

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SITTING AT NEW DELHI**

**I.A. NO. 94 OF 2024
IN**

**ORIGINAL APPLICATION NO. 481/ 2023
(connected with OA 462/2023)**

IN THE MATTER OF:

Balbir Sandhu & Ors Applicants
Versus

State of UP & OrsRespondents

AND IN THE MATTER OF:

Mohit Kumar,
Son of Sri Rajan,
Resident of Kukri Kheda, Kaluwala,
Jahanpur, District Saharanpur,
Uttar Pradesh- 247129

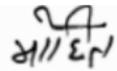
... APPLICANT No. 5

**WRITTEN OBJECTIONS ON BEHALF OF THE APPLICANT NO. 5 TO
THE APPLICATION SEEKING INTERIM DIRECTIONS ON BEHALF OF
THE RESPONDENT NO. 11 -MEMTA**

**PAPER BOOK
FOR INDEX KINDLY SEE INSIDE**

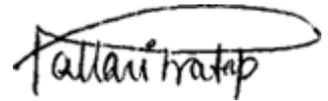
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4. **Annexure No.3:**
True copy of the order dated 30.05.2023 passed
in the case of in the case of *Aman Chaudhary*
versus Union of India and others. 38-85
5. **Annexure No.4:** True copy of the order
dated 21.03.2024 in the case of *Noble*
M. Paikada v. Union of India. 86-103
6. **Annexure No.5:**
True Copy of the Order dated 16.05.2023
passed in *State of Uttarakhand v.*
Satyendra Kumar Tomar. 104-105
7. Proof of service. 106



Applicant No .5

Through

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New Delhi

Dated: 22.04.2024

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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I.A. NO. 94 OF 2024
IN

ORIGINAL APPLICATION NO. 481/ 2023
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IN THE MATTER OF:

Balbir Sandhu & Ors

..... Applicants

Versus

State of UP & Ors

....Respondents

AND IN THE MATTER OF:

SALIM

Son of Sh. Jahur,
R/o House No. 34
Village Manjhar, Alhanpur
District Saharanpur,
Uttar Pradesh

... APPLICANT No. 5

**WRITTEN OBJECTIONS ON BEHALF OF THE APPLICANT NO. 5 TO
THE APPLICATION SEEKING INTERIM DIRECTIONS ON BEHALF OF
THE RESPONDENT NO. 11 -Memta**

MOST RESPECTFULLY SHOWETH:

The applicant no. 5 above named most respectfully showeth as under:-

1. That the answering Applicant has been impleaded as Applicant no. 5 in the above noted Original Application *vide* order dated 20.03.2024 passed by this Hon'ble Tribunal.

2. That the applicant no. 5 is a resident of Gram Kurdi Kheda, Kaluwala, Jahanpur, Saharanpur and the applicant is a farmer and carrying out agricultural work on his agricultural field bearing Khata no.429, 421, 140, 422, 423 and 385 as a co-sharer in the aforesaid land. True copy of the khatauni demonstrating the title of the applicant is annexed herewith as **Annexure No. 1.**
3. That by means of the present letter Petition registered as Original Application the Applicant No. 1 had raised multiple grievances regarding illegal mining in District Saharanpur, Uttar Pradesh including but not limited to Illegal mining in the area of Yamuna on the basis of MM-11 permits issued for mining in agricultural land, misappropriation of amount of Rs. 350 crores in the name of reclaiming agricultural land for cultivation, misappropriation of GST reverse charge on mining in agricultural land, violation of Sustainable Sand Mining Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020, concealment of information regarding mining in agricultural land by non-inclusion thereof in DSR etc.
4. That this Hon'ble Tribunal *vide* order dated 04.08.2023 has been pleased to direct District Magistrates and Senior Superintendent of Police, District Yamuna Nagar and District Saharanpur respectively to ensure that no mining and crushing is carried out

in District Yamuna Nagar and District Saharanpur respectively without grant of EC, CTE and CTO as may be under the relevant environmental laws

5. That in the meantime an I.A. No. 70/2024 filed for impleading *Memta* and grant of interim relief in the form of continuance of existing system of short term permit to the Bhumidhars of agricultural land in terms of Rule 52 (1) of the U.P. Minor Mineral Concession Rules 2021 had been partially allowed by this Hon'ble Tribunal *vide* order dated 09.02.2024.
6. That *vide* order dated 09.02.2024 this Hon'ble Tribunal directed the applicant *Memta* to be impleaded as respondent no. 11.
7. That before giving a *para-wise* reply to the contents of the I.A. filed by the respondent no. 11, the applicant seeks to bring on record the following facts:-
8. That the aforesaid I.A. has alleged that the respondent no. 11 is an agriculturist/farmer having an agricultural field measuring 1.63 ha at village Barkalan, Tehsil Behat, Saharanpur and that due to flooding sand has deposited in the area making the land unfit for cultivation. The said I.A. further states that the applicant had applied under Rule 52 (1) of the Uttar Pradesh Minor Minerals (Concession) Rules however due to the direction of this Hon'ble

Tribunal in the instant Original Application, the act of mining without obtaining Environmental Clearance has been restrained and such has caused great hardship to the applicant/impleader.

9. That at this juncture it is pertinent to state here that the respondent no. 11. has stated in the I.A. that owing to heavy flooding during the monsoon, sand has been deposited with gravel and boulder in mixed state due to which respondent no. 11 has lost his source of livelihood, however, it has not been expounded by the respondent no. 11 that since when are such fields lying barren.
10. That the respondent no. 11 has simply stated that his agricultural field has been destroyed due to heavy floods, but has failed to mention as to when such floods as claimed by the respondent no. 11 occurred in his land. Moreover, the respondent no. 11 has also not annexed any report by the Collector substantiating his claim as to the advent of floods in his land.
11. That at this juncture, it is pertinent to state here that any prudent farmer would have been a beneficiary of an insurance scheme, which provides a claim in case of the destruction of crops by the advent of flood and there are many schemes promulgated by the government, which provides for remuneration

in such event. Therefore, it is not that difficult for the respondent no. 11 to annex a document, substantiating his claim regarding the floods before this Hon'ble Tribunal.

12. That moreover, from a mere perusal of the *khasra* records of the Gata/Khasra No. 281 and 282 located in Village Badkala, District, Saharanpur for the fasli year 1428-1430, as made available on the Uttar Pradesh Bhulekh Website, it becomes apparent that no flood or any kind of calamity whatsoever occurred in the land of respondent no. 11 and no crops were damaged as is claimed by the respondent no. 11. True copies of the *khasra* records of the Gata/Khasra No. 281 and 282 located in Village Badkala, District, Saharanpur for the fasli year 1428-1430, as made available on the Uttar Pradesh Bhulekh Website are annexed herewith as **Annexure No. 2.**

13. That since the land of the respondent no. 11 was not affected by the floods, the provisions of Rule 23(e) of the U.P. Minor Minerals (Concession) Rules 2021 would apply on the respondent no. 11 instead of the provisions of Rule 52.

14. That the plain language of Rule 23(e) of the U.P. Minor Minerals (Concession) Rules 2021 makes it apparent that the intention of the legislature is to make the private land owner

participate in an e-auction process along with the other competitive bidders in a fair and transparent manner and the process is treated to be that of a mining operation thus necessitating the requirement of obtaining an Environmental Clearance.

15. That in light of the aforesaid, it is pivotal to state here that the Hon'ble Supreme Court in the case of ***Deepak Kumar v State of Haryana***, as reported in **(2012) 4 SCC 629**, observed that all mining leases irrespective of its size will have to obtain prior Environmental Clearance Certificate, after preparation of the Environment Impact Assessment Report, before grant of mining leases. Further, the Hon'ble Supreme Court issued recommendations to the states for the preparation of a "comprehensive mines plan" for continuous stretches of mineral deposits.
16. That taking into consideration the order passed by the Hon'ble Supreme Court in the case of Deepak Kumar (supra), Ministry of Environment, Forest and Climate Change, (hereinafter referred to MoEF&CC in short) framed and issued The Sustainable Sand Management Guidelines 2016 (hereinafter referred to as the SSMG 2016 in short).

17. That the SSMG 2016 in Chapter 20 titled “Management of Sand deposited after Flood on Agricultural Field of Farmers” at internal page 58 while making a distinction between a ‘mining operation’ and ‘desilting’ states that the agricultural land of farmer is destroyed and rendered infertile. Further the farmer loses his livelihood as the produce of his land is destroyed by flood and become unsalable. The farmer is also deprived of the right of lifting sand from his land. He is therefore, left helpless and destitute and leave their land in search of job. Internal Page 58 of the SSMG 2016 reads as follows:

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

Removal of sand from the agricultural field by the owner farmer of the land from environment point of view will not be considered as mining operation and its removal and disposal can be allowed without the requirement of environment clearance till it is done only to the extent of reclaiming the

agricultural land. The sand deposited after flood only be removed, so no mining / digging below the ground level is allowed. For removing sand in case where private land has gone into the river due to erosion, the requirement of mining lease and environment clearance will continue. This operation of removal of sand deposited on agricultural field should be done after a mapping of deposition is done by the Land Management Committee of the Gram Panchayat. The sand so deposited post flood can be removed by the farmer owning the land / group of farmers affected by this post flood sand deposition or the Gram Panchayat. Customary rights to remove and dispose off the sand should be given to the farmer affected by deposition of sand on account of sudden flood in his agricultural land.”

18. Therefore, from a plain reading of the aforesaid chapter of SSMG 2016 it is clear that the SSMG 2016 only envisages the disposal the sand accumulated over the land of farmers post flood so that the farmer isn't left helpless and destitute. That further, the said act of removal of the mining is not considered under the ambit of a mining operation but is only considered as desilting. Further, the aforesaid chapter of SSMG 2016 envisages for removal of sand deposited on agricultural field only after a mapping of deposition is done by the Land Management Committee of the Gram Panchayat.

19. That it is pertinent to submit here that the I.A. No. 70/2024 while citing Sustainable Sand Management Guidelines 2016 has craftily stated that since desilting from agricultural land will not be construed as “mining operation”, the government in its wisdom has sought certain royalty amount as per Rule 52(1) of the U.P. Minor Mineral Concession Rules 2021 so that the Bhumidhars can remove sand in a responsible manner and that consequent to the payment of royalty, the Applicant/impleader has to dispose it against the price in order to compensate the amount spent on royalty.
20. That it is pivotal to state here that once the question of royalty is involved, the said act in itself comes under the ambit of a mining operation as opposed to de-silting.
21. That as on date also the SSMG-2016 is operational and Enforcement and Monitoring Guidelines for Sand Mining 2020 (hereinafter referred to as EMGSM-2020), have also been introduced by the MoEF&CC.
22. That the EMGSM-2020 in Chapter no. 8.2 titled “Mining of Sand from Agricultural Fields” at internal page 46 states that the provision for sand mining in agricultural field may be permitted, whenever replenishment of sand occurs due to natural phenomena and that the permission may also be granted by

competent authority (District administration) for excavation of sand/Soil from agricultural fields, after due diligence of this prevailing condition in order to avoid any unacceptable impact on the environment and nearby livelihood from agriculture provided such objective of such excavation mining of Soil/Sand in limited increase the productivity of sand agricultural field.

23. The EMGSM-2020 guidelines also state that the mining of sand in such mines leases will require Environmental Clearance and that the slope of mining area adjacent to agricultural field should be proper (preferably 45 degree) and adequate gap (minimum 10 feet) be left from adjacent agricultural field to avoid erosion and scouring.
24. That furthermore, if the said mineral is removed by paying royalty and the sand so extracted is sold commercially, the said act cannot be termed as de-silting and once the commercial sand mining is involved, the same can be done only by obtaining Environmental Clearance.
25. That with respect to the payment of royalty it is submitted that the Rule 52 of the Rules of 2021 itself contains no provision for ascertaining whether the private landowner is an agriculturist and that sand or morrum or bajri or boulder or any of these ill mixed state have been accumulated on the applied land due to floods

and whether such land prior to application was utilised for agricultural purposes or not.

26. That at this juncture it is pertinent to state here that the Rule 52 A (2) as contained in the erstwhile U.P. Minor Minerals (Concession) Rules, 1963 contained a detailed provision with respect to the aforesaid. The relevant provision Rules 52 A (2) of the U.P. Minor Minerals (Concession) Rules, 1963 is quoted as under:

“Procedure for Grant of Mining Permit on Agricultural Land. -

(2) The District Officer shall cause an enquiry, if deemed necessary, through concerned Tahsildar and Mines Officer/Mines Inspector on the following points –

(a) Whether the sand or morrum or Bajri or Boulder or any of these ill mixed state have been accumulated on the applied land due to floods;

(b) Whether the name of the applicant/applicants is/are recorded as bhumidhars on the applied area;

(c) Whether due to accumulation of sand or morrum or Bajri or Boulder or any of these in mixed state, the applicant/applicants is/are suffering loss on account of non-utilisation of such applied land;

(d) Whether such land was utilise for agricultural purposes in the past 5 years;

(e) Whether the quantity of the minor mineral, applied by the applicant, is available on the applied area.

(f) Whether the applied area for mining permit is suitable for mining.”

27. That the Rule 52 of the Rules of 2021 has omitted the mandate as contained in Rule 52 A (2) of the U.P. Minor Minerals (Concession) Rules, 1963 and the said omission is in gross violation to the SSMG 2016 and the EMGSM-2020 and further taking advantage of such omission, the private landowners are used as proxy bidders in order to evade the regular procedure involved in the grant of a mining lease such as the procurement of environmental clearance etc
28. That moreover, there is also no provision in any legislation for ascertaining whether the landowners are an income tax payee or whether they have sufficient earning resources from which they have collected certain funds for the purpose of payment of royalty in a mining lease.
29. That it is pertinent to state here that, often in the garb of an agriculturist certain malefic elements of the society apply for such leases which in turn gives rise to the issues and grievances involved in the instant Original Application.
30. That furthermore, in practice, what happens is that under the ambit of provision such as Rule 52(1) of the U.P. Minor Mineral Concession Rules 2021, the short-term permits are awarded by the State which in turn permit the use of heavy machinery for the

purpose of digging the soil in order to obtain minerals. However, as can be ascertained by Chapter no. 8.2 of EMGSM-2020 and the provisions of Chapter 20 of SSMG 2016 only the mining of the minerals deposited on the farmer's land due to flood is permissible.

31. That moreover, generally in mining operations the mining leaseholders are required to observe various formalities such as installation of P.T.Z. cameras in various angles for the monitoring of the mining operations, however in the mining leases of Agricultural lands there is no such monitoring and thus the leaseholder is free to conduct illegal activities on the lease area.
32. That it is also relevant to state here that this Hon'ble Tribunal in the case of in the case of ***Aman Chaudhary versus Union of India and others*** having O.A. No. 176/2022 has made the requirement to obtain Consent to Operate from the concerned SPCB mandatory from 01.09.2023 *vide* the order dated 30.05.2023. True copy of the order dated 30.05.2023 passed in the case of in the case of *Aman Chaudhary versus Union of India and others* is annexed herewith as **Annexure No. 3.**
33. That an Environmental Clearance can be issued only after various stages of decision-making process have been completed.

