguards relating to the same** as below:

*“Ministry has issued Notification S.O. 1224 (E) dated 28.03.2020 wherein certain cases are exempted from requirement of obtaining Environmental Clearance, including for, “3. **Removal** of sand deposits on agricultural field after flood by farmers”. Such exemption may apply only in case of **removal of the sand deposited above surface** in the agricultural fields by a flood.*

*However, **mining** of the minor minerals, except for activities exempted by the aforesaid notification dated 28.03.2020, require Environmental Clearance as per the EIA Notification, 2006 (and its amendments time to time). Further, the said notifications do not stipulate exemption from Environmental Clearance for short-term mining of the minor minerals as such.”*

2. Background (OA No. 481/2023):

Hon'ble NGT (PB) vide order dated-**04.08.2023** in the matter of OA No. 481/2023 titled as Balbir Sandhu & Ors vrs State of U.P. and Anr, directed constitution of two joint committees to submit report in the matter. District Magistrates and SSP of districts Yamuna Nagar and Saharanpur were directed to ensure no mining and crushing is carried out in districts Yamuna Nagar and Saharanpur without grant of EC, CTE & CTO under relevant environmental laws. Reports of the two joint

committees as Part-A and Part-B respectively, were submitted to Hon'ble NGT (PB) vide e-mail dated-**19.04.2024**.

The recommendations of the **first** joint committee (i.e., Part A) included a recommendation as below:

“ ...

b. Ministry vide Notification S.O. 1224 dated 28.03.2020 has given exemption of certain cases from requirement of Environmental Clearance including for, “Removal of sand deposits on agricultural field after flood by farmers”, which applies only for the sand deposited in the agricultural fields by annual floods.

... ”

3. Order dated-24.04.2024 in the matter:

The OA No. 462/2023 along with OA No. 481/2023 was listed/heard on **24.04.2024** and Hon'ble NGT (PB) directed as below:

“ ...

42. The matter needs to be examined in the context of applicability to all States and UTs and formulation of **appropriate guidelines imposing requisite environmental safe guards for grant and execution of short term permits for removal of sand deposited by flood on agricultural land.**

43. The Director, Mining and Geology, U.P. and the Member Secretary, UPPCB and CPCB and MoEF & CC are directed to file their responses in this regard within two months by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

44. List on 12.08.2024 for further consideration.

45. However, till such time the validity of exemption of short term permits for removal of sand deposited on agricultural land by flood from prior environmental clearance is adjudicated upon, we consider it to be appropriate that order dated 07.11.2023 regarding requirement of EC for the same be modified and Order dated 07.11.2023 is modified accordingly to that extent in respect of “removal of sand deposit on agricultural fields by farmer” which will not require “prior environmental clearance” till further orders to the contrary.

46. However, while granting such short term permits to the farmers for removal of sand deposited on agricultural land by flood, the District Magistrate shall mention environmental safeguards/remedial measures required to be implemented by the farmers while carrying out sand mining on short term basis (three months) to avoid adverse environmental impact/pollution.

... ”

4. Response

It is humbly submitted that the MoEF&CC Notification S.O. 1224 (E) dated-28.03.2020 has exempted the requirement of EC for certain cases as per Appendix-IX, which includes - **removal** of sand deposits on agricultural field after flood by farmers. To prevent misuse of the said exemption - case no. 3 of Appendix-IX of Notification S.O. 1224 (E) dated 28.03.2020, **(Annexure-I)** the following checks/safeguards may be considered:

- a. The natural ground level of the area should not be changed during removal of the sand deposited by flood above the ground level by farmers.
- b. Digging of old deposits below the ground level should be allowed only with Environmental Clearance.
- c. Short-term permits for digging of old deposits below the ground level should not be considered by state governments without Environmental Clearance.

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 28th March, 2020

S.O. 1224(E).—WHEREAS, *vide* the Mineral Laws (Amendment) Act, 2020 (2 of 2020), the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (hereinafter referred to as MMDR Act) has been amended with effect from the 10th day of January, 2020 and, *inter alia*, new section 8B relating to the provisions for transfer of statutory clearances has been inserted;

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

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

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

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

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

In the said notification,-

(i) in paragraph 11, after sub-paragraph (2), the following sub-paragraph shall be inserted, namely:-

“(3) The successful bidder of the mining leases, expiring under the provisions of sub-sections (5) and (6) of section 8A of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made thereunder, shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee for a period of two years, from the date of commencement of new lease and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier:

Provided that the successful bidder shall apply and obtain prior environmental clearance from the regulatory authority within a period of two years from the date of grant of new lease.”;

(ii) in the Schedule, against the item 1(a), in the column (5), after clause (2) of the Note, the following clause shall be inserted, namely:-

