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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 752 OF 2023

NARENDER KUMAR

..... APPLICANT

VERSUS

UNION OF INDIA & ORS.

..... RESPONDENTS

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Note: The aforesaid O.A. No. 752 of 2023 is listed before the Hon'ble Principal Bench, New Delhi for 10.05.2024.

DATED: 30.04.2024

THROUGH COUNSELS


(VANEET SONI) (NAVEEN KUMAR)
P/1239/2001 P/2459/2014
COUNSELS FOR THE RESPONDENT NO. 10

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 752 OF 2023

IN THE MATTER OF:

NARENDER KUMAR

..... APPLICANT

VERSUS

UNION OF INDIA & ORS.

..... RESPONDENTS

OBJECTIONS ON BEHALF OF RESPONDENT NO.
10-M/S TIRUPATI ROADWAYS TO THE INTERIM
REPORT OF THE JOINT COMMITTEE DATED
28.02.2024.

TO,

THE HON'BLE CHAIRPERSON AND HIS COMPANION

MEMBERS OF THE NATIONAL GREEN TRIBUNAL.

MOST RESPECTFULLY SHOWETH:-

1. That the above-mentioned Original Application has been filed by the Applicant seeking an injunction on mining activities of the Respondent No. 10 in their contracted mining area. It is submitted at the outset that the averments of the Original Applicant are not only misleading but are also factually incorrect and are denied by the answering respondent.
2. That this Hon'ble Tribunal has vide order dated 04.01.2024 directed the Joint Committee to submit its factual report. In furtherance to the directions by this Hon'ble Tribunal, an interim

report dated 28.02.2024 has been submitted by the Committee formed by this Hon'ble Tribunal on 28.02.2024.

3. That on receipt of the aforesaid interim report, this Hon'ble Tribunal vide order dated 1.03.2024 was pleased to allow the answering respondent (Project Proponent) to file objections/ response to the said interim report of the Joint Committee and also directed the committee to submit its final report one week before the next date of hearing. Hence, the present objections to the interim report of the Joint Committee are being filed on behalf of answering respondent (respondent no. 10-M/s Tirupati Roadways).

4. That before proceeding further to set forth the objections to the said interim report, the answering respondent craves the indulgence of this Hon'ble Tribunal to permit them to set forth the facts and law relating to the grant of mining contract to them by the State Government for appreciation of the matter in its true perspective .

5. That it may be respectfully submitted that the Parliament has enacted Central legislation namely Mines and Minerals (Regulation & Development) Act 1957 (hereinafter referred to as Central Act) for regulation and development of minerals in the country. The Central Act, vide Section 3(e) defines the expression "minor mineral", to the following effect:-

(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral ; "

21. Penalties.—1 [(1) 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.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.]

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land. 2

[(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.]

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person,

rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority. 3 [(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.]

6. That boulder, gravel and ordinary sand the mention of which shall be made in the succeeding paragraphs of this reply fall in the definition of the minor minerals as defined hereinabove. The provisions of Section 15 of the Central Act authorize the State Governments to frame their own Rules for regulation for grant of mineral concession of minor minerals. For the said purpose earlier State of Haryana had adopted the Punjab Minerals Concession Rules, 1964 with certain amendments State of Haryana framed their own Rules namely, Haryana Minor Mineral Concession, Stocking and Transportation of Mineral and Prevention of Illegal Mining Rules, 2012 (in short State Rule, 2012) in line with its mineral policy for regulating the minor minerals in the State.

7. That Rule 103 and rule 104 of State Rule, 2012 dealing with illegal mining and consequences of illegal or unauthorized mining are reproduced below :-

103. Illegal or unauthorised Mining. - Any person undertaking any mining operations without a valid mineral concession granted under the Act and the rules framed there under in any area shall be deemed to be indulging in illegal or unauthorised mining and shall be dealt in accordance with the provisions contained in this chapter.

104. Consequences of illegal or unauthorised mining. - Any act of illegal or unauthorised mining shall be liable to the following:

- (i) for a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees;
- (ii) for a second time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation for a minimum period of seven days, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than fifteen thousand rupees;
- (iii) wherever a person is found to be indulging in such offence for the third time or more, the officer concerned shall register an FIR and handover all such tools, equipment, vehicles or any other things used for such unauthorised operation to the Police. Any such offence shall entail (a) confiscation of all such tools, equipment, vehicles or any other thing used for such unauthorised operation for a period of minimum thirty days or more, and (b) pecuniary penalty and punishment for the offence as provided under Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957.

8. That reverting back to the facts of the case and to the averments made in the present O.A. No 752 of 2023 and response of answering respondent thereto, it is humbly submitted that in the e-auction held on 24.05.2017 and on 25.05.2017 on the State Government web portal, the answering respondent gave a highest

bid of Rs. 11,72,50,000 per annum for the grant of mining contract of Rattewali Block/PKL B-10, district Panchkula having an area of 45 hectares for extraction of boulder, gravel and sand for a period of seven years. The highest bid of the respondent no. 10 was accepted by the State Government and a "Letter of Intent" was granted to them on 16.06.2017 so as to enable them to get environment clearance (EC) from the Ministry of Environment, Forest and Climate Change, Government of India (in short MoEFCC) under its notification dated 14.09.2006.

9. That a contract agreement on Form MC-1 of the State Rule 2012 was also executed on 4.12.2018 by the respondent no. 10 and their solvent sureties with the DGMG on behalf of the State Government. In compliance with condition No 3(xvii) and 3(xviii) of the LOI referred to above respondent no. 10 obtained environment clearance from the State Environment Impact Assessment Authority (SEIAA) on the recommendations of State Environment Appraisal Committee (SEAC) on 21.02.2020 as per which respondent no. 10 was permitted to extract 8,39,000 MT of boulder, gravel and sand per annum. After seeking Consent to Establish and Operate from Haryana State Pollution Control Board the respondent no. 10 commenced mining operation w.e.f 21.03.2020 .

