

**Factual and Action taken report in the matter of Sunil V/s State of Rajasthan & Ors. In Original Application No. 199/2024 (CZ) Hon'ble NGT, Central Zone Bench, Bhopal**

**1. Background**

In this original application, filed through a complaint vide email dated 18/07/2024 by the complainant **Sh. Sunil (through email ID [phonenumber7339@gmail.com](mailto:phonenumber7339@gmail.com))**, the complainant alleged that despite the seizure of sand laden tractor on dated 15/07/2024, Sh. Sonaram Yadav and his son Sh. Ashok is carrying illegal sand Mining. The complainant has also alleged that on dated 30/03/2024 also, same incident of illegal sand mining was reported but the officials (Head Constable Dharmendra, SHO and AME) were reportedly bribed and the matter was dismissed. The complainant has requested that an investigation be conducted into the suspicious roles of these officials and the illegal mining activities. Kindly take necessary action against the officials and mafias involved and order the seizure of both mining sites (As per the Jamabandi attached with the email) by sending senior and competent officials to the location.

**2. Order**

Hon'ble NGT, Central Zone Bench in its order dated 28/08/2024 has directed *inter-alia* as follows: -

*"...7. We further constitute a following Committee to submit the factual and action taken report: -*

- i. One representative from the District Collector, District- Kotputli, Rajasthan*
- ii. One representative from the Rajasthan State Pollution Control Board, Jaipur Rajasthan*

*8. The Committee is directed to visit the place and submit the factual and action taken report within six weeks. The State PCB will be the nodal agency for coordination and logistic support...."*

Accordingly, Regional Officer, RSPCB, Alwar was nominated by Member Secretary, RSPCB, Jaipur as representative on the behalf of RSPCB vide letter dated 09/09/2024. Copy of the letter dated 09/09/2024 is enclosed as **Annexure-1**.

And whereas, District Collector, Kotputli-Behror, vide letters dated 01/10/2024 and 09/10/2024, nominated Sub Divisional Officer (SDO), Paota as representative on the behalf of District Collector. Copy of letters dated 01/10/2024 and 09/10/2024 are enclosed as **Annexure-2**.

**3. Joint Committee Visit**

In compliance of the aforementioned orders/letters, the joint committee officials/representatives, comprising the officials from District Administration, Page 1 of 8

Mining Department and State Pollution Control Board, visited the sites (Khasra Nos. as mentioned in the Jamabandi submitted by the complainant with the email dated 18/07/2024 sent to Hon'ble Tribunal) as mentioned in the complaint in order to verify the present status, on dated 15/10/2024. Location of these khasra nos. have been pinned (Red Pins) on the Google Maps. Screenshot of the same is attached as follows:-



#### **4. Observations**

A. The present status, regarding illegal sand mining, if any, on the pieces of land (Khasra Nos. as per Jamabandi) are as follows: -

S. No.	Khasra No.	Area of the khasra (In Hectares)	GPS Co-ordinates	Site status during Joint Visit	Whether Sand Mining observed during site visit (Yes/No)
1.	1935	1.07	27.636198 N, 76.060105 E	Agricultural activities as well as levelling work	No
2.	1712	0.79	27.629725 N, 76.063790 E	Agricultural activities	No
3.	1717/2	0.18	27.629276 N, 76.060997 E	Agricultural activities	No
4.	1797	0.29	27.629531 N, 76.060727 E	Agricultural activities	No
5.	1799	0.29	27.630000 N, 76.059485 E	Agricultural activities	No
6.	3133/1717	0.0120	27.629915 N, 76.062584 E	Agricultural activities and a kachha village road exist in the area (both khasra are adjacent to each other)	No
7.	3134/1717	0.2560			

B. Observations related with the FIR registered during the illegal sand mining incident on dated 15/07/2024, as per the Factual Report received from Assistant Mining Engineer letter dated 15/10/2024 (copy of the factual status report enclosed as **Annexure-3**): -

- ✓ As per the factual status report submitted by the Assistant Mining Engineer, Kotputli, the technical employee of the mining office received information from mobile 7737182618 at about 4:40 PM regarding illegal transportation of Bajri by a tractor trolley in the Bhuri Bhadaj Area (01 km away from the nearby village Bhuri Bhadaj Gaushala)
- ✓ Accordingly, the official posted by the department in Bhuri Bhadaj Gaushala was sent to the said location where a vehicle tractor with trolley **without number MODAL B275 SI-SRNO-RU2E00862HE** was found loaded with Bajri. On seeing the Border Home Guard, the driver tried to unload the gravel and fled leaving the vehicle on the spot.
- ✓ The said vehicle was parked at Gaushala Premises Bhuri Bhadaj by the Border Home Guard. Information regarding the said action was given to SHO, Praggpura through telephone, on which Police Station Praggpura sent a police squad to the spot where the vehicle tractor with trolley without number MODAL B275 SI-SRNO-RU2E00862HE was found loaded with about 03 tons of Bajri.
- ✓ Since the said vehicle owner was found to be carrying Bajri illegally, therefore, action was taken against the vehicle in accordance with the Rules 54 and 60 of Rajasthan Minor Mineral Concession Rules 2017.
- ✓ In the aforesaid case, First Information Report having Number 405/2024 was filed in Police Station, Praggpura in which the vehicle tractor owner Sh. Raju Dhanka son of Sh. Shekhar Dhanka, resident of Bhuri Bhadaj has deposited the penalty amount of Rs 26,350/- imposed against the vehicle through GRN number 92016134 dated 16/07/2024 and the amount Rs 01 lakh through challan number 92014487 dated 16/07/2024 imposed (in accordance with the Deputy Secretary, Mines and Petroleum Department order dated 16/05/2023, copy of the order (with relevant documents) enclosed as **Annexure-4**), therefore, total amount of Rs 1,26,350/- has been deposited. Further investigation in the First Information Number is being done by Police Station, Praggpura itself.

C. Observations related with the illegal sand mining incident on dated 30/03/2024 (as mentioned in the email by complainant), as per the Factual Report submitted by Assistant Mining Engineer, Kotputli: -

- ✓ As per the factual status report submitted by the Assistant Mining Engineer, Kotputli, there is no documentary proof available with the Office of Mining Department, Kotputli related with any illegal mining incident on dated 30/03/2024.

5. Photographs with GPS co-ordinates, of the Khasra Nos. mentioned in the Jamabandi, taken during site visit are enclosed as follows: -



Fig 01: Khasra No. 1935, levelling work being done.



Fig 02: Khasra No. 1935, Agricultural activity.



Fig 03: **Khasra No. 1712**, Agricultural activity.



Fig 04: **Khasra No. 1717/2**, Agricultural activity.



Fig 05: **Khasra No. 1797**, Agricultural activity.



Fig 06: **Khasra No. 1799**, Agricultural activity.



Fig 07: Khasra No. 3133/1717 and 3134/1717, Agricultural activity.



Fig 08: Khasra No. 3133/1717 and 3134/1717, kachha village road.

**6. Conclusion and recommendation(s) by Joint Committee**

1. The matter related with the illegal transportation of Bajri incident on dated 15/07/2024 is already in process with the Mining Department and amount of Rs. 1,26,350/- has been deposited in this matter, till date and further investigation is ongoing at the level of Police Station, Praggura, therefore, no further action is required in this matter. However, if deem fit, Hon'ble Tribunal may direct the Mining Department to submit the action taken report in this particular case.
2. The applicant, while enclosing the Jamabandi, has alleged the illegal Bajri/Sand mining is being done at the Khasra nos. as located. The same was verified by the joint committee and the allegation was found incorrect.
3. Since this matter is related with another original application filed before Hon'ble Tribunal having O. A. No. 200/2024, Sonu V/s State of Rajasthan, therefore, both the matters, if deem fit by Hon'ble Tribunal, may be clubbed.

(Deependra Jharwal)

Senior Environment Engineer and Regional  
Officer, Regional Office, RSPCB, Alwar

(Kapil Upadhyay)

Sub Divisional Officer, Paota,  
Kotputli-Behror, Rajasthan



14. प्रभारी अधिकारी//समन्वयक प्रकरण में स्वयं की रिपोर्ट और राजकीय अधिवक्ता की राय के साथ न्यायालय के निर्देश, आदेश, निर्णय की प्रमाणित प्रति न्यायालय से प्राप्त कर तत्काल विभाग को प्रस्तुत करेंगे।
15. प्रभारी अधिकारी//समन्वयक का दायित्व विभाग के विरुद्ध पारित निर्णय के सन्दर्भ में आगामी अपीलीय कार्यवाही में अन्य प्रभारी अधिकारी//समन्वयक की नियुक्ति अथवा निर्णय की अनुपालना होने तक निरन्तर रहेगा।
16. प्रभारी अधिकारी//समन्वयक वादकरण प्रकरणों की मॉनिटरिंग हेतु न्याय विभाग की वेबसाइट LITES के निर्धारित सभी प्रपत्रों का संधारण करेंगे एवं LITES/Updation Center को समय समय पर प्रकरण प्रगति व अद्यतन सूचना प्रस्तुत करेंगे।
17. प्रभारी अधिकारी//समन्वयक का स्थानान्तरण/सेवानिवृत्त होने की स्थिति में अथवा प्रकरण अन्य प्रभारी अधिकारी//समन्वयक को स्थानान्तरित होने पर सभी प्रकरणों की सूची, पत्रावलियां, अभिलेख, आगामी तारीख पेशी और उस पर न्यायालय में सम्पादित होने वाली कार्यवाही का विवरण नवीन प्रभारी अधिकारी//समन्वयक को उपलब्ध करवाया जावेगा और इस आशय को प्रस्तुत करेगा अन्यथा स्थिति में अन्तिम वेतन भुगतान प्रमाण पत्र (L.P.C) जारी नहीं होगा।
18. यदि प्रभारी अधिकारी//समन्वयक उपर्युक्त निर्देशों की उपेक्षा करता है अथवा इनके प्रति असावधान पाया जाता है तो स्वयं को अनुशासनिक कार्यवाही हेतु उत्तरदायी बनायेगा।

(Vijai N.)  
Member Secretary *ole*

क्रमांक: प- F.10(638)RPCB/Legal/NGT/2024/ 1043-1044

दिनांक: 06-09-2024  
09

प्रतिलिपि निम्न को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है:-

1. Regional Officer, Regional Office, Rajasthan State Pollution Control Board, Alwar, may be appointed as OIC on behalf of RSPCB with the direction to prepare the parawise factual report, contact the counsel of the State Board and get the draft reply so that same may be filed with approval of competent authority before Hon'ble National Green Tribunal, Bhopal.

2. Shri Vaibhav Thakuria, Advocate, 203, A-7, Royal Abode, Vijaypath, Tilak Nagar, Mobile No. 7017975501 with the request to, act and plead before the Hon'ble High Court, Jaipur on behalf of RSPCB. You will be paid fee as per RSPCB office order dated 05.03.2020.

Member Secretary *ole*

Signature valid

Digitally signed by N.Vijai  
Designation: Member Secretary  
Date: 2024.09.08 19:08:52 IST  
Reason: Approved

जिला कलक्टर  
कोटपूतली-बहरोड़ (राज0)  
(REVENUE DEPARTMENT)

यूनिक कोड नं0 W 52-611-17024-407-43-199/2024

क्रमांक: प- 80/1889

दिनांक: 30-09-2024

01-10-2024

## आदेश

- विषय-
- वाद/याचिका/अपील सं0: ORIGINAL APPLICATION/APPLICATION/199/2024
  - याची/वादी/अपीलार्थी: Sunil
  - प्रत्यर्थी/प्रतिवादी: State of rajasthan and ors
  - न्यायालय का नाम: NATIONAL GREEN TRIBUNAL (NGT), Bhopal

दीवानी प्रक्रिया संहिता, 1908 -(केन्द्रीय अधिनियम, 5 वर्ष 1908) के आदेश XXVII के नियम 1 एवं 2 के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुये महामहिम राज्यपाल महोदय / संस्था की ओर से उक्त प्रकरण में जवाब/अपील/रिट प्रस्तुत करने, अभिवक्तियों को स्थापित करने एवं विविध आवेदन पत्र/प्रार्थना पत्र प्रस्तुत करने हेतु निम्न को प्रभारी अधिकारी/समन्वयक नियुक्त किया जाता है :-

प्रभारी अधिकारी/समन्वयक का नाम: SDO PAOTA

पदनाम: SDO

पता: SDO OFFICE PAOTA NEAR BY NAVODYA SCHOOL PAOTA

Mobile No / Email : 9680447574 / sdo.paota.jpr@gmail.com

प्रभारी अधिकारी/समन्वयक को यह ब्यादिष्ट किया जाता है कि वे राजस्थान विधि एवं विधिक कार्य विभाग नियमावली, 1999 के नियम 233 में उल्लेखित दायित्व एवं कर्तव्यों के अतिरिक्त अपनी नियुक्ति के तत्काल पश्चात् निम्न कार्य भी सम्पादित करेंगे:-

- प्रकरण के तथ्यों के संदर्भ में तत्काल आवश्यक जानकारी एवं आगामी तारीख पेशी ज्ञात करके राजकीय अधिवक्ता से सम्पर्क कर न्यायालय में आवश्यक कार्यवाही सम्पादित करेंगे।
- प्रकरण की विषयवस्तु से सम्बन्धित रागी पत्रावलियां/दस्तावेज/अधिनियम/नियम// विनियम/परिपत्र /दिशा-निर्देश /अधिसूचना / आदेश /सूचना एवं सुसंगत तथ्य एकत्रित करेंगे।
- प्रकरण में उठाये गये सभी तथ्य एवं बिन्दुओं का प्रशासनिक अनुभाग से प्राप्त तथ्यात्मक प्रतिवेदन एवं तथ्यों के आधार पर प्रकरण का पैरा क्रमानुसार तथ्यात्मक प्रतिवेदन तैयार करते हुए एवं ऐसी अतिरिक्त जानकारी अंकित करते हुये जो राजकीय अधिवक्ता एवं राज्य पक्ष के प्रतिरक्षण/पक्ष प्रस्तुतिकरण के लिए आवश्यक/सहायक हो, तैयार करेंगे।
- प्रभारी अधिकारी/समन्वयक सम्बन्धित प्रशासनिक अनुभाग से तथ्य एवं तथ्यात्मक विवरण प्राप्त करके राजकीय अधिवक्ता को प्रकरण का ब्रीफ, प्रभारी अधिकारी/समन्वयक के नियुक्ति पत्र के साथ प्रपत्र 'क' में उपलब्ध करायेंगे, जिसमें प्रकरण की पैराक्रमानुसार तथ्यात्मक स्थिति के अतिरिक्त प्रकरण की विषयवस्तु का दिनांकवार विवरण एवं घटनाक्रम अनुसार, सम्बन्धित नियम, अधिनियम, अधिसूचना, परिपत्र एवं दिशा-निर्देश और यदि पूर्व में समान बिन्दुओं पर निर्णित उच्च न्यायालय/उच्चतम न्यायालय के निर्णय हो तो वे (List / Details of Dates and Events, Act, Rules, Notification, Circular, Guidelines etc, Courts Judgments relevant & under reference) भी प्रभारी अधिकारी/समन्वयक द्वारा स्वयं के ज्ञान व विभाग के अभिलेखानुसार ज्ञात कर इस ब्रीफ में सम्मिलित किये जायेंगे।
- न्यायालय में दायर किये जाने वाले वाद/ अपील/ पुनर्विलोकन/ पुनरीक्षण/विविध प्रार्थना पत्र आदि की विभागीय तथ्यात्मक स्थितियों /आधार एवं तथ्यों का अभिलेख के साथ एकत्रिकरण किया जावे, जिनके आधार पर कार्यवाही सम्पादित की जानी है।
- प्रभारी अधिकारी/समन्वयक द्वारा प्रकरण की तथ्यात्मक रिपोर्ट प्राप्त हो जाने एवं पैनाल लॉयर/स्टैंडिंग कॉउन्सिल/राजकीय अधिवक्ता/एडवोकेट ऑन रिकार्ड/अतिरिक्त महाधिवक्ता की प्रकरण में पैरवी हेतु नियुक्ति हो जाने पर संबंधित अधिवक्ता से अतिशीघ्र सम्पर्क करके वांछित कार्यवाही सम्पादित की जावे।
- प्रभारी अधिकारी/समन्वयक प्रकरण के सुसंगत, क्रमबद्ध एवं व्यवस्थित तथ्यों व अभिलेख के साथ यथा समय पूर्व राजकीय अधिवक्ता से सम्पर्क करके आवश्यक प्रार्थना पत्र जवाब/अपील/रिट आदि तैयार न्यायालय में प्रस्तुत करायेंगे।
- प्रभारी अधिकारी/समन्वयक द्वारा उपर्युक्त तथ्यात्मक प्रतिवेदन एवं सामग्री के साथ प्रभारी अधिकारी द्वारा राजकीय अधिवक्ता से व्यक्तिगत सम्पर्क करके लिखित कथन/प्रत्युत्तर/अपील/ पुनर्विलोकन/ पुनरीक्षण/रिट याचिका/प्रार्थना पत्र आदि तैयार करवाया जावेगा और प्रारूपित दस्तावेज पर स्वयं एवं राजकीय अधिवक्ता के हस्ताक्षर करवाकर तथ्यों का सत्यापन/ प्रमाणीकरण/ अनुमोदन विधिज्ञा हेतु प्रशासनिक अनुभाग को प्रस्तुत किया जावेगा।
- प्रभारी अधिकारी/समन्वयक न्यायालय में पैरवी कर रहे राजकीय अधिवक्ता के पास प्रकरण पत्रावली परिपूर्ण एवं नवीनतम प्रगति व सूचनाओं सहित उपलब्ध रहे, यह सुनिश्चित करेंगे।
- प्रभारी अधिकारी/समन्वयक प्रकरण में न्यायालय में निर्धारित की गई सुनवाई की तारीख, प्रकरण की प्रगति एवं उसमें सम्पादित होने वाली आगामी कार्यवाही से स्वयं एवं विभाग को सदैव अवगत रखेंगे।
- प्रभारी अधिकारी/समन्वयक प्रत्येक तारीख पेशी को न्यायालय में उपस्थित हो कर सज्जमान अतिरिक्त विवरण प्रदान करने का प्रयत्न करेंगे और समय पर साक्ष्य, अभिलेख एवं प्रकरण की वर्तमान नवीनतम प्रगति प्रशासनिक अनुभाग/सम्बन्धित कार्यवाही के अधिकारी से ज्ञात करके न्यायालय में प्रस्तुत करवायेंगे। अतः प्रभारी अधिकारी/समन्वयक प्रगति निरन्तर प्राप्त करते रहेंगे।
- प्रभारी अधिकारी/समन्वयक प्रत्येक तारीख पेशी की कार्यवाही विवरण प्रशासनिक अनुभाग/सम्बन्धित कार्यवाही के अधिकारी से ज्ञात करके न्यायालय में प्रस्तुत करवायेंगे और LITES के प्रपत्र 3 में आगामी कार्यवाही के विवरण प्रदान करेंगे।

Signature valid

Digitally signed by Kalpana Agrawal

Designation, Collector &amp; District

Magistrate

Date: 2024.09.30 5:30:28 IST

Reason: Approved

13. प्रभारी अधिकारी/समन्वयक द्वारा न्यायालय से कोई आदेश, निर्देश, निर्णय पारित होने पर विभाग को उसके तथ्यों सहित उसी दिन जानकारी/सूचना उच्चाधिकारी को देनी होगी। प्रभारी अधिकारी/समन्वयक न्यायालय के उक्त निर्देश/आदेश/निर्णय की प्रमाणित प्रति प्राप्त करने हेतु उसी दिन अथवा आगामी दिवस को आवेदन प्रस्तुत करेंगे।
14. प्रभारी अधिकारी/समन्वयक प्रकरण में स्वयं की रिपोर्ट और राजकीय अधिवक्ता की राय के साथ न्यायालय के निर्देश, आदेश, निर्णय की प्रमाणित प्रति न्यायालय से प्राप्त कर तत्काल विभाग को प्रस्तुत करेंगे।
15. प्रभारी अधिकारी/समन्वयक का दायित्व विभाग के विरूद्ध पारित निर्णय के सन्दर्भ में आगामी अपील्य कार्यवाही में अन्य प्रभारी अधिकारी/समन्वयक की नियुक्ति अथवा निर्णय की अनुपालना होने तक निरन्तर रहेगा।
16. प्रभारी अधिकारी/समन्वयक वादकरण प्रकरणों की मॉनिटरिंग हेतु न्याय विभाग की वेबसाइट LITES के निर्धारित सभी प्रपत्रों का संधारण करेंगे एवं LITES/Updation Center को समय समय पर प्रकरण प्रगति व अद्यतन सूचना प्रस्तुत करेंगे।
17. प्रभारी अधिकारी/समन्वयक का स्थानान्तरण/सेवानिवृत्त होने की स्थिति में अथवा प्रकरण अन्य प्रभारी अधिकारी/समन्वयक को स्थानान्तरित होने पर सभी प्रकरणों की सूची, पत्रावलियां, अभिलेख, आगामी तारीख पेशी और उस पर न्यायालय में संपादित होने वाली कार्यवाही का विवरण नवीन प्रभारी अधिकारी/समन्वयक को उपलब्ध करवाया जावेगा और इस आशय को प्रस्तुत करेगा अन्यथा स्थिति में अन्तिम वेतन भुगतान प्रमाण पत्र (L.P.C) जारी नहीं होगा।
18. यदि प्रभारी अधिकारी/समन्वयक उपर्युक्त निर्देशों की उपेक्षा करता है अथवा इनके प्रति असावधान पाया जाता है तो स्वयं को अनुशासनिक कार्यवाही हेतु उत्तरदायी बनायेगा।