“(3) The evacuation or removal and transportation of already mined out material lying within the mining leases expiring under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), by the previous lessee, after the expiry of the said lease, shall not form the part of the mining capacity so permitted to the successful bidder, selected through auction as per the procedure provided under that Act and the rules made thereunder.”;

(iii) for Appendix-IX, the following Appendix shall be substituted, namely:-

“APPENDIX-IX

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

1. Extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.
2. Extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles.
3. Removal of sand deposits on agricultural field after flood by farmers.
4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.
5. Community works, like, de-silting of village ponds or tanks, construction of village roads, ponds or bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes and community efforts.
6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.
7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.
8. Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.
9. Manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community.
10. Digging of wells for irrigation or drinking water purpose.
11. Digging of foundation for buildings, not requiring prior environmental clearance, as the case may be.
12. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.
13. Activities declared by the State Government under legislations or rules as non-mining activity.”

[F. No. Z-11013/47/2018-IA.II (M)]

GEETA MENON, Jt. Secy.

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) *vide* number S.O. 1533 (E), dated the 14th September, 2006 and subsequently amended *vide* the following numbers:-

1. S.O. 1949 (E), dated the 13th November, 2006;
2. S.O. 1737 (E), dated the 11th October, 2007;
3. S.O. 3067 (E), dated the 1st December, 2009;
4. S.O. 695 (E), dated the 4th April, 2011;
5. S.O. 156 (E), dated the 25th January, 2012;
6. S.O. 2896 (E), dated the 13th December, 2012;
7. S.O. 674 (E), dated the 13th March, 2013;
8. S.O. 2204 (E), dated the 19th July, 2013;
9. S.O. 2555 (E), dated the 21st August, 2013;
10. S.O. 2559 (E), dated the 22nd August, 2013;
11. S.O. 2731 (E), dated the 9th September, 2013;
12. S.O. 562 (E), dated the 26th February, 2014;
13. S.O. 637 (E), dated the 28th February, 2014;

14. S.O. 1599 (E), dated the 25th June, 2014;
15. S.O. 2601 (E), dated the 7th October, 2014;
16. S.O. 2600 (E), dated the 9th October, 2014;
17. S.O. 3252 (E), dated the 22nd December, 2014;
18. S.O. 382 (E), dated the 3rd February, 2015;
19. S.O. 811 (E), dated the 23rd March, 2015;
20. S.O. 996 (E), dated the 10th April, 2015;
21. S.O. 1142 (E), dated the 17th April, 2015;
22. S.O. 1141 (E), dated the 29th April, 2015;
23. S.O. 1834 (E), dated the 6th July, 2015;
24. S.O. 2571 (E), dated the 31st August, 2015;
25. S.O. 2572 (E), dated the 14th September, 2015;
26. S.O. 141 (E), dated the 15th January, 2016;
27. S.O. 648 (E), dated the 3rd March, 2016;
28. S.O. 2269(E), dated the 1st July, 2016;
29. S.O. 2944(E), dated the 14th September, 2016;
30. S.O. 3518 (E), dated 23rd November 2016;
31. S.O. 3999 (E), dated the 9th December, 2016;
32. S.O. 4241(E), dated the 30th December, 2016;
33. S.O. 3611(E), dated the 25th July, 2018;
34. S.O. 3977 (E), dated the 14th August, 2018;
35. S.O. 5733 (E), dated the 14th November, 2018;
36. S.O. 5736 (E), dated the 15th November, 2018;
37. S.O. 5845(E), dated the 26th November, 2018;
38. S.O. 345(E), dated the 17th January, 2019;
39. S.O. 1960(E), dated the 13th June, 2019;
40. S.O. 236(E), dated the 16th January, 2020;
41. S.O. 751(E), dated the 17th February, 2020; and
42. S.O. 1223(E), dated the 27th March, 2020.

Item No. 06 and 07

Court No. 2

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

Original Application No. 462/2023

Raja Ram Singh

Applicant

Versus

State of U.P. & Ors.

Respondent

With

Original Application No. 481/2023
(I.A. No. 93/2024 and I.A. No. 70/2024)

Balbir Sandhu & Ors.

Applicant(s)

Versus

State of U.P. & Anr.

Respondent(s)

Date of hearing: 24.04.2024

**CORAM: HON’BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON’BLE AFROZ AHMAD, EXPERT MEMBER**

Counsel for the parties in O.A. No. 462/2023

Applicant: None for the applicant.