10. That it is pertinent to point out that when the respondent no. 10 commenced mining operation in March, 2020 they observed illegal mining done earlier by some anti-social elements in connivance with land owners in the areas which adjoin the contracted area of the respondent no. 10. In fact this illegal mining

had been going on even prior to the grant of mining contract to the respondent no. 10 as would be evident from the FIRs lodged by the department against the antisocial element who indulged in illegal mining. (details of FIR's given on page 3 of reply of respondent no. 10 dated 4.09.2023 to the show cause notice dated 22.08.2023). By making respondent no. 10 a scapegoat, the illegal mining done by the anti-social elements was attributed to the respondent no. 10 and a show cause notice dated 22.8.2023 was issued to respondent no. 10 alleging that a team of officers from the office of DGMG in order to verify the contents of the report of State Vigilance Bureau, Haryana (now Anti Corruption Bureau) alleging illegal mining of 47,66,079.68 MT by respondent no. 10, inspected the mine of the respondent no.10 on 23.11.2022 and allegedly further detected illegal mining to the tune 18,467 MT (allegedly mining done up to the depth of 1.75 meter instead of permissible 1.33 meter) inside the contracted area and 2,75,456 MT from the area adjoining the contracted area. It was further stated in the show cause notice that further inspection by the above said team on 15.06.2023 fresh illegal excavation to the tune of 16,44,500 MT was detected. In all, respondent no. 10 was directed to deposit a sum of Rs. 134,09,45,600/- as royalty, price and fine on 67,04,503 MT of boulder, gravel and sand alleged to have been illegally mined by respondent no. 10 from in around his contracted area. The respondent no. 10 was directed to deposit this amount in 30 days failing which mining operation would be suspended and matter would be referred to DGMG for termination of the contract. A copy of the show cause notice dated 22.08.2023

is annexed herewith as Annexure R-10/1. On receipt of aforesaid notice dated 22.08.2023, the respondent no. 10 submitted a detailed reply to the show cause notice refuting each and every allegation made in the show cause notice. Copy of reply dated 04.09.2023 to the show cause notice is annexed herewith as Annexure R-10/2. At this juncture, it would be imperative to refer to the provisions of Rule 73 and relevant portions Rules 74 and 75 of the State Rule, 2012 are reproduced as under for ready reference:-

“Rule 73. Non-compliance with or violation of the terms and conditions of the mineral concessions. -

(1) A mineral concession holder shall be held to be in 'default' of compliance of the conditions of grant of mineral concession in cases where the non-compliance is rectifiable suo motu or upon a notice within the period indicated in such notice. Some of the instances of major violations on the part of the mineral concession holder may be in the following areas:

(i) Undertaking mining operations in an unsafe and unscientific manner i.e. without bench formation, non-erection or maintenance of boundary pillars, lack of labour safety measures, and the regulations pertaining to the use of explosives;

(ii) Non-installation of the electronic weigh bridges or, the weigh bridges, if installed, are found to be not calibrated properly to ensure correct weighment;

(iii) Non-adherence to the rules with regard to the limits prescribed for stocking of minerals and failure to furnish the prescribed returns in this behalf;

(iv) Dispatch of mineral from the concession area without a valid mineral transit pass and through a vehicle not possessing a valid mineral transport permit;

(v) Non-submission of the prescribed reports and returns as per the time frame prescribed;

(2) Wherever non-compliance of terms and conditions of the mineral concession or violation thereof is observed, it shall cause a notice to be served upon the mineral concession holder to rectify the default and take corrective measures within such period as may be specified in such notice.

Rule 74(1) - "Any failure on the part of the mineral concession holder to rectify any default or take corrective measures under rule 73 above within the period specified or such violation being irreversible and non-rectifiable or recurrence of default takes place, the same shall amount to a "breach" of the terms and conditions of grant of mineral concession.

Rule 75. Procedure for dealing with 'Breach' conditions and the penalties. - (1) A breach of any of the conditions of grant of a mineral concession or violation of any of the conditions relating to permission or clearance to undertake mining by any authority shall be dealt as under:-

(i) the Director shall, upon inspection by himself or any officer of the department or on reporting of any violation amounting to breach by any other competent authority, issue a notice to the mineral concession holder to show cause within the period specified therein as to why the mineral concession be not prematurely terminated along with forfeiture of the amount of security, in full or part thereof, and forfeiture of the mineral already excavated while undertaking said operations;

(ii) on receipt and examination of the reply of the mineral concession holder, the Director may, on his satisfaction that the breach was either not entirely due to fault on the part of the concession holder or was beyond his control

or the same had actually not been committed, settle the notice with such caution as deemed appropriate with or without any further directions;

(iii) where the mineral concession holder admits to the breach having been committed on his part and promises to remedy the breach conditions in his reply and requests for grant of time, and the Director is satisfied with such promise, he may grant time as deemed proper for implementation of the remedial measures with or without a surety;

(iv) in case the Director prima facie forms an opinion on examination of the reply of the mineral concession holder that the breach is of a recurring or continuing nature, he may order suspension of the mining operations with immediate effect along with a ban on dispatch of the mineral from the site or any other related activity in the mine;

(v) In case the Director is not satisfied with the reply submitted by the mineral concession holder, the Director may terminate the mineral concession with or without forfeiture of the security amount in whole or part thereof along with forfeiture of the mineral already excavated while undertaking said operations. However, no such order shall be passed without affording an opportunity of show cause and representation to the mineral concession holder....”

11. That as apparent from Rule 74(1) of Rules of 2012 if the violations as enumerated in the Rule 73 are not rectified even after serving of notice and giving proper opportunity then these shall be treated as “breaches’ and when breach is not removed after a show cause notice only then action to suspend mining operation shall be initiated under sub rule 1(iv) of Rule 75 of Rules of 2012.

Thus in the instant case, the mining operations could not be suspended straightaway without following the mandatory procedure as set forth in the aforesaid Rules.