(कल्पना अग्रवाल)  
जिला कलक्टर कोटपूतली-बहरोड़ (राज0)

क्रमांक: प- 80) 1890-94

दिनांक: 30-09-2024

01-10-2024

प्रतिलिपि निम्न को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है:-

1. विधि परामर्शी विधि एवं विधिक कार्य विभाग शासन सचिवालय राजस्थान जयपुर।
2. श्रीमान शासन उप सचिव राजस्व (ग्रुप -7) विभाग शासन सचिवालय राजस्थान जयपुर।
3. श्री शोयब हरान खान अधिवक्ता माननीय राष्ट्रीय ग्रीन ट्रिब्यूनल सेंट्रल जोनल ब्रांच भोपाल (मो0न0 8989499211)
4. उपखण्ड अधिकारी प्रावटा (प्रभारी अधिकारी केरा ) को प्रेषित कर लेख है कि प्रकरण मे, जिला कलक्टर कोटपूतली-बहरोड़ कि ओर से प्रतिनिधि नियुक्त किया जाता है व प्रकरण में पूर्ण तथ्यात्मक रिपोर्ट एवं समस्त दस्तावेज सहित अविलम्ब अधिवक्ता माननीय राष्ट्रीय ग्रीन ट्रिब्यूनल सेंट्रल जोनल ब्रांच भोपाल से व्यक्तिशः संपर्क कर प्रकरण में पक्षकारों हेतु शुद्धि करण हेतु प्रार्थना पत्र प्रस्तुत करे साथ ही राज्य पक्ष की ओर से जबाब प्रस्तुत कर प्रभावी प्रतिरक्षण की कार्यवाही करना सुनिश्चित करें। प्रस्तुत जबाब की प्रति एवं प्रकरण में हुई प्रगति व वर्तमान स्थिति से अवगत करवाते रहे।
5. राजस्थान प्रदूषण नियंत्रण बोर्ड को आवश्यक कार्यवाही हेतु प्रेषित है।
6. सुरक्षित पत्रावली

अति0 जिला कलक्टर  
कोटपूतली-बहरोड़ (राज0)

Signature valid

Digitally signed by Kalpana Agrawal  
Designation: Collector & District  
Magistrate  
Date: 2024.09.30 15:30:28 IST  
Reason: Approved

**कार्यालय जिला कलक्टर एवं जिला मजिस्ट्रेट, कोटपूतली-बहरोड**

EMAIL-DM.KOTPUTLI.BEHROR.RAJASTHAN@GOV.IN

क्रमांक / राजस्व / एन.जी.टी. / 2024 / 2385

दिनांक :- 09.10.2024

**:- आदेश :-**

माननीय राष्ट्रीय हरित प्राधिकरण भोपाल के प्रकरण संख्या 199/2024(CZ) प्रकरण सुनिल बनाम राजस्थान सरकार एवं अन्य में पारित आदेश दिनांक 28.08.2024 की पालना तथा क्षेत्रीय अधिकारी, राजस्थान राज्य प्रदूषण नियंत्रण मंडल, अलवर के पत्रांक आर.पी.सी.बी./आर.ओ./अलवर/जी-410/2286-2288 दिनांक 27.09.2024 के क्रम में माननीय न्यायालय द्वारा पारित आदेशों के संबंध में आवश्यक जांच हेतु **उपखण्ड अधिकारी पावटा** को अधोहस्ताक्षरकर्ता का प्रतिनिधि नियुक्त कर निर्देशित किया जाता है कि वह दिनांक **11.10.2024** को प्रकरण में गहन जांच कर आवश्यक कार्यवाही करते हुये प्रकरण में प्रभारी अधिकारी से समन्वय स्थापित कर तथ्यात्मक रिपोर्ट बिन्दुवार माननीय न्यायालय में प्रस्तुत करवाना सुनिश्चित करेंगे तथा तथ्यात्मक रिपोर्ट की एक प्रति अधोहस्ताक्षरकर्ता के समक्ष प्रस्तुत किया जाना सुनिश्चित करेंगे।

**संलग्न:-मा0 एन.जी.टी. का आदेश  
मय संलग्न दस्तावेज।**

(कल्पना अग्रवाल)  
जिला कलक्टर,  
कोटपूतली-बहरोड

क्रमांक / राजस्व / एन.जी.टी. / 2024 / 2386 - 2388

दिनांक:-09.10.2024

प्रतिलिपि:-सूचनार्थ, पालनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है:-

- उपखण्ड अधिकारी, पावटा।
- सहायक खनि अभियंता, कोटपूतली-बहरोड को प्रेषित कर लेख है कि प्रकरण में आवश्यक जांचादि में उपखण्ड अधिकारी पावटा तथा प्रभारी अधिकारी, क्षेत्रीय अधिकारी, राजस्थान राज्य प्रदूषण नियंत्रण मंडल, अलवर को आवश्यक सहयोग प्रदान करना सुनिश्चित करेंगे।
- क्षेत्रीय अधिकारी, राजस्थान राज्य प्रदूषण नियंत्रण मंडल, अलवर, को उपखण्ड अधिकारी पावटा से समन्वय स्थापित कर नियमानुसार आवश्यक कार्यवाही हेतु पालनार्थ।

जिला कलक्टर,  
कोटपूतली-बहरोड

Validity unknownSignature valid

RajKaj Ref  
11047190



Digitally signed by K. Anana Agrawal  
Designation: Collector & District  
Magistrate  
Date: 2024.10.09 19:00:52 IST  
Reason: Approved

राजस्थान सरकार

कार्यालय सहायक खनि अभियंता, खान एवं भू-विज्ञान विभाग, कोटपूतली

क्रमांक:-सखअ/कोट/एनजीटी/2024/रूप-01

दिनांक: 15/10/2024

प्रेषित:-

श्रीमान क्षेत्रीय प्रदूषण नियंत्रण मण्डल अधिकारी,  
डी. ब्लॉक अम्बेडकर नगर अलवर 301001,  
ईमेल ro.alwar@gamail.com।

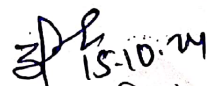
विषय:-ओ0ए0 संख्या 200/2024 (सीजेड) सोनू बनाम राजस्थान सरकार एवं अन्य, एवं  
ओ. ए. संख्या 199/2024 (सीजेड) में पारित आदेश दिनांक 28.08.2024 की  
पालना में।

प्रसंग:-कार्यालय जिला कलक्टर एवं जिला मजिस्ट्रेट, कोटपूतली-बहरोड़ के पत्र क्रमांक  
राजस्व/एज.जी.टी./2024/2381 दिनांक 09.10.2024 के क्रम में।

उपरोक्त विषयान्तर्गत प्रासंगिक ओ0ए0 संख्या 200/2024 (सीजेड) सोनू बनाम राजस्थान सरकार एवं अन्य, में पारित आदेश दिनांक 28.08.2024 के क्रम में निवेदन है कि जिला कोटपतली-बहरोड़ की तहसील पावटा में दिनांक 15.07.2024 को मोबाईल 7737182618 से लगभग 4.40 पीएम पर कार्यालय के तकनिकी कर्मचारी को सूचना प्राप्त हुई की निकट ग्राम भूरी भडाज गौशाला से 01 किलोमिटर दूर ट्रेक्टर ट्रौली के माध्यम से खनिज बजरी का अवैध रूप से भरकर ले जाया जा रहा है, उक्त सूचना पर भूरी भडाज गौशाला में विभाग द्वारा तैनात बोर्डरहोम द्वारा गौशाला को जरिये दूरभाष उक्त शिकायती स्थान पर भेजा गया जहा पर एक वाहन ट्रेक्टर मय ट्रौली बिना नम्बरी MODAL B275 SI-SRNO-RU2E00862HE जिसमें खनिज बजरी भरी हुई थी। बोर्डर होमगार्ड को देखकर वाहन चालक ने बजरी खाली करने की कोशिश की गई तथा मौके पर ही वाहन को छोड़कर भाग गया। उक्त वाहन को बोर्डर बोर्डर होमगार्ड द्वारा गौशाला परिसर भूरी भडाज से खडा करवाया गया उक्त कार्यवाही की सूचना श्रीमान थानाधिकारी प्रागपुरा को जरिये दूरभाष दी गई जिस पर पुलिस थाना प्रागपुरा द्वारा पुलिस जाप्ता मौके पर भिजवाया तथा उक्त वाहन को बोर्डर होमगार्डस द्वारा पुलिस जाप्ते के साथ पुलिस थाना प्रागपुरा मौके पर पहुंचे, जहा पर वाहन ट्रेक्टर मय ट्रौली बिना नम्बरी MODAL B275 SI-SRNO-RU2E00862HE जिसमें खनिज बजरी लगभग 3 टन भरी हुई पायी

गई। चूकि उक्त वाहन मालिक द्वारा खनिज बजरी को अवैध रूप से चोरी छिपे ले जाना पाया गया, वाहन को मय खनिज के राजस्थान अप्रधान खनिज रियायत नियमावली 2017 के नियम 54 व 60 के तहत कार्यवाही की गई। उक्त प्रकरण में पुलिस थाना प्रागपुरा में प्रथम सूचना संख्या 405/2024 दायर की गई जिसमें वाहन ट्रेक्टर मालिक राजु धानका पुत्र श्री शेखर धानका, निवासी भूरी भडाज द्वारा वाहन के विरुद्ध लगाई गई शास्ति राशि रूपयें 26,350/- जरिये जीआरएन संख्या 92016134 दिनांक 16.07.2024 एवं माननीय न्यायालय एन.जी.टी. द्वारा अधिरोपित राशि 1 लाख जरिये चालान संख्या 92014487 दिनांक 16.07.2024 कुल राशि 1,26,350/- जमा हो चुकी है। प्रथम सूचना संख्या में अनुसंधान पुलिस थाना प्रागपुरा द्वारा ही किया जा रहा है।

ओ0ए0 संख्या 199/2024 (सीजेड) सुनिल बनाम राजस्थान सरकार एवं अन्य में दिनांक 15.07.2024 में की गई कार्यवाही के दौरान वाहन ट्रेक्टर का विवरण उपरोक्तानुसार है एवं दिनांक 30.03.2024 को की गई कार्यवाही में कार्यालय रिकॉर्ड अनुसार कोई प्रकरण नहीं है।

  
(अमीचन्द दहारिया)  
सहायक खनि अभियंता,  
कोटपूतली  
दिनांक 15.10.2024

क्रमांक:-सखअ/कोट/एनजीटी/2024/

प्रतिलिपि:- श्रीमान उपखण्ड अधिकारी पावटा, जिला कोटपूतली-बहरोड़ को सूचनार्थ हेतु प्रेषित है।

सहायक खनि अभियंता,  
कोटपूतली

राजस्थान सरकार  
खान एवं पेट्रोलियम विभाग

क्रमांक:प.14(19)खान/गुप-2/2015 पार्ट-II 'सी'

जयपुर, दिनांक : 16 MAY 2023

आदेश

माननीय राष्ट्रीय हरित अधिकरण, नई दिल्ली द्वारा ओ.ए. संख्या 140/2014 नंगाराम डांगी के प्रकरण में पारित आदेश दिनांक 19.02.2018 की पालना में जयसमंद लेक, उदयपुर में बजरी के अवैध खनन/निर्गमन में लिप्त वाहनों से पर्यावरण क्षतिपूर्ति के रूप में राशि रुपये 1.00 लाख अधिरोपित की गई थी।

पर्यावरण क्षतिपूर्ति की उक्त शारती राशि माननीय उच्च न्यायालय, जोधपुर द्वारा जनहित याचिका संख्या 4239/2019 में पारित आदेश दिनांक 03.09.2019 के तहत संपूर्ण राज्य में बजरी के अवैध खनन/निर्गमन में लिप्त वाहनों से वसूल की जा रही है।

अवैध खनन/निर्गमन में लिप्त वाहनों के संबंध में माननीय एन.जी.टी. द्वारा ओ.ए. संख्या 44/2016 मुस्तकीम बनाम MoEF व अन्य में दिनांक 05.04.2019 को आदेश पारित कर निर्देश दिये कि ऐसे वाहनों को शोरूम कीमत की 50 प्रतिशत राशि जमा कराये जाने पर रिलीज किया जावे। इसके उपरान्त माननीय एन.जी.टी. द्वारा अपने पूर्व आदेश दिनांक 05.04.2019 में संशोधन कर आदेश दिनांक 19.02.2020 से खनिज बजरी के अवैध खनन/निर्गमन में लिप्त वाहनों पर निम्नानुसार पेनल्टी राशि वसूल करने के निर्देश दिये गये:-

क्र.स.	वाहन की श्रेणी	शास्ति राशि
1	वाहनों/उपकरणों/एक्सकेवेटर्स जिनका शोरूम मूल्य 25 लाख रुपये से अधिक और 5 साल से कम पुराने होने पर	रुपये 4 लाख
2	वाहनों/उपकरणों/एक्सकेवेटर्स जिनका शोरूम मूल्य 25 लाख रुपये से अधिक और 5 वर्ष से अधिक लेकिन 10 वर्ष से कम पुराने होने पर	रुपये 3 लाख
3	शेष वाहनों/उपकरणों/एक्सकेवेटर्स जो 10 वर्ष से अधिक पुराने हैं, क्रमांक 1 और 2 के अंतर्गत नहीं आते।	रुपये 2 लाख

**नोट-I :** उसी वाहन/उपकरण द्वारा अपराध की पुनरावृत्ति किये जाने पर आदेश दिनांक 05.04.2019 लागू होगा।

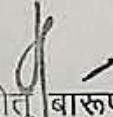
**नोट-II :** वाहन/उपकरण को जप्ती की तारीख से एक महीने की अवधि तक रिहाई/छोड़ने का विकल्प उपलब्ध हो सकता है और उसके बाद वाहनों को जब्त और नीलाम किया जा सकता है।

माननीय एन.जी.टी. द्वारा पारित आदेश दिनांक 26.02.2021 से अन्य प्रकरणों के साथ उक्त ओ.ए. संख्या 44/2016 को भी निस्तारित करते हुए पूर्व में पारित आदेश दिनांक 19.02.2020 की पालना के भी निर्देश दिये गये हैं।

चूंकि बजरी के अवैध खनन पर पूर्ण रूप से प्रतिबंध लगाया जाना अत्यावश्यक है, अतः माननीय एन.जी.टी. द्वारा उक्तानुसार पारित निर्देशों की पालना में बजरी के अवैध खनन/निर्गमन में लिप्त वाहनों पर पर्यावरण क्षतिपूर्ति हेतु वर्तमान में निर्धारित राशि रुपये 1.00 लाख के स्थान पर माननीय एन.जी.टी. के आदेश दिनांक 19.02.2020 एवं 26.02.2021 के आधार पर उपरोक्त वर्णित सारणी अनुसार शास्ती राशि वसूल करने की कार्यवाही तुरंत प्रभाव से अमल में लायी जावे।

यह सक्षम स्तर से अनुमोदित है।

आज्ञा से,

  
(नीतू बारूपाल)  
शासन उप सचिव

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है :- 16 MAY 202

1. विशिष्ट सहायक, कार्यालय मंत्री खान एवं गोपालन विभाग।
2. निजी सचिव, अतिरिक्त मुख्य सचिव, खान एवं पेट्रोलियम जयपुर।
3. निदेशक, खान एवं भू-विज्ञान विभाग राजस्थान, उदयपुर।
4. संयुक्त विधि परामर्शी, खान विभाग, जयपुर।
5. रक्षित पत्रावली।

शासन उप सचिव

Item Nos. 02 to 20

Court No. 1

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

Original Application No. 360/2015

(With report dated 15.01.2021)

National Green Tribunal Bar Association Applicant

Versus

Virender Singh (State of Gujarat) Respondent

**With**

Original Application No. 366/2015

National Green Tribunal Bar Association Applicant

Versus

Dr. Sarvabhoom Bagali (State of Karnataka) Respondent

**With**

Original Application No. 368/2015

National Green Tribunal Bar Association Applicant

Versus

Dr. Sarvabhoom Bagali (State of Karnataka) Respondent

**With**

Original Application No. 173/2018  
(Earlier O.A. No. 89/2017 (EZ))

Sudarsan Das Applicant

Versus

State of West Bengal & Ors. Respondent(s)

**With**

Original Application No. 874/2018

In Re: News item published in "The Tribune " Authored by Arun Sharma  
Titled "Mounds of sand on Sutlej banks, mining mafia digs in"

**With**

Original Application No. 44/2016

Mushtakeem Applicant

Versus

MoEF & CC & Ors.

Respondent(s)

**With**

Original Application No. 517/2015

Sandeep Kumar

Applicant

Versus

Ministry of Environment, Forests and  
Climate Change & Ors.

Respondent(s)

**With**

Original Application No. 550/2015

Virender Kumar

Applicant

Versus

Ministry of Environment, Forests and  
Climate Change & Ors.

Respondent(s)

**With**

Original Application No. 530/2016

Sandeep Kumar

Applicant

Versus

Ministry of Environment, Forests and  
Climate Change & Ors.

Respondent(s)

**With**

Original Application No. 272/2016

M/s Ganga Yamuna Mining Co.

Applicant

Versus

State of Haryana & Ors.

Respondent(s)

**With**

Original Application No. 481/2016

Joginder Singh

Applicant

Versus

Ministry of Environment & Forest

Respondent

**With**

Original Application No. 540/2015

Ved Pal Singh

Applicant

	Versus	
Ministry of Environment and Forests & Ors.		Respondent(s)
<b>With</b>		
	Original Application No. 90/2016	
Chander Mohan Uppal		Applicant
	Versus	
State of U.P. & Ors.		Respondent(s)
<b>With</b>		
	Execution Application No. 40/2017 IN O.A. No. 517/2015	
Sandeep Kumar		Applicant
	Versus	
Ministry of Environment, Forests and Climate Change & Ors.		Respondent(s)
<b>With</b>		
	Original Application No. 671/2017 (Earlier O.A.No.123/2014)	
Himmat Singh Shekhawat		Applicant
	Versus	
State of Rajasthan & Ors.		Respondent(s)
<b>With</b>		
	Original Application No. 726/2018	
Rupesh Pethe		Applicant
	Versus	
State of M.P. & Ors.		Respondent(s)
<b>With</b>		
	Original Application No. 456/2018 (Earlier O.A. No. 146/2014 (CZ))	
Nityanand Mishra		Applicant
	Versus	
State of M.P. & Ors.		Respondent(s)
<b>With</b>		
	Original Application No. 1086/2018 (Earlier O.A.No.140/2014)	
Nanga Ram Dangi		Applicant
	Versus	

Secretary, Department of Environment &  
Forests & Ors.

Respondent(s)

**With**

Original Application No. 575/2019

Yaduraj Singh Jat

Applicant

Versus

State of Rajasthan

Respondent

Date of hearing: 26.02.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Ms. Katyayni, Advocate in OA 1086/2018

Amicus Curiae: Mr. Raj Panjwani, Senior Advocate with Mr. Aagney Sail, Advocate

Respondent(s): Mr. Divya Prakash Pande, Advocate. for CPCB & MoEF & CC  
Mr. Raj Kumar, Advocate for CPCB in OA 726/2018  
Ms. Soni Singh, Advocate for CPCB in OA 456/2018  
Mr. Attin Shankar Rastogi, Mr. Balendu Shekhar & Mr. Shlok  
Chandra, Advocates for MoEF & CC  
Mr. Ankit Verma, Advocate for State of UP  
Mr. Rahul Khurana, Advocate for State of Haryana  
Mr. Darpan KM, Advocate for State of Karnataka  
Ms. Madhumita Bhattacharjee, Advocate. for State of West Bengal  
Mr. Vikas Mahajan, AAG for State of HP  
Mr. Maulik Nanavati, Advocate for State of Gujarat  
Ms. Soumya Priyadarshinee, Advocate for State of MP  
Ms. Sakshi Popli, Advocate for DPCC

### **ORDER**

1. The issue for consideration in this group of matters relates to updation of enforcement and monitoring mechanism to control and regulate illegal sand mining (including riverbed sand mining) in the light of directions in the judgments of the Hon'ble Supreme Court, including in *Deepak Kumar v. State of Haryana & Ors.: (2012) 4 SCC 629* and *Goa Foundation v. Union of India & Ors. (2014) 6 SCC 590* and orders of this Tribunal.