Respondents: Mr. Ankit Verma, Advocate for Respondents No. 1 & 3.
Mr. Mukesh Verma Advocate for Respondent No. 2
Mr. Pradeep Misra Advocate for Respondent No. 4
(through VC).
Mr. Sharad Chauhan Advocate for Respondent No. 5.
Mr. Hem Chandra Joshi Advocate for Respondent No. 6
(through VC).
Dr. Sapna Aggarwal Advocate for Respondent no. 7
(through VC).
Mr. Raj Kumar, Advocate for Respondent No. 8
(through VC).

Counsel for the parties in O.A. No. 481/2023

Applicant: None for applicants no. 1 to 4.
Ms. Pushpila Bisht, Ms. Pallavi Pratap and Mr. Shubham Karnwal, Advocates for Applicant No. 5 (Impleaded Vide order dated 20.03.2024 passed on I.A. No. 94/2024).

Respondents : Mr. Ankit Verma, Advocate for respondents no. 1 to 3 and 5
Mr. Pradeep Misra, Advocate for respondent no. 4 (through VC)
Mr. Rahul Khurana, Advocate for respondents no. 6 to 10.
Mr. Narender Pal Singh, Ms. Shaiem, Mr. Hasil Jain and Ms. Anjali Advocates for respondent No. 11-Memta (Impleaded vide order dated 09.02.2024 passed on I.A. No. 70 of 2024).
Mr. Vanshdeep Dalmiya and Ms. Anisha Jain Advocates for respondent No. 12-Salim (Impleaded vide order dated 20.03.2024 passed on I.A. 92 of 2024) and Applicant in I.A. 93 of 2024).
Mr. Atif Suhrawardy, Advocate for CPCB.
Ms. Suhasini Sen and Ms. Surbhi Advocates for MoEF & CC.

Both the applications have been registered on letter petitions received by post

ORDER

1. Mr. Raja Ram Singh sent letter petition by post to this Tribunal which has been treated and registered as O.A. No. 462/2023 complaining about illegal mining in villages Majharath, Jaitpur, Nawabganj, Tehsil Tarbganj, District Gonda, illegal transportation of the extracted minor minerals by overloaded trucks numbering more than 700 everyday, storage and illegal sale of minor mineral measuring about 20 lakh cubic meters and damage caused to Patpar Ganj Bridge and Road by overloaded trucks.
2. Vide order dated 02.08.2023, this Tribunal constituted a Joint Committee to look into the grievances of the applicant, verify the factual position, take appropriate remedial action by following due course of

law and submit its report within two months.

3. In compliance thereof, report of the Joint Committee was filed vide email dated 30.10.2023. The Joint Committee inter alia reported that around 1600 cubic meter sand is stored in authorized storage area at Laua Beerpur and 9337.5 cubic meters and 464 cubic meters sand was stored at unauthorized storage areas at Nawabganj Gird and Paraspur respectively without obtaining any storage permission. The Joint Committee mentioned that Short term permit dated 13.09.2023 for a period of three months w.e.f. 13.03.2023 to 12.06.2023 was granted by the District Magistrate, Gonda to Mr. Satyanarayan S/o Ram Avtar R/o Village-Majharat, Tehsil-Tarabganj, District-Gonda whereby he was allowed to extract 12,824 cubic meters of sand/morrum from Gata No. 505. Storage license dated 01.04.2023 was issued by the District Magistrate, Gonda in favour of Mr. Umesh Kumar Singh, R/o of Village Khanpur, P.S. Wazirganj, Tehsil-Tarabganj, District-Gonda on Gata No. 3318. Mining permit dated 10.03.2023 issued by the District Magistrate, Gonda for a period of three months w.e.f. 13.03.2023 to 12.06.2023 had already expired before field visit of the Joint Committee on 21.09.2023. The Joint Committee did not obtain information from the District Magistrate, Gonda/concerned District Mining Officer as to what was the exact quantity of the minor mineral which was extracted by Mr. Satyanarayan under the mining permit issued by the District Magistrate, Gonda and what was the storage/disposal thereof as per the information provided by him. The Joint Committee did not mention in its report as to whether any other mining lease of similar nature had been granted in the villages named in the application or any other area in District Gonda.

4. In its report the Joint Committee mentioned that the short term permit for a period of three months w.e.f. 13.03.2023 to 12.06.2023 was granted by the District Magistrate, Gonda without any requirement of environmental

clearance from SEIAA and consent from UPPCB on the ground that the same was not made mandatory by the Mining Department.

5. This Tribunal observed that as per the directions given by the Hon'ble Supreme Court and this Tribunal no sand mining irrespective of area size can be permitted without environmental clearance from SEIAA and consent from SPCBs/SPCCs. Question as to permissibility/validity of such short term permits without environmental clearance from SEIAA and consent from SPCB/SPCC arises in the present case and requires response from the concerned authorities/persons.