12. That respondent no. 10 had in his reply dated 4.09.2023 specifically brought out the fact that large scale illegal mining took place in around the contracted area before the grant of mining contract to the respondent no. 10, as would be evident from the detail of FIR's lodged by the department against the antisocial element who indulged in illegal mining. The illegal mining done by the antisocial elements has been attributed to the respondent no. 10 with malafide intention to inflict huge pecuniary liability on the respondent no. 10. In the reply dated 4.09.2023 position relating to the each of the quantity alleged to be illegally mined by respondent no. 10 as stated in the show cause notice dated 22.08.2023 was elaborately clarified. As regards 47,66,080 MT shown to have illegally mined by the respondent no. 10 by the Vigilance Bureau a detailed reply was sent to it 10.10.2022 explaining the position of respondent no. 10 qua this quantity. A copy of the reply dated 10.10.2022 is attached as Annexure R-10/3. In addition, position was further clarified in para 11 of the reply dated 4.09.2023. Regarding quantity of 2,93,923 MT position was explained in para 3 of the reply dated 4.09.2023 (in para wise reply page 7) and of 16,44,500 MT in para 6 of the reply dated 4.09.2023 (in para wise reply page 10).

13. That the respondent no. 10 commenced mining operation on 21.03.2020 and last inspection was made by a committee on 15.06.2023. Thus as per version of the department during the period

from 21.03.2020 and 15.06.2023 respondent no. 10 did illegal mining of 67,04503 MT as alleged in show cause notice dated 22.08.2023 i.e. within three years and three months. Taking 300 working days in a year then illegal mining of 67,04503 MT was done in 975 days or 6876 MT per day. Taking each truck load carry about 20 MT of BGS then every day about 344 truck load of illegally mined BGS were transported without e-rawana. It is beyond anybody's comprehension to believe that such a huge number of trucks could ply on the roads every day without e-rawanas without being detected, continuously for more than three years, by the mining staff of district Panchkula, by members of **District Level Task Force (DLTF)** constituted by Deputy Commissioner Panchkula, by Special Investigation Team (SIT) headed by Deputy Superintendent Of Police formed by the department and lastly by Policemen of Police Stations of Pachkula, Barwala, Raipur Rani, Naraingarh etc. The office of Mining Officer Panchkula as well as of Director Mines and Geology are located at half an hour drive from the Rattewali site. It is unbelievable that such a large illegal mining and transportation if it had taken place can escape their notice. Whereas in reality, the trucks even carrying e-rawana, but crossing its validity time by a few minutes, are being seized by above referred enforcement staff and released only after recovery of hefty fine up to Rs. 4 lakhs. In such a situation, it is unbelievable and unthinkable that truck owners/drivers will dare to ply on the roads with illegally mined 344 truck loads of BGS per day without e-rawana. In these circumstances, the only logic conclusion which can be drawn is that either all of enforcement staff detailed above had connived with the respondent

no. 10 and are equally guilty being accomplice or the figure of illegal mining of 67,04,503 MT has been cooked up to frame the respondent no. 10 under the influence of rival mining contractors. The inspection committees failed to elucidate as to how this huge quantity was dispatched by respondent no. 10 without e-rawana and how it remained un-noticed by the Mining staff, District Task Force and Police etc. All these facts and figures were brought to the notice of Mining Officer, Panchkula at the time of hearing on 15.02.2024 but the MO PKL neither made any mention of these facts and figures in the impugned order nor any rebuttal is made therein which is totally against the principle of justice.

14. That HARSAC while calculating the volume and tonnage of boulder, gravel and sand alleged to have been illegally mined by the respondent no. 10 did not take into consideration the quantum of over burden removed by them and also the quantum of legal mining done by them in terms of the EC granted by the MoEFCC which authorised them to extract 8.39 Lakh TPA of boulder, gravel and sand per annum. According to the approved mining plan the sand deposits of the contracted area are overlain by layer of soil and alluvium of varying thickness of 2 to 4 meter. The over burden of soil and alluvium of average thickness of 3 meter which was removed by the respondent no. 10 in order to reach the sand deposits also formed the part of total deposits calculated by the HARSAC. In the HARSAC report, the tonnage of mining done by respondent no. 10 from 356.80 MSL to 342 MSL has been calculated as 47,66,079 MT out of which over burden of 3 meter is of soil and alluvium which comes to 1/4th of total quantity of

47,66,079 MT i.e. 11,91,519 MT which respondent no. 10 removed after incurring huge expenditure which had no economical value and was disposed of as waste. Moreover depth of overburden is over and above the permissible depth up to which boulder, gravel and sand (BGS) can be extracted. The thickness of overburden is not counted with the actual permissible depth. Thus the quantum of overburden need to be deducted. In addition for a period of 3 years i.e. from 20.3.2020 to 15.6.2022. The respondent no.10 was authorized to extract 25.17 Lakh MT (8.39 Lakh TPA) from the contracted area in terms of the EC granted to them. In this way a production of 11,91,519 MT + 25,17,000 MT= 37,08,519 MTs cannot be termed as illegal mining out of the total quantity of 47,66,079MT. In this way respondent no 10 is required to explain about 10,57,560 MT only.

15. That following observations made in the HARSAC report are imperative, which are reproduced as such:-

"The entire report is prepared as per the information (existing level of river bed and permissible level of river bed) available in the mining plan provided by email dated 17.5.2022".

DISCLAIMER NOTE:- It is clarified that HARSAC shall not be responsible or liable in any manner before any court of law/authority/tribunal/forum in this regard to the submission of this report. It is further clarified that if any notice is issued or received to HARSAC in this regard, then only the concerned stake holders may be held responsible to respond to the same and not HARSAC because HARSAC is only technical facilitator to the Government department.

In these circumstances no heavy reliance can be placed on the report of HARSAC which has been prepared on the available data whose authenticity cannot be guaranteed.

16. That it is pertinent to point out that the mining plan only gives to permissible depth of 353.80 MSL and not existing level of 342.30 MSL on the basis of which the calculations have been made by HARSAC. Thus the claim of HARSAC that entire calculation have been made on the basis of mining plan is not correct. In the mining plan the existing depth of 342.30 MSL is not given which has been coined by the HARSAC itself so by giving disclaimer it cannot shed its responsibility of proving what it has said in the report detrimental to the interest of respondent no. 10 otherwise it has no evidentiary value. The respondent no. 10 strongly disputes that they ever carried out mining upto the depth of 14.5 meter (342.30 MSL) beyond the permissible depth of 1.33 meter. It is beyond anybody comprehension that respondent no. 10 could do mining upto such a depth without the knowledge of the authorities who regularly visit their mine which is located only at a distance of 30 minutes drive from the office of Mining Officer, Panchkula as well as of Director, Mines and Geology.