2. Some of the matters have been pending for about seven years while others have been tagged to the pending matters later, from time to time, in view of common question. We need not refer to the individual facts and all the earlier order. It will suffice to refer to some of the significant orders passed from time to time given in a tabular form as follows:

<b>Sl. No.</b>	<b>Party name</b>	<b>Date of orders</b>	<b>Particulars</b>
1.	OA No. 173/2018 Sudarsan Das v. State of West Bengal & Ors.	04.09.2018	Inter alia directing revision of monitoring mechanism by the MoEF&CC.
2.	OA No. 44/2016 Mushtakeem v. MoEF&CC & Ors.	05.09.2018	
3.	OA No. 186 of 2016 Satendra Pandey Vs. Ministry of Environment, Forest & Climate Change & Anr	13.09.2018	Inter alia disapproving dispensing with requirement of public hearing and requiring evaluation by DEIAA.
4.	OA 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016	16.01.2019	Requiring the Chief Secretaries to monitor the subject of unregulated and unscientific sand mining
5.	O.A. No. 360/2015, National Green Tribunal Bar Association v. Virender Singh (State of Gujarat)	05.04.2019	Inter alia consideration of scale of compensation and revised monitoring mechanism
6.	OA No. 44/2016 Mushtakeem v. MoEF&CC & Ors.	19.02.2020	Inter alia modifying the mechanism for release of vehicles
7.	OA No. 360/2015 National Green Tribunal Bar Association v. Virender Singh (State of Gujarat)	17.08.2020	Inter alia considering the scale of compensation proposed by the CPCB
8.	O.A. No. 40/2020, Pawan Kumar v. State of Bihar & Ors.	14.10.2020	Inter alia engagement of experts from NABT/QCCI for preparation of DSR/ replenishment study
9.	O.A. No. 726 of 2018 Rupesh Pethe v. State of M.P. & Ors.,	04.11.2020	

3. We may now refer to the developments which have taken place during pendency of the matters and then proceed to decide the surviving issues, as further discussed in para 24:

- a. enforcement of SSMG-2016 and EMGSM-2020,**
- b. compensation regime,**
- c. procedure for seizure and release of vehicles,**

- d. periodic interaction among the stakeholders as discussed in later part of the judgment,**
- e. designing and reviewing monitoring mechanism from time to time including grievance redressal.**

**‘Sustainable Sand Mining and Management Guidelines, 2016’ (SSMG-2016) and “Enforcement and Monitoring Guidelines for Sand Mining, 2020” (EMGSM-2020)**

4. In the course of proceedings, the Ministry of Environment, Forest and Climate Change (MoEF&CC) issued ‘Sustainable Sand Mining and Management Guidelines, 2016’ (SSMG-2016) under the provisions of the Environment (Protection) Act, 1986 (EP Act, 1986) on 15.01.2016. Further, in the light of the September 2016 report of the High-Powered Committee (constituted by the Tribunal), headed by the Secretary, MoEF&CC and suggestions as noted in order dated 04.09.2018 in OA 173/2018, *Sudarsan Das v. State of West Bengal & Ors.*, the Tribunal directed revision of the guidelines.<sup>1</sup> Accordingly, the MoEF&CC has issued “Enforcement

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<sup>1</sup>Para 25 of the said order is as follows:

“25. In view of above discussion, we are of the view that since the subject of mining is also required to be regulated for protection of environment and it is to take care of this requirement, MoEF&CC has issued directions from time to time under Section 3 and 5 of the Environment (Protection) Act, 1986. The MoEF&CC needs to revise its directions keeping in mind the following:

- i. Mining Surveillance System discussed in para 23 above be finalized in consultation with ISRO Hyderabad.
- ii. Safeguards suggested in Sustainable Sand Mining Guidelines published by the MoEF&CC in the year 2016.
- iii. Suggestions in the High Power Committee Report.
- iv. Requirement of demarcation of boundaries being published in respect of different leases in public domain.
- v. Need to issue SOP laying down mechanism to evaluate loss to the ecology and to recover the cost of restoration of such damage from the legal or illegal miners. Such evaluation must include cost of mining material as well as cost of ecological restoration and net present value of future eco system services forgone.
- vi. Need to set up a dedicated institutional mechanism for effective monitoring of sand and gravel mining which may also take care of mining done without any Environmental Clearance as well as mining done in violation of Environmental Clearance conditions.
- vii. The Mining Department may make a provision for keeping apart atleast 25% of the value of mined material for restoration of the area affected by the mining and also for compensating the inhabitants affected by the mining.
- viii. One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit atleast once in a year by reputed third party entity and report of such audit be placed in public domain.
- ix. In the course of such environmental audit, a three-member committee of the local inhabitants will also be associated. Composition of three members committee may

and Monitoring Guidelines for Sand Mining, 2020” (EMGSM 2020), uploaded on the website on 27.01.2020 and communicated to all the States. Salient features thereof will be noted later.

**Issue of EC procedure being handled by SEIAA instead of DEIAA, after public hearing and other necessary steps, procedure for revision of DSR preparation and enforcement mechanism in States, including compensation regime and seizure and release of vehicles**

5. Vide order dated 13.09.2018 in *O.A. No. 186/2016, Satyender Pandey Vs. MoEF*, further direction was issued against dispensing with the requirement of public hearing and evaluation by SEIAA in terms of the judgment of the Hon’ble Supreme Court in *Deepak Kumar, supra* thereby the guidelines/notification dated 15.01.2016 dispensing with such requirement was held to be hit by the judgment of the Hon’ble Supreme Court in *Deepak Kumar, supra* and thus not enforceable.

6. On 05.04.2019, the Tribunal conducted comprehensive review of the matter and noted following issues required consideration. Directions were issued with reference to the said issues:

- “(a) Revision of Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC in the light of directions of this Tribunal vide order dated 04.09.2018 in Sudarsan Das (supra).**
- (b) Compliance of Sustainable Sand Mining Guidelines, 2016 as may be revised by MoEF&CC as above.**
- (c) Effective monitoring mechanism for preventive and remedial measures as directed in orders of this Tribunal, including surveillance system and recovery of compensation.**
- (d) Directions in individual cases listed today.**
- (e) Scale of compensation.”**

7. Considering the extent of illegality in the process, apart from directing revision of the Guidelines as above, the Tribunal directed the

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preferably include ex-servicemen, former teacher and former civil servant. The Committee will be nominated by the District Magistrate.”

States<sup>2</sup> to review their monitoring mechanism in the light of observations of this Tribunal in earlier orders, including orders dated 04.09.2018 in *Sudarsan Das v. State of West Bengal & Ors*, 05.09.2018 in *Mushtakeem v. MoEF&CC & Ors*. and 16.01.2019 in OA 606/2018, *Compliance of Municipal Solid Waste Management Rules, 2016*. **Though direction was issued to the States who were parties before the Tribunal, the directions are of general nature applicable to sand mining in all the State /UTs.** The Tribunal also considered compliance reports from different States after finding that the response of the State was not satisfactory.

#### **Seizure and Release of vehicles involved in illegal mining**

8. Another issue bearing on the enforcement mechanism is the action against the vehicles used in illegal sand mining. Seizure of such vehicles is required and release of seized vehicles lightly defeats the purpose of the coercive measures. Since the vehicles are in a way weapon of offence, the same cannot be dealt with in the manner disputed property is dealt with under section 451 Cr.PC. by releasing the same in favour of the ostensible owner by taking an entrustment/indemnity bond/*sapurdginama*. In *Sujit Kumar Rana*, (2004) 4 SCC 129 and order dated 26.03.2019 in Cr. A. 524/2019, *State of Madhya Pradesh v. Uday Singh*, it was held that special procedure for seizure and release of such vehicles prevails over the procedure under Section 451 Cr.P.C. This Tribunal earlier directed, in the case of illegal mining in Meghalaya that such vehicles should be released only on the payment of 50% of the showroom value. The same was affirmed by the Hon'ble Supreme Court in *2019 (8) SCC 177*. Similar order was passed by the Tribunal on 10.01.2019 in O.A. No. 670/2018, *Atul*

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<sup>2</sup>The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh

*Chouhan v. State of U.P.*, which stands affirmed by the Hon'ble Supreme Court vide order dated 07.05.2019 in C.A. No. 1590/2019. **Thus, the procedure under Cr.P.C. for release of vehicles on *superdari* without stringent conditions would not apply in respect of action taken for enforcement of Sustainable Guidelines issued under the Environment (Protection) Act, 1986 (EP Act) and for enforcement of orders of this Tribunal under Section 15 of the National Green Tribunal Act, 2010 (NGT Act).** However, having regard to the difficulty expressed by the State that requirement to pay 50% of the showroom value of the vehicle was resulting in vehicles not being released at all, the earlier order was modified on 19.02.2020 to the effect that following scale of amount be recovered for release of the seized vehicles:-

<b>Sr. No.</b>	<b>Category of Vehicle</b>	<b>Penalty Amount</b>
1	<i>Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.</i>	Rs. 4 lacs
2	<i>Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.</i>	Rs. 3 lacs
3	<i>For the remaining Vehicles older than 10 years/Equipments/ Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.</i>	Rs. 2 lacs
<p><b>Note – I:</b> <i>On repetition of the offence by the same vehicle/ equipment, Order dated 05.04.2019 will be applicable.</i></p> <p><b>Note – II:</b> <i>The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.</i></p>		

9. Following further directions were issued :-

**“6. The State may issue an appropriate Office Order/Rule to the above effect and publish the same. Needless to say that any private contract between a financier and a debtor cannot affect the States’ sovereign power to protect the environment and take incidental coercive measure for enforcement of rule of law. Lien of the State will override any private interest. The above compensation regime will be over and above any existing Rules or provisions. The amount collected may be**

**remitted to the State PCBs/PCCs for being utilized for restoration of the environment.**

7. *The above course of action will be permissible to all the States at their option.*”

**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 for ecological damages.**
9. *In the first approach, the criteria adopted is:*
- *Exceedance Factor (EF).*
  - *Risk Factor (RF).*
  - *Deterrence Factor (DF).*

10. *Approach 1 is demonstrated by Table 1 as follows:*

“

<b>Table No. 01: Approach 1</b>				
<b>Permitted Quantity (in MT or m<sup>3</sup>)</b>	<b>Total Extraction (in MT or m<sup>3</sup>)</b>	<b>Excess Extraction (in MT or m<sup>3</sup>)</b>	<b>Exceedance in Extraction:</b>	<b>Compensation Charge (in Rs.)</b>
X	Y	Z = Y-X	Z/ X	D * (1+RF + DF) Where D = Z x Market Value-of-the-material-per-MT-or-m <sup>3</sup>

				<i>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 &gt;= 0.71</i>
				<i>RF = 0.25, 0.50, 0.75, 1.00 (as per table 2)</i>

11. Approach 2 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 atleast 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 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***



the Oversight Committee for the State of UP<sup>3</sup> to which reference will be made later.

### **Procedure for DSR/EC**

13. Vide order dated 14.10.2020 in O.A. No. 40/2020, *Pawan Kumar v. State of Bihar & Ors.*, the issue of preparation of District Survey Report (DSR) by Experts was considered. Vide Notification dated 25.07.2018 issued by the MoEF&CC, under Section 3(2)(v) of the EP Act, 1986 amending EIA Notification dated 14.09.2006, procedure for preparation of DSR for sand mining/riverbed mining was laid down. **The DSR is crucial as it contains Environment Management plan, including the replenishment study and other safeguards and is the basis to consider the environment impact of mining based on which decision to grant the Environmental Clearance is taken.** The Tribunal held that for such crucial exercise, the **Experts should be out of those accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India (NABT/QCCI) in terms of O.M. of MoEF&CC dated 16.03.2010.** Verification by the District Magistrate and evaluation by the SEAC was also necessary. Accordingly, following directions were issued in relation to a matter arising from the State of Bihar:-

*“(ii) As the DEIAA is not functioning as a consequence of the decision of the Tribunal in Satendra Pandey (supra), **the DSR shall be prepared through a consultant(s) accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India in terms of O.M. of MoEF&CC dated 16.03.2010.***

*“(iii) **The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the parameters prescribed in the SSMMG-2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regarding to the fact***

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<sup>3</sup> constituted by this Tribunal to oversee compliance of environmental issues, on suggestions of the State Government.

**that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements.**

**(iv) While preparing the DSR, the MoEF&CC Accredited Agency/Consultant shall scrupulously follow the procedure and the parameters laid down under the SSMMG-2016 and EMGSM-2020 read in sync with each other.”**

14. Considering the above, vide order dated 04.11.2020 in O.A. No. 726 of 2018, *Rupesh Pethe v. State of M.P. & Ors.*, the Tribunal directed that the above direction ought to be followed pan India, as follows:-

**“5. The above direction may be followed by the State of MP also for the sake of uniformity.** Further information required to be furnished is about the extent of illegal mining, extent of action taken, including the compensation recovered, vehicles seized and other coercive measures and impact of such action. The State of M.P. may compile relevant directions on the subject including the binding order of any Courts or Tribunal. This exercise may be undertaken jointly by the Secretary Geology and Mining, Member Secretary State PCB and Member Secretary SEIAA. In light of above, the State may further revise its policy and exercise. Let further compliance status be furnished before the next date by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

**6. We are of the view that the above directions need to be followed by all other States where the issue of mining is relevant.**

**7. A copy of this order be forwarded to the Chief Secretaries of all the States and UTs by e-mail for compliance.”**

### **Adverse impact of unscientific/unregulated Sand Mining**

15. It is undisputed that there is huge degradation of environment on account of unregulated sand mining remains which is otherwise lucrative activity. It poses threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird

species, increase saline water in the rivers. It has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand. The Hon'ble Supreme Court (in Deepak Kumar, supra) noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and ground waters. A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3 meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. It was noted that in-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.

16. *In State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772, at page 790, it was observed :

**“32.** *The policy and object of the Mines and Minerals Act and Rules have a long history and are the result of an increasing awareness of*

*the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature. The Court cannot lose sight of the fact that **adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service Report. As per the contents of the Report, lack of proper scientific methodology for river sand mining has led to indiscriminate sand mining, while weak governance and corruption have led to widespread illegal mining. While referring to the proposition in India, it was stated that sand trading is a lucrative business, and there is evidence of illegal trading such as the case of the influential mafias in our country.***

**33. The mining of aggregates in rivers has led to severe damage to rivers, including pollution and changes in levels of pH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal of more than 12 million tonnes of sand a year from Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 cm a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.**

*34. The Report also dealt with the astonishing impact of sand mining on the economy. It states that tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.*

*35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors—beaches themselves. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or*

*modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on instream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow paths*

*.....Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand and gravel mining from riverbeds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the stream-bed and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from riverbeds may also cause the entire stream-bed to degrade to the depth of excavation.”*

**Need for regulation under the Water, Air and EP Acts by PCBs, apart from the Mining authorities under the Mining law**

17. Again, in Goa Foundation, supra (prs 74-76) it was observed that **mining was required to be regulated not only by the Mining department but also by the PCBs under the Water and Air Act and by the MoEF under the EP Act. It is made clear that the environment laws override other laws and any provision to the contrary in the Mines Act will not stay in the way of enforcing the environment norms. In this regard reference may also be made to report of the Ministry of Mines entitled “Sand Mining Framework” which will not stand in the way of modified mechanism in accordance with this order.**

## **Salient features of the EMGSM-2020**

18. We may note the salient features of the EMGSM-2020, which are supplemental to existing SSMG-2016 and seek to provide effective enforcement and monitoring from the stage of identification of source to its dispatch and end use which requires involvement of all stakeholders viz. Central Government, State Government, Leaseholders/Mine Owners, Distributors, Dealers, Transporters and Consumers (bulk & retail). EMGSM refer to the judgment of the Hon'ble Supreme Court in *Deepak Kumar Vs. State of Haryana & Ors. (2012) 4 SCC 629* making EC mandatory irrespective of the area of mining lease, followed by monitoring in terms of the Environment Management Plan, using IT and IT enabled services. **Monitoring has to be with reference to quantity of mined material, transportation with a view to promote environmental protection, limit negative physiological, hydrogeological and social impacts underpinning sustainable economic growth.** Observations in the order of this Tribunal dated 04.09.2018 in O.A. 173/2018 in *Sudarsan Das vs. State of West Bengal & Ors.* has also been referred to as follows:

*"There can be no two views that an effective institutional monitoring mechanism is required not only at the stage when Environmental Clearance is granted but also at subsequent stages".*

*"The guidelines focus on the preparation of District Survey Report and the Management Plan" ...*

*We are of the view that all the safeguards which are suggested in sustainable sand mining guidelines as well as notification dated 15.01.2016 ought to be scrupulously followed." ...*

*It is a known fact that in spite of the above-suggested guidelines being in existence, on the ground level, illegal mining is still going on. The existing mechanism has not been successful and effective in remedying the situation." ...*

*Since there is an utter failure in the current monitoring mechanism followed by the State Boards, SEIAAs and DEIAAs, it is required to be revised for effective monitoring of sand and gravel mining and a dedicated monitoring mechanism be set up."*

Further reference has been made to the directions in the order dated 05.04.2019 requiring the 17 States, which were party before the Tribunal

viz. West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh, to follow the revised Guidelines and to review their respective monitoring mechanism. It is then stated that with the object of regulating the mining, the sources of sand and steps required are mentioned which provide for District Survey Report (DSR), Mining Plan, replenishment study, consideration of environment impact while granting EC, laying down conditions for EC, monitoring of transportation to the end user to ensure that only legally mined material is transported. There is need to balance between deposition and extraction of sand as per replenishment study, maintaining surveillance, using Unmanned Artificial Vehicles (UAVs)/Drone for reserves estimation, quantity estimation, land use monitoring. Details about all these aspects have been mentioned in the said Guidelines. With regard to post EC monitoring, there is a provision for environment audit, monitoring of sale and purchase by developing online portal and laying down the levels of monitoring i.e. Level 1- Reach/ Stockyard level monitoring, Level 2 - Transportation monitoring, Level 3 - End consumer monitoring/ bulk consumer, Level 4 - Indirect monitoring. Reference has then been made to the High-Powered Committee incorporating safeguards to be adopted by the project proponents. There is also provision for assessment of compensation for the ecological damage by the State/ PCB/ any other Authority. Inter District and Inter State boundaries are separately dealt with. The uniform monitoring mechanism stipulates:

“ 9.4. **Monitoring Mechanism**

xxx .....xxx.....xxx.....

1. *All precaution shall be taken to ensure that the water stream flows unhindered and process of Natural river meandering doesn't get affected due to mining activity.*
2. *River mining from outside shall not affect rivers, no mining shall be permitted in an area up to a width of 100 meters from the active edge of embankments or distance prescribed by the Irrigation department.*
3. *The mining from the area outside river bed shall be permitted subject to the condition that a safety margin of two meters (2 m) shall be maintained above the groundwater table while undertaking mining and no mining operation shall be permissible below this level unless specific permission is obtained from the Competent Authority. Further, the mining should not exceed nine-meter (9 m) at any point in time.*
4. *Survey shall be carried out for identifying the stretches having habitation of freshwater turtles or turtle nesting zones. Similarly, stretches shall be identified for other species of significant importance to the river ecosystem. Such stretch with adequate buffer distance shall be declared as no-mining zone and no mining shall be permitted. The regulatory authority as defined for granting Environmental Clearance, while considering the application of issuance of ToR and/or EC for the adjacent block (to non-mining zone) of mining shall take due precaution and impose requisite conditions to safeguard the interest of such species of importance.*
5. *District administration shall provide detailed information on its website about the sand mines in its district for public information, with an objective to extend all information in public domain so that the citizens are aware of the mining activities and can also report to the district administration on any deviation observed. Appropriate feedback and its redressal mechanism shall also be made operational. The details shall include, but not limited to, lease area, geo-coordinates of lease area and mineable area, transport routes, permitted capacity, regulatory conditions for operation including mining, environmental and social commitments etc.*
6. *A website needs to be maintain to track the movement of centralised sand mining and a Centralised server system should be made to manage the data related to sand mining across India.*
7. *The mineral concession holders shall maintain electronic weighbridges at the appropriate location identified by the district mining officer, in order to ensure that all mined minerals from that particular mine are accounted for before the material is dispatched from the mine. The weighing bridge shall have the provision of CCTV camera and all dispatch from the mine shall be accounted for.*

8. *The mineral movement shall be monitored and controlled through the use of transit permit with security features like printing on IBA approved MICR papers, Unique bar/QR, fugitive ink background, invisible ink mark, void pantographs and watermarks papers or through use of RFID tagged transit permits and IT /IT-enabled services. Such monitoring system shall be created and made operationalised by State Mining department and district level mining officer shall be responsible for ensuring that all legal and operational mines are connected and providing the requisite information on the system. Regular check and associated report shall be submitted to DLTF and uploaded on the website.*
9. **State Government shall constitute a District Level Task Force (DLTF) under the Chairmanship of Deputy Commissioner/District Magistrate/Collector with Superintendents of Police and other related senior functionaries (District Forest Officer, District transport officer, Regional officer- SPCBs, Senior Officer of Irrigation Department, District Mining Officer) with one/two independent member nominated by the Commissioner concerned. The independent member shall be retired government officials/teacher or ex-serviceman or ex-judiciary member.**

**The DLTF shall keep regular watch over the mining activities and movement of minerals in the district. The DLTF shall have its regular meeting, preferably every month to reconcile the information from the mining activity, and other observations made during the month and take appropriate corrective and remedial action, which may include a recommendation for revoking mining lease or environmental clearance. The DLTF may constitute an independent committee of the expert to assess the environmental or ecological damage caused due to illegal mining and recommend recovery of environmental compensation from the miner's concern. The recommendation may also include action under the provision of E(P) Act, 1986.**

10. *The area not identified for mining due to restriction or otherwise are also to be monitored on a regular basis by the DLTF. Any observations of mining activity from the restricted area shall be reported and corrective measures shall be initiated on an urgent basis by the DLTF.*
11. *The dispatch routes shall be defined in the Environmental Clearance and shall be avoided through densely habituated area and the increase in the number of vehicle movement on the road shall be in agreement with the IRC guidelines / carrying capacity of the road. The alternate and dedicated route shall be explored and preferred for movement of mining to avoid inconvenience to the local habitat. The mining production capacity, by volume/weight, shall be governed by total permissible dispatch calculated based on*

*the carrying capacity of dispatch link roads and accordingly, the production should be regulated.*