6. In view of the precautionary principle embodied in Section 20 of the National Green Tribunal Act, 2010, this Tribunal vide order dated 07.11.2023, directed that till the next date of hearing fixed no short term permit for mining of minor mineral (sand, Morrum etc.) be granted in the State of Uttar Pradesh without EC from SEIAA and consent from UPPCB and without following Sustainable Sand Mining Management Guidelines, 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020 in this regard. Said interim order was extended by subsequent orders.

7. In that case this Tribunal also observed that neither the Joint Committee nor the Mining Department ascertained from which locations/sites the minor mineral stored at above said three storage locations was mined/brought. Such unauthorized storage of minor mineral is indicative of and consistent with illegal mining. Neither the Joint Committee nor the Mining Department looked into the question of illegal mining. The factual position verified by the Joint Committee disclosed that illegal mining had been done in the area. Such illegal mining being a cognizable offence punishable under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957/Section 379 of the India Penal Code, 1860, FIR ought to have been registered and proper investigation ought to have been carried

out as to when and where illegal mining was carried out and who were the persons involved in the same. Accordingly, the District Mining Officer, Gonda was directed to submit written complaint with all relevant factual details to the SHO of the concerned police station within 7 days and the Superintendent of Police, Gonda was directed to issue appropriate instructions to the concerned SHO to register FIR immediately on receipt of the complaint and to carry out the investigation and submit an interim report to this Tribunal.

8. State of Uttar Pradesh, through Chief Secretary, Government of Uttar Pradesh; Director, Geology and Mining, Uttar Pradesh; District Magistrate, Gonda, Uttar Pradesh; UPPCB, through its Member Secretary; Mr. Satyanarayan S/o Ram Avtar R/o Village-Majharat, Tehsil-Tarabganj, District-Gonda and Mr. Umesh Kumar Singh, R/o of Village Khanpur, P.S. Wazirganj, Tehsil-Tarabganj, District-Gonda were impleaded as respondents no. 1 to 6.

9. In compliance of order dated 07.11.2023, report was filed by respondent no.2- Director, Geology and Mining, U.P. vide email dated 19.12.2023 mentioning that FIR number 0529 dated 24.11.2023 has been registered and the matter is under investigation.

10. In the course of hearing additional reply was been filed by respondent no. 4 vide email dated 18.12.2023 that Uttar Pradesh Pollution Control Board vide letter dated 18.12.2023 has imposed the Environmental Compensation of Rs. 5,75,000/- on Lease Holder-Shri Satya Narayan, S/o Shri Ram Avtar, R/o Village- Manjharath, Tehsil- Tarabganj, District- Gonda in question for a default period of 13.03.2023 to 12.06.2023 for removal of sand deposited in the agriculture land at Araj No- 505, Village- Manjharath, Tehsil- Tarabganj, District- Gonda without obtaining prior consent to operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air

(Prevention and Control of Pollution) Act, 1981.

11. This Tribunal observed that in **Original Application No.176/2022 Aman Choudhary vs Union of India and others** even the Director, Mining and Geology, State of Uttar Pradesh & Ors. had taken the stand that CTE/CTO was not required from UPPCB for such mining leases. Even the Member Secretary had taken the stand that categorization of sand mining was to be done by MoEF&CC in accordance with the decision taken by CPCB and no such categorization had been done by MoEF&CC. Director, Mining and Geology, U.P. and Member Secretary, UPPCB had taken contradictory stands regarding requirement of consent and UPPCB had also adopted contradictory approach by selectively issuing show cause notices, closure orders and environmental compensation orders in respect of some mining lease holders for not obtaining CTE/CTO without taking any action against hundreds of mining lease holders who have not obtained CTE/CTO from UPPCB. The Director, Mining and Geology, U.P. and Member Secretary, UPPCB were directed to file their own affidavits giving detailed reasons justifying selective arbitrary and discriminatory treatment given to some mining lease holders without taking any action against other similarly placed mining lease holders in tabular format with all relevant particulars with respect to each mining lease holder in the State of Uttar Pradesh.

12. In the course of hearing it was stated that short term permits are being issued by the District Magistrates in the State of Uttar Pradesh in view of guidelines at pages 58 and 72 of the Sustainable Sand Mining Management Guidelines, 2016 and the Rules framed by the State of U.P. in this regard.

13. Since the question of permissibility of such short term permit arose in the case. MoEF&CC and CPCB were impleaded as respondents no. 7 and 8 and were directed to file their response. The Director, Mining and Geology, State of U.P. was directed to file additional reply giving information regarding

short term mining permits issued by the District Magistrates/District Mining Officers in the State of U.P. and the procedure followed in respect thereof during last one year and Member Secretary, UPPCB was directed to file additional reply giving information as to the number of cases in which CTE/CTO was taken from UPPCB and number of cases in which CTE/CTO was not taken from UPPCB.