17. The perusal of the interim report of the joint committee would show that in the table in para No. 7 of its report against serial No. 1 which relates to the permissible maximum minable depth of 1.33 meter the joint committee has mentioned that Project Proponent (respondent no. 10) has violated the maximum depth from the original ground. It does not mention upto what extent. If the respondent no. 10 had gone upto the depth of 14.5 meter instead of

1.33 meter the joint committee would have pointed out this grave violation on the part of PP. The PP strongly challenges the contention that they had carried out mining upto the depth of 14.5 meter. **This Hon'ble Tribunal may get this fact verified by inspection from any Independent Agency.** Thus the report of the Vigilance department is not based on facts and is fully exaggerated. It is worth mentioning here that a departmental committee visited the lease hold area of the respondent no. 10 on 23.11.2022 i.e. on date subsequent to the report of HARSAC dated 6.06.2022. **Surprisingly this committee only found that the respondent no.10 was doing mining upto the depth of 1.75 meter depth instead of permissible depth of 1.33 meter and assessed that the respondent no. 10 had extracted 1,07,450 MT beyond the permissible depth(Pl see show cause notice dated 22.08.2022 (Annexure R-10/1) whereas HARSAC in its report made calculation for the illegally mined mineral up to the depth of 14.5 meter on a date earlier to 23.11.2022. This also needs to be reconciled and there is all the more reason that the area should be got inspected from independent agencies like Indian Bureau of Mines, Nagpur, Directorate General of Mines Safety, Dhanbad or by Directorate General of Geological Survey of India, Kolkata.**

18. That as regards the allegation of illegal mining done by respondent no. 10 outside the lease hold area as observed by the departmental committee in its report dated 15.6.2023. It is submitted that respondent no. 10 in its reply dated 04.09.2023 (Annexure R-10/2) had already pointed out that illegal mining had

been going on the areas adjoining to the area which was given on mining contract to them and department had itself lodged FIR's against anti social elements who had indulged in illegal mine.

19. That the perusal of the demand notices dated 22.08.2023 and dated 18.10.2023 would show that in a arbitrary manner a huge sum of Rs. 134,09,45,600/- is being claimed from the respondent no. 10 without stating the provision of law under which the price, royalty and fine on alleged illegally mined quantity of mineral is being claimed . For argument sake not admitting otherwise, in case this claim is being made under Rule 104 of State Rules, 2012 even then the perusal of rule 103 of State Rule, 2012 reproduced above show that the Rule 104 comes in to play only when any person undertake any mining operations without a valid mineral concession granted under the Act and the rules framed there under in any area which is not the present case as respondent no. 10 is legal mining contractor of the Department. In addition, it becomes applicable only when seizure of mineral, tools and equipment used for illegal mining is done by the Department which may be released only on payment of price, royalty and fine on the mineral illegally mined and seized. In the present case there is no seizure of mineral along with the impounding of all such tools, equipment, vehicles or any other things used for such illegal mining. Thus no recovery of price, royalty and fine on 67,04,503 MT of BGS as mentioned in the impugned order can be made in absence of any seizure of any mineral alleged to be illegally mined. In these circumstances respondent no.10 is not covered by the provision of section 21(5) of Central Act, 1957 or

under rule 103 and 104 of State Rules **being a valid and legal mining contractor**. Secondly for argument sake not admitting otherwise even if the case of respondent no. 10 is covered under these provisions even then it is submitted that no proper procedure laid has been followed for arriving at quantum of alleged illegal mining. This huge quantity cannot be dispatched in a short span of time it would have taken months to dispatch such huge quantity. But the committee failed to elucidate as to how this huge quantity was dispatched by respondent no. 10 without e-rawana and how it remained un-noticed by the Mining staff, District Task Force and Police etc. These mere statements of the committee without any supporting evidence are arbitrary and cannot be relied upon. The committee has not elaborated as to by which mode it has calculated such a precise figure of illegal mining and has also not stated that on what basis they have come to the conclusion that this illegal mining was done by respondent no. 10 and not done prior to the grant of mining contract to the respondent no. 10 for which FIR's were lodged by the department. In these circumstances the report of the committee cannot be relied upon.

20. That the demand notices dated 22.08.2023 and dated 18.10.2023 have been issued against the instructions issued by the Mines Department itself to the Mining Officers of the State as per which before issuing a demand notice under section 21(5) of Central Act and rule 104 of State Rules, 2012 they are required to issue a show cause notice as to why price, royalty and fine be not recovered from the person who has allegedly illegally mined the

mineral. In the show cause notice the person accused of illegal mining is required to be confronted with evidence on the basis of which Mining Officer has formed his opinion that accused person had indulged in illegal mining. As per instructions issued referred above, after receiving the reply to the show cause notice from the accused person, the Mining Officer, if not satisfied with reply, is required to afford an opportunity of being heard to the accused person. On the basis of hearing held and evidence collected by him relating to illegal mining, if he forms an opinion, that illegal mining has been done by the accused person, then he is required to pass a speaking order raising demand of price, royalty and fine against the accused person. However, in issuing the demand notices dated 22.08.2023 and dated 18.10.2023 the MO PKL has failed to abide by principle of natural justice as well as the instructions of the department.