12. *The movement of minerals shall be reconciled with the data collected from the mines and various Naka/check posts. Other measures may also include a general survey of the potential mineable area in the district which has not been leased/auctioned or permitted for mining due to regulatory or other reasons.*
13. *The location and number of check post requirement shall be reviewed by DLTF on a regular basis so that appropriate changes in location/number could be made as per the requirement. Such review shall be carried out on a regular basis for the district on inter-state boundary or district providing multiple passages between two districts of different states.*
14. ***The district administration shall compile the information from their district of the permitted and legal mined out minerals and other details and share such information and intelligence with the officials of the adjoining district (Inter or/and Intra State) for reconciliation. The information shall include the area of operation, permissible quantity, mined out minerals (production) the permitted route etc., and other observations, especially where the mine lease boundary is congruent with the district boundary. Such coordination meeting shall be held on a quarterly basis, alternatively in two district headquarters or any other site in two districts decided mutually by the District Magistrate.***
15. ***The mining department shall include submission of an annual environmental audit report as one of the conditions in the mining lease agreement. The annual audit for each river bed mining lease shall be carried out and the audit report shall be uploaded on the website of district administration. The audit shall be carried out by an independent team of 3 members nominated by District Collector/Magistrate/Commissioner comprising of Ex-Serviceman, Ex-Government officials of repute, Professor or Person having experience of mining/environment. The guidelines and method of the audit shall reflect adequately the monitor-able parameters and output and reflect the compliance status with respect to the conditions imposed by the regulatory authorities including conditions of Environmental clearance.***
16. *The in-situ and ex-situ environmental mitigative measures stipulated as EMP, CER, CSR and other environmental and safety conditions in mines including the welfare of labours shall properly reflect in the audit report.*

#### **9.5 Suggestive additional requirements are**

**i. The requirement at the Mine Lease Site:**

- a. *Small Size Plot (Up to 5 hectares): Android Based Smart Phone.*
- b. *Large Size Plots (More than 5 hectares): CCTV camera, Personal Computer (PC), Internet Connection, Power Back up.*
- c. *Access control of mine lease site.*
- d. *Arrangement for weight or approximation of the weight of mined out mineral on the basis of the volume of the trailer of vehicle used.*

**ii. Scanning of Transport Permit or Receipt and Uploading on Server:**

- a. *Website: Scanning of receipt on mining site can be done through barcode scanner and computer using the software;*
- b. *Android Application: Scanning on mining site can be done using Android Application using a smartphone. It will require internet availability on SIM card;*
- c. *SMS: Transport Permit or Receipt shall be uploaded on the server even by sending SMS through mobile. Once Transport Permit or Receipt get uploaded, a unique invoice code gets generated with its validity period.*

**iii. Proposed working of the system:**

*The State Mining Department should print the Transport Permit or Receipt with security features and issue them to the mining leaseholder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferable with pre-fixed quantity, so the total quantity gets determined for the receipts issued. When the Transport Permit or Receipt barcode gets scanned and invoice is generated, that particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.*

**iv. Checking On Route:**

*The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using the website, Android Application and SMS.*

**v. Breakdown of Vehicle:**

*In case the vehicle break-down, the validity of Transport Permit or Receipt shall be extended by sending SMS by the driver in specific format to report the breakdown of the vehicle. The server will register this information and register the breakdown. The State can also establish a call center, which can register breakdowns of such vehicles and extend*

*the validity period. The subsequent restart of the vehicle also should be similarly reported to the server or call center.*

**vi. Tracking of Vehicles:**

*The route of the vehicle from source to destination can be tracked through the system using checkpoints, RFID Tags, and GPS tracking.*

**vii. Alerts or Report Generation and Action Review:**

*The system will enable the authorities to develop a periodic report on different parameters like daily lifting report, vehicle log or history, lifting against allocation, and total lifting. The system can be used to generate auto mails or SMS. This will enable the District Collector or District Magistrate to get all the relevant details and shall enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle shall be tracked.*

*The monitoring of mined out mineral, environmental clearance conditions and enforcement of Environment Management Plan will be ensured by the regulatory authority and the State Pollution Control Board or Committee. The monitoring arrangements envisaged above shall be put in place. The monitoring of enforcement of environmental clearance conditions shall be done by the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change and the agency nominated by the Ministry for the purpose.*

*Some of the State has followed the SSMMG-2016 and has also improvised or customized on the provisions given therein, and are successfully in operation. Salient provision adopted at different stages of sand mining in the state of Tamil Nadu is given as **Annexure VIII**.*

**9.6 Actions against illegal excavation and transport**

*Solapur district administration in Maharashtra had adopted a multi-pronged strategy to penalize the persons involved in illegal excavation and transport which resulted in a significant increase in revenue earned by the state. Following rules and procedures as mentioned in these guidelines will add to the costs of PP. Those involved in illegal activities are not required to bear these costs and this will make their supply in the market cheaper (though illegal). This will put the players running their business by following rules and procedures laid down by the government to disadvantage as far as the selling price is considered. Therefore, it is necessary to come down heavily on those involved in illegal excavation/transport, so that there is no incentive for players to abide by the rules.*

**The following action may be taken to achieve this deterrence against illegal business:**

- 1. The action should be taken under all legal options available simultaneously. Thus, after identifying the case of illegal excavation, storage and/or transport of minor minerals (including sand), fine should be levied as per the land revenue laws/code(s) of the state. In addition, FIR should be lodged in the police station under relevant sections of law including sec 379 IPC. In addition, action under the Motor Vehicle Act, 1989 and relevant rules should initiate to cancel/suspend the driving license of the driver and permit of the vehicle. Further, action should be initiated under provisions in the Income Tax Act, 1961 for unaccounted income and under the Central Goods and Services Act, 2017 for nonpayment of GST. (Earlier this was done under the state act pertaining to Value Added Tax/Sales Tax). Habitual offenders should also be taken up under local state laws for externment and/or preventive action. It is clarified that as per law, it is possible to take all actions under various laws simultaneously for one offence. What is prohibited in law is an action under the same law for the same act more than once.*
- 2. The action should be taken against all persons responsible. Often, there is a tendency to penalize only the drivers of the vehicles. The mafia of illegal mining and transport is much bigger and drivers are only one part of the system. It is necessary to identify all those involved in the offence. It is usually not possible to reach the place of excavation without creating a motorable pathway up to the same through land which may be private land. Such role of such landowners needs to be looked into for each offence and proceeded against simultaneously. Further, the role of vehicle owners needs to be probed. Role of the person who allowed his land to be used for illegal excavation and storage should also be examined. Lastly, the person who purchases such sand should also be probed. The legal proceedings stated above needs to be initiated against all of these together. An attempt should be made to fix the financial responsibility in joint and several ways so that recovery is easier.*
- 3. There may be discretion available in law about the extent of the penalty to be levied. If such discretion is very wide, then it is advisable that guidelines may be laid down to reduce such discretion in law for levying penalties. For example, in Maharashtra, Land Revenue Code, fine of any amount of penalty up to thrice the value of the sand can be levied. Solapur district administration had instructed Tahsildars and SDMs not to use discretion and levy the fine of three times the value. Availability of discretion makes junior level functionaries susceptible to pressures and it may also lead to corrupt practices.*

4. It is emphasized that actions, as stated above, are most important to ensure that the IT-based system works. If these exemplary actions are not taken against everyone, it shall create a strong disincentive to those involved in legal excavation and transportation. For IT-based (or any other) legal system to work, it is necessary to ensure that illegal system stops working altogether.”

19. Several formats have been suggested in the Annexures, apart from salient provisions in the State of Tamil Nadu before execution of the mining lease and after execution of such lease including **judicious mined closure plan, reclamation, removal of sheds and maintaining of record for future reference.**

#### **Compliance Status in States – Context of UP**

20. We now refer to the Oversight Committee report dated 15.01.2021 for the State of UP with regard to status of compliance of Sustainable Guidelines as follows:-

<b>S. No.</b>	<b>Directions by Hon’ble NGT</b>	<b>Compliance Status (Yes/No)</b>	<b>Compliance Status</b>
<b>1.</b>	<i>Status of the progress in ensuring issues related to illegal sand mining in the State of Uttar Pradesh</i>	<b>Partially Complied</b>	<i>For effective control of illegal mining and transportation of minerals, a seven-member District level Task Force has been constituted under the chairmanship of District Magistrate vide Govt. Order no. 616/86-2018-371/2005 dated 20.03.2018. Under the Integrated Mines Surveillance System (IMSS), all the mine areas have been geo fenced. PTZ cameras at the mines have been installed. Weigh Bridges fitted with cameras have been installed at all mines and have been integrated with the Control Centre at Head Quarters. At present, there are 36000 registered vehicles and 310 Weigh Bridges have been established.</i>
<b>2.</b>	<i>Demarcation of boundaries for regulating grant of sand mining lease</i>	<b>Partially Complied</b>	<i>Rule-23 of the Uttar Pradesh Sub-Divisional (Avoidance) Rules, 1963 as amended, provides for the advertisement of an area with Geo-coordinates and Rule-17 mentions the Geo-coordinates of all boundaries of the area sanctioned. These are being followed by all the District Magistrates.</i>

<b>3.</b>	<i>Environmental Compensation imposed on leasing of minor minerals in any area to cover the restoration cost of environment and to compensate the victims</i>	<b>Partially Complied</b>	<i>There is provision for execution of mining lease deed only after demarcation under rule-17 of the Mining lease Approval Rules, 1963.</i>
<b>4.</b>	<i>Status of the constitution of a team to carry out demarcation by the Chief Secretary</i>	<b>Partially Complied</b>	<i>Under Rule-17 of the Uttar Pradesh Sub-Divisional (Avoidance) Rules, 1963, there is a provision for survey/demarcation of the area by an authorized officer/employee of the Directorate of Geology and Mining. A separate team is not justified at the level of Chief Secretary</i>
<b>5.</b>	<i>Mining in all blocks is undertaken as per provisions of EIA Notification, 2006; MOEF Notification dated 15.1.2016 and the Sustainable Sand Mining Management Guidelines, 2016</i>	<b>Partially Complied</b>	<i>i. Rule 34(4) of Rules-1963 contains the provision for obtaining Environmental Clearance before commencement of mining in the sequence of notification dated 14.09.2006 and the notification as amended from time to time. ii. According to the Sustainable Sand Mining Management Guidelines, 2016 issued by MOEF&amp;CC, mining work is restricted from the riverbed during the monsoon season. Thus, mining work is restricted in the month of July, August and September in the State.</i>
<b>6.</b>	<i>No sand mining is permitted without due compliance of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as regulations governing clearances by the Central Ground Water Authority</i>	<b>Partially Complied</b>	<i>Rule- 41(J)(1) of the 1963 Rules envisages that no mining operations in the leveled river bed shall be carried out beyond the depth of 3 meters or water level whichever is less/lower. The conditions mentioned in the Environmental Cleanliness Certificate issued by the State Level Environmental Impact Authority (SEIAA), are being followed.</i>
<b>7.</b>	<i>District authorities shall seize all sump pumps, other machinery, tools, vehicles, etc. used for carrying out illegal sand mining.</i>	<b>Partially Complied</b>	<i>Report awaited</i>
<b>8.</b>	<i>Any penalty imposed or not by concerned Department to cover the restoration cost of environment and to compensate the victims.</i>	<b>Partially Complied</b>	<i>The orders of Hon'ble NGT dated 18.02.2016 in OA No. 184/2013 Gurpreet Singh Baggha vs. MOEF, regarding recovery of penalty/ environmental damage from the concerned lease holders are being complied at district level.</i>
<b>9.</b>	<i>Status of a detailed restoration plan for the concerned river and its river beds</i>	<b>Partially Complied</b>	<i>Mining work is being done on the basis of approved mining scheme by including the restoration plan in the mining plan.</i>

<b>10</b>	Status of the assessment done through Indian Council of Forestry Research and Education, Dehradun of the ecological damage on account of illegal mining by incorporating the given components: a) Cost of river bed material b) Cost of ecological restoration c) Net present value of the future ecosystem services.	<b>Partially Complied</b>	In OA No. 184/2013 Gurpreet Singh Bagga vs. MOEF, the action is being taken by conducting assessment of environmental damage in compliance with Indian Council of Forestry Research and Education, Dehradun.
<b>11</b>	Action against the polluters and the erring officers	<b>Not Complied</b>	Report awaited
<b>12</b>	Status of CCTV Cameras installation at mining points to verify the amount of sand extracted	<b>Partially Complied</b>	Rule-35(2) of Uttar Pradesh Minor Mineral Regulations, 1963 provides that the mining lease holder whose mining lease area is more than 5 hectares, shall constructs checkpost/gate and install 4 CCTV cameras capable of recording at 360° visibility at his own expense for monitoring. Under the supervision of the DMs.
<b>13</b>	Status of regular patrolling by the police to inspect the mining operations	<b>Partially Complied</b>	For effective control over illegal mining and transportation of minerals, a seven-member district level task force has been set up under the chairmanship of DM vide order no. 616/86-2018-371/2005 dated 20.03.2018. Deputy Superintendent of Police level officers of Police department are members of this task force. The mining areas are constantly monitored by this task force.
<b>14</b>	Status of daily reports regarding mining to be filed by SHO/ Mining officer to be sent to District Magistrate.	<b>Partially Complied</b>	According to the information received from the DM, Prayagraj in compliance of the order of Hon'ble NGT passed in OA No. 670/2018 in re: Atul Singh Chauhan vs. MOEF&CC and Ors., regular checking of illegal mining transportation is being done by the Task force constituted at the district level. The District Collector/ Senior Superintendent of Police, Prayagraj are regularly informed.
<b>15</b>	Status of vehicles confiscation	<b>Partially Complied</b>	In compliance of orders of Hon'ble NGT in OA No. 670/2018 in re: Atul Singh Chauhan vs. MOEF&CC and Ors., in district Prayagraj 06 chargesheets were filed in the financial year 2018- 19; 80 chargesheets filed in 2019-20 and in the year 2020-21 till the month of November, 2020, 150 FIRs and 214 cases have been filed in the competent Courts, including the order passed by Hon'ble NGT. Similar instructions have also been issued to the other districts regarding the above.

<p><b>16</b></p>	<p>Status of EC imposed and realized by the CPCB till date in this regard</p>	<p><b>Partially Complied</b></p>	<p>In compliance of Order dated 05.04.2019 of Hon'ble NGT, Principal Bench in O.A. 360 of 2015 (13 clubbed cases), CPCB in NGT on 06.01.2020 the "Recommendations on Scale of Compensation to deal with the cases of illegal sand mining" were made by the Committee of Experts constituted by Hon'ble NGT. The Committee of Expert recommended two approaches regarding the scale of compensation to deal with the cases of illegal sand mining:</p> <ol style="list-style-type: none"> <li>1. Direct Compensation based on the market value of extraction, adjusted for ecological damages</li> <li>2. Computing a Simplified NPV for ecological damages.</li> </ol> <p>The above referred recommendations were initially taken up by Hon'ble NGT during the hearing on 08.01.2020 wherein Hon'ble NGT expressed prima facie deficiencies in the recommendations and directed for rectification of the deficiencies before the next date. Accordingly, the Committee of Experts reviewed and revised its recommendations, and CPCB filed in NGT on 30.01.2020 the revised "Recommendations on Scale of Compensation to deal with the cases of illegal sand mining" of the Committee of Experts constituted by Hon'ble NGT. The scale of compensation was calculated by adopting two approaches. For details of approach, I &amp; II refer Appendix- VI. It was also suggested by the Hon'ble NGT vide its order dated 17/08/2020 to consider the suggestions of Shri Panjwani which were noted at point no 13 needs to be looked into by the same Committee and thereafter the Scale of Compensation finalized (Refer Appendix- VII).</p> <p>In compliance of the Hon'ble NGT direction, the matter was examined by the same expert Committee at CPCB, Delhi &amp; found that more or less the formula suggested by committee and the methodology suggested by Shri Panjwani is similar except some of the factors. The details of same are noted at point no. 3 of the affidavits is submitted before the Hon'ble NGT by CPCB on 12.10.2020. Copy of same is enclosed as Appendix-VIII.</p>
<p><b>17</b></p>	<p>Status of EC imposed and realized by the UPPCB till date in this regard</p>	<p><b>Partially Complied</b></p>	<p>In compliance of Order dated 08.01.2020 of Hon'ble NGT in O.A. 360 of 2015 are given at Appendix -IX of the report</p>

<b>18</b>	Status of setting up of dedicated institutional mechanism for monitoring of conditions of Environmental Clearance as granted under EIA Notification, 2006 in respect of sand and gravel mining.	<b>Partially Complied</b>	Under the supervision of the DMs in the districts, the conditions of the Environmental Clearance Certificate are complied with by the PCBs/ Departmental officers. A separate institutional mechanism has been established for the same.
<b>19</b>	Safeguards based on High Powered Committee report and observations into the Sustainable Sand Mining and Management Guidelines, 2016.	<b>Partially Complied</b>	MOEF& CC is following the Sustainable Sand Mining Management Guidelines, 2016. (Refer Appendix- X)
<b>20</b>	Necessary steps have been taken by District Administration for the effective monitoring mechanisms for preventive and remedial measures including surveillance system for recovery of compensation.	<b>Not Complied</b>	Action will be taken after necessary amendments in environmental regulations. As per information given by the Mr. A.K. Tiwari, UPPCB on 07.01.2021 that: Comments: In compliance of Hon'ble NGT order dated 17.08.2020 in OA No. 360/2015 and as per provision of 'Enforcement & Monitoring Guidelines for Sand Mining' Jan., 2020 issued by MOEF&CC, Govt. of India, action is to be taken by concerned District Administration. (Refer Appendix- XI)
<b>21</b>	Necessary steps have been taken by MOEF & CC to restore effective impact assessment and safeguards; any action taken against the erring officers	<b>Not Complied</b>	Report awaited
<b>22</b>	Status of Chief Secretary filed the report regarding recovery of compensation (i.e. damage to environment)	<b>Not Complied</b>	Report awaited

23	Whether there is any progress towards amendments of the Act/Rules so that the Courts can order for the fine as ordered by Hon'ble NGT.	<b>Not Complied</b>	<p>As per information given by the Mr. A.K. Tiwari, UPPCB on 07.01.2021 that: Comments: In compliance of Hon'ble Supreme Court Judgement dated the 27.02.2012 in I.A. No. 12-13 in Special Leave Petition (C) No. 19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others and in compliance of Hon'ble NGT directions dated 04.09.2018 in O.A. No. 173/2018 in the matter of Sudarsan Das Vs. State of West Bengal, MOEF&amp;CC, Govt. of India has issued 'Enforcement &amp; Monitoring Guidelines for Sand Mining' Jan., 2020 which has the following provisions regarding illegal mining:</p> <p>"As per the provision of 23 (C) of MMDR Act, the State Government is empowered to make rules for preventing illegal mining, and transportation &amp; storage of illegal minerals. All such mining which qualifies under illegal shall be dealt with in the provision of MMDR Act the concern authorities".</p> <p>In the above circumstance the necessary amendments in Mining Regulation/ The Uttar Pradesh SubDivisional (Avoidance) Rules, 1963 is to be initiated by the Mines &amp; Geology Department, Govt. of U.P. (Refer Appendix- XI).</p>
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**Additional Information provided by Mines Department**

1. **The Mines Department has established a Command Centre at the Directorate of Geology and Mines at Lucknow from where they operate the Integrated Mines Surveillance System for the entire State. They are using Artificial Intelligence based Software and taking the help of Drones and Cloud Services for monitoring mining activity in the State. Drone Videography has been done in sensitive districts- Fatehpur, Banda, Prayagraj and Saharanpur. Besides the CCTV Cameras, they are using RFID tags to monitor the movement of vehicles.**
2. They have made a provision in the Rules to blacklist a person for upto 2 years if found guilty of illegal mining/ illegal transportation. So far 125 persons/firms have been blacklisted.
3. They have amended the Rules to allow storage of minerals beyond 5Km radius from the riverbed. This has been done to prevent illegal mining from river bed under the alibi of storage.
4. **They have established a Vehicle Tracking System to check the misuse of Transport Pass and Overloading. To begin with, this system has been introduced in the most sensitive districts of Hamirpur, Banda, Fatehpur, Jalaun and Jhansi.**

5. *New areas have been identified based on survey conducted according to Sustainable Mining Guidelines and they are being included in the DSR.*
6. *Instead of the printed MM-11, online royalty payment has been introduced through E- MM- 11.*
7. *Security features have been introduced in E-MM 11 to check its misuse.*
8. *Transport of minerals even from stores is being regulated through electronic E- forms.*

**Observation of the Oversight Committee:** *The Committee felt that the compliance of the Mining Department needs to be verified by independent sources. CPCB and UPPCB are being directed by the Committee to jointly verify the compliance. The report would be submitted in three months time.*

## **VI. RECOMMENDATIONS**

1. *There have been a number of complaints regarding illegal mining specially in Districts of Hamirpur, Banda, Fatehpur, Jalaun, Prayagraj, Saharanpur and Jhansi. The Oversight Committee, while enclosing the newspaper cuttings has asked for a status report from the Directorate of Mining, which so far has not been received. **Illegal Mining is mining done without a Mining Plan in utter violation of environmental norms and is a grave threat to ecology and environment.** The State Government should have a zero tolerance on illegal mining and the Directorate of Mining and District Administration should immediately enquire into all such cases and if found correct take stringent legal action against the guilty.*
2. *Environmental Clearance takes into account all the environmental concerns. Mining plan is the instrument through which it is enforced. However, for mining activity going on illegally, there is neither any EC nor any mining plan. Illegal mining invariably leads to reckless damage to environment. Hence, utmost efforts are required in surveillance, patrolling and enforcement. **Electronic surveillance through UAVs/Remote Sensing is a good surveillance option especially in areas where sand mafias are active. Night vision drones could be used for checking mining activity at night. Sensitive spots need to be identified and police presence- both static presence and dynamic patrolling needs to be beefed up there. DMs / SSPs be made directly responsible for checking illegal mining.***
3. *DSRs need to be prepared very carefully. They should be based on Physical surveys and replenishment studies. **Since sand deposition is a dynamic issue, they need to be regularly updated. While awarding lease deeds, important environmental parameters like deposition and replenishment of sand, areas of erosion, distance from infrastructural structures need be considered.***