14. This Tribunal also observed that un-authorized storage of 9337.5 cubic meters and 464 cubic meters sand was not claimed to have been done by the owner of the land or the short term mining lease permit holder. The District Magistrate, Gonda was directed to take over possession of the sand un-authorizedly stored and dispose of the same by way of open auction and deposit the amount thereby realized with UPPCB for utilization for restoration of environment in the area and to file action taken report. The Director, Mining and Geology, State of U.P. was also directed to issue instructions that in cases where illegal mined material is found to have been stored un-authorizedly then the possession of the illegally mined material shall also be taken over and the same shall be disposed of by way of open auction and the amount realized shall be deposited with UPPCB which may utilize the same in the area affected by such illegal mining for restoration of environment.

15. Reply/reports have been filed by District Magistrate, Gonda vide email dated 19.04.2024 and by Member Secretary, UPPCB vide email dated 22.04.2024. Replies has been filed by CPCB vide email dated 22.04.2024 and by MoEF & CC vide email dated 23.04.2024 and the matter is pending for further consideration/compliance.

16. Mr. Balbir Sandhu and others sent letter petition by post, which has been treated and registered as O.A. No. 481/2023, complaining about illegal mining in District Saharanpur, Uttar Pradesh, District Yamuna Nagar,

Haryana.

17. Vide order dated 04.08.2023 this Tribunal constituted two Joint Committees and directed the same to submit reports as directed therein.

18. The District Magistrates and Senior Superintendent of Police, District Yamuna Nagar and District Saharanpur respectively were directed to ensure that no mining and crushing is carried out in District Yamuna Nagar and District Saharanpur respectively without grant of EC, CTE and CTO as may be under the relevant environmental laws.

19. Vide order dated 09.11.2023 the District Magistrates, Yamuna Nagar, Haryana and Saharanpur, Uttar Pradesh respectively were directed to upload information regarding all mining leases, mining permits granted and stone crushers with details regarding EC/CTE/CTO in Districts Yamuna Nagar, Haryana and Saharanpur, Uttar Pradesh respectively on the website of the District Administration within two weeks, if not already done.

20. In the course of hearing (1) State of Uttar Pradesh through Chief Secretary, Government of Uttar Pradesh, (2) Principal Secretary, Department of Environment, Forest and Climate Change, Government of Uttar Pradesh, (3) Director, Department of Geology and Mining, State of Uttar Pradesh, (4) UPPCB, (5) District Magistrate, Saharanpur, Uttar Pradesh, (6) State of Haryana through Chief Secretary, Government of Haryana, (7) Additional Chief Secretary, Directorate Environment and Climate Change, Government of Haryana, (8) Director, Department of Mines and Geology, State of Haryana, (9) HSPCB, (10) District Magistrate, Yamuna Nagar, Haryana were impleaded as respondents No. 1 to 10 and notices were issued to them.

21. Reports of the Joint Committee have been filed vide email dated 19.04.2024 but responses to the same are yet to be filed by the concerned respondents.

22. One of the aspects regarding which the Joint Committee was directed

to submit report includes number of mining permits for mining in agricultural land granted in District Yamuna Nagar, Haryana and District Saharanpur, Uttar Pradesh respectively with details of EC/CTE/CTO.

23. In view of interim order passed in **O.A. No. 462/2023 titled as Raja Ram Singh Vs. State of U.P. and others** prohibiting grant of short term permits without EC and CTE/CTO I.A. No. 70/ 2024 and I.A. No. 92/2024 were filed by Memta and Salim for impleading them as respondents and I.A. No. 94/2024 was filed by Mr. Mohit Kumar for impleading him as applicant.

24. I.A. No. 70/2024 was filed for impleading Memta and grant of interim relief in the form of continuance of existing system of short term permit to the Bhumidhars of agriculture land in terms of rule 52 (1) of Uttar Pradesh Minor Mineral (Concession) Rules, 2021 till the issue is examined and finally decided by this Tribunal. In view of the nature of the questions relating to environment involved in the case and the reasons mentioned in the application, I.A. No. 70/2024 was partly allowed vide order dated 09.02.2024 and Memta was impleaded as respondent no. 11.

25. I.A. No. 92/2024 was filed by Mr. Salim, agricultural land owner, for his impleadment as respondent on the ground that when the applicant approached for EC for removal of sand from agricultural land for resuming agricultural operations, UPSEIAA opined that the same is exempted and when he applied for CTE/CTO, UPPCB referred to CPCB circular/notification dated 22.09.2023 mentioning that the same does not require CTE/CTO and his livelihood and rights are adversely affected by the order passed by this Tribunal.