21. That the above plea of the appellant stand fortified from the judgment of the Hon'ble Allahabad High Court in the case of Ranveer Singh Vs State of U.P (Writ-C.No 1986 of 2016 decided on 16.12.2016 wherein Collector, Saharanpur as in charge of the district exercising the powers of State Government delegated to him under section 21(5) of Central Act had imposed the penalty in the form of price and royalty of sand alleged to have illegally mined by the Ranveer Singh the petitioner. The facts of the case of appellant are to some extent identical but important difference is that the appellant is a legal mining contractor who can not be proceeded under section 21(5) of Central Act which is applicable on person like

Ranveer Singh who allegedly indulged in illegal mining without being a mining contractor or lessee . The relevant extract of the said judgment of Ranveer Singh is reproduced as under:-

*"In the present case, the allegations that have come forward is that petitioner has indulged in illegal mining and accordingly, royalty and other dues are liable to be charged from him. Section 21(5) of the MMDR Act, 1957 clearly makes its intentions clear by empowering the State Government to recover rent, royalty or tax from the person who has raised the mineral from any land without any lawful authority and also empowers the State Government to recover the price thereof where such mineral has already been disposed of, inasmuch as, the same would not be available for seizure and confiscation. Once there has been complaint of illegal mining, then certainly the said amount in question has to be recovered from the person, who was not entitled in law to raise such minerals but has proceeded to indulge in raising of such mineral without any authority of law, **but the larger issue that is engaging our attention is as to what should be the procedure that is to be adhered at the point of time when such a liability is fastened on a incumbent, qua whom allegations have come forward that he has caused loss to the State by raising of minerals though he was not entitled in law to raise the same.***

Rate of royalty/dead rent is fixed under the provisions of MMDR Act and the Rules framed there under, the extent of illegal mining can be computed by making comprehensive survey and then assessing the quantity of mineral illegally raised, followed by quantification of the amount liable to be recovered and then proceeding to recover the same from the person responsible for such illegal mining. Before recovering

the liability to be discharged is liable to be fastened on incumbent, who has purportedly caused loss to the State exchequer by raising the mineral. Qua the same a full fledged mechanism is not at all there, in view of this, we posed specific query to the State as to in what way and manner, an incumbent, against whom financial liability is to be shouldered in lieu of illegal mining, is to be dealt with. Learned Standing Counsel has submitted that apart from the provisions quoted in the preceding part of the judgement, there is no fixed criteria provided for and accordingly, action is taken by the State/Competent Authority by adhering to provide reasonable opportunity of hearing before forming formal conclusion.

Law on the subject is clear that the exercise of power by public authority is always coupled with duty to fulfill the conditions of such exercise and the said responsibility in question has to be properly discharged and in the said direction, once there is procedure in place then action contemplated has to be done in a certain way or not at all, but once there is no specific procedure provided for as to in what way and manner for illegal mining, liability is to be fastened, then obviously in absence of Rules, fair procedure has to be followed.

Here, in the present case, State is coming up with the case that petitioner has himself indulged in illegal mining whereas the petitioner, in his turn, is declining of being engaged in any illegal mining and contrarily, he claims himself to be a crusader against illegal activities and thus a victim. This is also an accepted position that on his complaint Apex Court has already taken cognizance in the matter against the incumbent, against whom he has made a complaint, but the fact of

the matter is when fingers have been pointed at others, then counter finger has been pointed in the direction of petitioner also that he has tainted background and the fact of the matter is that he himself is Mining mafia. Apex Court in its order dated 25.04.2016, gives liberty to petitioner to respond to the notices before the Competent Authority, and the Competent Authority has been asked to bring the proceedings to its logical conclusion. In the present case as such, the petitioner is also burdened to get clean chit in the said direction once the Authorities on the spot even before the matter has been before Apex Court has initiated proceedings as against him.

The Act/Rules in question do not contemplate or provide for a procedure to be adhered by the decision maker in the matter of fixing financial liability against incumbent engaged in illegal mining.

Here, the petitioner has been denying his indulgence in the activity of illegal mining and what we find from the decision making process and from the record is that rule of fair play has been breached with impunity, inasmuch as, after liberty has been accorded by the Apex Court, the petitioner has proceeded to file a detailed and exhaustive reply wherein each and every facet of the matter was sought to be denied/disputed and most conveniently, it is sought to be mentioned by the District Magistrate that the reply submitted by the petitioner was no satisfactory and in the earlier part of the order while dealing with respective notices, it has been mentioned that petitioner has not proceeded to place sufficient material to rebut the allegation. Decision maker in the present case has ignored the weight of reply available on record as extracted above and has dealt with the same in perfunctory manner with

closed mind, whereas while exercising quasi-judicial authority was required to be free from bias i.e. there should be absence of conscious or unconscious prejudice to either of the parties. Here the tenor of proceedings are speaking for itself that District Magistrate while dealing with the matter was proceeding with pre-conceived notion that petitioner in-fact has indulged in illegal mining, whereas the said opinion could have been formed, only after enquiry was held.

Once the liability was to be fastened on the shoulder of petitioner, then **it was the obligation of the State to prove by way of credible evidence available that it was the petitioner, who has indulged in illegal mining and in the said direction, apart from issuing show cause notice, all the evidence that was sought to be relied upon i.e. the incumbents who have carried out the search and survey and the incumbents who have come forward to depose against petitioner, their names ought to have been disclosed and they ought to have been produced to support the case of State that petitioner in-fact has indulged in illegal mining.** Not only this as a part of process, petitioner was entitled to have reasonable opportunity of **defending himself by questioning the veracity of evidence produced against him and by adducing his own defence evidence, if any.** Decision maker is bound to act fairly, as under the scheme of things provided for, the determination made by him will entail civil consequences, as qua the person charged with illegal mining on charges being proved financial liability would be shouldered and in contra situation, the State would be at loss.

Apex Court in the case of **Goa Foundation vs. Union of India 2014 (6) SCC 590** while dealing with the report of Shah Commission, constituted for inquiring illegal mining, in reference of report so submitted held that prosecution of mining lessees cannot be directed on the basis of finding in report of Shah Commission, as before submitting said report, **incumbents have not been provided with the opportunity of being heard and to produce evidence in their defence and not allowed the right to cross-examine.** In the said case, Central Government/State Government gave undertaking that no action would be undertaken on the basis of said finding without undertaking exercise of giving opportunity of hearing.

Since in the present case the State/Competent Authority would conduct an enquiry into the allegation of illegal mining it would possess the character of quasi-judicial proceeding. Recording of finding as to illegal mining being carried out by a particular incumbent for the purposes of fixing financial responsibility **would certainly entail full-fledged enquiry, comprising allegation/evidence in support of charges coming forward followed by his case in defence and then findings arrived at based on evidence adduced.** Recovery would follow if the finding returned is adverse to incumbent charged with allegation of illegal mining. Having regard to the character and complexion of proceedings in conjunction with the structure of power conferred by the Act/Rules, the inevitable conclusion is that proceedings in hand necessarily will have to be quasi-judicial proceedings wherein full play is required to be given to the rule of natural justice by the State/Competent Authority.