Requirements such as conducting a public hearing, screening, scoping and appraisal or components of the decision-making process which ensure that the likely impacts of the mining activity are considered in the decision making calculus and thus the exemption of an Environmental Clearance can prove hazardous.

34. That furthermore, the Hon'ble Supreme Court of India in the case of ***Noble M. Paikada v Union of India*** as reported in **2024 SCC OnLine SC 369** while striking down item 6 of the substituted Appendix-IX forming part of the 2020 notification and item 6 of the amended 2023 notification issued by Ministry of Environment and Forests which provided for exemption from the requirement of obtaining the Environmental Clearance in case of dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management, has observed that granting blanket exemption from the requirement of obtaining Environmental Clearance is unconstitutional as it violates Article 14 of the Constitution of India. True copy of the order dated 21.03.2024 in the case of *Noble M. Paikada v Union of India* is annexed herewith as **Annexure No. 4.**

35. That the applicant now proceeds to give *para-wise* reply to the contents of the I.A. filed on behalf of respondent no. 11:

36. That the contents of paragraphs 1 and 2 of the I.A. filed on behalf of respondent no. 11 are a matter of record and hence need no comments.
37. That the contents of paragraph 3 of the I.A. filed on behalf of respondent no. 11 are a matter of record and hence need no comments.
38. That the contents of paragraphs 4 and 5 of the I.A. filed on behalf of respondent no. 11 are denied as stated. In reply thereto, it is stated that since the area of the applicant/impleader does not even fall in the flood zone, the question of sand depositing due to floods does not even arise.
39. That the contents of paragraphs 6 and 7 of the I.A. filed on behalf of respondent no. 11 are false and misleading and hence are denied as stated. In reply thereto, it is stated that the respondent no. 11 has stated in the I.A. that significant agricultural fields have become barren over a period of time due to deposits of Sand/Bajri/boulder in the past, however, it has not been expounded by the respondent that since when are such fields lying barren and as a result of which monsoon season.
40. That the contents of paragraphs 8 and 9 of the I.A. filed on behalf of respondent no. 11 are false and misleading and hence are denied as stated. In reply thereto, it is stated that from a mere

perusal of the *khasra* records of the Gata/Khasra No. 281 and 282 located in Village Badkala, District, Saharanpur for the fasli year 1428-1430, as made available on the Uttar Pradesh Bhulekh Website, it becomes apparent that no flood or any kind of calamity whatsoever occurred in the land of respondent no. 11 and no crops were damaged as is claimed by the respondent no. 11. Since the land of the respondent no. 11 was not affected by the floods, the provisions of Rule 23(e) of the U.P. Minor Minerals (Concession) Rules 2021 would apply on the respondent no. 11 instead of the provisions of Rule 52 and the plain language of Rule 23(e) of the U.P. Minor Minerals (Concession) Rules 2021 makes it apparent that the intention of the legislature is to make the private land owner participate in an e-auction process along with the other competitive bidders in a fair and transparent manner and the process is treated to be that of a mining operation thus necessitating the requirement of obtaining an Environmental Clearance.

41. That the contents of paragraph 10 of the I.A. filed on behalf of respondent no. 11 are false, misleading and erroneous and hence are denied as stated. In reply thereto it is stated that the *khasra* records of the respondent no. 11's land demonstrate otherwise and furthermore what is annexed by the respondent no.

11 in annexure no. 3 is a copy of the letter of Intent and no report of the tehsildar or any other evidence affirming the claim of the respondent no. 11 regarding the advent of floods have been annexed.

42. That the contents of paragraphs 11,12 and 13 of the I.A. filed on behalf of respondent no. 11 are not accepted in the manner stated. In reply thereto it is stated that in the light of the recent dictum propounded by the Hon'ble Supreme Court of India in the case of ***Noble M. Paikada v Union of India*** as reported in **2024 SCC OnLine SC 369** it becomes apparent that any act of that granting blanket exemption from the requirement of obtaining Environmental Clearance is unconstitutional as it violates Article 14 of the Constitution of India. Moreover, the Hon'ble Supreme Court of India in Special Leave Petition (Civil) having SLP(C) No. 011510/2023 titled ***State of Uttarakhand v. Satyendra Kumar Tomar*** has observed in clear terms that while the commercial sale of earth boulder etc. will not be permitted, the *bhoomidhars* will be permitted to utilize the boulders etc. for their self-use within their land. True Copy of the Order dated 16.05.2023 passed in *State of Uttarakhand v Satyendra Kumar Tomar* is annexed herewith as **Annexure No. 5.**

43. That the contents of paragraph 14 of the I.A. filed on behalf of respondent no. 11 are false, misleading and erroneous and hence are denied as stated. In reply thereto it is stated that the from a mere perusal of the *khasra* records of the Gata/Khasra No. 281 and 282 located in Village Badkala, District, Saharanpur for the fasli year 1428-1430, as made available on the Uttar Pradesh Bhulekh Website, it becomes apparent that no flood or any kind of calamity whatsoever occurred in the land of respondent no. 11 and no crops were damaged as is claimed by the respondent no. 11. Since the land of the respondent no. 11 was not affected by the floods, the provisions of Rule 23(e) of the U.P. Minor Minerals (Concession) Rules 2021 would apply on the respondent no. 11 instead of the provisions of Rule 52.
44. That the contents of paragraph 15 of the I.A. filed on behalf of respondent no. 11 are false, misleading and erroneous and hence are denied as stated. In reply thereto it is stated that from a plain reading of the aforesaid chapter of SSMG 2016 it is clear that the SSMG 2016 only envisages the disposal the sand accumulated over the land of farmers post flood so that the farmer isn't left helpless and destitute. That further, the said act of removal of the mining is not considered under the ambit of a mining operation but is only considered as desilting. Further, the

aforesaid chapter of SSMG 2016 envisages for removal of sand deposited on agricultural field only after a mapping of deposition is done by the Land Management Committee of the Gram Panchayat. As it is evident from the averments made in the I.A. No. 70/2024 no mapping of deposition is done by the Land Management Committee of the Gram Panchayat. Moreover, a mere perusal of the *khasra* records of the Gata/Khasra No. 281 and 282 located in Village Badkala, District, Saharanpur for the fasli year 1428-1430, as made available on the Uttar Pradesh Bhulekh Website, it becomes apparent that no flood or any kind of calamity whatsoever occurred in the land of respondent no. 11 and no crops were damaged as is claimed by the respondent no. 11.

45. That the contents of paragraph 16 and 17 of the I.A. filed on behalf of respondent no. 11 are false and misleading and hence are denied as stated. In reply thereto it is stated that administrative circular dated 30.08.2019, as cited by the respondent no. 11 has been made inapplicable after subsequent amendment, and hence as such holds no relevance in the present context.

46. That the contents of paragraph 18 of the I.A. filed on behalf of respondent no. 11 are false and misleading and hence are denied

as stated. In reply thereto it is stated that from a mere perusal of the *khasra* records of the Gata/Khasra No. 281 and 282 located in Village Badkala, District, Saharanpur for the fasli year 1428-1430, as made available on the Uttar Pradesh Bhulekh Website, it becomes apparent that no flood or any kind of calamity whatsoever occurred in the land of respondent no. 11 and no crops were damaged as is claimed by the respondent no. 11. Since the land of the respondent no. 11 was not affected by the floods, the provisions of Rule 23(e) of the U.P. Minor Minerals (Concession) Rules 2021 would apply on the respondent no. 11 instead of the provisions of Rule 52.

47. That the contents of paragraph 19 of the I.A. filed on behalf of respondent no. 11 are false, misleading and erroneous and hence are denied as stated. In reply thereto it is stated that there is also no provision in either Rule 52 or any other legislation for ascertaining whether the landowners are an income tax payee or whether they have sufficient earning resources from which they have collected certain funds for the purpose of payment of royalty in a mining lease. That even in the present case on one hand, the respondent is claiming loss of livelihood and on the other hand the respondent is willing to pay a hefty amount towards Royalty, DMF and TCS.

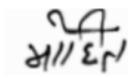
48. That the contents of paragraphs 20 and 21 of the I.A. filed on behalf of respondent no. 11 are not accepted in the manner stated. In reply thereto it is stated that neither the MMDR Act, 1957 nor the U.P. Minor Mineral Concession Rules 2021 provide for the exemption of Environmental Clearance in case of farmers. Recently, the Hon'ble Supreme Court of India in the case of ***Noble M. Paikada v Union of India*** as reported in **2024 SCC OnLine SC 369** it becomes apparent that any act of that granting blanket exemption from the requirement of obtaining Environmental Clearance is unconstitutional as it violates Article 14 of the Constitution of India. Moreover, this Hon'ble Tribunal in O.A. 142 of 2022 (SZ) titled ***Sarvabhoom Bagali v. State of Karnataka and Others*** has held in explicit terms that even dredging and desilting of dams is not exempted from obtaining prior Environmental Clearance as the sand is being extracted for commercial purpose.

49. That the contents of paragraphs 22, 23 and 24 of the I.A. filed on behalf of respondent no. 11 are not accepted in the manner stated. In reply thereto it is stated that the Hon'ble Supreme Court of India in the case of ***Bhagwan Dass Versus State of U.P.*** as reported in **(1976) 3 SCC 784** has observed that the act of 'winning' a mineral not always mean hazardous or perilous

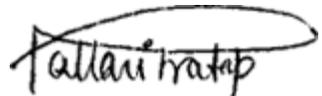
activity, but the word simply means extracting a mineral and is used generally to indicate any activity by which a mineral is secured. Thus, from the aforesaid observation it becomes apparent that's the removal of mineral from the upper surface of land also comes under a mining operation. Moreover, once the question of royalty is involved and the preparation of mining plan is required and the act involves mining which includes lifting from the surface, the entire operation becomes a mining operation as opposed to desilting.

50. That in view of the averments made above, it is in the interest of justice that the written objections filed by the applicant be allowed.

New Delhi
Dated: 20.04.2024


Applicant No. 5

Through


PALLAVI PRATAP
Advocate
Counsel for the Applicant No. 5

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AND IN THE MATTER OF:

Mohit Kumar,
Son of Sri Rajan,
Resident of Kukri Kheda, Kaluwala,
Jahanpur, District Saharanpur,
Uttar Pradesh- 247129

... APPLICANT No. 5

AFFIDAVIT

I, Mohit Kumar, aged about 27 years, son of Sri Rajan, resident of Kukri Kheda, Kaluwala, Jahanpur, District Saharanpur, Uttar Pradesh- 247129, presently at New Delhi, do hereby solemnly affirm and declare as under:

1. That I am the applicant no .5 and as such I am fully conversant with the facts and circumstances of the case and thus competent to swear this affidavit.
2. That the contents of the accompanying written submissions and other I.As have been explained to me in vernacular by my counsel and the same are true and correct to my knowledge and belief and nothing material has been concealed therefrom.
3. That the annexures are true copies of their respective originals.



[Handwritten signature]

Deponent

Verification:

Verified at New Delhi on this 20th day of April, 2024 that the contents of para 1 to 3 of this affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.

[Handwritten signature]

Deponent

[Handwritten signature]
IDENTITY THE EXECUTANT/DEPONENT WHO WAS SIGNED IN THE PRESENCE OF

IDENTITY THE EXECUTANT/DEPONENT WHO WAS SIGNED IN THE PRESENCE OF



CERTIFIED THAT THE DEPONENT
Shri/Smt./Km. *[Handwritten name]*
S/o *[Handwritten name]*
R/o *[Handwritten name]* aged about *[Handwritten age]*
Identified by Shri/Smt. *[Handwritten name]*
has solemnly affirmed before me at New Delhi
on *[Handwritten date]* as SI. No. *[Handwritten number]*
that the contents of the affidavit which have
been read & explained & are true & Correct
to his/her Knowledge.

[Handwritten signature]
Oath Commissioner, New Delhi



खाता विवरण (अप्रमाणित प्रति)

ANNEXURE NO.1

ग्राम का नाम : कालूवाला जहाद परगना : (मुजफ्फराबाद) तहसील : बेहट जनपद : सहारनपुर फसली वर्ष : 1427-1432 (01 जुलाई, 2019 से 30 जून, 2025) भाग : 1 खाता संख्या : 00429				
खातेदार का नाम / पिता पति संरक्षक का नाम / निवास स्थान	खसरा संख्या	क्षेत्रफल (हे.)	आदेश	टिप्पणी
श्रेणी 1-क / भूमि जो संक्रमणीय भूमिधरो के अधिकार में हो।				
<p>पूरण / शम्भू / नि० कुरडीखेडा सतीश / शम्भू / नि० कुरडीखेडा रामदास / शुगन / श. कुरडी खेडा नाथीराम / मंगल / श. कुरडी खेडा शमीम / मौ० यासीन / नि. बास्गढ श्रीमति अकबरी / जहर हसन / नि. बास्गढ गालिब / मनसब अली / नि. शेखपुर मुजाहिदपुर श्रीमति मीना देवी / जुगमन्दर सिंह / नि. कुरडी खेडा धूम सिंह / सुरत सिंह / नि० कुरडीखेडा</p>	691	0.6870	<p>1427फ- रा०नि० मु०बाद द्वारा आर०सी०प्रपत्र-9 पर पारित आ० दि० 10.3.19 के अनुसार खाता सं० 429, 421, 140, 422, 423, 365 से मृतक नाथी पुत्र मंगल के स्थान पर सुन्दरपाल पुत्र नाथीराम व विमला देवी पत्नी नाथीराम व पंकित कुमार व मोहित कुमार पुत्र राजन व श्रीमति माया पत्नी राजन नि० कुरडी खेडा का नाम बतौर वारिस दर्ज होवे ह० र० का० 15.3.19/8.1.2020</p> <p>1428फ- रा० नि० विहारीगढ द्वारा आर०सी०प्रपत्र-9 पर पारित आ० दि० 15.2.2021 के अनुसार खाता सं० 746, 422, 429, 421 से मृतक रामदास पुत्र सुगन के स्थान पर संतोष पत्नी रामदास व ऋषिपाल, नरेन्द्र, सुशील, पिट्ट, सोनू पुत्रगण रामदास नि० कुरडी खेडा का नाम बतौर वारिस दर्ज होवे ह० र० का० 19.2.2021</p> <p>1429फ- रा०नि० कार्यालय के आ० दि० 3.8.2021 के अनुसार खाता सं० 831, 693, 168, 241, 421, 422. 429 पर अकित शमीम पुत्र यासीन की ऋण की प्रविष्टि दिनांक 30.7.2021 में बैंक का नाम पी०एन०बी० विहारीगढ के स्थान पर पी०एन०बी० कालूवाला पहाडीपुर दर्ज होवे ह० र० का० 3.8.2021</p> <p>1429फ- न्यायालय तहसीलदार बेहट वाद सं० 983/T202209600202056/14.5.2022 को आ० हुआ कि खाता सं० 429 के ख० नं० 691 क्षे० 0.687हे० मा० 15.00रु० के भागानुसार 0.1374हे० से विक्रेता ऋषिपाल व नरेन्द्र कुमार व पिन्टू उर्फ अरविन्द कुमार व सोनू व सुशील कुमार पुत्रगण रामदास निवासी कुरडी खेडा तहसील बेहट का नाम खारिज करके क्रेता मेहरबान पुत्र मुरताक निवासी बास्गढ तहसील बेहट का नाम द्वारा विक्रय पत्र दिनांकित 04.03.22 अंकन 4,40,000/-रुपये के आधार पर बतौर संक्रमणीय भूमिधर दर्ज होवे ह० र० का० 17.5.2022</p>	<p>1427फ- पी०एन०बी० विहारीगढ से सुन्दरपाल पुत्र नाथीराम नि० कुरडी खेडा ने खाता सं० 429, 421, 140, 422, 365, 423 भागा० बंधक करके 2,92,000/- लोन लिया है ह० र० का० 15.6.2020</p> <p>1429फ - PNB विहारीगढ से शमीम पुत्र यासीन नि० बास्गढ ने खाता सं० 831, 693, 168, 241, 421, 422, 429 भागा० बन्धक करके 4,39,000/- लोन लिया है ह० र० का० 30.7.2021</p>
योग	1	0.6870		