4. ***In the absence of replenishment studies and physical inspection before award, many times sites are awarded where there is no sand. The lease holder per force indulges in mining adjoining areas, some of which may be environmentally not very suitable. Before award of LOI, physical inspection should be mandatory.***
5. ***Areas where only few leases are operative and the rest are not settled/surrendered need to be carefully analyzed. There could be a chance of cartel formation and mining of sand illegally from other vacant mining plots under the garb of the operative lease. (In district Prayagraj, there is only one operative lease out of 51 leases).***
6. ***Storage Godowns should be at least 5 kms away from the river bank. Otherwise, illegal mining can be carried on under the garb of storage by the leaseholder himself.***
7. ***Geo-fencing of sites, their physical demarcation, allotment of geo-coordinates to all the pillars and their constant physical inspection and electronic surveillance is a must to ensure that the mining activity is as per the approved mining plan and no illegal mining, detrimental to environment, is going on.***
8. ***There has to be a mechanism to ensure that the actual mining activity conforms to the approved Mining Plan and the approved Environment Management Plan (EMP). Besides the statutory system of Departmental inspections, there has to be a system of annual mandatory Environmental Audit by experts. Environment Department can empanel some experts/expert institutions with standard TORs and Remuneration terms which could be utilized by the Mines Department on a regular basis. This way the District Administrations can access good technical experts with standard conditions in a transparent way without bothering about tedious time-consuming tender formalities.***
9. ***There has to be an effective mechanism for restoration of environment in case of its degradation due to mining. A portion of the royalty could be reserved for it as Environment Restoration Fund. The Environment Department can empanel some reputed institutions with standard terms for preparing environmental restoration plans which could be used directly by the Mining Department without the arduous formalities. These plans could be funded by the Environment Fund as mentioned above. Already a number of mineral rich districts like Sonbhadra have a sizeable District Mineral Fund at the disposal of the District Collector. However, since there is no mechanism available at the level of District Collector for preparation of Environment Restoration Plans, this fund is normally used for works other than environmental restoration.***

10. *All the mining activity should strictly comply with Provisions of EIA Notification 2006, Sustainable Sand Mining Guidelines, 2016; The Environmental Protection Act, 1986; The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981 and Regulations of Central Ground Water Authority.*
11. ***Direction may be issued to the Principal Secretary, Mining to take immediate steps for amendment of rules so that the Courts may order the fine as ordered by the Hon'ble NGT."***

#### **Stand of State of MP**

21. The State of MP has filed an affidavit on 13.01.2021 that necessary changes have been made in accordance with the directions of this Tribunal dated for procedure for granting EC in accordance with the directions of this Tribunal in the order dated 13.9.2018 in Satendra Pande, by constituting a Committee. Order dated 12.10.2020 was issued by the State of Madhya Pradesh on the subject. There is a proposal to amend the Minor Minerals Rules and also to introduce technology to prevent illegal mining using QR Code for transit passes, pool SMS facility to ascertain validity of electronic passes, google distance matrix to avoid multiple usage of single transit pass, web portal and mobile App to verify validity of electronic transit pass. It is not necessary to refer to the affidavits of other individual States in view of the fact that final and updated directions are now being issued in the light of which all the States/UTs are expected to take further steps in the matter.

#### **Stand of State of Rajasthan**

22. In the status report, filed by the State of Rajasthan on 16.10.2020, it is stated that the Chief Secretary Environment Cell has been established. It holds regular meetings with the District Magistrates. Meeting was also held with the Director General of Police (law and order), Secretary Home, Director Mines, all District Collectors, Dy. Conservators of Forest and other concerned officers. Directions have been issued for formation of SITs,

monitoring cases of illegal mining, setting up of special check posts on the routes used for illegal mining, ensuring CCTV surveillance, strict recovery of environmental compensation fee, etc. Directions have issued to District Magistrates to create awareness at Panchayat level. The Chief Secretary proposes proposed to issue comprehensive guidelines. Mining Department has also taken up a project for creating redressal portal and mobile app for reporting illegal mining.

### **Today's Consideration**

23. The extent of challenge posed by illegal sand mining was noted by the Tribunal in the order dated 05.04.2019 in OA 360/2015 as follows:-

*“8. Despite this, the menace of illegal sand mining in India continues unabated. **As per reports, the sand business in India employs over 35 million people and is valued at well over \$126 billion per annum. In the year 2015-2016, there were over 19,000 cases of illegal minor minerals including sand in the country.**<sup>4</sup> In Uttarakhand, a 115 years old bridge collapsed due to overloaded sand trucks. In Maharashtra, 26,628 cases of illegal sand mining were recorded in the year 2017. The State of Maharashtra has the highest number of cases of non-compliance of Sustainable Sand Mining Management Guidelines, 2016. The State of Kerala suffered hugely in 2004 Tsunami and 2018 floods which several report explain were aggravated by illegal sand extraction.<sup>5</sup> The issue of illegal sand mining is also rampant in the states of Goa<sup>6</sup>, Bihar<sup>7</sup>, Tamil Nadu<sup>8</sup>, Uttarakhand<sup>9</sup>, Telangana<sup>10</sup>, Jammu and Kashmir<sup>11</sup> amidst others.”*

24. In view of resume of above orders and responses, the issue which survives for consideration is enforcement of the 2016 and 2020 guidelines, read with orders dated 19.2.2020, 14.10.2020, 4.11.2020 and observations herein, by evolving appropriate comprehensive monitoring

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<sup>4</sup><http://www.legalserviceindia.com/legal/article-73-why-is-illegal-sand-mining-harmful-.html>

<sup>5</sup><https://sandrp.in/2019/03/01/sand-mining-2018-is-it-a-national-menace/>

<sup>6</sup><https://timesofindia.indiatimes.com/city/goa/govt-is-ignoring-illegal-sand-mining/articleshow/67908428.cms>

<sup>7</sup><https://www.firstpost.com/india/illegal-sand-mining-part-3-bihar-govts-attempted-crackdown-has-sent-prices-soaring-officials-face-axe-as-rivers-in-ruin-6008351.html>

<sup>8</sup>[https://en.wikipedia.org/wiki/Sand\\_mining\\_in\\_Tamil\\_Nadu](https://en.wikipedia.org/wiki/Sand_mining_in_Tamil_Nadu)

<sup>9</sup><https://sandrp.in/tag/uttarakhand-sand-mining/>

<sup>10</sup><https://sandrp.in/2019/02/26/sand-mining-2018-telangana-and-andhra-pradesh/>

<sup>11</sup>[https://greaterkashmir.com/article/news.aspx?story\\_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1](https://greaterkashmir.com/article/news.aspx?story_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1)

mechanism, with designated accountable officers, grievance redressal mechanism, envisaging strict action against violators, including assessment and recovery of compensation for the violations, seizure of vehicles and review at higher levels in the State.

### **Compensation**

25. In the light of discussion in para 12 above, having regard to the totality of the situation, **we accept the report of the CPCB and direct that the scale of compensation calculated with reference to approach II be adopted by all the States/UTs.** Though compensation assessment for damage to the environment is a dynamic concept, depending on variables, floor level formula can be worked out to avoid arbitrariness inherent in unguided discretion. **The CPCB may issue an appropriate statutory direction for the facility of monitoring and compliance to the Environment Secretaries of all the States/UTs who may forthwith evolve an appropriate mechanism for assessment and recovery of compensation in all Districts of the State. The recovered compensation may be kept in a separate account and utilized for restoration of environment by preparing an appropriate action plan under the directions of the Environment Secretary with the assistance of such individual/ institutions as may be considered necessary.**

### **Interaction for Effective enforcement**

26. The above discussion shows that the problem has defied solution and unless tackled seriously, damage to the environment will continue. Clear road map is thus required with effective monitoring mechanism. Report of the Oversight Committee for UP and affidavit of the State of MP, the report from Rajasthan and some other States also show that effective

mechanism is lacking. For clarity on all issues, periodic interaction of stake holders, particularly the enforcement authorities is required. This will also facilitate engagement of accredited agencies/experts for preparing DSRs/replenishment studies. In the Central Government, the concerned authorities include Mining Ministry, Environment Ministry, Jalshakti Ministry and CPCB. In States, Departments of Mining, Environment, SEIAA, PCB and District Magistrates.

**Enforcement of Monitoring Mechanism and review by the Chief Secretary at State level and Secretary MoEF&CC at National level**

**27. We direct all the States/UTs to strictly follow the SSMG-2016 read with EMGSM-2020 reinforced by mechanism for preparation of DSRs (in terms of directions of this Tribunal dated 14.10.2020 in Pawan Kumar, supra and 04.11.2020 in Rupesh Pethe, supra), Environment Management Plans, replenishment studies, mine closure plans, grant of EC (in terms of direction dated 13.09.2018 in Satendra Pandey, supra), assessment and recovery of compensation (as per discussion in Para 25), seizure and release of vehicles involved in illegal mining (in terms of order dated 19.02.2020 in Mushtakeem, supra), other safeguards against violations, grievance redressal, accountability of the designated officers and periodical review at higher levels. As already noted, EMGSM-2020 contemplates extensive use of digital technology, including remote sensing.**

**28. We further direct that periodic inspection be conducted by a five-members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC regional office is available, its Regional Officer will be included in the Committee.**

**Where neither CPCB nor MoEF&CC regional office exists, Chairman, SEIAA will tie up with the nearest institution of repute such as IIT to nominate an expert for being included in the Committee. Such inspection must be conducted at least thrice for each lease i.e. after expiry of 25% the lease period, then after 50% of the period and finally six months before expiry of the lease period for midway correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on website of the SEIAA. Every lessee, undertaking mining, must have an environment professional to facilitate sustainable mining in terms of the mining plan and environmental norms. This be overseen by the SEIAA. Environment Departments may also develop an appropriate mobile App for receiving and redressing the grievances against the sand mining, including connivance of the authorities and also a mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of UP quoted earlier may be duly taken into account.**

**The mechanism must provide for review at the level of the Chief Secretary at least once in every quarter, in a meeting with all concerned Departments in the State. The Chief Secretary UP may ensure further action in the light of the report of the Oversight Committee.**

**Similarly, at National level, such review needs to be conducted atleast once in a year by the Secretary, Environment in coordination with the Secretaries Mining and Jalshakti Ministries the CPCB.**

#### **Publication of Annual Reports**

**29. We further direct all the States/UTs to publish their annual reports on the subject and such annual reports may be furnished to**

**MoEF&CC by 30th April every year giving status till 31<sup>st</sup> March. First such report as on 31.03.2022 may be filed with the MoEF&CC by all the States/UTs on or before 30.04.2022. The report may also be simultaneously posted on the website of the Environment Department of the States/UTs. Based on such reports, MoEF&CC may consider supplementing its Guidelines from time to time. The MoEF&CC may prepare a consolidated report considering the reports from the States/UTs and publish its own report on the subject, preferably by 31<sup>st</sup> May every year.**

#### **Interaction at National Level**

**30. We direct the Secretary MoEF to convene a meeting in coordination with the CPCB and Mining and Jalshakti Ministries of Central Government and such other experts/individuals at National level and representatives of States within three months for interaction on the subject which may be followed by such meetings being convened by the Chief Secretaries in all States in next three months. Holding of such meetings will provide clarity on enforcement strategies and help protection of environment.**

All the applications are disposed of. Individual issues may be gone into in accordance with the mechanism to be involved as above.

A copy of this order be forwarded to the MoEF&CC, CPCB, Secretaries, Ministries of Jalshakti and Mining, GoI, Chief Secretaries, Environment Secretaries, SEIAA and State PCBs/PCCs and District Magistrates of all the States/UTs by e-mail for compliance.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

February 26, 2021  
Original Application No. 360/2015  
and other connected matters  
DV & A

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

M.A. No. 16/2020

(Filed by the State of Haryana for modification of order of this Tribunal dated 05.04.2019 read with order dated 26.07.2019 laying down terms on which vehicles or other equipment involved in illegal mining may be released.)

In

Original Application No. 44/2016

Mushtakeem

Applicant(s)

Versus

MoEF & CC & Ors.

Respondent(s)

Date of hearing: 19.02.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER  
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER**

For Respondent(s): Mr. Ajay Bansal, AAG with Mr. Rahul Khurana, Advocate and Mr. Sanjay Simberwal, AME, Faridabad

**ORDER**

1. This application seeks modification of order dated 05.04.2019 read with order dated 26.07.2019 laying down terms on which vehicles or other equipments involved in illegal mining may be released passed by this Tribunal. After referring to the earlier orders on the subject passed by this Tribunal and the Hon'ble Supreme Court referred to therein, and perusing the reports received from different States, this Tribunal found that steps taken by the States to check illegal mining were not adequate. The Tribunal *inter alia* directed the States to ensure that in compliance of polluter pays principle, the illegal miners may be required to be pay compensation which should include not only the value of illegal mined material but also cost of restoration of environment as well as cost of ecological

services foregone forever. It should be deterrent so as not to render such illegal activity profitable. It was further directed that the vehicles or any other equipments used for illegal mining are required to be confiscated and to be released only on payment of atleast 50% of the showroom value as laid down by this Tribunal earlier in Original Application No.110(THC)/2012, Threat to life arising out of coal mining in South Garo Hills District v. State of Meghalaya & Ors., affirmed by the Hon'ble Supreme Court in (2019) 8 SCC 177.

2. The above order was passed by this Tribunal in exercise of jurisdiction under Section 15 of the NGT Act, 2010. It is well settled that terms for release of vehicles and equipments involved in violation of special law is not control by the general provisions of the Cr.P.C. In this connection reference may also be made to another order of this Tribunal on the same subject in O.A. No. 840/2019, Atul Chouhan v. State of U.P. The said order was challenged by the State of U.P. in C.A. 1590/2019 which was dismissed by the Hon'ble Supreme Court on 07.05.2019. The Tribunal also referred to order of the Hon'ble Supreme Court dated 26.03.2019 in Cr.A. 524/2019, State of Madhya Pradesh v. Uday Singh that special procedure for confiscation prevailed over procedure under Section 451 of Cr.P.C. In the said case principle laid in Sujit Kumar Rana, (2004) 4 SCC 129 was followed.

3. In spite of above legal position, any other view on the subject will be against the law laid down by the Hon'ble Supreme Court. The plea that different Courts are taking different interpretation and releasing vehicles on *superdari* without any conditions is

untenable. Legal position need to be brought to the notice of such courts where matters are taken up.

4. Other difficulty pointed out by the State is that police stations are finding it difficult to provide sufficient space for custody of the vehicles. 669 vehicles have already been seized and more may be seized. The stand of the State itself supports the allegation that illegal sand mining and illegal use of vehicles for the purpose is taking place at large scale which itself may require a stern approach in the matter. The vehicles can be stored by the State at any appropriate place and cost recovered from the law violators. The State has to take necessary steps for enforcing rule of law and for protection of environment. As regards the difficulty that with the scale of compensation laid down by this Tribunal, the vehicle owners do not find it profitable to come forward and take the vehicles unless the scale of compensation is reduced. The showroom value of a truck is said to be around Rs. 30 lacs and 50% thereof comes to Rs. 15 lacs. In terms of order of this Tribunal, if amount of Rs. 15 lacs is to be deposited for release of every seized vehicle, there may be many vehicles which may be of much lesser value, in which case nobody may come forward to take such vehicles.

5. Having regard to the above practical difficulty, we modify the orders dated 05.04.2019 and 26.07.2019 as follows:

<b>Sr. No.</b>	<b>Category of Vehicle</b>	<b>Penalty Amount</b>
1	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.	Rs. 4 lacs
2	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.	Rs. 3 lacs

3	For the remaining Vehicles older than 10 years/Equipments/ Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.	Rs. 2 lacs
<p><b>Note – I:</b> On repetition of the offence by the same vehicle/ equipment, Order dated 05.04.2019 will be applicable.</p> <p><b>Note – II:</b> The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.</p>		

6. The State may issue an appropriate Office Order/Rule to the above effect and publish the same. Needless to say that any private contract between a financier and a debtor cannot affect the States' sovereign power to protect the environment and take incidental coercive measure for enforcement of rule of law. Lien of the State will override any private interest. The above compensation regime will be over and above any existing Rules or provisions. The amount collected may be remitted to the State PCBs/PCCs for being utilized for restoration of the environment.

7. The above course of action will be permissible to all the States at their option.

A copy of this order be sent to all the Chief Secretaries of all States/UTs, PCBs/ PCCs, CPCB and MoEF&CC.

The application is disposed of.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

February 19, 2020

M.A. No. 16/2020 in O.A. No. 44/2016  
AK



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

Original Application No. 360/2015

WITH

Original Application No. 366/2015

(M.A.No. 02/2019)

WITH

Original Application No. 368/2015

(M.A.No. 16/2019)

WITH

Original Application No. 173/2018

(Earlier O.A. No. 89/2017 (EZ)

(I.A. No. 76/2019)

WITH

Original Application No. 874/2018

WITH

Original Application No. 44/2016

WITH

Original Application No. 517/2015

WITH

Original Application No. 550/2015

WITH

Original Application No. 530/2016

WITH

Original Application No. 272/2016

WITH

Original Application No. 481/2016

WITH

Original Application No. 540/2015

WITH

Original Application No. 90/2016

WITH

Execution Application No. 40/2017

IN

O.A. No. 517/2015

National Green Tribunal Bar Association

Applicant(s)

Versus

Virender Singh (State of Gujarat)

Respondent(s)

WITH

National Green Tribunal Bar Association

Applicant(s)

Versus

Dr.Sarvabhoush Bagali (State of Karnataka)

Respondent(s)

WITH

National Green Tribunal Bar Association

Applicant(s)

Versus  
Dr.Sarvabhoun Bagali (State of Maharashtra) Respondent(s)  
WITH

Sudarsan Das Applicant(s)

Versus  
State of West Bengal &Ors.  
(State of West Bengal and Odisha) Respondent(s)  
WITH

News item published in "The Tribune " Authored by Arun Sharma  
Titled "Mounds of sand on Sutlej banks, mining mafia digs in"

WITH  
Mushtakeem Applicant(s)

Versus  
MoEF& CC &Ors. Respondent(s)

WITH  
Sandeep Kumar Applicant(s)

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

WITH  
Virender Kumar Applicant(s)

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

WITH  
Sandeep Kumar Applicant(s)

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

WITH  
M/s Ganga Yamuna Mining Co. Applicant(s)

Versus  
State of Haryana&Ors. Respondent(s)

WITH  
Joginder Singh Applicant(s)

Versus  
Ministry of Environment, Forests &Ors. Respondent(s)

WITH  
Ved Pal Singh Applicant(s)

Versus  
Ministry of Environment, Forests &Ors. Respondent(s)

Chander Mohan Uppal WITH Applicant(s)  
Versus State of U.P. &Ors. Respondent(s)  
Sandeep Kumar WITH Applicant(s)  
Versus Ministry of Environment, Forests and  
Climate Change &Ors. Respondent(s)

Date of hearing: 05.04.2019

**CORAM:HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

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For Respondent (s):

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Mr. Soumyajit Pani, Advocate for State of Odisha  
Mr. Raja Chatterjee, Advocate for State of West Bengal  
Mr. Ankit Verma, Advocate for State of U.P  
Mr. Divya Prakash Pande, Advocate  
Mr. Shlok Chandra, Mr. Ritesh Kumar Sharma, Advocates  
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Mr. Ankur Mittal, Mr. Abhay Gupta, Advocate  
Mr. Rahul Khurana, Advocate, Mrs. Madhri Gupta, Mr. Sanjay Sabbarwa, Mining Officer

### **ORDER**

1. The common question for consideration in this group of matters is the steps required to be taken for environment protection from unregulated sand mining in the States of Gujarat, Karnataka, Maharashtra, West Bengal, Odisha, Punjab, Haryana and Uttar Pradesh. The issue is common even with regard to States who are not party to these proceedings.

## **Background**

2. The Hon'ble Supreme Court, vide judgment in *Deepak Kumar Vs State of Haryana &Ors. (2012) 4 SCC 629*, directed that leases of minor minerals, including their renewal, even for an area of less than 5 hectares (ha) be granted only after environmental clearance from the Ministry of Environment and Forest and Climate Change (MoEF & CC). This direction was held to be necessary in view of degradation of environment on account of illegal and unrestricted upstream, in-stream and flood plain sand mining activities. Under the existing guidelines, no environmental clearance was required for minor leases of less than 5 hectare area. The result was that there was no regulation of such mining which resulted in environmental degradation. Even bigger cluster was split up in less than 5 ha units to avoid law.
3. The Hon'ble Supreme Court observed that absence of regulation of such mining was not justified as it was threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird species, increase saline water in the rivers.
4. The Hon'ble Supreme Court observed that such mining has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream

roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand.

5. The Hon'ble Supreme Court noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and ground waters. A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3 meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. It was noted that in-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.

6. The grievance before the Tribunal is that the river bed mining was taking place at several locations in violation of judgment of the Hon'ble Supreme Court either without any valid lease or under leases

given without following the strict regulatory regime in terms of judgment of the Hon'ble Supreme Court or in violation of lease conditions.