In view of this, as far as we are concerned, we are not at all approving the decision making process that has been so undertaken by the State, the same having been passed in most arbitrary fashion with closed mind, without providing reasonable opportunity of hearing to petitioner and for absence of reason, accordingly, the order dated 06.10.2016 passed by District Magistrate, Saharanpur is hereby quashed and set aside. As we have intervened on the issue of decision making process, we proceed to pass an order asking the State/Competent Authority to issue a concrete show cause notice to the petitioner appending therein the entire material to be relied upon and the list of witnesses in support of the same and thereafter after adducing evidence and after providing opportunity of hearing to the petitioner to lead his defence, reasoned decision be taken based on evidence adduced preferably within next three months from the date of receipt of certified copy of this order.

*With this, present Writ Petition is **allowed.**"*

22. That the findings in the above referred case are fully applicable to the present case. Firstly the Mining Officer did not pass his order under section 21(5) of the Central Act or under 104 of State Rules secondly if at all it is admitted for argument sake and not admitting he passed order under this provision of law even then no formal procedure as laid down in above judgment has been followed thus the demand notices dated 22.08.2023 and dated 18.10.2023 are illegal.

23. That the perusal of the interim report of joint committee would show that it has not been signed by the Deputy Commissioner, Panchkula and State Mining Engineer of Mines and Geology

Department who are the key member of the joint committee constituted by this Hon'ble Tribunal. In absence of consensus amongst the members of joint committee the recommendation made by it, in the opinion of respondent no. 10 are not legally valid and may not carry any weight.

24. That under the heading "observation of the joint committee" in para 1 the committee has observed that on day of visit on 8.2.2024 it was found that mining has been done within the pillars installed by the Revenue Department and Mining department and same has been verified by the Tehsildar, Panchkula that no mining was done beyond the pillars. This observation completely demolishes the allegation of the departmental committee that respondent no. 10 has done illegal mine outside the lease hold area. This report also did not talk about any deep mining done by the respondent no.10 as alleged in vigilance report

25. That it is worth mentioning here that the respondent no. 10 has filed a Criminal Misc. Petition CRM-M No. 4430 of 2024 in Hon'ble Punjab and Haryana High Court, Chandigarh challenging the FIR lodged by the Vigilances Department under different sections of IPC. The challenge of the respondent no. 10 is based on the plea that the legal mineral concession holder cannot be proceeded against under section 379 IPC as he had not committed any theft of mineral. At best he can be proceeded under section 21 of Mines and Minerals (Regulation & Development Act), 1957 for carrying out un-authorized mining. The Mineral Concession Rules-1960 framed under section 13 of the MMRD Act was amended on 26.07.2012 to introduce the definition of "illegal mining" as Clause

(ii a) in its Rule 2. The definition of illegal mining introduced is reproduced as under:-

“(ii a)” Illegal mining” means any reconnaissance or prospecting or mining operation undertaken by any person or a company in any area without holding a reconnaissance permit or a prospecting license or , as the case may be, a mining lease, as required under sub-section (1) of section 4 of the Act.

Explanation—For the purpose of this clause:-

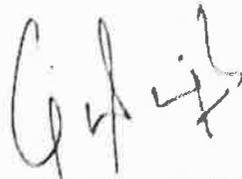
*(a) violation of any rules, other than the rules made under section 23C of the Act, within the mining lease area **by a holder of a mining lease shall not include illegal mining:***

(b) any area granted under reconnaissance permit or a prospecting license or a mining lease, as the case may be, shall be considered as an area held with lawful authority by the holder of such permit or license or a lease, while determining the extent of illegal mining.

By introducing the definition of illegal mining in the mineral concession Rule, 1960 the Central Government has distinguished between illegal mining and un-authorised mining. The legal mineral concession holder can not be proceeded against for illegal mining or for theft of mineral. The above referred CRM-M is fixed for hearing on 02.05.2024 before Hon'ble High Court.

In view of the submissions made hereinabove, it is most humbly prayed that this O.A. may kindly be dismissed being devoid of any merit as same has been filed with ulterior motives at the behest of rival mining contractors.

DATED: 30.04.2024



(GURPREET SINGH SABHARWAL)
FOR RESPONDENT NO. 10

THROUGH COUNSELS



(VANEET SONI) (NAVEEN KUMAR)

P/1239/2001

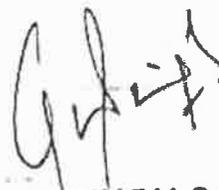
P/2459/2014

COUNSELS FOR THE RESPONDENT NO. 10

VERIFICATION:-

Verified that the contents of all the paragraphs of aforesaid objections are true and correct to the best of my knowledge. The legal submissions as made in the aforesaid appeal are believed to be true and correct being made on advice of the counsel. No part of it is false and nothing has been kept concealed therefrom.

DATED: 30.04.2024



(GURPREET SINGH SABHARWAL)
FOR RESPONDENT NO. 10

457

Annexure R-10/1

OFFICE OF MINING OFFICER, MINES & GEOLOGY
DEPARTMENT, PANCHKULA, HARYANA
Plot No-09, DHL Square, IT Park, Sec-22. Panchkula.

To

M/s Tirupati Roadways# 3, Sadashiv Properties, Katras Road Bank More, Dhanbad, Jharkhand-826001.

Memo No. Mining/PKL/ 3080

Dated Panchkula, the 22.08.2023

Sub: Notice before termination of contract of Rattewali Block/PKL B-10, District Panchkula.

This is in reference of letter dated 04.08.2023 issued by the Director, Mines and Geology Department and letters dated 17.01.2023, 16.05.2023 and dated 17.07.2023.

2. As you know that State Vigilance Bureau, Haryana (now Anti Corruption Bureau) had conducted inspection of your contract area and reported that illegal extraction of mineral was made. The quantity of illegal excavated mineral as reported by the Vigilance was 4766079.68 MT.