कृपया उक्त खसरे की प्रस्थिति (भूखंड (गाटा) के वाद ग्रस्त /विक्रय /भू-नक्शा /नामांतरण बही) हेतु खसरा संख्या पर क्लिक करें

Disclaimer: उक्त आँकड़े मात्र अवलोकनार्थ हैं, उक्त विवरण अद्यतन है, तहसील कम्प्यूटर केन्द्र एवम सी.एस.सी/लोकवाणी केन्द्र से उद्धरण की प्रमाणित प्रति प्राप्त की जा सकती है।

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Tallanhatap

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ANNEXURE NO.2

खसरा विवरण (अप्रमाणित प्रति)

फसली वर्ष : 1428 जिला नाम : सहारनपुर तहसील नाम : बेहट ग्राम नाम : बडकला

भाग 1

(1) खसरा / गाटा संख्या 281 (2) गाटे का यूनिफ कोड 1088990281000012
(3) क्षेत्रफल (हे.) 1.7210 (4) खतौनी खाता संख्या 00088

(5) खतौनी के स्तम्भ-2 में अंकित खातेदार/खातेदारों के नाम : राजेन्द्र, रणतेज, रणवीर ंसिंह, ममता, विश्वम्बर, भीम सिंह, श्रीमति तारा वि०

खरीफ की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
मक्का नहीं - - - नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

रबी की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
गेहूँ अधिक उपज वाला नहीं - - - नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

जायद की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

- (30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

- (36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

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खसरा विवरण (अप्रमाणित प्रति)

फसली वर्ष : 1429 जिला नाम : सहारनपुर तहसील नाम : बेहट ग्राम नाम :
बडकला

भाग 1

(1) खसरा / गाटा संख्या 281 (2) गाटे का यूनिक कोड 1088990281000012
(3) क्षेत्रफल (हे.) 1.7210 (4) खतौनी खाता संख्या 00088

(5) खतौनी के स्तम्भ-2 में अंकित खातेदार/खातेदारों के नाम : राजेन्द्र, रणतेज, रणवीर ंसिंह, ममता, विश्वबर, भीम सिंह, श्रीमति तारा वि०

खरीफ की फसल

भाग 3

(21) फसल	(22) क्या दैवी आपदा में फसल को क्षति हुई है? का प्रकार	(23) दैवी आपदा का प्रकार	(24) आपदा से प्रभावित क्षेत्रफल	(25) क्षति का प्रतिशत	(26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
मक्का	नहीं	-	-	-	नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार	(31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल	(32) गैर कृषिक घोषित क्षेत्रफल	(33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं.	(34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार	(37) क्षेत्रफल	(38) पट्टा धारक का नाम	(39) पट्टा धारक का पता	(40) पट्टा प्रारम्भ होने की तिथि	(41) पट्टा समाप्त होने की तिथि

रबी की फसल

भाग 3

(21) फसल	(22) क्या दैवी आपदा में फसल को क्षति हुई है? का प्रकार	(23) दैवी आपदा का प्रकार	(24) आपदा से प्रभावित क्षेत्रफल	(25) क्षति का प्रतिशत	(26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)

2597

गेहूँ अधिक उपज वाला नहीं

नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

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|--------------------------------|---|--------------------------------|--|---|
| (30) गैर कृषिक उपयोग का प्रकार | (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल | (32) गैर कृषिक घोषित क्षेत्रफल | (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. | (34) गैर कृषिक घोषित करने के आदेश का दिनांक |
|--------------------------------|---|--------------------------------|--|---|

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

- | | | | | | |
|----------------------|----------------|------------------------|------------------------|----------------------------------|--------------------------------|
| (36) पट्टे का प्रकार | (37) क्षेत्रफल | (38) पट्टा धारक का नाम | (39) पट्टा धारक का पता | (40) पट्टा प्रारम्भ होने की तिथि | (41) पट्टा समाप्त होने की तिथि |
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जायद की फसल**भाग 3**

- | | | | | | |
|----------|--|-----------------------------------|---------------------------------|-----------------------|--|
| (21) फसल | (22) क्या दैवी आपदा में फसल को क्षति हुई है? का प्रकार | (23) दैवी आपदा प्रभावित क्षेत्रफल | (24) आपदा से प्रभावित क्षेत्रफल | (25) क्षति का प्रतिशत | (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं) |
|----------|--|-----------------------------------|---------------------------------|-----------------------|--|

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

- | | | | | |
|--------------------------------|---|--------------------------------|--|---|
| (30) गैर कृषिक उपयोग का प्रकार | (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल | (32) गैर कृषिक घोषित क्षेत्रफल | (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. | (34) गैर कृषिक घोषित करने के आदेश का दिनांक |
|--------------------------------|---|--------------------------------|--|---|

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

- | | | | | | |
|----------------------|----------------|------------------------|------------------------|----------------------------------|--------------------------------|
| (36) पट्टे का प्रकार | (37) क्षेत्रफल | (38) पट्टा धारक का नाम | (39) पट्टा धारक का पता | (40) पट्टा प्रारम्भ होने की तिथि | (41) पट्टा समाप्त होने की तिथि |
|----------------------|----------------|------------------------|------------------------|----------------------------------|--------------------------------|

Software Powered By: National Informatics Center, Uttar Pradesh State Unit, Lucknow.





KHASRA
Uttar Pradesh

खसरा विवरण (अप्रमाणित प्रति)

फसली वर्ष : 1430 जिला नाम : सहारनपुर तहसील नाम : बेहट ग्राम नाम : बडकला

भाग 1

(1) खसरा / गाटा संख्या 281 (2) गाटे का यूनिफ कोड 1088990281000012
(3) क्षेत्रफल (हे.) 1.7210 (4) खतौनी खाता संख्या 00088

(5) खतौनी के स्तम्भ-2 में अंकित खातेदार/खातेदारों के नाम : राजेन्द्र, रणतेज, रणवीर ंसिंह, ममता, विश्वम्बर, भीम सिंह, श्रीमति तारा वि०

खरीफ की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
मक्का नहीं - - - नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

रबी की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
गेहूँ अधिक उपज वाला नहीं - - - नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

जायद की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

2599

31

- (30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

- (36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

Software Powered By: National Informatics Center, Uttar Pradesh State Unit, Lucknow.





KHASRA
Uttar Pradesh

खसरा विवरण (अप्रमाणित प्रति)

फसली वर्ष : 1428 जिला नाम : सहारनपुर तहसील नाम : बेहट ग्राम नाम : बडकला

भाग 1

(1) खसरा / गाटा संख्या 282 (2) गाटे का यूनिफ कोड 1088990282000012
(3) क्षेत्रफल (हे.) 1.2080 (4) खतौनी खाता संख्या 00088

(5) खतौनी के स्तम्भ-2 में अंकित खातेदार/खातेदारों के नाम : रणवीर ंसिंह, राजेन्द्र, ममता, विश्वम्बर, भीम सिंह, श्रीमति तारा वि०, रणतेज

खरीफ की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
मक्का नहीं - - - नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

रबी की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
गेहूँ अधिक उपज वाला नहीं - - - नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

जायद की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

2601

33

- (30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

- (36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

Software Powered By: National Informatics Center, Uttar Pradesh State Unit, Lucknow.





KHASRA
Uttar Pradesh

खसरा विवरण (अप्रमाणित प्रति)

फसली वर्ष : 1429 जिला नाम : सहारनपुर तहसील नाम : बेहट ग्राम नाम : बडकला

भाग 1

(1) खसरा / गाटा संख्या 282 (2) गाटे का यूनिफ कोड 1088990282000012
(3) क्षेत्रफल (हे.) 1.2080 (4) खतौनी खाता संख्या 00088

(5) खतौनी के स्तम्भ-2 में अंकित खातेदार/खातेदारों के नाम : रणवीर ंसिंह, राजेन्द्र, ममता, विश्वम्बर, भीम सिंह, श्रीमति तारा वि०, रणतेज

खरीफ की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
मक्का नहीं - - - नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

रबी की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
गेहूँ अधिक उपज वाला नहीं - - - नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

जायद की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

2603

35

- (30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

- (36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

Software Powered By: National Informatics Center, Uttar Pradesh State Unit, Lucknow.





KHASRA
Uttar Pradesh

खसरा विवरण (अप्रमाणित प्रति)

फसली वर्ष : 1430 जिला नाम : सहारनपुर तहसील नाम : बेहट ग्राम नाम : बडकला

भाग 1

(1) खसरा / गाटा संख्या 282 (2) गाटे का यूनिफ कोड 1088990282000012
(3) क्षेत्रफल (हे.) 1.2080 (4) खतौनी खाता संख्या 00088

(5) खतौनी के स्तम्भ-2 में अंकित खातेदार/खातेदारों के नाम : रणवीर ंसिंह, राजेन्द्र, ममता, विश्वम्बर, भीम सिंह, श्रीमति तारा वि०, रणतेज

खरीफ की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
मक्का नहीं - - - नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

रबी की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)
गेहूँ अधिक उपज वाला नहीं - - - नहीं

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

(30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

(36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

जायद की फसल

भाग 3

(21) फसल (22) क्या दैवी आपदा में फसल को क्षति हुई है? (23) दैवी आपदा का प्रकार (24) आपदा से प्रभावित क्षेत्रफल (25) क्षति का प्रतिशत (26) कृषि अवशिष्ट निस्तारण (पराली जलायी गयी अथवा नहीं)

भाग 5

(29) क्या भूमि अथवा उसका कोई भाग धारा 143 U.P.L R Act 1901 / धारा 80 उत्तर प्रदेश राजस्व संहिता के तहत अकृषिक घोषित हुई है ? :

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- (30) गैर कृषिक उपयोग का प्रकार (31) गैर कृषिक उपयोग के अंतर्गत क्षेत्रफल (32) गैर कृषिक घोषित क्षेत्रफल (33) गैर कृषिक घोषित करने की वाद / कम्प्यूटरीकृत वाद सं. (34) गैर कृषिक घोषित करने के आदेश का दिनांक

भाग 6

(35) क्या भूमि अथवा किसी भाग को लीज़/पट्टे पर दिया गया है ? :

- (36) पट्टे का प्रकार (37) क्षेत्रफल (38) पट्टा धारक का नाम (39) पट्टा धारक का पता (40) पट्टा प्रारम्भ होने की तिथि (41) पट्टा समाप्त होने की तिथि

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ANNEXURE NO.3

Item No. 3

(Court No. 2)

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

(Through Physical Hearing with Hybrid VC Option)

Original Application No.176/2022

I.A No. 39/2023, I.A No. 40/2023 and I.A No. 592/2023

Aman Chaudhary

...Applicant

Versus

Union of India & Ors.

....Respondents

Date of hearing: 30.05.2023

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

Applicant: None for the applicant.

Respondents: Mr. Somesh Chandra Jha and Ms. Aanya Shrotriya, Advocates for Respondent No. 1 with Dr. S. Kerketta, Scientist G and Mr. Pankaj Verma, Scientist E, MoEF & CC.

Ms. Pushpila Bisht, Ms. Pallavi Pratap and Mr. Akshay Singh, Advocates for Respondent No. 2.

Mr. Saurabh Balwani, Advocate for Respondent No. 3 with Mohmad Nizamuddin, Scientist F and Ms. Sonia, CPCB.

Mr. Pradeep Misra, Advocate for Respondent No. 4 with Mr. Ajay Kumar Sharma, Member Secretary, UPPCB.

Mr. Mukesh Verma, Advocate for Respondent No. 6 with Dr. Roshan Jacob, Director, Geology and Mining Department, U.P., Mr. Vipin Kumar Jain, Additional Director, Geology and Mining Department, U.P.

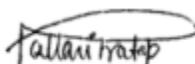
Mr. Vishak G., District Magistrate, Kanpur (through VC)

Mr. Raj Panjwani, Amicus Curiae.

None for respondent no. 5.

Application under Sections 14, 15 and 18 (1) of the National Green Tribunal Act, 2010.**ORDER**

1. Grievances in the application are regarding illegal sand mining in the region of Kanpur and Unnao by Mr. Nagendra Singh (Respondent no.


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2). The applicant also submitted that even an unauthorized bridge was constructed in the middle of the River Ganga by the Project Proponent due to which the river got divided into two Streams.

2. This Tribunal constituted a Joint Committee vide order dated 07.03.2022 which submitted its report vide email dated 10.08.2022. In its report Joint Committee *inter alia* recorded following observations and findings:

“Report of Joint Inspection team in compliance to Hon’ble NGT Order dated 07.03.2022 in the Original Application No. 176 of 2022 in the matter Aman Chaudhary Vs. Union of India and Others.

X X X X

13. In the EC issued by SEIAA, several conditions are imposed. The compliance of some (sic of) the major conditions are as given below-

- The proponent was to establish ambient air quality monitoring stations to monitor the ambient air during the mining operations. The proponent was also to submit monitoring reports of ambient air quality/water & waste water/flora & fauna, six monthly compliance report, annual environmental statement and detailed replenishment study report to SIA/PCB/district administration.
- No such data/compliance reports are submitted by the project proponent.
- The proponent was to carry out various Corporate Social Responsibility (CSR) activities including community development & income generating programs, maintenance of village road, free distribution of smoke less chulha, etc.
- No such data/compliance reports are submitted by the project proponent.
- The project proponent has to develop green cover belt in an area equivalent to 20% of the total leased area either on river bank or along road side.
- No such efforts are been made by the proponent.

X X X X

Findings of the visit:-

- River bed mining lease is sanctioned at Vill-Katari Sunaudha, Tahsil-Bilhaur, District-Kanpur Nagar. The Committee found the issues raised in the Hon’ble NGT order are matter of concerns w.r.t. construction of temporary bridge at mining site. During inspection no such temporary bridge was found in the mining lease area.
- According to Google Earth timeline map of dated 25.03.2018 & 18.04.2019, no such temporary bridge was observed.
- During inspection approach road was found at the mining lease site in the main stream area of River, which obstruct the flow of the River.
- Project proponent has not taken any significant measures for environmental safeguard and also not made any efforts/initiatives for conducting activities under CSR.