### **Proceedings before NGT**

7. This Tribunal passed several orders in the present matter since 05.08.2013<sup>1</sup> to check illegal sand mining from the riverbeds without environmental clearance or in violation of terms of environmental clearance. The State of Uttar Pradesh was directed to frame a policy to check illegal sand mining. MoEF&CC was also directed to prepare comprehensive guideline on the subject. The Tribunal considered regulatory regime applicable in some of the States in the light of the judgment of the Hon'ble Supreme Court in *Deepak Kumar* (supra), including in the States of Uttar Pradesh, Haryana, Madhya Pradesh, Maharashtra, Karnataka, Gujarat, West Bengal and Odisha. The MoEF&CC issued Sustainable Sand Mining Guidelines 2016, vide notification dated 15.01.2016. Thereafter, further directions were issued by the Tribunal in the light of report of the High-powered Committee<sup>2</sup>.
8. Despite this, the menace of illegal sand mining in India continues unabated. As per reports, the sand business in India employs over 35 million people and is valued at well over \$126 billion per annum. In the year 2015-2016, there were over 19,000 cases of illegal minor minerals including sand in the country.<sup>3</sup> In Uttarakhand, a 115 years old bridge collapsed due to overloaded sand trucks. In Maharashtra,

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<sup>1</sup> In O.A. No 38/2015

<sup>2</sup> Order dated 08.08.2018 in Gurpreet Singh Bagga Vs. Ministry of Environment, Forest and Climate Change, E.A. No. 17/2016

<sup>3</sup> <http://www.legalserviceindia.com/legal/article-73-why-is-illegal-sand-mining-harmful-.html>

26,628 cases of illegal sand mining were recorded in the year 2017. The State of Maharashtra has the highest number of cases of non-compliance of Sustainable Sand Mining Management Guidelines, 2016. The State of Kerala suffered hugely in 2004 Tsunami and 2018 floods which several report explain were aggravated by illegal sand extraction.<sup>4</sup> The issue of illegal sand mining is also rampant in the states of Goa<sup>5</sup>, Bihar<sup>6</sup>, Tamil Nadu<sup>7</sup>, Uttarakhand<sup>8</sup>, Telangana<sup>9</sup>, Jammu and Kashmir<sup>10</sup> amidst others.

9. Natural resources are 'public goods' and the Doctrine of Equality must guide the State in determining the actual mechanism for distribution of natural resources. It takes into account the rights and obligations of the State vis-a-vis its people and the demands that the people be granted equitable access to natural resources and they are adequately compensated for the transfer of these resources for public domain and regulation of rights and obligations of the State vis-à-vis private parties seeking to acquire the resources which demands that the procedure adopted and distribution is just and transparent.
10. Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, water and forest have great importance to public as a whole and it is wholly unjustified to make them a subject of private ownership. The public trust doctrine enjoins upon the Governments to protect the resources for enjoyment of general public

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<sup>4</sup> <https://sandrp.in/2019/03/01/sand-mining-2018-is-it-a-national-menace/>

<sup>5</sup> <https://timesofindia.indiatimes.com/city/goa/govt-is-ignoring-illegal-sand-mining/articleshow/67908428.cms>

<sup>6</sup> <https://www.firstpost.com/india/illegal-sand-mining-part-3-bihar-govts-attempted-crackdown-has-sent-prices-soaring-officials-face-axe-as-rivers-in-ruin-6008351.html>

<sup>7</sup> [https://en.wikipedia.org/wiki/Sand\\_mining\\_in\\_Tamil\\_Nadu](https://en.wikipedia.org/wiki/Sand_mining_in_Tamil_Nadu)

<sup>8</sup> <https://sandrp.in/tag/uttarakhand-sand-mining/>

<sup>9</sup> <https://sandrp.in/2019/02/26/sand-mining-2018-telangana-and-andhra-pradesh/>

<sup>10</sup> [https://greaterkashmir.com/article/news.aspx?story\\_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1](https://greaterkashmir.com/article/news.aspx?story_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1)

rather than to permit the use for private ownership of commercial purposes.<sup>11</sup>

11. When the State holds a resource that is freely available for the use of public, it provides for a high degree of judicial scrutiny on any action of the State in dealing with the subject in a prudent manner. It is the duty of the State to provide complete protection to the natural resources as a trustee of the public at large. Moreover, a policy to give free sand must be justified as a welfare measure but even this consideration cannot justify unregulated and unscientific mining unmindful of impact on environment. If in the course of mining, damage is caused, cost of the same must be recovered from such violators. In any case, the authorities cannot avoid their duty under the environmental law to prevent and restore the damage which is an inalienable duty of the State.

**Sudarsan Das v. State of West Bengal**

Vide order dated 04.09.2018 in O.A No. 173/2018, *Sudarsan Das v. State of West Bengal & Ors*, the Tribunal considered the issue of unchecked mechanised sand mining on the banks of river Subarnarekha by use of suction pumps, earth movers and netting in an area falling under Jaleswar Tehsil, Balasore District, Odisha on the Odisha – West Bengal Boarder area and neighbouring district of West Medinapur in the State of West Bengal. The mining was being done by a method whereby ground water is allowed to seep into excavation of 40 to 50 feet beneath the river and collected in sumps and pumped away for disposal. No environmental clearance had been

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<sup>11</sup>Natural Resources Allocation in RE: Special Reference No. 1/2012, (2012)10 SCC1, para 77-78,89-92

taken nor consent taken from the Pollution Control Board. This was impacting the ecology of the river including its channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transpiration capacity, turbidity, temperature, etc. Such indiscriminate mining was the cause of the river Subarnarekha changing its course every year and made susceptible to flooding during every monsoon, threatening the safety of the villages situated along the river bank due to the banks being severely eroded in villages Rajnagar, Mankia, Kanrpur, Totapada, Beherasahi and Praharajpur. The authorities confirmed that illegal mining was taking place at large scale without any Environmental Clearance under the Environment (Protection) Act, 1986 or Consent under the Water (Prevention and Control of Pollution) Act, 1974 or the Air (Prevention and Control of Pollution) Act, 1981. Sustainable Sand Mining and Management Guidelines, 2016 were also not being followed. There was adverse impact on the ecology. No Management Plan was prepared for replenishment of preventive steps. Safeguards suggested in the report of High-powered Committee in September, 2016<sup>12</sup> were also not been adopted.

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<sup>12</sup> The report suggest follows:

- i) Project Proponent must ensure that the security features of Transport Permission viz. (a) Printed on Indian Bank Association (IBA) approved Magnetic Ink Character Recognition Code (MICR) paper; (c) Unique Barcode; (d) Unique Quick Response Code (QR); (e) Fugitive Ink Background; (f) Invisible Ink Mark; (g) Void Pantograph; (h) Watermark.
- ii) Project Proponent must ensure that the CCTV camera, Personal Computer (PC), Internet Connection, Power Back up, access control of mine lease site; and arrangement for weight or approximation of weight of mined out mineral on basis of volume of the trailer of vehicle used at mine lease site are available.
- iii) Project Proponent must ensure the Scanning of Transport Permit or Receipt and uploading on Server.
- iv) The State Mines and Geology Department should print the Transport Permits/Receipt with security features enumerated at Paragraph (i) above and issue them to the mine lease holder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferably with pre-fixed quantity, so the total quantity gets determined for the receipts issued. When the Transport Permit or Receipt barcode gets scanned and invoice is generated,

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the particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.

- v) The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using website, Android Application and SMS.
- vi) In case the Vehicle breakdown, the validity of Transport Permit or Receipt shall be extended by sending SMS by driver in specific format to report breakdown of vehicle. The server will register this information and register the breakdown. The State can also establish a call centre, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server/call centre.
- vii) The route of vehicle from source to destination should be tracked through the system using check points, Radio-frequency identification (RFID) Tags, and Global Positioning System (GPS) tracking.
- viii) The system shall enable the Authorities to develop periodic report on different parameters like daily lifting report, vehicle log/history, lifting against allocation, and total lifting. The system can be used to generate auto mails/SMS. This will enable the District Collector/Magistrate to get all the relevant details and will enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle should be tracked.”

Considerations required to be kept in mind for sustainable sand mining are:

- a. Parts of the river reach that experience deposition or aggradation shall be identified first. The Lease holder/ Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.
- b. The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.
- c. Sand and gravel may be extracted across the entire active channel during the dry season.
- d. Abandoned stream channels on terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. Stream should not be diverted to form inactive channel.
- e. Layers of sand and gravel which could be removed from the riverbed shall depend on the width of the river and replenishment rate of the river.
- f. Sand and gravel shall not be allowed to be extracted where erosion may occur, such as at the concave bank.
- g. Segments of braided river system should be used preferably falling within the lateral migration area of the river regime that enhances the feasibility of sediment replenishment.
- h. Sand and gravel shall not be extracted within 200 to 500 meter from any crucial hydraulic structure such as pumping station, water intakes, and bridges. The exact distance should be ascertained by the local authorities based on local situation. The cross-section survey should cover a minimum distance of 1.0 km upstream and 1.0 km downstream of the potential reach for extraction. The sediment sampling should include the bed material and bed material load before, during and after extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross- section. Using the historical or gauged flow rating curve, determine the suitable period of high flow that can replenish the extracted volume. Calculate the extraction volume based on the sediment rating curve and high flow period after determining the allowable mining depth.
- i. Sand and gravel could be extracted from the downstream of the sand bar at river bends. Retaining the upstream one to two thirds of the bar and riparian vegetation is accepted as a method to promote channel stability.
- j. Flood discharge capacity of the river could be maintained in areas where there are significant flood hazard to existing structures or infrastructure. Sand and gravel mining may be allowed to maintain the natural flow capacity based on surveyed cross- section history.
- k. Alternatively, off-channel or floodplain extraction is recommended to allow rivers to replenish the quantity taken out during mining.
- l. The Piedmont Zone (Bhabhar area) particularly in the Himalayan foothills, where riverbed material is mined, this sandy-gravelly track constitutes excellent conduits and holds the greater potential for ground water recharge. Mining in such areas should be preferred in locations selected away from the channel bank stretches.
- m. Mining depth should be restricted to 3 meter and distance from the bank should be 3 meter or 10 percent of the river width whichever less.
- n. The borrow area should preferably be located on the river side of the proposed embankment, because they get silted up in course of time. For low embankment less than 6 m in height, borrow area should not be selected within 25 m from the toe/heel of the embankment. In case of higher embankment the distance should not be less than 50 m. In order to obviate development of flow parallel to embankment, cross bars of width eight times the depth of borrow pits spaced 50 to 60 meters centre-to-centre should be left in the borrow pits.
- o. Demarcation of mining area with pillars and geo-referencing should be done prior to start of mining.”

12. The Management Plan as per the guidelines is to require system of replenishment as well as preventive steps during the sand mining. Replenishment and reclamation of riverine sand are the integral part. Guidelines also deal with the issue of depth of mining and strict regulatory regime. The management of mining clusters should have a separate approach. Management of sand deposited after the floods should be treated as separate for mining. Monitoring system proposed includes safeguards during transport as well as checking of condition of mining.

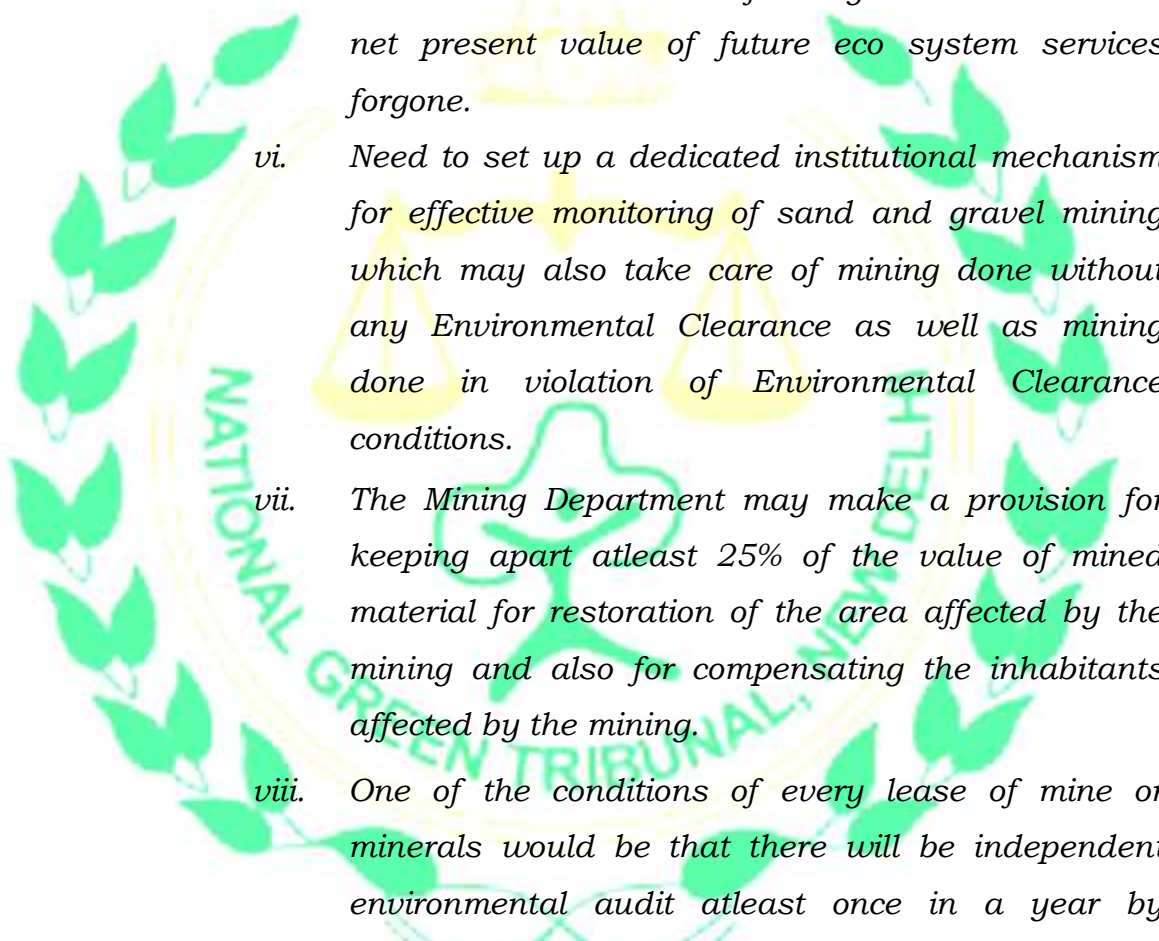
13. The Tribunal noted that Ministry of Mines and Indian Bureau of Mines (IBM) had developed Mines Surveillance System (MSS), with assistance from Bhaskaracharya Institute for space applications and Geoinformatics (BISAG), Gandhinagar and Ministry of Electronics and Information Technology (MEITY). The Mining Surveillance System (MSS) is a satellite-based monitoring system which aims to establish a regime of responsive mineral administration by curbing instances of illegal mining activity through automatic remote sensing detection technology.

14. In view of above, the Tribunal directed<sup>13</sup> the MoEF&CC to revise its guidelines as in-spite of the guidelines already issued, the monitoring mechanism was not working effectively. The directions of this Tribunal are:

*“i. Mining Surveillance System discussed in para 23 above be finalized in consultation with ISRO Hyderabad.*

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<sup>13</sup> Vide order dated 04.09.2018 in Original Application No. 173 of 2018 (Earlier O.A. No. 89/2017) (EZ) in the matter of Sudarsan Das Vs. State of West Bengal & Ors.

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- ii *Safeguards suggested in Sustainable Sand Mining Guidelines published by the MoEF&CC in the year 2016.*
  - iii *Suggestions in the High-Powered Committee Report.*
  - iv *Requirement of demarcation of boundaries being published in respect of different leases in public domain.*
  - v. *Need to issue SOP laying down mechanism to evaluate loss to the ecology and to recover the cost of restoration of such damage from the legal or illegal miners. Such evaluation must include cost of mining material as well as cost of ecological restoration and net present value of future eco system services forgone.*
  - vi. *Need to set up a dedicated institutional mechanism for effective monitoring of sand and gravel mining which may also take care of mining done without any Environmental Clearance as well as mining done in violation of Environmental Clearance conditions.*
  - vii. *The Mining Department may make a provision for keeping apart atleast 25% of the value of mined material for restoration of the area affected by the mining and also for compensating the inhabitants affected by the mining.*
  - viii. *One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit atleast once in a year by reputed third party entity and report of such audit be placed in public domain.*
  - ix *In the course of such environmental audit, a three member committee of the local inhabitants will also be associated. Composition of three members committee may preferably include ex-servicemen, former teacher and former civil servant. The Committee will be nominated by the District Magistrate.”*

15. Such steps were to be worked out within two months and circulated to all States. The mechanism is to provide for a report of implementation from the concerned States every quarter. The matter needs to be reviewed after every six months by the MoEF & CC. The direction with regard to setting up of 'dedicated institutional mechanism' for monitoring of conditions of Environmental Clearance as granted under EIA Notification, 2006 in respect of sand and gravel mining as directed in para (vi) is for an All-Encompassing Body to monitor the conditions of Environmental Clearance with respect to all development projects. Report of the steps taken by MOEF&CC was to be furnished to this Tribunal by email at filing.ngt@gmail.com on or before 31.12.2018.

16. The Tribunal also issued directions to the State of West Bengal and Odisha to take steps as follows:

- “*
- i. The State of West Bengal and Odisha may demarcate the boundaries for regulating grant of sand mining lease within three months from today. No mining lease of minor minerals may be given in the area in question till demarcation is complete. All existing mining operations in those areas shall remain suspended till demarcation work is completed and attains finality. To carry out the demarcation, the Chief Secretaries of the two States may constitute a team of three suitable officers each within two weeks. The said teams may hold their first meeting within one month.*
  - ii. The States of West Bengal and Odisha must ensure that mining in all sand mining blocks is undertaken strictly in accordance with the provisions of EIA Notification, 2006, MoEF*

*Notification dated 15th January, 2016 and the Sustainable Sand Mining Management Guidelines, 2016. They must also ensure that no sand mining is permitted without due compliance of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as regulations governing clearances by the Central Ground Water Authority. The District Administration must be held accountable for any failure.*

*iii. District Magistrates and Superintendents of Police, Balasore district in Odisha and Paschim Medinapur, West Bengal, respectively, shall seize all sump pumps, other machinery, tools, vehicles, etc. used for carrying out illegal sand mining.*

*iv. Apart from instituting appropriate criminal proceedings against those carrying out illegal mining, exemplary penalty shall be imposed against them by the concerned District Magistrates within three months from today to cover the cost of restoration of environment and to compensate the victims.*

*v. The Chief Secretaries of the two States shall also get prepared jointly a detailed restoration plan for river Subarnarekha and its riverbeds for which a Committee of experts shall be constituted from independent institutions, i.e., the CPCB, Indian School of Mines, Dhanbad and the respective State Pollution Control Boards as members. Such constitution may take place within one month.*

*vi. The Expert Committee shall carry out detailed study and submit the restoration plan, as far as may be practicable, within three months after its constitution.*

- vii. *The Committee shall also get the assessment done through Indian Council of Forestry Research and Education, Dehradun of the ecological damage on account of illegal mining by incorporating the following components: a) Cost of riverbed material. b) Cost of ecological restoration. c) Net present value of the future ecosystem services foregone.*
- viii. *The above steps may be facilitated by the Regional Office of the CPCB as nodal officer, by coordinating with the Chief Secretaries of the two States.*
- ix. *The damage suffered by the inhabitants caused by the illegal mining may also be assessed by the above Committee, which shall form a separate component of the Restoration Plan for river Subarnarekha as per direction No. (v) above. Cost of restoration plan shall be recovered as environmental compensation from the illegal miners, to be identified by the District Magistrate. The component of the compensation in respect of damages suffered by the inhabitants may be credited with District Legal Services Authority. The District Legal Services Authority may disburse the same to the victims of illegal mining, after proper identification.”*

17. An oversight Committee was formed headed by Justice R.K. Merathia, former Judge of Jharkhand High Court to oversee the execution of above directions which was to function for six months.

### **Consideration in Today's Proceedings**

#### **Sand Mining in the State of West Bengal and Odisha**

18. The matter has been listed today to consider the report from the MoEF & CC which was to be furnished by 31.12.2018 in terms of

para 28 in *Sudarshan Das* (supra) and report of the oversight Committee which was to be furnished within three months in respect of steps taken by the State of West Bengal and Odisha in terms of direction of this Tribunal.

19. We may note that vide order dated 16.01.2019 in O.A. No. 606/2018, titled *Compliance of Municipal Solid Waste Management Rules, 2016*, the Tribunal flagged the issue of sand mining as one of the issues required to be monitored by the Chief Secretaries of the concerned States and to be reported to the Tribunal on personal appearance of Chief Secretaries before the Tribunal.

20. In pursuance of the said direction, Chief Secretaries of Odisha and West Bengal furnished their respective reports on 26.03.2019 and 02.04.2019. Learned counsels for the State of West Bengal and Odisha have relied upon the said reports during the hearing of present cases. The reports were not found to be satisfactory as per orders of the Tribunal dated 26.03.2019 and 02.04.2019 respectively and further directions were issued.

21. Question for consideration is further directions in the matter. We will consider this aspect after noticing developments in connected cases.