26. I.A. No. 94/2024 was filed by Mr. Mohit Kumar, a resident of village Kheda, Kaluwala, Jahanpur, Saharanpur for intervention as co- applicant on the grounds that commercial sand mining can be done only after obtaining EC. Impugned interim order has been rightly passed by this Tribunal. If

mining leases are awarded by the State under the garb of rule 52 (1) of the Uttar Pradesh Minor Minerals (Concession) Rule, 2021, the same will result in environmental degradation and ecological imbalance.

27. In view of the reasons mentioned in the applications and probable adverse effect of the orders to be passed by this Tribunal on the applicants, I.A. No. 92/2024 and I.A. No. 94/2024 were allowed to the extent that Mr. Mohit Kumar was ordered to be impleaded as applicant no. 5 and applicant Mr. Salim was ordered to be impleaded as respondent no. 12.

28. Ms. Pushpila Bisht, Ms. Pallavi Pratap and Mr. Shubham Karnwal, learned Counsel for applicant no. 5-Mohit Kumar in O.A. No. 481/2022 have submitted that as per revenue record the land in question belonging to Memta and Salim regarding which LoI for issuance of short term permits have been granted was not affected by flood and the LoI granted are illegal and directions be issued that no short term permits be granted without EC and executed without grant of CTE/CTO by State Pollution Control Board.

29. In support of these submissions copies of the revenue record have been placed on record by applicant no. 5-Mohit Kumar.

30. Mr. Narender Pal Singh, Ms. Shaiem, Mr. Hasil Jain and Ms. Anjali, learned Counsel for respondent no. 11-Memta and Mr. Vanshdeep Dalmiya and Ms. Anisha Jain, learned Counsel for respondent no. 12-Salim in O.A. No. 481/2023 have argued that item 3 in Appendix IX to EIA notification dated 14.09.2006 (Inserted vide S.O. 141 (E) dated 15th January, 2016 and substituted vide S.O. 3611 (E) dated 25th July, 2018 and S.O. 1224 (E) dated 28th March, 2020) exempted “removal of sand deposit on agricultural fields by farmer” from requirement of “prior environmental clearance”.

31. Learned Counsel for respondent no. 11-Memta and Learned Counsel for respondent no. 12-Salim have also referred to Serial No. 20 “**Management of Sand Deposited after Flood on Agricultural Field of Farmers**” and

Serial No. 28 “**Exemption of Certain Cases from being Considered as Mining and Requirement of Environmental Clearance**” of the Sustainable Sand Mining Management Guidelines 2016 which read as under:-

“Management of Sand Deposited after Flood on Agricultural Field of Farmers.

The Standing Committee on Water Resources on issues, concerning flood management, compensation, and status of ownership of submerged and eroded land in the country including compensation to farmers for loss of their crops destroyed by floods and right to disposal of the sand left in the fields of farmers in its meeting held on 29.04.2015 made observations on this subject.

The Committee observed that pursuant to Hon'ble Supreme Court of India decision in "Deepak Kumar Case" in 2012, regulations were framed by the Ministry of Mines to guide environmental clearance of minor minerals. ... The Committee, therefore, desires the Ministry of Water Resources, River Development and Ganga Rejuvenation to work in close coordination with the Ministry of Mines and Environment, Forest and Climate Change to frame regulations / Guidelines in this regard expeditiously.

Mining of Sand

The Committee further observed that due to the floods, the agricultural land of farmer is destroyed and rendered infertile. Further the farmer loses his livelihood as the produce of his land is destroyed by flood and become unsalable. The farmer is also deprived of the right of lifting sand from his land. He is therefore, left helpless and destitute and leave their land in search of job.

The Committee observes that "mining operation" means any operation undertaken for the purpose of winning any mineral. Accordingly, if desilting is undertaken perse with the objective of winning a mineral then only it will be construed as a mining operation. Apparently, if the desilting is undertaken not for winning any mineral, it will not be construed as mining operation and therefore, the farmer can remove the sand from the land without requiring the requisite permits. However, the Committee strongly feels that the farmer be given the right to use and dispose-off the sand accumulated over their land post flood, by incorporating the necessary provisions in the Mines and Mineral (Development and Regulation) Act, 1957".