O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-3-

- *Compliance of conditions of Environmental Clearance issued by SEIAA are not found.*

Hence, the Committee is in view that the lease holder may be directed to comply the conditions of Environmental Clearance and mining deed. Environmental compensation may be imposed for violation of various Norms and degradation of surrounding environment."

3. The matter was heard on different dates and in the course of hearing serious environmental violations were noticed including the factual position that the Project Proponent had not obtained CTE/CTO from UPPCB and therefore UPPCB had issued show cause notice for imposition of environmental compensation of Rs. 4,29,37,500/- to the Project Proponent.

4. This Tribunal, vide Order dated 29.09.2022, made the following observations with consequential directions as under :-

*"We find that the report of District Mines Officer, Kanpur Nagar referred to in the reply of the Director, Directorate of Geology and Mining, Government of Uttar Pradesh that **"the approach road is within the lease boundary. That approach road is three hundred meters away from the active channel of the river."** is contradictory to the report of the Joint Committee that **"During inspection approach road was found at the mining lease site in the main stream area of River, which obstruct the flow of the River."** Further, in its report the Joint Committee has mentioned that **"Project proponent has not taken any significant measures for environmental safeguard and also not made any efforts/initiatives for conducting activities under CSR."** and that **"Compliance of conditions of Environmental Clearance issued by SEIAA are not found"** and recommended that **"the lease holder may be directed to comply the conditions of Environmental Clearance and mining deed."** but in its reply the Director, Directorate of Geology and Mining, Government of Uttar Pradesh has merely mentioned that "Mines Officer, Kanpur Nagar vide Letter dated 29.06.2022 has issued notice to the proponent in this regard" and what further action has been taken on said notice is not mentioned in the reply which was **filed on 13.09.2022**. We have noticed that **"Mining lease deed was registered on 07.04.2018 for the period up to dt. 06.04.2023"** and out of five years lease period more than four years period has already expired without requisite compliance with environmental compliance conditions and without obtaining CTO from UPPCB. No doubt, UPPCB has imposed environmental compensation amounting to Rs.4,29,37,500/- on respondent No.6 the Project Proponent for not obtaining consent to operate from UPPCB under the Water (Prevention and Control of Pollution) Act, 1974 and Air*

(Prevention and Control of Pollution) Act, 1981 before commencement of mining but the same has been imposed after initiation of the present proceedings and such imposition appears to be without issuing any notice and giving opportunity of being heard to respondent No.6 the Project Proponent. Detailed guidelines have been laid down in **Sustainable Sand Mining Management Guidelines 2016** and **Enforcement & Monitoring Guidelines for Sand Mining 2020** issued by MoEF & CC and specific directions have also been issued by this Tribunal in **OA No. 360/2015 National Green Tribunal Bar Association Vs. Virender Singh** for operationalization of monitoring/supervisory/review mechanism and periodical audits/inspections/returns/reports for ensuring compliance with **environmental clearance** and **consent to operate conditions** and environmental norms, which prima facie, appear to have been flouted by the Director, Directorate of Geology and Mining, Government of Uttar Pradesh and UPPCB in the present case. However, before making any further observations in the matter we consider it appropriate to give them opportunity to file detailed replies and to direct them to give their account of measures taken by them for compliance with the guidelines issued by MOEF & CC and directions given by this Tribunal. In its reply the Director, Directorate of Geology and Mining, Government of Uttar Pradesh shall specifically mention as to (i) whether copy of environmental clearance/mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent? (ii) whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by designated third party/departmental agency regarding compliance with **environmental clearance** and **consent to operate conditions** and environmental norms by the project proponent, if yes produce copies of the same if not the reasons for the same? (iii) whether the project proponent was entitled to and could commence mining before grant of CTO by UPPCB if not why the project proponent was allowed to commence such mining without CTO from UPPCB and (iv) whether any notice for non compliance with **environmental clearance/consent to operate**/environmental norms was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof. In its reply the UPPCB shall specifically mention as to (i) whether copy of environmental clearance/ mining lease agreement was sent to UPPCB, if yes when and if no, whether any reference was made for obtaining the same? (ii) whether UPPCB conducted any inspection regarding mining in the mining site in question to ascertain compliance of environmental clearance conditions/obtaining of CTO before initiation of the present proceedings, if yes what action was taken on the basis thereof and if no, what are the reasons for the same? and in how many cases copies of environmental clearance/ mining lease agreement was not sent to UPPCB during the last five years and in how many cases mining was commenced without obtaining CTO from UPPCB. Reply/response by the Director, Directorate of Geology and Mining, Government of Uttar Pradesh be filed by within two months by e-mail at judicial-ngt@gov.in preferably in the form of

O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-5-

searchable PDF/OCR Support PDF and not in the form of Image PDF."

5. In compliance thereof affidavits have been filed by Dr. Roshan Jacob, Director, Geology and Mining Department, U.P. and Mr. Ajay Sharma, Member Secretary, UPPCB vide emails dated 21.04.2023.

6. The relevant part of the affidavit filed by Dr. Roshan Jacob, Director, Geology and Mining Department, U.P. is reproduced as under:-

"AFFIDAVIT OF COMPLIANCE

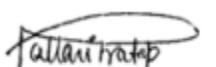
X X X X
 3. That in compliance of above direction of this Hon'ble Tribunal, it is submitted that in Chapter - 4 of U.P. Minor Mineral (Concession) Rules 2021 (previously Rule 1963) the lease deed of normal sand mining area, plot no.2m rakba 10.50 hectare of village Katri Sunada, Tehsil Billaur situated at the bank of Ganga River of the district was executed in favor of lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh R/o 113 MIG-2, Mahabali Puram, Kalyanpur, Kanpur Nagar on 07.04.2018 for the period of 05 years from 07.04.2018 to 06.04.2023. Now the lease has been expired.

4. Point no. (i) - Whether copy of environmental clearance /mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent?

With reference to above point, it is submitted that the copy of environmental clearance certificate issued by State Environment Impact Assessment Authority (SEIAA) in favor of project proponent/lease holder vide letter no.174/environment/SEAC/4026/20 1 7 dated 12.02.2018 was forwarded to 07 persons/authorities, in which through S.No. 04 same was forwarded to Member Secretary, U.P. Pollution Control Board, Environment Bhawan, Vibhuti Khand, Lucknow. It is also pertinent to mention that a copy of environmental clearance certificate is available on Parivesh Portal which is in public domain. After issuance of environmental clearance certificate, it is considered that the lease deed will be executed and mining operation will start. Therefore, sending a copy of lease deed separately to UPPCB will be duplication of the same.

Considering this, it is not customary to send the copy of deed to UPPCB.

5. Point no.(ii) - Whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by designated third party/departmental agency regarding compliance with environmental clearance and consent to operate conditions and environmental norms by the project proponent, if yes produce copies of the same if not the


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reasons for the same?

*In compliance of above direction of this Hon'ble Tribunal it is submitted **that the lease holder /project proponent has not filed any periodical returns and in compliance of conditions of environment, the project proponent has not got any audit /periodical inspection done from any third party /departmental agency.** It is mentioned in letter no.NGT-509/81-7-2022 dated 05.01.2023 of Secretary, Environment, Forest and Climate Change Section-7, U.P. Lucknow that the relevant part of the order dated 26.02.2021 passed by this Hon'ble Tribunal in O.A. no.360/2015 titled as National Green Tribunal Bar Association Vs. Virendra Singh (State of Gujarat &Ors.) is as follows:-*

"....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 within 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 environmental 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 mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of U.P. quoted earlier may be duly taken into account..."

It is pertinent to mention here that site has been inspected from time to time for compliance of conditions of lease deed and UPMCR, 2021 by the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh for the ordinary sand mining area village Katari Sunadha Plot no.2Miarea 10.50 hectare of Tehsil Bilhaur.

It is respectfully submitted that due to non-installation of CCTV Camera in mining area and violation of Rule 59(3),a

O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-7-

penalty of Rs.25,000.00 has been imposed vide notice dated 05.09.2019 against the Lease holder.

Sub Divisional Magistrate Bilhaur inspected the site on 07.12.2020, a passage of height same as water level was removed and an FIR was registered in concerned police station against unknown persons.

Vide letter no.446/ST-Misc./20 dated 12.12.2020 of Sub Divisional Magistrate, Bilhaur it was informed that the above lease holder has done illegal mining and transportation of ordinary sand of about 54219 cubic mtr. from plot no.01m of area 5.4219 hectare outside the approved mining area. With reference to above, a notice was issued on 22.12.2020 and direction was given to place its case within 15 days.

Director, Directorate of Geology and Mining, Lucknow inspected the area on 11.01.2021 and henceforth constituted a team for correct demarcation of boundary pillar of mining area and for detailed survey of the mined-out quantity. The Joint inspection team ratified the Sub Divisional Magistrate Billaour report dated 12.12.2020. In light of above the lease holder was again issued a notice on 03.02.2021 to deposit total amount of Rs.2,39,06,360.00 in Govt. Treasury within 15 days in lieu of illegal mining and transportation. Against above notice the lease holder filed Revision No.48(R)/SM/2021 to the Govt. which was dismissed by the Govt. on 09.08.2021. Thereafter, the lease holder filed Writ Petition No.18966/2021 in Hon'ble High Court of Allahabad Lucknow Bench. In compliance of order dated 22.09.2021 passed by Hon'ble High Court, permission was given to lease holder for mining and transportation of ordinary sand. Writ Petition No. 18966 of 2021 is pending before the High Court.

It is respectfully submitted that again in pursuance of joint inspection report dated 05.12.2021 notice dated 09.12.2021, a fine of Rs.72,500.00 was imposed on lease holder due to constructing passage /road without permission.

On the basis of inspection by DM. Kanpur Nagar on 31.05.2022 and report dated 21.06.2022 of inspection team constituted by DM, a notice dated 10.08.2022 was issued to the lease holder for depositing total amount of Rs. 11,55,837.00.

Thus periodical inspection of the lease has been constantly done by the District Administration, Kanpur and Director, Geology and Mining, Govt. Of Uttar Pradesh.

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6. Point no.(iii) -Whether the project proponent was entitled to and could commence mining before of CTO by UPPCB if not why the project proponent was allowed to commence such mining without CTO from UPPCB?

In pursuance to this, it is humbly submitted that

- i. For harmonization of Classification of Industries under Red/Orange/Green/White Categories CPCB vide letter dated 19.08.2015 forwarded a copy of draft document on revised concept of categorization of industrial sectors to all SPCBs, PCCs and concerned ministries. CPCB further issued modified directions to revise/prepare categories of industrial sector in Red, Orange, Green and White as per final report to all SPCBs/PCCs on 07.03.2016.
- ii. That is further worthwhile to mention here that in compliance to the directions issued by CPCB, UPPCB in its meeting dated 29.03.2016 adopted the same categorizations of industries and issued letter dated 18.04.2016 to all concerned controlling officers of the UPPCB and Regional officers of the UPPCB to comply the same. A true copy of the letter dated 18.04.2016 is being annexed herewith as Annexure No-1.
- iii. That there are two additional notes in the list of Industrial Sectors mentioned in the final report and Note (ii) is being quoted as below;

SI.No.	Origin at SI. No.	Industry Sector	Original Category	Remarks
1	24	Excavation of sand from the River Bed (excluding manual excavation)	O	Since such type of activities cause ecological disturbances the instructions issued by the Government from time to time be followed to be categorized by MoEF & CC.

iii. That at Serial No. 1 which was originally at SI.No 24 regarding excavation of Sand from the riverbed (excluding manual excavation), it has been mentioned in remark column that such type of activities cause ecological disturbances, the instructions issued by the Government (MoEF&CC) from time be followed. So, excavation of Sand from the riverbed (excluding manual excavation) has to be categorized by MoEF&CC separately.

iv. That pursuant to remarks made in categorization of sector up till now no categorization has been made by the MoEF&CC for excavation of sand from the riverbed therefore the sand mining is not covered under the categorization of the industrial Sector. It is also submitted that as per the MOEF&CC, EIA notification 2006, EC has been obtained in this particular case and also in cases of Sand Mining across the state.

v. Under the provisions of Water Act 1974 and Air Act 1981, industries, which causes underground/surface water and Air pollution, requires CTE /CTO from concerning SPCB. But in the case of Sand Mining no fugitive emissions are released. It is to be mentioned that neither permanent structure of any kind is erected during the mining operations of Sand/Morrum situated in the river bed nor heavy machinery are used in the mining operations. In the said mining operations, neither anything is added to the water nor is anything released, so water or air does not get polluted.

8. Point no. (iv) — Whether any notice for non-compliance with environmental clearance /consent to operate /environmental norms was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof?

In compliance Regular inspection was done by district authorities for compliance of the UPMPCR 2021 and the conditions of the lease deed. Notices were issued to project proponent when any irregularities were found during inspection, details are mentioned in point no. 06.

As per the facts mentioned in point no. 07, there is no requirement to obtain CTO.”

7. The relevant part of the affidavit filed by Mr. Ajay Sharma, Member Secretary, UPPCB is reproduced as under:-

“Affidavit on behalf of Member Secretary, UPPCB in pursuance to the order dated 29.09.2022 and 17.03.2023 passed by the Hon’ble National Green Tribunal

X

X

X

X

3. That it is pertinent to mention here that the CPCB under the powers conferred under Section 18(1)(b) of the Water Act, 1974

and the Air Act, 1981 has issued direction dated 07.03.2016 regarding Harmonization of classification of Industrial Sectors under Red/Orange/Green/White categories. The directions dated 07.03.2016 are annexed here with as Annexure No-1 to this affidavit.

4. That it is further worthwhile to mention here that in compliance to the directions issued by Central Pollution Control Board, were adopted by the UP Pollution Control Board in its 96th Board meeting dated 29.03.2016 and direction dated 18.04.2016 were issued to all concerned officers of the Board. A true copy of the letter dated 18.04.2016 is being annexed herewith and marked as Annexure No.-2 to this affidavit.

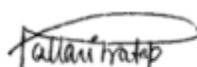
5. That in the final List issued by CPCB on 07.03.2016 of Orange Category of Industrial Sectors the following comment regarding "Excavation of sand from the river bed" has been mentioned.

"There are specific remarks in respect of some of the industrial sectors. These sectors are either merged with other relevant sectors or deleted due to duplication /vague category. The details are as follows:-

SL No.	Origin at SL No.	Industry Sector	Original Category	Remarks
1	24	Excavation of sand from the River Bed (excluding manual excavation)		Since such type of activities cause ecological disturbances, the instructions issued by the Government from time to time be followed. To be categorized by MoEF&CC

6. That pursuant to above remarks made in categorization of sector, until now no clarification of MoEF&CC regarding categorization of 'Excavation of sand from the river bed', has been received from CPCB. In compliance of the Hon'ble NGT order dated 17.03.2023 in aforesaid case the details as desired by Hon'ble NGT regarding the status of issuance of CTO/CTE, Environmental Clearance (EC) by SEIAA and action against defaulter units etc. are being annexed herewith and marked as Annexure no.-3 to this affidavit.