### **Sand Mining in the State of Gujarat**

22. Following the above order in *Sudarsan Das* (supra), the issue of illegal sand mining in the State of Gujarat was dealt with in O.A. No. 360/2015, *National Green Tribunal Bar Association v. Virender Singh (State of Gujarat)*. The Tribunal passed several orders from time to time since 28.11.2016 and finally considered the report of the State

of Gujarat vide order dated 13.07.2018 to the effect that persons engaged in illegal mining were identified and proceeded against. The Tribunal directed the State of Gujarat to take further preventive and remedial steps and observed that compounding fee to be recovered should be fixed having regard not only to the cost of mined material but also the cost of restoration of the environment and cost of ecological services lost forever and should be separately accounted for, for restoration of the environment. Again, vide order dated 17.09.2018, the Tribunal considered the policy of the State of Gujarat but found that preventive and remedial steps proposed were not sufficient. Damage caused to the environment was not fully taken into account. It was required to include Net Present Value (NPV) of future ecosystem services foregone forever. It was also observed that the preventive steps should also include demarcation and publication of boundaries in different leases and the same may be placed in the public domain. The Tribunal also referred to other orders on the subject being orders dated 05.09.2018, 10.09.2018 and 13.09.2018 in *Original Application No. 44/2016- Mushtakeem Vs. MoEF & CC & Ors.*, *Original Application No. 304/2015- Jai singh & Anr. Vs. Union of India & Ors.* and *Original Application No. 186/2016 - Satendra Pandey Vs. Ministry of Environment, Forest & Climate Change & Anr.* The application was disposed of but the action taken report was required to be furnished. Accordingly, the matters have been put up today for consideration of the action taken report.

23. We may also note that vide order dated 04.01.2019 in *Original Application No. 110(T<sub>HC</sub>)/2012, Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & and Ors.*, the

issue of compensation and seizure of vehicles in the context of illegal rat hole mining in the State of Meghalaya was considered. On the subject of compensation to be recovered for damage to the environment, it was observed:

*“31. Paying capacity and the amount which may act as deterrent to prevent further damage is also well recognised. 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.*

*32. We are satisfied that having regard to the totality of factual situation emerging from the record, damages required to be recovered are not, prima facie, less than Rs. 100 Crores. Accordingly, by way of an interim measure, we require the State of Meghalaya to deposit Rs. 100 crores within two months with the CPCB in this regard.”*

On the subject of vehicles, it was observed:

*“ 36. The Committee may also consider the following:-*

*Any cranes and trucks found to be involved in illegal mining or transportation which have not yet been seized may also be seized. The seized vehicles or equipments be released by the concerned District Magistrates only after recovering damages to the extent of 50% of the showroom 17 price of the vehicles or equipments. The said amount may also be credited to the restoration fund.”*

24. We have perused the report filed by the State of Gujarat vide email dated 17.12.2018 to the effect that environment compensation scale has been enhanced which now can be between 21% to 41% value of the illegally mined material and if such value is found to be less than the cost of the damage to the environment, the matter is to be referred to the State Pollution Control Board. The above

compensation is in addition to the penalties under the Rules. However, the scale of penalty has not been specified.

25. Accordingly, further directions are required which may apply not only to the State of Gujarat but also other States. We may consider this aspect after taking note of developments in other States.

### **Sand Mining in the State of Karnataka**

26. O.A. No. 366/2015 (M.A. No. 02/2019), *National Green Tribunal Bar Association v. Dr. Sarvabhoun Bagali (State of Karnataka)* and O.A. No. 368/2015 (M.A. No. 16/2019), *National Green Tribunal Bar Association v. Dr. Sarvabhoun Bagali (State of Maharashtra)* relate to the issue of sand mining in the State of Karnataka and Maharashtra. Vide order dated 25.09.2018, the matter was considered in the light of observations in O.A No. 173/2018 (Earlier O.A. No. 89/2017 (EZ) (I.A. No. 76/2019), *Sudarsan Das Vs. State of West Bengal & Ors and Original Application No. 186/2016, Satendra Pandey v. Ministry of Environment, Forest & Climate Change & Anr.* The States of Karnataka and Maharashtra were required to take steps as per the directions in the above matters, to the extent applicable and file an affidavit.

27. Accordingly, an affidavit has been filed on 06.03.2019 by the state of Karnataka stating that there was no sand *mafia* in the State of Karnataka and only there are exceptional instances. It is further submitted:

*“I submit that all necessary steps are taken by Government of Karnataka and compliance report is submitted in this case, separately. If this Hon’ble Tribunal opines to establish any “Monitoring*

*Mechanism”, we welcome it. However, any suggestions or directions may kindly be issued to Government of Karnataka to (1) evaluate loss to the ecology (2) to recover cost of restoration from illegal miners (3) to monitor mining (4) to make provision for restoration (5) for compensation to the inhabitants and (6) for audit etc., the Government of Karnataka will obey the directions of this Hon’ble Court.”*

28. Our attention has been drawn to a news article published in Bangalore Mirror dated 24.12.2018 appearing under the title “Karnataka: Sand mafia under scanner after lorry runs over official”<sup>14</sup> and an article published in Decan Herald dated 17.09.2018 under the title “Karnataka is a leading State that witnesses the devastating effects of sand mining”<sup>15</sup> to the effect that fourteen million metric tonnes of sand unaccounted for the State of Karnataka is as follows:

*“The state government is receiving approximately Rs 150 crore as royalty from legitimate sand mining blocks every year. As per estimates, the state government is losing around Rs 200 crore per year due to illegal sand mining. Here is a ballpark estimation to find out the consumption of sand in the state. According to cement manufacturing companies’ data, around 18 million metric tonnes of cement is sold in the state every year. The cement-sand mix ratio is either 1:4 or 1:6 (four or six bags of sand per cement bag). Even if 1:4 ratio is taken, a whopping 70 million metric tonnes of sand is approximately used in the state every year. The official data from the Department*

<sup>14</sup><https://bangaloremirror.indiatimes.com/bangalore/others/karnataka-sand-mafia-under-scanner-after-lorry-runs-over-official/articleshow/67221261.cms>

<sup>15</sup><https://www.deccanherald.com/exclusives/illegal-sand-mining-wrecking.html>

*of Mines and Geology shows that from the blocks permitted by it, a total quantity of 30 million metric tonnes of sand (from all types of blocks - river sand, patta land, blocks allocated to government departments, and manufactured sand) is produced in the state. As per this, there is a difference of around 40 million metric tonnes of sand in comparison to the cement sold in the state.”*

29. We may consider further directions after noting facts of other states.

### **Sand Mining in the State of Maharashtra**

30. In the case of Maharashtra, an affidavit has been filed by the State of Maharashtra on 20.2.2019 to the effect that the State Government is in the process of framing Sand Mining Policy for which a Committee has been constituted.

31. Our attention has also been drawn to an article published in The Hindustan Times dated 27.01.2019 under the title “Maharashtra registers most cases of illegal mining between 2013-17”<sup>16</sup> inter alia stating as follows:

*“Maharashtra recorded 1,39,706 illegal mining cases between 2013 and 2017, the highest number in the country, revealed data submitted by the Union environment ministry before the Rajya Sabha on January 3.*

*However, the state had one of the lowest number of prosecutions in such cases. The state filed 712 first information reports (FIR) and one court case, while seizing around 1,39,000 vehicles used in illegal*

<sup>16</sup> <https://www.hindustantimes.com/india-news/maharashtra-registers-most-cases-of-illegal-mining-between-2013-17/story-2j69aqmsygzCcTBBB8emtN.html>

*mining operations and collecting Rs 267 crores as fines from offender.*

*India recorded 4,16,410 cases during the same time, which means Maharashtra accounts for 33.5% of all cases in the country. Uttar Pradesh recorded 36,054 illegal mining cases, Madhya Pradesh 46,193, Karnataka 33,390, and Goa had 3 cases. The information was submitted in response to a query on the environmental impact of illegal mining.”*

32. In view of above, further directions are required to be considered for the State of Maharashtra.

**Sand Mining in the State of Punjab**

33. Vide order dated 13.11.2018 in O.A. No. 874/2018 News item published in "The Tribune " Authored by Arun Sharma Titled "Mounds of sand on Sutlej banks, mining mafia digs in", a report was sought on the allegation of large scale illegal mining on the bank of River Satluj in District Ropar in the light of directions vide order dated 04.09.2018 in Sudershan Das (supra) and other orders. Accordingly, a report has been received vide email dated 25.02.2019 confirming that illegal mining had taken place. The observations in the inspection report are as follows:

- “1. No mining operation was observed during visit of the Committee at the mining sites located in the riverbed.*
- 2. The mining of minor minerals in the riverbed has taken place more than permitted depth of 3 meters, as specified in point no. 4(i) of Form – L appended to the Punjab Minor Mineral Rules, 2013, which is a violation of sustainable mining practice.*

3. *The specified boundaries or demarcation of mine lease area was not demarcated as required for checking illegal mining, substantiates the fact of illegal or unauthorized excavation of minerals.*
4. *From the existing natural level adjoining to the mining site, it we noticed that mining has been carried out in an unscientifically manner as:*

- a) *The mining of minor mineral has been done beyond the permitted depth.*

- b) *No strip of 7.5 m width of the lease boundary as seen left as per provisions of the Metalliferous Mines Regulations, 1961 in compliance to condition imposed in the Mining Plan approved by the State Geologist, Punjab, a serious violation for safety of banks.*

- c) *The contractor has not maintained slope height not exceeding 45 degree from the horizontal width along the boundaries of mining site in compliance to condition no. 12 of the letter vide which mining plan was approved, negligence towards slope stability.*

- d) *The contractor was not providing bench along the boundary of the mining site having height not exceeding 1.5 m and its width should not be less than the height as per condition no. 13 of the letter vide which mining plan was approve.*

1. *From the conditions of the area along the riverbed in revenue estate of village Baihara and Swarha, it seems that the mining has been carried out at the different locations in an unscientific way.*
2. *During the inspection, the impressions of heavy vehicles movement were observed. Also, it was found that road for movement of vehicle were in very bad shape as these roads have not been*

*stabilized or metalled with any of construction material and no plantation was observed along the roads.*

- 3. The development of water sumps as well as erosion of banks due to unscientific mining within the riverbed are threat to river ecological system and make it prone to flooding conditions during full flow. Also, it may cause the course of river to change rapidly and meandering to a great extent.*
- 4. No check post was observed during the visit along the routes leading to mining lease area.*
- 5. As per stipulation of environmental clearance, the contractor is required to maintain safety and stability of river banks i.e. 3 m or 10% of the width of the river, whichever is more will be left intact as no mining zone. Since no embankment of the riverbed was noticed and there was no demarcation of the mining site, as such, compliance of the above stipulation of the Environmental Clearance could not be verified.*
- 6. The contractor has neither done any plantation along with the lease boundary of mining site in compliance to the condition imposed in the approval letter of the Mining plan.*
- 7. The stone crusher units nearby the riverbed were observed by the committee. The stone crusher units were observed to be non-operational during visit of the committee, but stock piling of crushed material is indicative of their operation. The heavy machineries like JCB, pokland machines, dumper etc. were observed around the river, which may have been use for illegal mining in the area. Hence, the possession of these types of machines and working of stone crusher units need to be regulated. This issue needs to be monitored by the State.”*

34. The Committee further observed.

*“The suggestions of the joint committee visit on 20.12.2018 in the report filed in OA no. 767 of 2018 titled as Dinesh Kumar Chadha versus State of Punjab & Others were as follows :*

- The mining activity within the riverbed should not be permitted without the preparation of Comprehensive Mining plan/District Survey report as required in Sustainable Sand Mining Management Guidelines, 2016 issued by the MoEF by the State of Punjab with replenishment/scientific study by an institute of national importance and prior recommendations of MoEF & CC.*
- The State of Punjab may be asked to develop mechanism to stop the illegal extraction and transportation of riverbed material. The mechanism must include the environmental compensation for violators and vehicles used for the purpose to be seized along with prosecution of owners of such vehicles. Including cancellation of registration certificate of such vehicles.*
- The District Administration may consider establishing the check post barrier at suitable site to check vehicles carrying the riverbed material and to maintain strict vigil over overloading vehicles involved.*
- The Detailed Survey of river eco system comprising of identification of river stretches affected by unscientific mining should be carried out for preservation and exclusion of stretches from any type of extraction process or mining activity. In addition the auction of identified stretches may not*

*be considered without approved annual replenishment report.*

- *The restoration plan of river ecosystem in mine lease area should be enforced for minimizing the impacts of unscientific mining and to improve the riparian habitat. The State of Punjab can be asked to execute the restoration plan within time bound manner.*
- *The demarcation of auctioned mine lease area should be done urgently with pillars/fencing along with geo-referencing to protect the river ecosystem and to avoid bed degradation.*
- *The raw material to be imported, processed, dispatched and balance stock shall be regulated strictly as per the policy guidelines for registration and working of stone crushers in the State of Punjab issued by the Department of Industries and Commerce vide notification dated 19.03.2015.*
- *As regards to initiating action against the erring officials, the Heads of the concerned Departments should identify the erring officials who allowed to take place illegal mining and initiate action against these officials, after conducting detailed investigations.*

*The same physical conditions have been noticed during the recent visit on 20.2.2019 at the mining sites located in the revenue estate of village Baihara and Swarha, as such, the suggestions may be considered by the court alongwith the followings:*

- *The District Survey Report for the mining site in the area in order to identify depositions / aggradations stretches of the riverbed material should be prepared.*
- *Declaration of safety zones around infrastructures like National Highway, Bridge, Railway line etc. must be ensured for protection as per provisions of the Punjab Minor Minerals Rules, 2013.*
- *Replenishment report including time of replenishment for the mining area to be undertaken by the concerned Authorities for permitting mining.*
- *Strict vigilance to be implemented to ensure no illegal mining / transportation in the bed of river.*

*As regards to facts noted regarding mining beneath the bridge on Sri Anandpur Sahib-Garshankar road, besides above, it is suggested as under:*

- (i) The Deptt. of Mining is required to ensure the compliance of stipulations of para 4 of Form 'L' appended to the Punjab Mining Minerals Rules, 2013 as regards to no mining area within a distance of 500m upstream /downstream of any high level bridge and 250m upstream / downstream of other bridges.*
- (ii) The Mining department jointly with Deptt. of Irrigation is required to rejuvenate the area near and beneath the above mentioned bridge so as to ensure safety of the same and these departments are required to take necessary safeguards for further safety of the said bridge.”*

35. In view of above, directions are called for to the State of Punjab to deal with the issue of sand mining.

### **Sand mining in the State of Uttar Pradesh and Haryana**

36. O.A. No. 44/2016, Mushtakeem v. MoEF&CC & Ors., involved illegal mining in Uttar Pradesh and Haryana on riverbeds of Yamuna. The matter was disposed of vide order dated 05.09.2018, following directions dated 04.09.2018 in Sudershan Das (supra). In terms of order dated 05.09.2018, no report has been received from the State of Uttar Pradesh. Thus further directions are necessary. A report has been received from Additional Chief Secretary, Haryana vide email dated 05.04.2019 to the effect that the State of Haryana was following the guidelines and will implement revised Sustainable Sand Mining Guidelines issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) in terms of the order dated 04.09.2018, in O.A No. 173/2018 (Earlier O.A. No. 89/2017 (EZ) (I.A. No. 76/2019), *Sudarsan Das Vs. State of West Bengal & Ors.*

37. In view of the above, further directions are called for to the State of Uttar Pradesh and Haryana to deal with the issue of sand mining.

### **Sand Mining in the State of Madhya Pradesh**

38. Though no case of the State of Madhya Pradesh is listed today, we have taken note of the problem sand mining in the State in O.A. No. 456/2018 Nityanand Mishra v. State of M.P. & Ors., which is pending before this Tribunal and sought report from Committee vide order dated 31.07.2018. Accordingly, a report is submitted & the same is on record of the said case. Extract from the report is as follows:

*“Sand mining is directly affecting basking and nesting*

habitats of species in SGS. Mining of sand from the riverbed and river banks will negatively alter the river morphology, will increase sedimentation and turbidity and also disrupt the lateral connectivity within the river. Studies have already shown condition of Son River to be at a critical level with severely compromised river flows. Sand mining will only result in compounding what is an already sub-optimal riverine habitat. Any further degradation of this habitat will potentially make Son River uninhabitable for some of the most threatened fauna in the country. The data from offence registers of SGS as depicted in table 1 does indicate that there has been an increase in the number of cases with respect to the illegal sand mining in the sanctuary area. The information is about cases that were caught and processed by the Forest Department. **There are many cases that go unnoticed due to inadequate patrolling as everyone informs that one truck generates illegal revenue of Rs. 12,000 and per night 1000 trucks generate illegal revenue of Rs. 1,20,00,000.”**

39. In view of above, further directions are necessary for the State of Madhya Pradesh to deal with the issue of sand mining.

#### **Sand Mining in the State of Andhra Pradesh**

40. We may also note that in the case of *Anumolu Gandhi V. State of Andhra Pradesh in Original Application No. 935/2018*, illegal sand mining causing damage to Krishna river in Vijayawada, Godavari river and their tributaries in the State of Andhra Pradesh and absence of remedial steps was considered. The Tribunal vide order dated 04.04.2019 directed the Chief Secretary of the State of Andhra Pradesh to forthwith prohibit all unregulated sand mining without following the procedure prescribed under the law in the judgment of the Hon’ble Supreme Court in *Deepak Kumar v. State of Haryana*. The Tribunal further directed Chief Secretary of the State to evolve a mechanism to assess and recover the cost of sand mining already incurred in the last three years and initiate

steps to recover compensation to meet the cost of restoration of environment. The Tribunal constituted a Committee comprising CPCB, MoEF&CC, National Institute of Mines, Dhanbad, IIT Roorkee and Madras School of Economics to undertake environment damage assessment within three months and furnish a report to this Tribunal by e-mail at [ngt.filing@gmail.com](mailto:ngt.filing@gmail.com).

41. In this light, further directions are called for to the State of Rajasthan and Andhra Pradesh to deal with the issue of sand mining.

#### **Sand Mining in the State of Rajasthan and Himachal Pradesh**

42. The problem of illegal sand mining contrary to the directions of the Hon'ble Supreme Court in Deepak Kumar vs. State of Haryana (supra) in the States of Rajasthan, Himachal Pradesh, Karnataka, Madhya Pradesh and Punjab was also considered by this Tribunal in Himmat Singh Shekhawat vs. State of Rajasthan & Ors. (O.A. No. 797/2018) vide order dated 15.03.2019. the Tribunal founds the reports submitted by the States to be unsatisfactory and accordingly directed furnishing of fresh action taken reports. The matter was directed to be listed on 11.07.2019. The said matter may now be listed on 23.07.2019 along with the present batch of matters.

#### **Sand Mining in Bihar**

43. This Tribunal vide its order dated 24.08.2018 in Amarshakti v. State of Bihar & Ors. O.A. No. 596/2018 dealt with the issue of illegal sand mining during monsoon in the rivers Son and Ganga at Koelbar and Patna in Bihar. The Tribunal directed the

Secretary, mines and minerals, Bihar to constitute a team comprising of officers of Mines and Minerals Department and District Magistrate and S.P. Patna to look into the allegations and report compliance to the Tribunal. Report dated 12.10.2018 was received from the Government of Bihar stated that 122 prosecutions were initiated and 297 persons arrested. 32 boats and 287 trucks were seized in District Saran. Action was also taken in District Bhojpur at Ara and District Vaishali at Hajipur. The Tribunal directed the Secretary, Government of Bihar to monitor the matter from time to time and continue to enforce the law.

#### **Sand Mining in Uttarakhand**

44. The issue of illegal sand mining in the State of Uttarakhand was also considered by this Tribunal vide its order dated 27.11.2018 in Anand Gopal Singh Bist v. State of Uttarakhand O.A. No. 751/2018 wherein, this Tribunal directed the District Magistrate Nanital and Principal Chief Conservator of Forest, Dehradun to jointly look into the matter. The Tribunal vide its order dated 14.02.2019 directed that the monitoring may continue and the Collector may ensure that Revenue Department performs its duty in accordance with law.

#### **Sand Mining in other States**

45. Illegal sand mining in violation of Sustainable Sand Mining Guidelines, 2016 has also been reported widely in the States of

Jammu and Kashmir<sup>17</sup>, Goa<sup>18</sup>, Kerala<sup>19</sup>, Telangana<sup>20</sup> and Tamil Nadu<sup>21</sup>.

46. General directions may be necessary even for Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu which may also apply to any other States facing the issue of illegal sand mining.

### **Issues**

47. Main issues are:

- (a) Revision of Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC in the light of directions of this Tribunal vide order dated 04.09.2018 in Sudarsan Das (supra).
- (b) Compliance of Sustainable Sand Mining Guidelines, 2016 as may be revised by MoEF&CC as above.
- (c) Effective monitoring mechanism for preventive and remedial measures as directed in orders of this Tribunal, including surveillance system and recovery of compensation.
- (d) Directions in individual cases listed today.
- (e) Scale of compensation

48. We may now deal with the issues involved and directions required.

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<sup>17</sup>[https://greaterkashmir.com/article/news.aspx?story\\_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1](https://greaterkashmir.com/article/news.aspx?story_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1)

<sup>18</sup> <https://timesofindia.indiatimes.com/city/goa/govt-is-ignoring-illegal-sand-mining/articleshow/67908428.cms>

<sup>19</sup> Order dated 29.03.2019 in News Item Published In "Indian Express" Authored by Vishnu Verma in O.A. No. 76/2019

<sup>20</sup> <https://sandrp.in/2019/02/26/sand-mining-2018-telangana-and-andhra-pradesh/>

<sup>21</sup> [https://en.wikipedia.org/wiki/Sand\\_mining\\_in\\_Tamil\\_Nadu](https://en.wikipedia.org/wiki/Sand_mining_in_Tamil_Nadu)

**Re (i): Revision of Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC in the light of directions of this Tribunal vide order dated 04.09.2018 in Sudarsan Das (supra).**

49. As noted in para 12 to 15 above, need for revision of Sustainable Sand Mining Guidelines, 2016 has been discussed by the Tribunal in order dated 04.09.2018. Further discussion is unnecessary. The 2016 Guidelines need revision in the light of report of High Powered Committee in September 2016, failure of Monitoring mechanism followed by State Boards, SEIAs, DEIAs and MSS system developed by Ministry of Mines & IBN with the assistance of BISAG and MAITY and other observations quoted in paras 12 to 15 above. Since no report has been received from MoEF&CC as per report dated 04.09.2018, the MoEF&CC may now take necessary steps in the matter in terms of order dated 04.09.2018 in *Sudarsan Das* (supra) latest by June 30, 2019 and file compliance report by 15.07.2019.