3. In order to verify the contents of the vigilance report, the Director, Mines and Geology constituted a Committee of the officers/officials of the department. The constituted committee visited the site of contract on 23.11.2022 and found that you had excavated the mineral of 1,07,450 MT upto the depth of 1.75 meters whereas as per Environmental Clearance, you are required to excavate the mineral only upto the depth of 1.33 meters. Therefore, you had excavated the mineral of 18,467 MT illegally.

4. Apart from above, it was also reported by the committee that fresh, illegal excavation outside mining contract area was also

noticed between pillar No. 01 and 17. The quantity excavated illegally is 275456 MT. At the time of inspection, it was also reported that due to rain water accumulated in the 2/3 part of contract area, the actual depth and quantity could not be calculated.

5. Accordingly, notices as referred above were issued to you with direction to deposit the penalty of Rs. 5,87,99,600/- against the quantity of 18,467 MT+275456 MT total 293923 MT. Although in response to the notice, you submitted the reply dated 17.07.2023 but the same was found not to be satisfactory. So far, you have failed to deposit the said penalty into Government treasury.

6. The constituted committee has again visited the site of your contract on 15.06.2023. During inspection, it was observed that fresh, illegal excavation outside mining contract area was also carried out between boundary pillars No. 1, 2 & 17. The said illegal excavated area was measured using total station by the team. As per report, the quantity of 16,44,500 MT was found to be excavated illegally.

7. Whereas the Director, Mines and Geology, Haryana vide letter dated 04.08.2023 informed that the quantity 293923 MT and 16,44,500 MT excavated illegally is other than the quantity 4766079.68 MT as assessed by the Vigilance Bureau. It has been ordered to recover the penalty against the quantity excavated illegally. The detail penalty are given as under:

| Quantity excavated | Price of mineral as per | Rate of royalty | Total Penalty |
|--------------------|-------------------------|-----------------|---------------|
| | | | |

| illegally (in MT) | market rate | | |
|-------------------|-------------|----|---------------|
| 4766080 | 150 | 50 | 95,32,16,000 |
| 293923 | 150 | 50 | 5,87,84,600 |
| 1644500 | 150 | 50 | 32,89,00,000 |
| Total | | | 134,09,00,600 |

8. Hence, you are liable to pay the price, royalty and fine (Rs. 45000/-) against the total quantity which comes out of Rs. 134,09,45,600/- into Government Treasury within a period 30 days failing which mining operation of Rattewali Block/PKL B-10, District Panchkula will be suspended and case for termination of your contract will al be forwarded to the Director, Mines and Geology, Haryana and government dues shall be recovered under Arrear of Land Revenue Act.

Sd/- Mining Officer
Mines & Geology Deptt
Panchkula

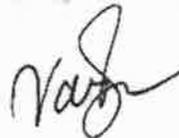
Endst. No. Mining/PKL/

Dated:

A copy of the same is forwarded to the Director, Mines and Geology, Haryana w.r.t. his letter No. 4423 dated 04.08.2023 for information and taking further necessary action please.

Sd/- Mining Officer
Mines & Geology Deptt
Panchkula

TRUE TYPED COPY



ADVOCATE

Annexure R-10/2

TIRUPATI ROADWAYS

Miners, Transporters & Contractors

House No. 1666, Sector-4, Panchkula-134112 (Haryana)

Dated: 04-09-2023

TRW/PKL/SAND/23-24/027

To

1. The Mining Officer,
Mines & Geology Department, Government of Haryana,
Panchkula.

Copy for information to:

The Director

Mines & Geology Department, Government of Haryana,
Panchkula.

Subject: Reply to Memo No. Mining.PL/3080 dated 22.08.2023 with subject as "Notice before termination of contract of Rattewali Block/PKL B-10, District Panchkula".

Preliminary Submissions:

1. That at the outset, the entirety of the Notice dated 22.08.2023 is denied as being without any factual or legal basis whatsoever. That no part of the said notice is admitted and it is humbly submitted that the same be withdrawn with immediate effect. The demand raised is wholly arbitrary and unsustainable in the eyes of law.

BRIEF BACKGROUND

2. That M/s Tirupati Roadways (hereinafter referred to as "Tirupati") was awarded the contract to mine an area of 45

hectares situated in Rattewali Block/PKL B-10 in District Panchkula (hereinafter referred to as "the contract area"). That since 21.03.2020, Tirupati has been carrying out mining in the contract in accordance with the law.

3. That the notice dated 22.08.2023 amounts to an order threatening suspension and termination of the contract, which as per 'Haryana Minor Mineral Concession, Stocking and Transportation of Minerals, and Prevention of Illegal Mining Rules, 2012' cannot be done "without giving reasonable opportunity to show cause" and following the procedure prescribed in the said Rules.

4. That even prior to the grant of mining contract, there was rampant illegal mining in the area and various FIR's had been registered in that regard, which are as hereunder against different persons.

The applicant was not even in the picture at this stage. The applicant is only responsible for mining within the allocated area and has no relation whatsoever with any mining outside the mining area. Any such mining is illegal and deserves to be investigated to determine the actual culprits involved in the case. A copy of the following FIR's is the attached to show the other individuals are responsible for mining outside the mining area and FIR in this regard have already been registered by the department between the years 2017 to 2020.

| FIR No. | Year | Police Station | District | Sections |
|---------|------|----------------|-----------|-----------|
| 65 | 2017 | Raipur Rani | Panchkula | S. 21 (4) |

| | | | | |
|----|------|-------------|-----------|-----------------------------------------------------|
| | | | | Mines & Minerals Act, S 188 IPC |
| 35 | 2018 | Raipur Rani | Panchkula | S. 21 (4) Mines & Minerals Act, 379 IPC |
| 41 | | Raipur Rani | Panchkula | S. 21 (4) Mines & Minerals Act, 379 IPC |
| 42 | 2018 | Raipur Rani | Panchkula | S. 21 (4) Mines & Minerals Act, 379 IPC |
| 44 | 2018 | Raipur Rani | Panchkula | S. 21 (4) Mines & Minerals Act, 379 IPC |
| 76 | 2018 | Raipur Rani | Panchkula | S. 21 (4) Mines & |

| | | | | |
|----|------|-------------|-----------|-------------------------------------------------------------|
| | | | | Minerals Act, 379 IPC |
| 58 | 2018 | Raipur Rani | Panchkula | S. 21 (4) Mines & Minerals Act, S. 188, 379 IPC |
| 75 | 2018 | Raipur Rani | Panchkula | S. 21 (4) Mines & Minerals Act, 379 IPC |
| 20 | 2019 | Raipur Rani | Panchkula | S. 21 (4) Mines & Minerals Act, 379 IPC |
| 77 | 2019 | Raipur Rani | Panchkula | S. 21 (4) Mines & Minerals Act, 379 IPC |
| 24 | 2019 | Raipur Rani | Panchkula | S. 21 (4) Mines & Minerals |

| | | | | |
|----|------|-------------|-----------|-------------------------------------------------------------|
| | | | | Act, 379 IPC |
| 84 | 2020 | Raipur Rani | Panchkula | S. 21 (4) Mines & Minerals Act, S. 188, 379 IPC |

The applicant cannot be burdened with the cost of material so excavated by these persons.