8. In view of the submissions made by Dr. Roshan Jacob, Director,


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O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-11-

Geology and Mining Department, U.P. and Mr. Ajay Sharma, Member Secretary, UPPCB in their affidavits, this Tribunal vide order dated 26.04.2023 directed respondent no. 1-MoEF & CC and respondent no. 3-CPCB to file their detailed response about requirement of consent/NoC from UPPCB for the excavation of sand from the river bed (excluding manual excavation), since such activities are having ecological impacts on or before 18.05.2023.

9. In compliance thereof respondent no. 1-MoEF & CC has filed affidavit vide email dated 18.05.2023 and respondent No.3-CPCB has filed affidavit vide email dated 18.05.2023.

10. Relevant part of the affidavit filed by respondent no. 1-MoEF is reproduced below:

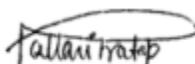
“It is humbly submitted that, the Environmental Clearance (EC) granted to the project/activity is strictly under the provisions of the Environmental Impact Assessment (EIA) Notification, 2006 and its amendments issued from time to time. It does not tantamount/ construe to approvals/ consent/ permissions etc. required to be obtained or standards/conditions to be followed under any other Acts/ Rules/ Subordinate legislation, etc., as may be applicable to the project. Further, the requirement of consent/ No objection Certificate (NOC) are issued by the respective State Pollution Control Board (SPCBs) as per provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

5. That, the State Pollution Control Board is the Nodal Authority in the State for dealing with the cases related to pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981.

6. It is submitted that the present reply may kindly be taken on record and into consideration and the Hon'ble Tribunal may pass appropriate Order(s)/Direction(s) as deemed fit and proper under the facts and circumstances of the present case. Further, the other ancillary issues raised in the application under reply do not pertain to the answering respondent.”

11. Relevant part of the affidavit filed by the CPCB is reproduced below:-

“2. That it is humbly submitted that the applicable law as well as relevant procedural requirement for any project proponent for the purposes of the excavation of sand from the river bed are are provided below for perusal:


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The Procedural requirement as laid down under the Central Acts of Water and Air Act along with EIA notification

i. Clause 25 of the Water Act 1974 relates to Consent of SPCB

"25. Restrictions on new outlets and new discharges -

(1) Subject to the provisions of this section, **no person shall, without the previous consent of the State Board -**

(a) **establish or take any steps** to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, **which is likely to discharge sewage or trade effluent into a stream** or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:"

Definitions

"2 (g) "sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drains; "

"2 (k) "trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage"

ii. Clause in Air Act 1981 related to Consent of SPCB

"21. Restrictions on use of certain industrial plants -

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area

Definitions

"2(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere; "

iii. Clause in EIA Notification 2006 related to Environment Clearance (EC)

The EIA Notification 2006 is issued under Section 3(2)(v) of Environment (Protection) Act 1986 which is related to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards and under Section 5 of Environment (Protection) Rules 1986 which is related to prohibitions and restrictions on the location of

industries and the carrying on processes and operations in different areas. The said notification prescribe as below:

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

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

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

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

Projects / activities have been categorised into Category A and Category B in the Schedule.

iv. Categorisation of projects/activities by CPCB

CPCB has provided a uniform categorisation criteria of industries into Red, Orange, Green and White categories to SPCBs vide directions dated **07.03.20216**. The said criteria suggested different validly periods for consent as below:

"5. SPCBs/PCCs may issue consent to the industries:

- Red category of industries for 5 years.
- Orange category of industries for 10 years.
- Green category of industries for 15 years.
- No necessity of consent for non-polluting industries."

The Copy of the Directions dated 07.03.2016 is annexed herewith as Annexure

R-1.

3. That it is humbly submitted that the U.P. Mining and Geology Department and U.P. Pollution Control Board both have mentioned in their responses before Hon'ble NGT-PB in the present case that "Excavation of sand from river bed (excluding normal excavation)" has not been assigned Category under the above mentioned uniform categorisation by CPCB in 2016 because such type of activities cause ecological disturbances.

4. In this regard it is submitted that Central Government has already covered the mining of river bed material under Schedule of the EIA Notification 2006. In consideration of this,

the SPCBs themselves can categorise this activity for the purpose of deciding validly of the consent as already directed by CPCB for categorisation of any left out sector in the directions dated 07.03.2016. In the case of U.P., CPCB has informed U.P. Geology and Mining Department and UPPCB by a recent letter dated 24.03.2023 also that SPCB may categorise any left out sector by following the criteria / methodology prepared by CPCB. The Copy of the same is annexed herewith as Annexure R-2.

5. That it is further pertinent to note that the MOEF has already formulated the Sustainable Sand management guidelines 2016 & 2020 which primarily focuses on the management of Sand mining in India as well as the fact that section 23 C of the MMDDRR Act, 1957 further grant the relevant state government to make rules & policy to prevent any illegal mining, transportation and storage of minerals including sand. The Enforcement and monitoring guidelines for Sand Mining dated January 2020 contains specific guidelines for process and procedural requirements for approvals for the project proponents.

The Copy of the Enforcement and monitoring guidelines for Sand Mining dated January 2020 is annexed herewith as Annexure R-3.

6. The Hon'ble Supreme Court in its Judgment dated the 27.02.2012 in I.A. No.12-13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc. made prior environment clearance mandatory for mining of minor minerals irrespective of the area of mining lease. On 24.12.2013, the MoEF issued an OM which mandates that "EC will be valid for the lease period subjected to a ceiling of 5 years". Thereafter, in 2016 the MOEF issued the Sustainable Sand Mining Management Guidelines, 2016 (hereinafter referred to as SMMG, 2016), inter alia, with an endeavor to ensure that sand and gravel mining is done in an environmentally sustainable and socially responsible manner, and to further ensure the conservation of river equilibrium and its natural environment by protection and restoration of the ecological system. The same was again updated in 2020 and the same made it a sine qua non that EC is valid only for a period of 5 years, after which the same has to be renewed only with prior permission of the nodal agencies.

7. It is humbly submitted that continuation of sand mining in the absence of environmental clearances obtained by the Project Proponent contravenes the various decisions passed by the Hon'ble Supreme Court in its Judgment dated the 27th February 2012 in I.A. No.12- 13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc. and various directions of this Hon'ble Tribunal in order dated 13th January, 2015 in the case of Himmat Singh Shekhawat v. State of Rajasthan and Ors., 2015 ALL (I) NGT Reporter (1) (Delhi) 44, National Green Tribunal Bar Association Vs Ministry of Environment and Forest & Ors. in Original Application No. 364

O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-15-

Of 2015 and Order dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal & Ors and MoEF & CC guidelines for Sustainable Sand Mining Management Guidelines 2016 & 2020 for scientific and sustainable sand mining in the Country.

8. That in view of the facts indicated in earlier paras it is respectfully prayed that necessary directions be passed and the Respondent No.3 confirms that it shall abide by any order or direction, passed by this Hon'ble Tribunal."

12. Reply was filed by the Respondent no. 2- the project proponent vide email dated 01.02.2023. In his reply Respondent no. 2- the project proponent has made vague and general averments regarding carrying out of mining by him in accordance with environmental clearance granted to him while denying allegations regarding illegal mining and construction of temporary bridge. In his reply Respondent no. 2 has not specifically replied and given any specific response with respect to the findings of the Joint Committee regarding violations of conditions of environmental clearance and mining lease deed and has also not mentioned anything regarding requirement of obtaining CTE/CTO from UPPCB and also show cause notice dated 02.12.2022 for imposition of environmental compensation issued to him by Chief Environment Officer, Circle-2, U.P. Pollution Control Board Lucknow.

13. We have learned Counsel for the respondents and learned Amicus Curiae on the question of requirement of CTE/CTO from SPCBs/PCCs for Excavation of sand form the River Bed (excluding manual excavation) and gone through the relevant material.

14. In the directions issued by CPCB in June 2012 in the context of categorization of industries as Red, Orange & Green, mining and ore beneficiation were included at serial no. 35 of Table G-2:Final List of Red category of Industrial Sectors. Respondent no. 3-CPCB vide letter dated 19.08.2015 forwarded a copy of draft document on revised concept of categorization of industrial sectors to all SPCBs/PCCs and concerned

Ministries for harmonization of classification of industries under Red, Orange, Green and white categories in which "excavation of the sand from the river bed (excluding manual excavation)" was mentioned at serial no. 24. Based on the revised criteria, Respondent no. 3-CPCB evolved the 'Final Report on Revised Categorization of Industrial Sectors under Red/Orange/Green/White' with number of industries in Red, Orange, Green and newly introduced White categories in the above said final list being 60, 83, 63 and 36 respectively. Accordingly, the earlier Directions issued in June 2012 in the context of categorisation of industries as Red, Orange & Green were withdrawn and modified directions were issued vide letter no. B-29012/ESS(CPA)/2015-16 dated 07.03.2016.

15. Even though in the draft list of Orange category of industries "excavation of the sand from the river bed (excluding manual excavation)" was mentioned at serial no. 24 but the CPCB did not finalize said categorization and made the remarks "since such type of activities cause ecological disturbances, the instructions issued by the Government from time to time be followed" and left the industrial sector for being categorized by MoEF & CC.

16. No categorization has been done by MoEF & CC so far. On the other hand, in the affidavit filed on behalf of respondent no. 1-MoEF & CC, it has been mentioned that the State PCB is the nodal authority for dealing with the cases related to pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. In the response filed on behalf of respondent no. 3-CPCB, it has been submitted that the Central Government has already covered the mining of river bed material under Schedule of the EIA Notification 2006. In consideration of this, the SPCBs/PCCs themselves can categorise this

activity for the purpose of deciding validly of the consent as already directed by CPCB for categorisation of any left out sector in the directions dated 07.03.2016.

17. It may also be observed here that vide above referred letter no. B-29012/ESS(CPA)/2015-16 dated 07.03.2016 following 'Directions' were issued for compliance by all SPCBs and PCCs :

"1. That the SPCBs and PCCs shall adopt the Revised Criteria of categorization of industrial sectors as detailed in table nos. F1, F2, F3 and F4 and Revised Lists of Red, Orange, Green and White categories of industrial sectors, presented at table no. G2, G3, G4 and G5 respectively, in the 'Final Report' as attached herewith immediately.

2. That all pending applications for consideration of 'Consent to Establish' and 'Consent to Operate' and future such applications shall be processed as per revised criteria.

3. That the SPCBs and PCCs will provide the list of industries identified in each category existing in the State which have been considered for grant of consents. SPCBs/PCCs will forward the list of such industries before 31.05.2016 and the same will be uploaded on the websites of respective SPCB/PCC.

4. That the 'Revised Lists of Red, Orange, Green and White category of industrial sectors' shall be used by the SPCBs and PCCs for Consent Management and inventorization of industries under Red, Orange, Green and White categories. Siting of industries shall be only in conforming areas. SPCBs / PCCs shall evolve sector specific plans for control of pollution and industrial surveillance for verifying compliance.

5. That the SPCBs and PCCs shall revise / prepare the inventory of Red, Orange, Green and White categories of industries operating in their jurisdiction based on the revised criteria specified in the Final Report and submit the same to CPCB within 90 days i.e., before 30.05.2016 in hard copy as well as soft copy.

6. That the listed category of industries or those identified later-on under different categories shall not be linked to sanction of loan /finance or bank proceedings.

7. That any further addition of any new or left-over industrial sector and their categorization which is not listed in the revised list of Red, Orange, Green and White industrial sectors, shall be done at the level of concerned SPCB /PCC following revised criteria & guidelines as detailed in the attached document and no concurrence of CPCB shall normally be required. It is further clarified that while categorizing the

industries, fractional numbers shall be rounded off to nearest integer.”

18. In the response filed on behalf of respondent no. 3-CPCB, it has also been mentioned that in the case of State of U.P., CPCB has informed U.P. Geology and Mining Department and UPPCB by a recent letter dated 24.03.2023 also that SPCB may categorise any left out sector by following the criteria / methodology prepared by CPCB.

19. Even after receipt of the above said letter no categorization has been done by UPPCB so far. The attendant facts and circumstance show that despite the Union of India and the States being under Constitutional obligation under Article 48A of the Constitution of India to protect and improve the environment, their executive agencies/instrumentalities have slept over the issues/concerns raised and have therefore allowed confusion and contradictions to prevail, suffered massive violations of environmental laws, ignored the dangers involved and brushed aside the questions of their accountability.

20. We find that the respective stands taken by Department of Geology and Mining and UPPCB have resulted into utter confusion leading to contradictory practices in the State of Uttar Pradesh regarding enforcement of the regime of environmental norms including mandatory requirement of obtaining of CTE/CTO from UPPCB. The UPPCB is indulging in contradictory practices. On the one hand UPPCB is claiming that there is no mandatory requirement of CTE/CTO from UPPCB for river bed sand mining and on the other hand UPPCB is issuing show cause notices and passing orders for imposition of environmental compensation for not obtaining CTE/CTO from UPPCB.

21. In O.A No. 485/2022 titled as Gautam Sharma Vs. State of U.P. and Others pending before this Tribunal, UPPCB has taken the stand in its reply that CPCB has issued a letter dated 02.02.2017 regarding

O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-19-

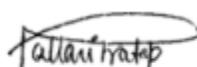
mechanism to be followed for granting Consent to Operate (CTO) under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, for certain category of industries and that as per said letter the projects which have obtained Environmental Clearance (EC) from SEIAA and installed requisite pollution control system, may be issued Consent to Operate (CTO) directly.

22. In O.A No. 160/2022 titled as Om Pal and others Vs. State of U.P. and others pending before this Tribunal the Project Proponent filed Civil Appeal No. 8872/2022 before Hon'ble Supreme Court against restraint order passed by this Tribunal by asserting compliance with the environmental norms on the basis of the Joint Committee reports and in view of the directions of the Hon'ble Supreme Court, this Tribunal vacated the restraint order on 08.12.2022 and directed the Project Proponent to file compliance status report and the Director, Geology and Mining Department, U.P. and UPPCB to file joint report after verifying the same. In the Joint Report filed by the Director, Geology and Mining Department, U.P. and UPPCB vide email dated 24.03.2023 the Project Proponent is stated to be non-compliant inter alia on the ground that the Project Proponent obtained CTO from the UPPCB on 05.01.2023 and condition no. 8 of the EC was violated as mining was started before obtaining CTO.

23. The Extent of such contradictory practices is revealed by the table in annexure III appended to the affidavit filed by the Member Secretary, UPPCB vide email dated 21.04.2023 which is reproduced as under.