Removal of sand from the agricultural field by the owner farmer of the land from environment point of view will not be considered as mining operation and its removal and disposal can be allowed without the requirement of environment clearance till it is done only to the extent of reclaiming the agricultural land. The sand deposited after flood only be removed, so no mining / digging below the

ground level is allowed. For removing sand in case where private land has gone into the river due to erosion, the requirement of mining lease and environment clearance will continue. This operation of removal of sand deposited on agricultural field should be done after a mapping of deposition is done by the Land Management Committee of the Gram Panchayat. The sand so deposited post flood can be removed by the farmer owning the land / group of farmers affected by this post flood sand deposition or the Gram Panchayat. Customary rights to remove and dispose off the sand should be given to the farmer affected by deposition of sand on account of sudden flood in his agricultural land.”

“Exemption of Certain Cases from being Considered as Mining and Requirement of Environmental Clearance

Keeping in view the purpose, maintenance of infrastructure, abatement of disasters, customary easement and property rights, it is felt that following cases may not be treated as mining for the purpose of requirement of environmental clearance. The following cases shall not require prior environmental clearance, namely:-

X X X X

3. Removal of sand deposits on agricultural field after flood by farmers.

X X X X”

32. Learned Counsel for respondent no. 11-Memta and learned Counsel for respondent no. 12-Salim have also referred to Rule 52 (1) of U.P. Minor Mineral Concession Rules, 2021 which reads as under:-

“52 (1) Notwithstanding anything contained in rule 74, **the bhumidhar of agricultural land may apply for grant of mining permit for removal of sand or morrum or Bajri or Boulder or any of these in mixed state deposited on his land** in Form MM-8, in triplicate to the District Officer, accompanied by a non refundable fee of Rs. 2,000/- (Rupees two thousand) Only, and two copies of a cadastral Survey map on which the area, applied for, is clearly marked. **The District Officer shall cause an enquiry, if deemed necessary, through Revenue and Geology & Mining Departments regarding the title of the land and availability of minor mineral on the applied area.**
(2) In the light of the report submitted by the concerned Officer, the District Officer, may grant the mining permit for a period not exceeding three months in favour of the bhumidhar, after realizing double the amount of royalty in advance.
(3) Except above mentioned provisions, the other provisions of these rules will apply mutatis mutandis to the mining permit granted under this rule.”

33. Learned Counsel for respondent no. 11-Memta and learned Counsel

for respondent no. 12-Salim have further argued that in compliance to order dated 30.05.2023 passed by this Tribunal In O.A. No. 176 of 2022 titled as “Aman Chaudhary Vs. Union of India & Ors.”, CPCB has categorized ‘Sand/river bed material mining from the riverbed and its floodplains (excluding manual excavation)’ in red and orange categories for the consent mechanism which reads as under:-

“Categorization of sand / riverbed material mining from riverbed and its floodplains (excluding manual excavation)”

SI. No.	SI. No.(as per CPCB Document)	Non-industrial operations	Category	Remarks
1	63	Sand / riverbed material mining from riverbed and its floodplains (excluding manual excavation)		i. Sand / riverbed material mining from riverbed and its floodplains may cause ecological disturbances, erosion of riverbed, change in hydro-geological conditions & river ecosystem, etc.
		(i) Mining lease area more than 5 hectares or Mining lease area up to 5 hectares which is part of cluster mining	Red	ii. Cluster mining means that the distance of mining lease area is less than 500 m from periphery of another lease area.
		(ii) Standalone mining lease area up to five hectares in areas (not a part of any cluster mining)	Orange	iii. This categorization is made considering the ecological damages and not based on pollution potential/index.

Note: Cluster mining as defined in ‘Enforcement & Monitoring Guidelines for Sand Mining, 2020’, issued by MoEF&CC.”

34. Learned Counsel for respondent no. 11-Memta and learned Counsel for respondent no. 12-Salim have vehemently argued that EC and CTE and CTO are not required for removal by the method of manual excavation by farmers of sand deposited on agricultural land by flood and interim orders passed by this Tribunal prohibiting short term permits without EC and CTE/CTO be modified. Notification dated 28.03.2020 issued by MoEF &

CC, whereby Appendix IX was substituted is operative and item 3 thereof provides that “removal of sand deposits on agricultural field after flood by farmer” will not require environmental clearance.

35. It may be observed here that exemption granted by above referred MoEF notifications do not contain any condition regarding quantity of the sand to be removed and also period within which the same is to be removed although Rule 52 of the Uttar Pradesh Minor Mineral (Concession) Rules, 2021 contains the condition that the permit cannot be for the period of more than three months. It may be added here that Rule 52 of the Uttar Pradesh Minor Mineral (Concession) Rules, 2021 is not restricted to mining of sand deposited by flood on agricultural land but extends by farmer to removal of sand, morrum, bajri or bolder or any of these in mixed deposited on his land but the latter is not exempted from the requirement of environmental clearance and is not permissible without prior environmental clearance.