**Re (ii): Compliance of Sustainable Sand Mining Guidelines, 2016 as may be revised by MoEF&CC as above.**

50. As noted earlier in paras 17, 23, 27, 31 and 35, States of West Bengal, Odisha, Gujarat, Karnataka, Maharashtra, Punjab, Haryana and Uttar Pradesh are required to follow SSMG, 2016 as may be revised by MoEF&CC and even other States where illegal sand mining is taking place. All such States may take steps in terms of orders dated 04.09.2018 in *Sudarsan Das v. State of West Bengal & ors*, 05.09.2018 in *Mushtakeem v. MoEF&CC & Ors.*, 13.09.2018 in *Satendra Pandey v. MoEF&CC & Ors.* and 16.01.2019 titled Compliance of Municipal Solid Waste

Management Rules, 2016. The Chief Secretaries may monitor and furnish reports as earlier directed on the subject of sand mining.

**Re (iii): Effective monitoring mechanism for preventive and remedial measures as directed in orders of this Tribunal, including surveillance system and recovery of compensation.**

51. We have found in the discussion above, particularly in paras 8 to 11, 20, 21, 23, 29, 32, 33, 36, 39, 41 and 43 with regard to factual position in various States that monitoring mechanism-preventive and remedial measures is not effective and illegal sand mining is continuing. The same needs to be reviewed in the light of above discussion. The States may review monitoring mechanism in terms of several directions of the Tribunal and guidelines of MoEF&CC. As regards monetary compensation, the same has to be not only equal to cost of mined material and penalty to evade royalty but also to meet cost of restoration and NPV of eco services fore gone forever. Seizure of vehicles or other equipment may be dealt with as per rules and directions in *Threat to life arising out of coal mining in South Garo Hills district* (supra).

**Re (iv): Directions in Individual Cases Listed Today. For the discussion and observation hereinabove, case is made out for issuing directions following discussion on the subject.**

52. In *Sudarsan Das* (supra) one of the directions was that the Chief Secretaries of West Bengal and Odisha will prepare a restoration plan in consultation with the Central Pollution Control Board (CPCB), Indian School of Mines, Dhanbad and the Respective State Pollution Control Boards (SPCBs). We are informed that Indian School of Mines, Dhanbad declined to comply with the

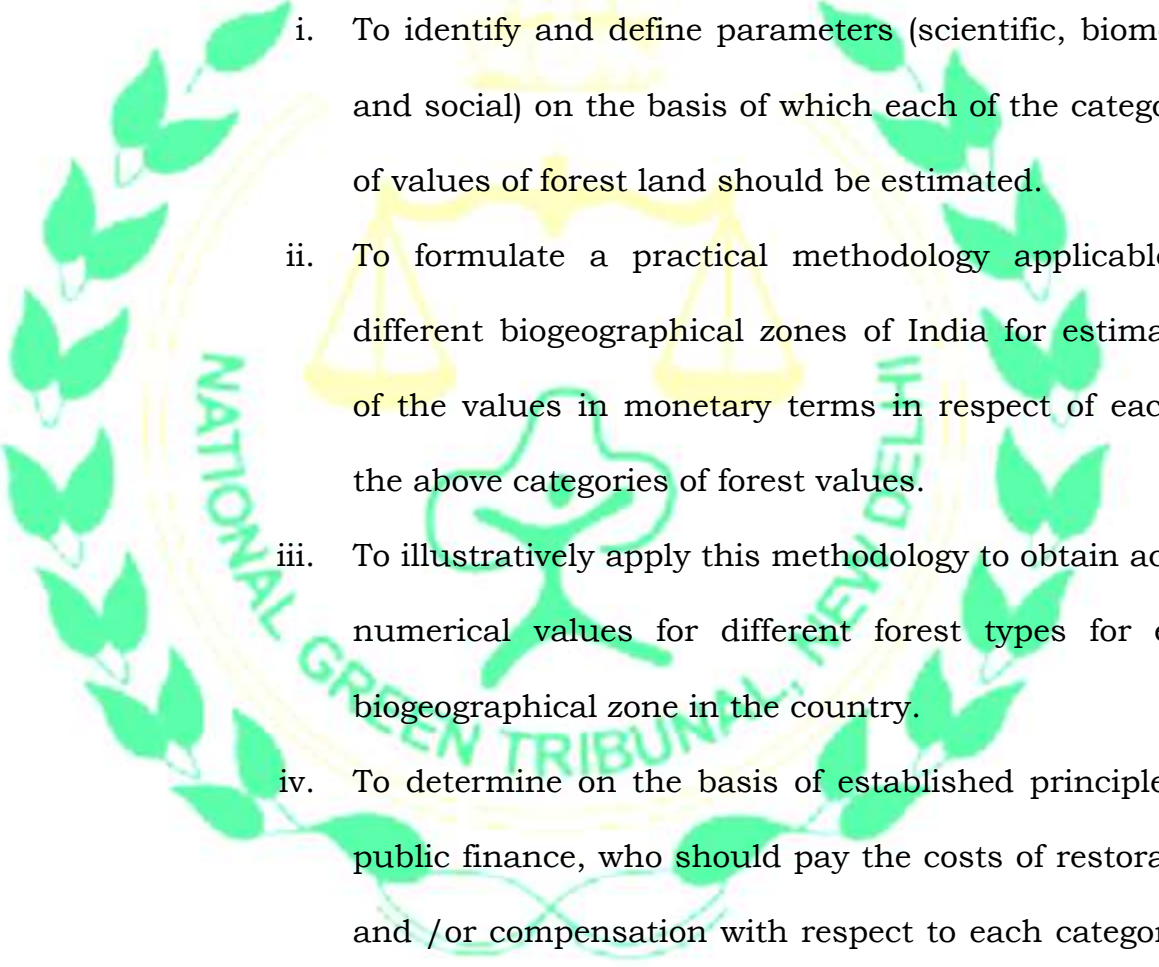
order. This may call for remedial action against defiance by the said institution. Order of this Tribunal is a decree of the Court and can be executed in the manner provided under Section 51 CPC by ordering civil imprisonment or adopting other norms. Violation of order of this Tribunal is also a criminal offence punishable by imprisonment and fine. The Head of the Department concerned is liable to be proceeded against. Thus, the Director Indian School of Mines, Dhanbad will have to be required to appear in person to explain why action be not taken for violation of order of this Tribunal. The State of West Bengal, Orissa, Punjab and Gujarat need to send further action taken reports by 30.06.2019.

53. The State of Uttar Pradesh has not complied with the order dated 05.09.2018. This must not be done by way of last opportunity till 30.06.2019, failing which coercive measures will be adopted. Responsibility for compliance will be of the Chief Secretary.

54. In O.A. No. 173/2018, in view of the fact that term of the oversight Committee headed by Justice Ramesh Kumar Merathia, former Judge, High Court of Jharkhand was six months which period is over, the said Committee may now conclude its proceedings and furnish its final report with findings and recommendations on or before April 30, 2019. Further directions in the matter may be considered on the next date.

**Re (v): Scale of Compensation**

55. We have held that the scale of compensation proposed by the State of Gujarat does not fully comply with the 'Polluter Pays' principle which envisages that polluter is required to pay for complete restoration of the environment. This principle has been articulated further by the Hon'ble Supreme Court of India in *T.N. Godavarman Thirumulpad vs Union Of India & Ors, (2006) 1 SCC 1* in the context of forests. In this matter, the Hon'ble Supreme Court appointed a committee of experts and following directions were given:

- 
- i. To identify and define parameters (scientific, biometric and social) on the basis of which each of the categories of values of forest land should be estimated.
  - ii. To formulate a practical methodology applicable to different biogeographical zones of India for estimation of the values in monetary terms in respect of each of the above categories of forest values.
  - iii. To illustratively apply this methodology to obtain actual numerical values for different forest types for each biogeographical zone in the country.
  - iv. To determine on the basis of established principles of public finance, who should pay the costs of restoration and /or compensation with respect to each category of values of forests.
  - v. Which projects deserve to be exempted from payment of NPV.

56. Similar criteria may have to be taken into account for arriving at an approximate scale of compensation. The compensation is to

include not only the full value of the illegally mined material but also cost of restoration of environment as well as cost of ecological services foregone forever. It should be deterrent so as not to render such illegal activity profitable. In *Sudarsan Das Vs. State of West Bengal & Ors.* (Supra), it was held that full value of the material, the cost of restoration and the NPV should form part of the compensation to be recovered. There has also to be action against the polluters and the erring officers. The vehicles or any other equipment used for illegal mining are required to be confiscated and to be released only on payment of atleast 50% of the showroom value as laid down in *Original Application No.110(THC)/2012, Threat to life arising out of coal mining in South Garo Hills District v. State of Meghalaya& Ors.* This scale can then apply for all States, as far as possible.

57. We consider it necessary to constitute a Committee comprising representatives of the MoEF&CC, Central Pollution Control Board (CPCB), Indian Institute of Forest Management, Bhopal, Institute of Economic Growth Delhi and Madras School of Economics to prepare a scale of compensation, after including the above components which can then be adopted in whole of the country. The report may be furnished within three months to the Tribunal by email at [ngt.filing@gmail.com](mailto:ngt.filing@gmail.com). The nodal agency for compliance and coordination will be CPCB. The Committee may also take professional service of an expert/ institution in the matter if it so desires.

### **Conclusions**

58. We sum up our directions as follows:

- a) MoEF&CC may now take necessary steps in the matter in terms of order dated 04.09.2018 in *Sudersan Das* (supra) latest by June 30, 2019 and file compliance report by 15.07.2019, as already directed.
- b) The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may take steps in terms of orders dated 04.09.2018 in *Sudarsan Das v. State of West Bengal & ors*, 05.09.2018 in, 13.9.2018 in *Mushtakeem v. MoEF&CC & Ors.* and 16.01.2019 in Compliance of Municipal Solid Waste Management Rules, 2016. The Chief Secretaries may monitor and furnish reports as earlier directed.
- (c) The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may review monitoring mechanism in terms of directions of the Tribunal and guidelines of MoEF&CC.
- (d) The Director Indian School of Mines, Dhanbad may appear in person on 26.07.2019 to explain why action be not taken for violation of order of this Tribunal.
- (e) The State of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa,

Kerala, Telangana and Tamil Nadu and Himachal Pradesh may send further action taken reports by 30.06.2019.

(f) The Committee in terms of para 59 above may furnish its report within three months to the Tribunal by email at [ngt.filing@gmail.com](mailto:ngt.filing@gmail.com)

59. A copy of this order be sent to MoEF&CC, Central Pollution Control Board (CPCB), Indian Institute of Forest Management, Bhopal, Institute of Economic Growth, Delhi and Madras School of Economics, Chennai by email.

List the matter for further consideration on 26.07.2019.



Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

April 05, 2019  
Original Application No. 360/2015  
With other connected matters  
AS



राजस्थान सरकार

कार्यालय अधीक्षण खनि अभियन्ता, खान एवं मूविज्ञान विभाग, जयपुर  
खनिज भवन, पांचवा तल तिलक मार्ग जयपुर। दूरभाष 0141-2227136

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क्रमांक : अखअ/जय/कोर्ट-केस/2019/ 186 - 193

दिनांक 07.11.2019

खनि अभियन्ता

जयपुर/अलवर/सीकर/झुन्झुनू।

सहायक खनि अभियन्ता

नीमकाथाना/कोटपूतली/टोंक/दौरा।

विषय:- जनहित याचिका संख्या 4239/2019 श्री खेमसिंह बनाम राजस्थान राज्य व अन्य सक्षम माननीय राजस्थान उच्च न्यायालय जोधपुर।

प्रसंग:- निदेशालय का पत्रांक निदे/प-6/1/जोध/प-2809/1029/3607 दिनांक 23.09.2019. एवं अति निदेशक (खान) जयपुर का पत्रांक अनिखा/जय/ कोर्ट-केस / विविध / 2019-2020 / 645-646 दिनांक 06.11.2019.

महोदय,

उपरोक्त विषयान्तर्गत लेख है कि प्रासंगिक पत्र द्वारा जनहित याचिका संख्या 4239/2019 श्री खेमसिंह बनाम राजस्थान राज्य व अन्य में माननीय उच्च न्यायालय जोधपुर द्वारा पारित आदेश दिनांक 03.09.2019 में निर्देशित किया गया है कि खान विभाग द्वारा खनिज वजरी के अवैध खनन के दौरान जब्त किये गये वाहन को सुपुर्दगी पर छोड़े जाने से पूर्व खान विभाग की कम्पाउण्डिंग फीरा व एन.जी.टी की आरोपित कम्पाउंड राशि 1.00 लाख जमा करवाने के बाद ही वाहन को रिलिज करे। इसके साथ अवैध खनन वजरी पुनः नदी में खाली कराने हेतु आदेश किया है। अतः आपको निर्देशित किया जाता है कि माननीय न्यायालय के आदेश की पालना सुनिश्चित करावे।

सलग्न उपरोक्तानुसार

महोदय,

(महेश माथुर)

अधीक्षण खनि अभियन्ता,

जयपुर वृत्त जयपुर

दिनांक :- 11.2019

क्रमांक समसख्यक/

प्रतिलिपि:- श्रीमान अति निदेशक (खान) जयपुर क्षेत्र जयपुर को उनके पत्र दिनांक 05.11.2019 के क्रम में सूचनार्थ प्रेषित है।

अधीक्षण खनि अभियन्ता,

जयपुर वृत्त जयपुर

राजस्थान-सरकार  
कार्गल्य अतिरिक्त निदेशक (खान), खान एवं भू-विज्ञान विभाग, जयपुर क्षेत्र, जयपुर।

क्रमांक :- अनिखा/जय/कोर्ट-केस/विविध/2019-2020/ 675-676 दिनांक :- 6/11/19

अधीक्षण खनि अभियंता,

खान एवं भू विज्ञान विभाग,

जयपुर वृत्त जयपुर/अजमेर।

विषय :- जंगलित याचिका संख्या 4239/2019 श्री खेमसिंह बनाम राजस्थान राज्य व अन्य, समक्ष माननीय राजस्थान उच्च न्यायालय जोधपुर।

प्रसंग :- निदेशालय का पत्र क्रमांक निदे/प-6/1/जोध/प-2809/1029/3607 दिनांक 23.09.2019 के क्रम में।

उपरोक्त विषयान्तर्गत प्रकरण में निदेशालय के प्रासांगिक पत्र दिनांक 23.09.2019 से प्राप्त माननीय उच्च न्यायालय से जारी आदेश दिनांक 03.09.2019 की प्रति पत्र के साथ संलग्न कर भिजवाई जा रही है।  
संलग्न :- उक्तानुसार।

भवदीय,

(बी.एस.सोडा)  
अतिरिक्त निदेशक (खान),  
जयपुर क्षेत्र, जयपुर।

क्रमांक :- अनिखा/जय/कोर्ट-केस/विविध/2019-2020/ 675 दिनांक :- 6/11/19

प्रतिलिपि निदेशक महोदय, खान एवं भू विज्ञान विभाग, राजस्थान उदयपुर को सूचना एवं आवश्यक कार्यवाही हेतु प्रेषित है।

अतिरिक्त निदेशक (खान),  
जयपुर क्षेत्र, जयपुर।

क्रमांक: निदे / प. 6 / 1 / जोध / प 280 / 1019 / 3607

दिनांक: 22 सित, 2019

अतिरिक्त निदेशक (खान) जोध उदयपुर / जयपुर / जोधपुर / कोटा / सतर्गता।  
अतिरिक्त निदेशक (भूविज्ञान) मुख्यालय / उदयपुर / जयपुर / जोधपुर / बीकानेर / कोटा।

विषय:- जनहित याचिका संख्या-4239/2019 श्री खेमसिंह बनाम राजस्थान राज्य व अन्य,  
समस्त उच्च न्यायालय, जोधपुर द्वारा पारित निष्पत्ति दिनांक 03-09-2019

महोदय,

उपरोक्त विषयान्तर्गत लेख है कि प्रकरण में माननीय उच्च न्यायालय ने विषयवस्तु प्रकरण में अपने निर्णय दिनांक 03-09-2019 में निर्देशित किया है कि खान विभाग द्वारा खनिज बजरी के अवैध खनन के दौरान जन्म किये गये वाहन को सुपूर्दगी पर छोड़े जाने से पूर्व खान विभाग की सम्पादनशील फील्ड व एन.जी.टी. की आरोपित कम्पाउण्ड पीसा 1.00 लाख जमा करवाने के बाद ही वाहन को रिट्रीज करें। इसके अलावा अवैध खनन बजरी पुनः नदी में खाली कराने के निर्देश दिये है।

माननीय न्यायालय द्वारा पारित निर्णय दिनांक 03-09-2019 की प्रति इस पत्र के साथ संलग्न प्रेषित कर लेख है कि पारित निर्णय की पालना में आपके अधीनस्थ कार्यालयों को निर्णयानुसार कार्यवाही किये जाने हेतु निर्देशित कराना सुनिश्चित करावें। बजरी अवैध खनन निर्गमन के वाहनों को सुपूर्दगी पर देने हेतु न्यायिक मजिस्ट्रेट न्यायालयों में प्रस्तुत प्रकरणों में इस आदेश की प्रति प्रस्तुत करें व पेशवा करवावें।

संलग्न-उपरोक्तानुसार।

भवदीय  
20/9/19  
(एन.के.कोठारी)  
अतिरिक्त निदेशक (खान-सु)

क्रमांक.सम  
प्रतिलिपि-

दिनांक सित. 2019

1- निदेशक, अभियोजन विभाग राजस्थान जयपुर को माननीय न्यायालय द्वारा पारित निर्णय दिनांक 03-09-2019 की प्रति प्रेषित कर नियेदन है कि पारित निर्णय की पालना हेतु अपने अधीनस्थ कार्यालयों को निर्देशित करने का श्रम करावें।

2- अधीक्षण खनि अभियन्ता तृतीय केन्द्रीय कार्यालय उदयपुर को प्रेषित कर लेख है कि माननीय उच्च न्यायालय, जोधपुर द्वारा पारित निर्णय दिनांक 03-09-2019 (प्रति संलग्न) में दिये गये निर्देशों के क्रम में पॉलिरी बनाई जाना सुनिश्चित करें।

संलग्न-उपरोक्तानुसार।

अतिरिक्त निदेशक (सम-सु)

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
JODHPUR.**

D.B. Civil Writ Petition No. 4239/2019

Khem Singh

----Petitioner

Versus

State Of Rajasthan & Ors.

----Respondents

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For Petitioner(s) : Mr. Moti Singh.

For Respondent(s) : Mr. Sandeep Shah, AAG.  
Ms. Akshiti Singhvi.

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**HON'BLE THE CHIEF JUSTICE S. RAVINDRA BHAT  
HON'BLE MR. JUSTICE ASHOK KUMAR GAUR  
Order**

**03/09/2019**

Learned counsel for the Respondents State seeks short adjournment to file precise particulars with regard to stage of the criminal cases.

It is transpired during the course of hearing that the Police and the State without proper approach – in some instances, FIRs were registered under MMDR Act; and in other cases, action is proposed under the Motor Vehicles Act; and still in some other cases and the last category, *Bazari* was seized and compounding is permitted under the Minor Mineral Concession Rules.

It is the petitioner's complaint that the Magistrates have invariably released the offending vehicle and surprisingly in many instances, the release of vehicle through an order is without imposing a compounding fee.

In the present incident, the Court has been apprised of the fact that the National Green Tribunal by its order has required that the State Authorities should levy a compounding fee not less than ₹ 1.00 lac in addition to other penalties under the MMDR Act and other relevant Rules.

The power to release motor vehicles by the Magistrates under the provisions of the Motor Vehicles Act may not be disputed. Nevertheless the Court is of the opinion that in cases, release of the vehicle by the Magistrates involving seizure of illegal mined *Bazari* should not be automatic. The Magistrates should invariably levy compounding fees and also having regard to the National Green Tribunal orders specially to levy Rs. 1.00 lacs as compounding fee. Further more, the Magistrates or the Court concerned should ensure that in the cases of release of the vehicle, *Bazari* or *sand* should not be permitted to be taken away since *Bazari* is procured on account of illegal mining, which continues to be vested in the State and has to be appropriately restored back to the position from where it was mined or from where such illegal mining/extraction took place.

The Court is further of the opinion that the Principal Secretary, In-charge of the Mines, in consultation with the Police and the Transport Department should frame a policy for unanimous adoption with regard to the uniform approach in such cases. The State should take action with regard to illegal mining of *Bazari* or *sand* and initiate prosecution rather than leaving it to the Enforcement agencies, who may act according to their discretion. Such policy and relevant guidelines should also be circulated to all authorities and departments to take action; such policy shall be framed and issued within two months from today.

List on 11.11.2019.

**(ASHOK KUMAR GAUR),J**

**(S. RAVINDRA BHAT),CJ**