“Consolidated Status of Mining Leases in UP

- *Total Number of Mining Leases (As per the information received by concerned Regional officer from the District Mining Officer) : 1232*
- *Total No. of CTO Granted to Mining Leases : 444*
- *Total No. of CTO Rejected of Mining Leases : 18*
- *Total No. of CTO pending of Mining Leases : 62*


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- *Total No. of Mining Leases which have not applied for CTO : 708*
- *Total Number of Cases Carrying Out Mining without Grant of CTO by UPPCB : 577*
- *Total No. of E.C. issued by SEIAA to Mining Leases : 1232*
- *Total Number of Cases in which Environmental Compensation has been Imposed on Mining Units : 18”*
- *Total Number of Cases in which Show Cause for Environmental Compensation has been issued on Mining Units: 639*
- *Total Amount of Environmental Compensation has been Imposed on Mining Units : Rs. 35,92,30,032 /-*
- *Total Number of Cases in which Environmental Compensation has been Recovered/Realized from Mining Units : 04*
- *Total Amount of Environmental Compensation that has been Recovered/Realized from Mining Units: Rs. 71,90,000 /-*
- *Total Number of Cases in which Recovery of Environmental Compensation is Pending from Mining Units : 14”*

24. UPPCB cannot be allowed to create confusion and take such contradictory stands and indulge in such legally untenable contradictory practices, when the legal position is clear and unambiguous. We do not find any reason for such confusion and any scope for contradictory practices and divergent views in applicability of environmental laws, directions given by Hon'ble Supreme Court and this Tribunal and guidelines issued by MOEF&CC and CPCB.

Directions Given by Hon'ble Supreme Court.

25. The Department of Mines and Geology, Government of Haryana issued an auction notice dated 3.6.2011 proposing to auction the extraction of minor mineral boulder, gravel and sand quarries of an area not exceeding 4.5 hectares in each case in the District of Panchkula, auction notices dated 8.8.2011 in the District of Panchkula, Ambala and Yamuna Nagar exceeding 5 hectares and above, quarrying minor mineral, road metal and masonry stone mines in the District of Bhiwani, stone, sand mines in the District of Mohindergarh, slate stone mines in the District of Rewari, and also in the Districts of Kurukshetra, Karnal, Faridabad and Palwal, with certain restrictions for quarrying in

O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-21-

the river beds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River basin etc. The validity of the auction notices was challenged before Hon'ble Supreme Court, apart from the complaint of illegal mining going on in the State of Rajasthan and Uttar Pradesh in **I.A. No.12-13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009**, in the matter of **Deepak Kumar etc. Vs. State of Haryana and Others** etc. In its order dated 27.02.2012 Hon'ble Supreme Court noticed the adverse impact of sand mining on river ecology and aquatic life and observed as under:-

"7. We have no materials before us to come to the conclusion that the removal of minor mineral boulder, gravel, sand quarries etc. covered by the auction notices dated 3.6.2011 and 8.8.2011, in the places notified therein and also in the river beds of Yamuna, Ghaggar, Tangri, Markanda, Krishnavati river basin, Dohan river basin etc. would not cause environmental degradation or threat to the biodiversity, destroy riverine vegetation, cause erosion, pollute water sources etc. Sand mining on either side of the rivers, upstream and in-stream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India's rivers and Riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of river beds, destruction of natural habitats of organisms living on the river beds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers etc. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

8. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3.6.2011 and 8.8.2011 have permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and

perennial rivers and river beds and sand extraction may have an adverse effect on bio-diversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. Rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna."

26. In the above mentioned case Hon'ble Supreme Court, while directing all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, made prior environment clearance mandatory for mining of minor minerals irrespective of the area of mining lease. The Relevant part of the order is reproduced as under:-

"14. We are of the view that all State Governments/Union Territories have to give due weight to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments and Union Territories. Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and biodiversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.

15. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

16. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care

of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio assessment protocol. Sand mining, it may be noted, may have an adverse effect on biodiversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.

17. The State of Haryana and various other States have not so far implemented the above recommendations of the MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the river beds and elsewhere of less than 5 hectares. We, therefore, direct to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports.

18. Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules 2010 at the earliest. State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Govt. of India. Communicate the copy of this order to the MoEF, Secretary, Ministry of Mines, New Delhi, Ministry of Water Resources, Central Government Water Authority, the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the concerned Departments.

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

Proactive Role of Pollution Control Board/Committees for protection of Environment.

27. In **Goa Foundation v. Union of India (SC)- 2014(6) SCC 590** **Hon'ble Supreme Court** emphasized the powers and role of Pollution Control Board and observed as under:-

"72. The Goa State Pollution Control Board has immense

powers under the Water (Prevention & Control of Pollution) Act, 1974 (for short 'the 1974 Act') to prevent pollution of water. Section 33A of the 1974 Act which confers on the State Pollution Control Board the power to give directions is quoted here in below:

"33A. Power to give directions - Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation. For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct (a)the closure, prohibition or regulation of any industry, operation or process; or (b)the stoppage or regulation of supply of electricity, water or any other service."

73. Similarly, the Air(Prevention and Control of Pollution) Act, 1981(for short 'the 1981 Act') confers immense powers on the State Pollution Control Board to prevent air pollution. Section 31A of the 1981 Act which confers powers on the State Pollution Control Board to give directions is quoted here in below:

"31A. Power to give directions. Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation. For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct (a)the closure, prohibition or regulation of any industry, operation or process; or (b)the stoppage or regulation of supply of electricity, water or any other service."

74. It will be clear from the aforesaid provisions of Section 33A of the 1974 Act and Section 31A of the 1981 Act that the Goa State Pollution Control Board had powers to issue any direction including the power to close, prohibit or regulate mining operations or even to stop or regulate supply of electricity, water or any other service with a view to prevent water pollution or air pollution. Yet, from the report of the Expert Committee as well as the reports of ISM, Dhanbad and NEERI, it is clear that iron ore production in Goa has led to massive negative impacts on all ecosystems leading to enhanced air, water and soil pollution affecting quality of life across Goa. The Goa State Pollution Control Board in its note filed in Writ Petition (C) No.435 of 2012, however, states:

"Details of monitoring of water quality (with regards to mining leases) from 2007 to 2012 - The Board conducts inspections during the monsoon and other seasons also to verify the discharge of surface runoff/discharge from the pit outside the mining lease and also collects samples for analyzing in the Board Laboratory. Wherever the parameters exceed the prescribed limits necessary directions are issued to the mining

units to take remedial measures for controlling the waste water being discharged into the water bodies/fields without treatment. Directions are also issued to provide settling ponds, arrestor walls, filter beds so as to ensure that no untreated waste water is discharged into the water bodies/fields.

Details of monitoring of air quality (with regards to mining leases) from 2007 to 2012 - The Board is presently carrying out the periodic monitoring of Air Quality in pre-selected areas throughout the State to comply with one of the mandates of the Central Pollution Control Board (CPCB) under National Ambient Monitoring Programme (NAMP) at 16 stations."

75. We do not agree with Mr. Arvind Datar, learned senior counsel for the Goa State Pollution Control Board, that sincere efforts were made by the Pollution Control Board to monitor the water quality and air quality in the mining areas. Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties. We hope that in future the Goa State Pollution Control Board exercises strict vigil and monitors the water quality and air quality in accordance with the provisions of the two Acts and if necessary, exercises the powers conferred on it to close down mining operation of a lessee, if the lessee does not conform to the air emission and water discharge standards while carrying on mining operations and does not take other preventive measures as directed by the State Pollution Control Board.

28. Central Government has already covered the mining of river bed material under "Mining of Minerals" at serial no. 1 (a) in the Schedule of the EIA Notification 2006. The MOEF&CC issued the "Sustainable Sand Mining Management Guidelines" in 2016 and "Enforcement & Monitoring Guidelines for Sand Mining-2020 in 2020, inter-alia, with an endeavor to ensure that sand and gravel mining is done in an environmentally sustainable and socially responsible manner, and to further ensure the conservation of river equilibrium and its natural environment by protection and restoration of the ecological system. CPCB has provided a uniform categorisation criteria of industries into Red, Orange, Green and White categories to SPCBs/PCCs vide directions dated 07.03.20216 with different validly periods of consent of 5, 10 and 15 years for Red, Orange and Green categories. It was specifically mentioned therein that there shall be no necessity of obtaining the Consent to Operate for White category of industries and an intimation to concerned SPCB /PCC shall

suffice.

29. In 2012 categorization of industries by CPCB "mining and ore beneficiation" were mentioned at serial number 49 in Table 7.3: List of Red Category of Industries. Modification thereof was proposed by including "excavation of the sand from the river bed (excluding manual excavation)" in the draft list of orange category of the industrial sectors but the same was not finalized by the CPCB which aborted the proposed modification with the remarks that since such type of activities cause ecological disturbances the instructions issued by the Government from time to time be followed and to be categorized by the MoEF & CC". In 2016 final categorisation of industries issued by CPCB vide letter dated 07.03.2016 "mining and ore beneficiation" is mentioned at serial number 35 in Table G2: Final List of Red Category of Industrial Sectors which will continue to prevail with "excavation of the sand from the river bed (excluding manual excavation)" as part of the same. Since the CPCB did not convert the same to any other Orange, Green or White category and merely remarked that MOEF&CC may categorize "excavation of the sand from the river bed (excluding manual excavation)", categorization of "Mining and Ore beneficiation" as red category industry by CPCB will continue to prevail regarding excavation of the sand from the river bed (excluding manual excavation)" till any modification is made by MOEF&CC by making any such categorization. Consequently, "excavation of the sand from the river bed (excluding manual excavation)" cannot be even considered to be left over category.

30. Even otherwise, even if the same be held to be left over category due to the reason that CPCB did not finalize draft categorization of Excavation of sand form the River Bed (excluding manual excavation) in orange category, the remarks made by (CPCB "since such type of activities cause ecological disturbances, the instructions issued by the

O. A. No. 176/2022

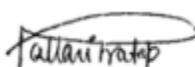
Aman Chaudhary Vs. Union of India & Ors.

-27-

Government from time to time be followed. To be categorized by MoEF&CC"), did not bar UPPCB from categorizing the same, which is also now the stand of both MOEF&CC and CPCB. UPPCB has not done so even on receipt of letter dated 24.03.2023 from CPCB. However, it is pertinent to observe even in the absence of any such categorization, when it is acknowledged, (as also observed by the Hon'ble Supreme Court) that excavation of the sand from the river bed (excluding manual excavation) may cause ecological degradation/disturbances, as also observed by the Hon'ble Supreme Court, the excavation of the sand from the river bed (excluding manual excavation) cannot be treated, by any stretch of imagination to fall in the **White category of Industrial Sectors** and in which ever of the other three categories **Red, Orange or Green** the same is considered to fall as per the revised criteria, obtaining of consent from SPCBs/PCCs will be mandatory in all eventualities.

31. In any case, even CPCB, while leaving categorization to MOEF&CC, also recommended that due to excavation of sand form the River Bed (excluding manual excavation) causing ecological disturbances, the instructions issued by the Government from time to time be followed. MOEF&CC while granting EC for sand mining from river bed is imposing condition requiring the Project Proponent to obtain consent from concerned SPCB.

32. Reference in this regard may be made to O.A No. 581/2022 titled as Vikas Kumar Vs. State of Haryana and Others pending before this Tribunal. In para no. 11 part A Specific Conditions clause (iv) of EC F.No.-J-11015\112\2015-IA-II (M) dated 28.01.2016 granted by MoEF & CC for Mining of Sand (Minor Mineral) in the Mines of "Jainpur-2 Sand Unit" 44 hectares mainly laying on the bed of river Yamuna (34.40 Ha) and partly outside river bed (10.0 Ha) with production capacity of 16 lakh TPA Sand (Minor Mineral) by M/s Yodha Mines and Minerals


True Copy

O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-29-

may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms. Section 2(a) of the Air (Prevention of Control of Pollution) Act, 1981 defines air pollutant to mean any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment and Section 2(b) of the above said Act defines air pollution to mean the presence in the atmosphere of any air pollutant. Sections 24 and 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Sections 21 and 22 of the Air (Prevention of Control of Pollution) Act, 1981 have to be interpreted in view of the above said definitions. It is now universally acknowledged that excavation of minor mineral may disturb or change the underlying soil characteristics of the river bed/catchment/basin; may disturb the velocity and flow pattern (discharge) of the river water and may also adversely affect river morphology/ecology, the ground water regime and habitat of wild fauna in the river bed significantly. The river bed sand mining involves causing of air pollution due to generation of dust during excavation of dry sand and also fugitive emissions from the heavy vehicles used for transportation of the mined material. Such river bed sand mining requires setting up of temporary habitation camps for accommodating the labour employed for mining and also utilization of river/ground water for human consumption and sprinkling to control dust pollution. Discharge of waste water from temporary human habitation camps and mobile toilets may pollute the river water. Transportation of such river bed sand mining material also requires construction of road/pathways. In cases where heavy quantity of sand mining is permitted from the river

bed, deployment of large number of heavy vehicles for transportation of sand also results in fugitive emissions and dust generation thereby affecting the residents of neighbouring villages. Consequently, the stand taken by Dr. Roshan Jacob, Director, Geology and Mining Department, U.P. that river sand mining does not cause air and water pollution is factually and scientifically wrong.

36. Further, the stand taken by the Director, Geology and Mining Department, U.P., that sand mining from river bed does not cause Water and Air Pollution ignores condition no. 8 imposed in the EC granted in favor of the Project Proponent that "all necessary statutory clearances shall be obtained before start of mining operations. If this condition is violated, the clearance shall be automatically deemed to have been cancelled". Condition No.2 of the EC provided that forest clearance shall be taken by the proponent as necessary under law. Condition No.36 of the EC provided that environmental clearance is subject to obtaining clearance under the Wildlife (Protection) Act, 1972 from the competent authority, if applicable to this project. Condition no. 8 of the EC essentially refers to requirement of consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. No reference was ever made by the Director, Geology and Mining Department, U.P. to SEIAA, U.P. to clarify that consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 were not required and some other statutory clearances were required to be obtained before commencement of the mining. The stand taken by the Director, Geology and Mining Department, U.P. that CTE/CTO from UPPCB was not mandatory/ necessary is illogical and illegal in view of the prevailing Environmental Acts/Rules.

37. It is also pertinent to observe that even in the present case

conditions imposed in the EC issued in favour of the Project Proponent assign important role to UPPCB and envisage monitoring by UPPCB for ensuring compliance by the Project Proponent of the conditions and environmental laws/norms and the same may be reproduced as under:-

" X X X X

7. *It shall be ensured that standards related to ambient air quality/effluent as prescribed by the Ministry of Environment & Forests are strictly complied with. Water sprinklers and other dust control majors should be applied to take-care of dust generated during mining operation. Sprinkling of water on haul roads to control dust will be ensured by the project proponent.*

8. *All necessary statutory clearances shall be obtained before start of mining operations. If this condition is violated, the clearance shall be automatically deemed to have been cancelled.*

X X X X

14. *It shall be ensured that there is no fauna dependant on the river bed or areas close to mining for its nesting. A report on the same, vetted by the competent authority shall be submitted to the RO, PCB and SEIAA within 02 months.*

15. *Primary survey of flora and fauna shall be carried out and data shall be submitted to the RO, PCB and SEIAA within six months.*

16. *Hydro-geological study shall be carried out by a reputed organization/institute within six months and establish that mining in the said area will not adversely affect the ground water regime. The report shall be submitted to the RO, PCB and SEIAA within six months. In case adverse impact is observed /anticipated, mining shall not be carried out.*

17. *Adequate protection against dust and other environmental pollution due to mining shall be made so that the habitations (if any) close by the lease area are not adversely affected. The status of implementation of measures taken shall be reported to the RO, UPPCB and SEIAA and this activity should be completed before the start of sand mining.*

X X X X

22. *An Environmental Audit should be annually carried out during the operational phase and submitted to the SEIAA.*

X X X X

24. *The project proponent shall submit six monthly reports on the status of compliance of the stipulated environmental clearance conditions including results of monitored data (both in hard & soft copies) to the SEIAA, the District Officer and the respective Regional Office of the State Pollution Control Board bji 1st June and 1st December every year.*

X X X X
 27. Waste water, from temporary habitation campus be property collected & treated before discharging into water bodies the treated effluent should conform to the standards prescribed by MoEF/CPCB.