36. Exemptions granted by item 3 of Appendix IX of notification dated 28.03.2020 applies only in case of removal of sand deposit on above surface in the agricultural field by flood. The conditions of (i) deposit of sand on agricultural field by flood; (ii) mapping of the deposition by the Land Management Committee of the Gram Panchayat, if any, and (iii) manual excavation of the sand deposited are conditions which have to be satisfied for exemption from EC of short term permit for removal by farmer of sand deposited on agricultural land by flood.

37. As per LoI issued in favour of respondent no. 11-Memta quantity of 32600 cubic meter of mineral deposit is to be manually excavated within period of 90 days. As per LoI issued in favour of respondent no. 12-Salim quantity of 69,000 cubic meter of mineral deposit is to be manually excavated within period of 90 days. Serious doubt arises as to whether such huge quantity of sand can be removed by manual excavation within the period

permitted and if yes further question arises about the number of laborers and transport vehicles required. It may be observed here that even in commercial leases granted for mining of minor mineral initially in leases condition was imposed for manual excavation which was later altered to mechanized mining in view of directions given by Hon'ble Supreme Court/this Tribunal. We find no justification for imposing the condition of manual excavation which may defeat the very purpose of reclamation of agricultural land for cultivation. Perhaps the condition of manual excavation has been added to justify the exemption

38. It may also be added here that even in case of manual excavation there will be employment of large contingent of laborers and hiring of large number of vehicles for transportation of sand removed from agricultural field which will cause water and air pollution. Therefore, blanket exclusion of "manual excavation" in categorization of sand/riverbed material mining from the riverbed and its flood plains in red and orange categories requires hedging by appropriate conditions and warrants adjudication/intervention by this Tribunal on due consideration of the matter after hearing the necessary parties. Till such adjudication/intervention requirement of CTE/CTO from SPCB/UTPCC is mandated by precautionary principle. Needless to say that SPCB/UTPCC have to adopt summary procedure in cases of short permits for grant of CTE/CTO in expeditiously disposing of application for CTE/CTO within a few days.

39. It may also be observed here that even though as per categorization by CPCB removal of sand deposited on agricultural land by flood by method of manual excavation does not fall in red/orange category but in O.A. No.262/2023 environmental compensation has been imposed by UPPCB on respondent no. 5 on the ground of his failure to obtain CTE/CTO from UPPCB which warrants further response from UPPCB in this regard.

40. In Civil Appeal No. 1628-1629/2021 titled as Noble M. Paikada Vs. Union of India the Hon'ble Supreme Court held that completely, unguided and blanket exemption granted by Item 6 in Appendix-IX to the requirement of obtaining in EC notification dated 14.09.2006 to be arbitrary and violative of article 14 of the Constitution of India.

41. The exemption has to be hedged by appropriate conditions regarding (i) applicability of SSMG, 2016 and EMGSM, 2020, (ii) the period within which such removal is to be made, (iii) assessment of quantity of sand to be removed from agricultural field, (iv) method of excavation/removal of sand (v) measures to be taken to prevent illegal mining in the garb of short term permits for removal by farmers of sand deposited on the agricultural land by flood and (vi) environmental safe guard measure required to present negative environmental impact.

42. The matter needs to be examined in the context of applicability to all States and UTs and formulation of appropriate guidelines imposing requisite environmental safe guards for grant and execution of short term permits for removal of sand deposited by flood on agricultural land.

43. The Director, Mining and Geology, U.P. and the Member Secretary, UPPCB and CPCB and MoEF & CC are directed to file their responses in this regard within two months by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

44. List on 12.08.2024 for further consideration.

45. However, till such time the validity of exemption of short term permits for removal of sand deposited on agricultural land by flood from prior environmental clearance is adjudicated upon, we consider it to be appropriate that order dated 07.11.2023 regarding requirement of EC for the same be modified and Order dated 07.11.2023 is modified accordingly to

that extent in respect of “removal of sand deposit on agricultural fields by farmer” which will not require “prior environmental clearance” till further orders to the contrary.

46. However, while granting such short term permits to the farmers for removal of sand deposited on agricultural land by flood, the District Magistrate shall mention environmental safeguards/remedial measures required to be implemented by the farmers while carrying out sand mining on short term basis (three months) to avoid adverse environmental impact/pollution.

47. A copy of this order be sent to the Member Secretaries, UPPCB and HSPCB and the Directors Mining and Geology, Uttar Pradesh and Haryana and the District Magistrates, Gonda, Saharanpur (Uttar Pradesh) and Yamuna Nagar (Haryana) for requisite compliance.

48. A copy of this order be placed on the record of O.A. No. 481/2023 titled as Balbir Sandhu & Ors. Vs. State of U.P. and others.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

April 24th, 2024
AG