X X X X
 29. Special Measures shall be adopted to protect the nearby settlements from the impacts of mining activities. Maintenance of village roads through which transportation of minor minerals is to be undertaken, shall be carried-out by the project proponent regularly at his own expenses.

X X X X
 32. Under corporate social responsibility a sum of 5% of the total project cost or total income whichever is higher is to be earmarked for total lease period. Its budget is to be separately maintained. CSR component shall be prepared based on need of local habitant. Income generating measures which can help in upliftment of poor section of society, consistent with the traditional skills of the people shall be identified. The programme can include activities such as development of fodder farm, fruit bearing orchards, free distribution of smokeless Chula etc.

X X X X
 34. The funds earmarked for environmental protection measures should be kept in separate account and should not be diverted for other purpose. Year wise expenditure should be reported to the Ministry of Environment and Forests and its Regional Office located at Lucknow, SEIAA, U.P and UPPCB.

35. Action plan with respect to suggestion/improvement and recommendations made and agreed during Public Hearing shall be submitted to the District mines Officer, concern Regional Officer of UPPCB and SEIAA within 02 months.

X X X X
 40. Appropriate mitigative measures shall be taken to prevent pollution of the river in consultation with the State Pollution Control Board. It shall be ensured that there is no leakage of oil and grease in the river from the vehicles used for transportation.

X X X X
 45. The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of environmental clearance conditions and shall also be sent to the Regional Office of the Ministry of Environment and Forests, Lucknow by e-mail.

Specific Condition

X X X X
 14. Total Project Cost has been submitted as Rs. 81.0 lac. A

CSR plan with minimum 5% work to be executed with installation of five hand pumps for drinking water, solar light in villages of streets, construction of two numbers of toilets at the primary school with name displayed and address and details of beneficiary and gram pradhan along with phone number, photographs should be submitted to Directorate as well as to the District magistrate / Chief Development officers, Kanpur nagar, U.P.

X X X X
26. *The mining work will be open-cast and manual/semi mechanized (subject to order of Hon'ble NGT/Hon'ble Courts (s)). No drilling/blasting should be involved at any stage.*

X X X X
29. *The project proponent shall adhere to mining in conformity to plan submitted for the mine lease conditions and the Rules prescribed in this regard clearly showing the no work zone in the mine lease i.e. the distance from the bank of river to be left un-worked (Non mining area), distance from the bridges etc. It shall be ensured that no mining shall be carried out during the monsoon season.*

X X X X
32. *The critical parameters such as PM10, PM2.5, 5O2 and NOx in the ambient air within the impact zone shall be monitored periodically. Further, quality of discharged water if any shall also be monitored HMS, DO, pH, Fecal Coliform and Total Suspended Solids (TSS).*

X X X X
42. *Digital processing of the entire lease area in the district using remote sensing technique should be done regularly once in three years for monitoring the change of river course by Directorate of Geology and Mining, Govt of Uttar Pradesh. The record of such study to be maintained and report be submitted to Regional office of MoEF, SEIAA, U.P. and UPPCB.*

X X X X
44. *State Pollution Control Board shall display a copy of the clearance letter at the Regional office, District Industry Centre and Collectors office/Tehsildar's Office for 30 days.*

45. *The project authorities shall advertise at least in two local newspapers widely circulated, one of which shall be in the vernacular language of the locality concerned, within 7 days of the issue of the clearance letter informing that the project has been accorded environmental clearance and a copy of the clearance letter is available with the State Pollution Control Board and also at web site of the SEIAA at <http://www.seiaaup.in> and a copy of the same shall be forwarded to the Regional Office of the Ministry located in Lucknow, CPCB, State PCB."*

38. These conditions envisaged proper consultation by the Project Proponent with UPPCB before commencement and during continuance of sand mining and also periodical monitoring by UPPCB. For this purpose

sending of copy of lease deed by the concerned District Magistrate to UPPCB was essentially required. Since the Project Proponent was legally bound to obtain CTE/CTO from UPPCB before commencement of mining, the District Magistrate and the District Mining Officer were legally bound not to allow commencement of mining before grant of consent by UPPCB. However, in the present case, the Project Proponent was allowed to carry out mining without such statutory consent throughout the five year term of the lease which has expired in April, 2023.

39. It may be observed that in the present case there are serious violations of the SSMG 2016 and EMGSM 2020 and EC conditions by the Project Proponent. In the affidavit of the Director, Geology and Mining Department, U.P. it is admitted that the lease holder /project proponent has not filed any periodical returns and the project proponent has not got any audit /periodical inspection done from any third party /departmental agency. In its report the Joint Committee had also mentioned non-compliance of EC conditions by the project proponent. Even there was non-compliance with SSMG 2016 and EMGSM 2020 by the project proponent in the present case. The Project Proponent did not install CCTV Camera in mining area for which merely penalty of Rs.25,000/-was imposed without verifying whether CCTV camera was subsequently installed. In the present case the Project Proponent is alleged to have indulged in illegal mining and transported ordinary sand about 54219 cubic mtrs. from plot no.01m of area 5.4219 hectare outside the approved mining area. Efforts have been made to project the same as incident of wrong demarcation and action regarding such illegal mining was not taken regarding the same as per EMGSM 2020 and directions of this Tribunal in OA 360 of 2015 titled as National Green Tribunal Bar Association Vs. Virender Singh (State of Gujarat). The facts and circumstances of the present case reveal serious violations of

O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-35-

environmental laws/norms by the Respondent no. 2-project proponent and serious derelictions of duty by concerned officers of the Department of Geology and Mining, U.P. and UPPCB.

Illegal Mining has to be dealt with sternly by visiting the same with all consequences without any leniency.

40. Section 21(1) of the MMDR Act provides that whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area. Section 21 (6) of the MMDR Act empowers the police to investigate offence punishable under Section 21 of the MMDR Act by providing that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.

41. In **Lalita Kumari vs. Govt. of U.P. (SC) : 2013(4) R.C.R.(Criminal) 979 : 399 :2014(2) SCC 1** Hon'ble Supreme Court held that registration of FIR is mandatory under Section 154 of the Code of Criminal Procedure, 1973, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation and if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

42. In **State of NCT of Delhi vs. Sanjay, (2014) 9 SCC 772**, Hon'ble Supreme Court considered the question whether the provisions contained in Sections 21, 22 and other sections of MMDR Act operate as bar against prosecution of a person who has been charged with allegations which constitute offences under Section 379/114 and other provisions of the Indian Penal Code, 1860 (the IPC). In other words,

whether the provisions of MMDR Act explicitly or impliedly excludes the provisions of the IPC when the act of an accused is an offence both under the IPC and under the provisions of the MMDR Act. Since conflicting views had been taken by Gujarat High Court, Delhi High Court, Kerala High Court, Calcutta High Court, Madras High Court and Jharkhand High Court, Hon'ble Supreme Court proceeded to settle the question and on detailed analysis of the relevant statutory provisions and judicial precedents, Hon'ble Supreme Court observed as under:-

"69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

71. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the

State, is liable to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

72. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, I.P.C., it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in section 190 (1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-a-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled....."

43. In **Jayant vs. State of Madhya Pradesh(SC) : Law Finder Doc Id**

1776867 Hon'ble Supreme Court observed as under :-

"After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis a vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct

the concerned Incharge/ SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned Incharge/ SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned Incharge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering subsection 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under subsection 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.”

44. The settled position of law which emerges is that in a case where

O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-39-

there is a theft of sand and gravels from the river bed, the police can register a case, investigate the same and submit a final report under Section 173 of the Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in section 190 (1)(d) of the Cr.P.C. It may be observed here that the Parliament has made offence punishable under Section 21 of the MMDR Act cognizable only for the purpose to enable the Police to register FIR and investigate the same. Arrest and custodial interrogation of the offenders may be mandatorily required in cases of illegal mining and/or illegal transportation of illegally mined minor mineral for ascertaining the place of illegal mining, seizure of the mined mineral, tools, equipment, vehicles used and other persons involved in the commission of the offences. No doubt the Mining Officer is authorized to file complaint under Section 22 of the MMDR Act but due to having no power to arrest and interrogate the offenders, the Mining Officer may not be able to collect the factual information and legal evidence to fasten criminal liability to the accused complained against. For the commission of offence punishable under Section 379 of the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act. For the commission of offence under Section 21 of the MMDR Act the Magistrate having jurisdiction can take cognizance of the said offence on the basis of complaint that may be filed by the authorized officer in respect of violation of various provisions of the MMDR Act along with the report under Section 173 (2) of the Cr.P.C. filed by the Police.

45. In EMGSM 2020 detailed guidelines have been incorporated for effectively dealing with cases of illegal mining and guidance has been provided for taking action against illegal excavation and transport. The

relevant of the same reads as under:-

"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 non- payment 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."*

46. In OA 360 of 2015 titled as National Green Tribunal Bar Association Vs. Virender Singh (State of Gujarat) this Tribunal in its order dated 26.02.2021 emphasized the measures to deal with the menace of illegal mining. The closing paragraphs containing the directions are reproduced below:-

"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 31st 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 31st 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."

Failure to comply with award, order, decision of this Tribunal constitutes an offence.

47. Section 25 of the National Green Tribunal Act, 2010 provides that an award or order or decision of the Tribunal under the above said act shall be executable by this Tribunal as a decree of a civil court and for this purpose this Tribunal shall have all the powers of a civil court. Sections 37 to 40 and Order 21 and Rules 37 to 40 of the Code of Civil Procedure, 1908 empowers the Civil Court to execute its decree by arrest and detention of the Judgment debtor in the civil prison. This Tribunal is also empowered by these statutory provisions to execute its award/order/decision by arrest and detention of the defaulters in civil prison besides other coercive methods.

48. Section 26 of the National Green Tribunal Act, 2010 visits the failure to comply with orders of this Tribunal with penal consequences and the same reads as under: -

"26 Penalty for failure to comply with orders of Tribunal.

- (1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention: Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code"

49. It may also be observed here that the Parliament while enacting the

National Green Tribunal Act, 2010 contemplated the situations where the failure to comply with any order/award/decision of this Tribunal may be by a Department of the Government and in such an eventuality made provision in Section 28 of the National Green Tribunal Act, 2010 for punishment of the Head of the Department which reads as under:-

“28 Offences by Government Department. - (1) *Where any Department of the Government fails to comply with any order or award or decision of the Tribunal under this Act, the Head of the Department shall be deemed to be guilty of such failure and shall be liable to be proceeded against for having committed an offence under this Act and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.*

(2) *Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*

50. However, the offence punishable under Section 26 of the National Green Tribunal Act, 2010 has been made non-cognizable and Section 30 of the National Green Tribunal Act, 2010 which provides for cognizance of offences reads as under:-

“30 Cognizance of offences. - (1) *No court shall take cognizance of any offence under this Act except on a complaint made by-*

(a) *the Central Government or any authority or officer authorised in this behalf by that Government; or*

(b) *any person who has given notice of not less than sixty days in such manner as may be prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.*

(2) *No court inferior to that of a Metropolitan Magistrate or, a Judicial Magistrate of the first class shall try any offence punishable under this Act.”*

51. On a cursory reading of the provisions of Section 30 of the National

O. A. No. 176/2022

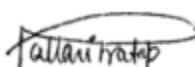
Aman Chaudhary Vs. Union of India & Ors.

-45-

Green Tribunal Act, 2010 one may gather the impression that in cases where this Tribunal passes order/award/decision by taking cognizance *suo motu* without there being any complainant the matter of prosecution of defaulters has been left entirely to the Central Government or authority/officers authorised by the Central Government but even in such cases this Tribunal can order prosecution of the defaulters and on an analogy to clause (b) of Section 30 of the National Green Tribunal Act, 2010, copy of order served on the concerned Authority/Officers authorised by the Central Government shall be liable to be treated as notice for filing of such complaint and in case of failure to file complaint against the defaulters within sixty days, the Registrar of this Tribunal will be entitled to file such complaints against the defaulters in view of clause (b) of Section 30 of the National Green Tribunal Act, 2010.

52. Even though the serious violations revealed by the affidavits filed in the present case warrant an order for prosecution of the concerned officers, but instead of having recourse to said remedy we consider it appropriate to impress and direct upon the concerned Officers/Authorities to take requisite action for protection and improvement of the environment. However, we also consider it appropriate to forewarn that in case such state of affairs of non-compliance with environments laws/norms continues, we shall be constrained to order prosecution of the concerned Officers besides the concerned Project Proponent and also to execute order/award/decision of this Tribunal by arrest and detention of the defaulting Officers.

53. In view of above discussion, CPCB and MoEF & CC are directed to look into the matter of categorization of Excavation of sand from the River Bed (excluding manual excavation) in red or orange category and issue appropriate Notification clarifying categorization thereof as red or orange category within a period of two months from the date of receipt of


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a copy of this order. Till issuance of such Notification, river sand mining shall continue to be treated to fall in red category. However in whichever category- red or orange excavation of sand from the River Bed (excluding manual excavation) is so notified to fall, it shall be mandatory for all the Project Proponents to obtain CTE/CTOs from concerned SPCB/PCC and with effect from 01.09.2023 no river sand mining will be allowed to continue to operate in the entire India without obtaining consents from concerned SPCB/PCC and all the concerned Directors, Geology and Mining Department, the District Magistrates and the Commissioners/Superintendents of Police of the concerned Districts shall ensure that no such mining is continued/operative without obtaining CTE/CTO from concerned SPCB/PCC. MOEF&CC is also directed to issue appropriate guidelines/OM within a period of two months from the date of receipt of a copy of this order for ensuring that the requirement of obtaining CTE/CTO from concerned SPCB/PCC is uniformly made applicable to all the river bed sand mining projects throughout India.

54. Affidavit in this regard be filed by respondent no. 1-MoEF & CC on or before 15.09.2023 by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

55. Cases have come to the notice of this Tribunal in which short term permits for sand mining in river bed/agricultural land have been issued by the District Magistrate in the State of U.P. without environmental clearance by SEIAA in violation of direction given by the Hon'ble Supreme Court in Deepak Kumar's case (Supra) and this Tribunal and therefore the Director, Geology and Mining Department, Uttar Pradesh is directed to ensure no such short term permits are issued without EC and strict compliance with statutory provisions, SSMG, 2016 and EMGSM, 2020,

O. A. No. 176/2022

Aman Chaudhary Vs. Union of India & Ors.

-47-

Environment Protection Act, 2016 environmental clearance/consent conditions and directions given by the Hon'ble Supreme Court and this Tribunal is made by all the Project Proponents and to take action against all the Project Proponents who have not complied with the same. The UPPCB is directed to periodically inspect all mining lease sites in the State of Uttar Pradesh and monitor mining activities for verifying status regarding compliance with statutory provisions, SSMG-2016, EMGSM-2020, Environment Act, 2016 and directions given by Hon'ble Supreme Court and this Tribunal and take appropriate remedial action.

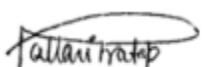
56. The Director, Geology and Mining Department, U.P. and UPPCB is also directed to take appropriate action against Respondent No. 2 – the Project Proponent for violation of SSMG, 2016, EMGSM, 2020 and environmental clearance conditions.

57. The Director, Geology and Mining Department, U.P. and Member Secretary, UPPCB are also directed to file Compliance Reports regarding compliance with above referred aspects/directions as well as status report regarding action taken against the Project Proponent on or before 15.09.2023 by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

58. UPPCB has filed interim application no. 592/2023 stating that UPPCB is unable to pay the honorarium and expenses to the amicus curie from the concerned fund and the same may be directed to be spent from environmental compensation fund.

59. We have heard the learned counsel and gone through the relevant record.

60. The case involves the questions relating to environment arising out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010 in the State of Uttar Pradesh. Vide order dated 26.04.2023, Mr. Raj Panjwani, Senior Advocate was


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appointed as *amicus curie* to assist this Tribunal in just and fair adjudication of environmental questions involved in the case. In the facts and circumstances of the case we consider it to be appropriate that honorarium and expenses payable to the *amicus curie* be paid out of environmental compensation deposited with UPPCB as such appointment of *amicus curie* is meant to serve ultimately the cause of protection of environment.

61. In view of the above, **interim application no. 592/2023 is disposed of** with the direction that honorarium and expenses be paid to the *amicus curie* by UPPCB out of amount/funds of environmental compensation deposited with UPPCB.

62. List for further consideration on 25.09.2023.

63. A copy of this order be forwarded by email to the applicant and learned Amicus Curiae for information and to the Secretary, MoEF & CC, Chief Secretary, Government of Uttar Pradesh, Member Secretary, CPCB, Member Secretary, UPPCB, Director, Geology and Mining Department, Uttar Pradesh and District Magistrate, Kanpur Nagar for compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

May 30, 2023

AG

2024 SCC OnLine SC 369

In the Supreme Court of India

(BEFORE ABHAY S. OKA AND SANJAY KAROL, JJ.)

Noble M. Paikada ... Appellant;

Versus

Union of India ... Respondent.

Civil Appeal Nos. 1628-1629 of 2021

Decided on March 21, 2024

Advocates who appeared in this case :

For Appellant(s) Ms. Nishtha Kumar, AOR

Mr. Vanshdeep Dalmia, Adv.

Mr. Shrom Sethi, Adv.

For Respondent(s) Mr. Gurmeet Singh Makker, AOR

The Judgment of the Court was delivered by

ABHAY S. OKA, J.:—

FACTUAL ASPECTS

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

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

"2. Requirements of prior Environmental Clearance (EC):—

The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of

land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

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

"Appendix-IX

Exemption of certain cases from requirement of Environmental Clearance

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

.. .. .
.. .. .

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

.. .. ."

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

4. In the Original Application subject matter of these appeals, the

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

"Appendix-IX

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

..
..

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

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

.."

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

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

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

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

6. The impugned notification was challenged on several grounds before the NGT by filing the Original Application subject matter of these appeals. Apart from other grounds, it was contended that the impugned notification violated the directions issued by this Court in the case of *Deepak Kumar v. State of Haryana*¹. Even the ground that the impugned notification was arbitrary and violative of Article 14 of the Constitution of India was invoked. We must note that in the Original

Application, the specific challenge was only to item 6 of the impugned notification.

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

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

(emphasis added)

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

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

the issuance of the amended impugned notification, even after the verdict was reserved, the parties were permitted to make further submissions on the legality and validity of the amended impugned notification.

SUBMISSIONS

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

10. The learned senior counsel invited our attention to a decision of this Court in the case of *Hanuman Laxman Aroskar v. Union of India*². She also relied upon a decision of this Court in the case of *Deepak Kumar*¹. She pointed out that as a result of item 6, there will not be any regulation of the extraction of ordinary earth for utilisation in linear projects, such as, roads, pipelines, etc. She submitted that such a blanket exemption will defeat the very object of enacting the EP Act and, in particular, Section 3 thereof. She submitted that the decision of this Court in the case of *Deepak Kumar*¹ and subsequent decisions mandated that there must be a requirement to obtain EC for the minor minerals pertaining to materials used for linear projects. The learned senior counsel submitted that allowing the extraction of the earth in such an indiscriminate manner is wholly arbitrary and violative of Article 14 of the Constitution of India.

11. Inviting our attention to the amended impugned notification, the learned senior counsel pointed out that the substituted item 6 provides that extraction of ordinary earth for linear projects shall be subject to compliance with the Standard Operating Procedure (SOP) and safeguards issued in this regard from time to time. Thus, the

exemption remains. However, an SOP will be laid down to avail the exemption. She urged that the substituted item 6 is more arbitrary.

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

13. The learned senior counsel pointed out that the decision of this Court in the case of *Deepak Kumar*¹ still holds the field, which directs that the leases of minor minerals, including their renewal for an area less than 5 hectares, shall be granted by the States/Union territories only after getting EC. She submitted that the impugned notification and the amended impugned notification, insofar as item 6 is concerned, are completely contrary to the directions issued by this Court in *Deepak Kumar*¹. She also urged that before publishing the draft of the impugned notification, objections to the draft notification were not invited. She submits that this action contravenes the provisions of sub-rule (3) of Rule 5 of the EP Rules.

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

policy matters.

CONSIDERATION OF SUBMISSIONS

15. We have carefully considered the submissions. The EP Act was brought into force on 19th November 1986. The statement of objects and reasons of the EP Act specifically refers to the substantive decline in environmental quality due to increasing pollution, loss of vegetal cover, etc. It also notes the growing risk of environmental accidents and threats to life support systems. It refers to the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972. In the said Conference, the world communities resolved to protect and enhance the environmental quality. Clause (3) of the statement of objects and reasons reads thus:

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

(emphasis added)

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

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

- (1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.
- (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:—
 - (i) co-ordination of actions by the State Governments, officers and other authorities—
 - (a) under this Act, or the rules made thereunder, or
 - (b) under any other law for the time being in force which is

- relatable to the objects of this Act;
- (ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
 - (iii) laying down standards for the quality of environment in its various aspects;
 - (iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever : Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;
 - (v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;**
 - (vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
 - (vii) laying down procedures and safeguards for the handling of hazardous substances;
 - (viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
 - (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;
 - (x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;
 - (xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
 - (xii) collection and dissemination of information in respect of matters relating to environmental pollution;
 - (xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;
 - (xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act."

(emphasis added)

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

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

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

- (2) **While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the**

procedure hereinafter laid down.

- (3)(a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.**
- (b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area.**
- (c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.**
- (d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may within 1 [three hundred and sixty-five days] from such day of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.**
- (4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3)."**

(emphasis added)

SCOPE OF ADJUDICATION

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

"(a) Pass an Order quashing newly inserted Clause 6 of the Impugned Notification dated 28.03.2020 as being violative of Article 14 and 21 of the Constitution of India, ultra vires the provisions of the EPA Act, 1986, the EIA Notification dated 14.09.2006, and in

further violation of the Judgment passed by the Hon'ble Supreme Court in the *Deepak Kumar case* (supra);

(b) Pass an appropriate Order quashing the Impugned Notification dated 28.03.2020 as being violative of the principles of Polluter Pay, Non-regression, sustainable development and Precautionary Principle;

(c) Pass an appropriate Order directing the Respondent not to allow any mining of ordinary earth without a prior environmental clearance."

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

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

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

List the matter after two weeks."

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

"5.

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

submitted that the aforesaid point was raised, however the Hon'ble Tribunal did not find merit in the said submission as is evident from the judgment dated 28.10.2020."

(emphasis added)

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

CHALLENGE TO ITEM 6 IN THE IMPUGNED NOTIFICATION Failure to follow the procedure prescribed by sub-rule (3) of Rule 5

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

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

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

"S.O. 1224(E).— WHEREAS, vide the Mineral Laws (Amendment) Act, 2020 (2 of 2020), the Mines and Minerals (Development and

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

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

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

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

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

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

.....”

(emphasis added)

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

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

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

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

allowing them to raise objections to the proposed notification. After all, citizens are major stakeholders in environmental matters. Their participation cannot be prevented by casually exercising the power under sub-rule (4) of Rule 5.

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

24. The impugned notification was issued two days after the nationwide lockdown was imposed due to the COVID-19 pandemic. At that time, the work of linear projects, such as roads, pipelines, etc., had come to a grinding halt. So, there was no tearing hurry to modify the EC notifications. Apart from the fact that no reasons have been assigned in the counter affidavit filed by the Central Government for coming to the conclusion that in the public interest, the requirement of prior publication of notice was required to be dispensed with, we fail to understand the undue haste shown by the Central Government in issuing the impugned notification during the nationwide lockdown. Therefore, the inclusion of item 6 of the substituted Appendix-IX will have to be held illegal. We have already given reasons for not dealing with the challenge to item 7 of the impugned notification.

ARBITRARINESS

25. There is one more important ground for striking down item 6. But for item 6 in Appendix-IX to the impugned notification, for extraction, sourcing, or borrowing of ordinary earth for linear projects, prior EC would have been required in terms of the first EC notification. The very object of issuing the first EC notification incorporating the mandatory requirement of obtaining EC for projects was that the

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

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

27. The learned Additional Solicitor General placed reliance on the Office Memorandum dated 21st August 2023. It provides that before carrying on activities mentioned in entry 6, the project proponents must notify the State Pollution Control Board/Pollution Control Committees. The State Pollution Control Boards are required to monitor the compliance status of the SOP/environmental safeguards. As entry 6 is arbitrary, the Office Memorandum is of no consequence. Hence, on account of the violation of Article 14, item 6 in the impugned notification, as well as the amended impugned notification, will have to be struck down. As noted earlier, the object of the EP Act is to protect and improve the environment. Apart from the illegality committed by non-compliance with sub-rule (3) of Rule 5 of the EP Rules, the exemption granted without incorporating any safeguards is completely unguided and arbitrary. Grant of such blanket exemption completely

defeats the very object of the EP Act.

NON-COMPLIANCE WITH THE DIRECTIONS OF THE NGT

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

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

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

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

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

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

¹ (2012) 4 SCC 629

² (2019) 15 SCC 401

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SLP(C) Diary No. 18136/2023

ITEM NO.17

COURT NO.5

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No. 18136/2023

(Arising out of impugned final judgment and order dated 26-09-2022 in WPMS No. 2909/2021 and 23-03-2023 in MCC No. 8/2023 passed by the High Court Of Uttarakhand At Nainital)

STATE OF UTTARAKHAND & ORS.

Petitioner(s)

VERSUS

SATYENDRA KUMAR TOMAR

Respondent(s)

(IA No.92824/2023-CONDONATION OF DELAY IN FILING and IA No.92826/2023-EXEMPTION FROM FILING O.T.)

Date : 16-05-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s)

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Virendra Rawat, D.A.G.
Mr. Keshav Sehgal, Adv.
Mr. M. Thangathurai, Adv.
Ms. Rachna Gandhi, Adv.
Mr. Sudarshan Singh Rawat, AOR

For Respondent(s)

Mr. Suhaas Ratna Joshi, AOR
Ms. Mallika Joshi, Adv.
Mr. P. Ramesh, Adv.

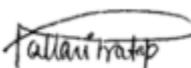
UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Issue notice returnable in the month of September 2023.

Signature Not Verified
Digitally signed by
SWETA BAI JOSHI
Date: 2024.05.18
19:18:18
Reason: I
Learned counsel for the respondent has entered appearance and
hence notice need not be served.

Till the next date of hearing, there will be partial stay of
the impugned judgment dated 26.09.2022 passed in Writ Petition


True Copy

(M/S) no. 2909/2021 and the order dated 23.03.2023 passed in the review petition being MCC no. 08/2023. While commercial sale of earth, boulders etc. will not be permitted, the *bhoomidhars* will be permitted to utilize the boulders etc. for their self-use within their land.

(DEEPAK GUGLANI)
AR-cum-PS

(R.S. NARAYANAN)
COURT MASTER (NSH)



PROOF OF SERVICE

106

2674

kunal arya <kunalarya16111989@gmail.com>

Service of Written Objections in IA No. 94/2024 in OA No. 481/2023 Balbir Sandhu vs state of UP And in the matter of: Mohit Kumar (Applicant)

1 message

kunal arya <kunalarya16111989@gmail.com>

Mon, Apr 22, 2024 at 2:33 PM

To: "Dalmialawoffices@gmail.com" <dalmialawoffices@gmail.com>, hasil jain <advjain25@gmail.com>

Please find attached the copy of Written Objections in the captioned matter.

Regards,

Office of Pallavi Pratap
Advocate for the Applicant-Mohit Kumar
A-90, LGF South Ex-II, New Delhi
Mob: 9999990078
Email: pallavipratap@hotmail.com

2 attachments **NGT Written Objections for Salim 22 04 2024.pdf**
10527K **NGT WS for MEMTA 22 04 2024.pdf**
7403K

2675



National Green Tribunal

Your Payment is Successful

Case Title :	Balbir Sandhu vs
Transaction Id :	0101010072782024
Transaction Date :	22-04-2024
Miscellaneous No :	0701116003582024/1

S. No.	DD/IPO.	Amount Rs.	Bank/IPO Name	Branch Name	State	District	Pin Code
1	56H267758	100	Post Office	ITO	Delhi	NEW DELHI	
2	56H267757	100	Post Office	ITO	Delhi	NEW DELHI	
3	56H267756	100	Post Office	ITO	Delhi	NEW DELHI	
4	56H267755	100	Post Office	ITO	Delhi	NEW DELHI	
5	56H267754	100	Post Office	ITO	Delhi	NEW DELHI	
6	56H267753	100	Post Office	ITO	Delhi	NEW DELHI	
7	56H267752	100	Post Office	ITO	Delhi	NEW DELHI	
8	56H267751	100	Post Office	ITO	Delhi	NEW DELHI	
9	56H267750	100	Post Office	ITO	Delhi	NEW DELHI	
10	56H267749	100	Post Office	ITO	Delhi	NEW DELHI	
11	56H267748	100	Post Office	ITO	Delhi	NEW DELHI	
12	56H267747	100	Post Office	ITO	Delhi	NEW DELHI	
13	56H267746	100	Post Office	ITO	Delhi	NEW DELHI	

S. No.	File Name	Party Name	Location	Document Type
1	NGT Written Objections for Salim 22 04 2024.pdf	Mohit Kumar	NEW DELHI (PRINCIPAL BENCH)	Others
2	NGT WS for MEMTA 22 04 2024.pdf	Mohit Kumar	NEW DELHI (PRINCIPAL BENCH)	Others

*Payment will be accepted as complete only when actual DD/IPO is submitted at NGT Office