5. That there after vigilance inspection was done, which was carried out without following scientific measures,, it was duly objected and a proper survey report submitted to the Vigilance Department. The contractor reserves the right and contentions in respect of the said vigilance investigation. However, the issue of demands raised in relation to the mining contract are completely independent and have to be adjudicated on their own merit. It is pertinent to mention that the applicant on 5th December 2022 had submitted a survey report to the Director General vigilance. He said report pertains to the relevant time and thus reflect the true picture of the excavation done by the applicant.

6. That the contractor was issued for notice on 17th January 2023 wherein it was stated that the block was inspected on 23rd of November 2022 pursuance to directions of the director. It is surprising that we were neither issued any notice, nor associated with the inspection, which was imperative for ensuring that a fair inquiry is being conducted. The said notice stated that it found

mining in an area outside the prescribed area. It is submitted that the applicant is in no position to make submissions in respect of this finding as the applicant is not concerned with mining outside the mining area. It is the duty of the department to ensure that illegal mining is not carried out and catch the perpetrators. The second allegation pertain to exceeding the depth prescribed for mining in 7.68 acres of land. No details of the land area were provided along with this notice, neither the copy of the report prepared behind the back of the applicant was supplied. It is submitted that the extent of illegal mining being alleged is not possible considering that the mined mineral has to be transported on open roads, where nakas are setup and regular checkings are made.

7. That on 21/01/2023 we replied to the notice and submitted our objections to the inspection being carried behind our back. It was specifically submitted that at no point during the survey, the applicant was either informed or was a part of the survey and thus, to survivors in consequential being incomplete violation of principles of natural justice.

8. Again without providing any further details or copy of the so we report, you again issued a letter on 17th July 2023 raising or demand of 5,87,99,600. In response there off we again reiterated that, the survey team have never associated us and thus there was no authenticity attached to the survey report. In fact till date we haven't even been supplied a copy of the report.

10. That we are surprised to now receive your letter dated 22nd August 2023 demanding a sum of ₹134,09,45,600, which is not

only without basis but also exaggerated and add the same component at multiple places. The response to this notice requires the segregation of the demand into area which falls within the mining contract and that which falls outside and this has no concern with the mining contract. Pertinently, your notice dated 22nd August 2023 refers to a letter issued by the director, mines and geology department. It is submitted this letter has never been communicated to us and we have no knowledge of its contents. However this reference to this letter shows that the entire proceedings have been conducted behind our back. you are requested to immediately supply the copy of this letter and also the survey report as the present proceedings are being conducted in a opaque manner, possibly to victimise the applicant for the illegal mining done prior to his commencing operations of the mine or illegal mining by other persons is sought to be covered.

11. Paragraph 2 of the demand notice dated 22nd August 2023, you have stated the state vigilance Bureau Haryana had found the quantity of illegal excavated mineral was 47,66,079.68 metric ton. It is submitted that this report was disputed by us and we had submitted the true survey report of the area after considering the lay of the land and the inclined nature of the riverbed and the level provided in the mining plan which is reflective of the situation which existed when the site was handed over to the applicant. Further, the vigilance report was itself found to be erroneous as per the subsequent paragraph of your notice.

12. In paragraph 3 of your notice you have stated that a committee was constituted to verify the contents of the vigilance report. Your own committee has only found that 1,07,450 metric ton of mineral has been excavated. Your own department has found the excess mineral to be only 18,467 metric ton. Thus, the vigilance report, which was being counter checked, could not be the basis for raising, a demand especially where the applicant has been objecting to its contents and the matter is pending. It is submitted that this minor quantity is also without any basis, as the applicant would have easily explained the same or pointed out to the error in the inspection methodology, if it was associated with the survey process. In the absence of the copy of the report, the applicant is handicapped in explaining this quantity of 18,467 metric ton which is alleged to be excavated illegally.

13. Second part of your demand relates to alleged inspection of areas outside the mining contract. It is submitted that for areas outside the mining contract, no recovery can be made under the contract. It is submitted that the allegations of illegal mining outside the mining area are wholly misconceived and incorrect. We have only mined within the stipulated area and have submitted monthly reports to the department which have been verified from time to time. Any illegal mining by 3rd persons outside the mining area is not the responsibility of the contractor. It is the duty of the authorities to prevent such illegal mining, if any, and any failure to do so is only attributable to the officials of the mining department. It is neither a case that the applicant has been found mining outside the mining area, an alleged inspection has been done and

some area has been found to be mined, without conducting any enquiry to find as to who is responsible for this mining, the applicant has been burdened with the demand for a quantity of 2,75,456 metric ton and 16,44,500 metric ton. This demand is wholly without basis. It is submitted that an inquiry is required into the matter as to how illegal mining, if any has been permitted and what persons, including within the department, who are responsible for this thing.

14. The extent of injustice and malice in law is apparent from the fact that the finding in the vigilance report has become the basis of a separate demand and the committee report which was constituted to cross check its finding, has been added as a separate demand. Thus, two inspections reports have been made basis of separate demands, thus defying all logic, only to exaggerate the alleged illegal mining quantity.

15. Once it is being alleged that mining has been undertaken outside the mining area, no liability can be sought to be imposed on us as a mining contract holder. In that case, the matter falls under chapter 16 of the rules and can only be proceeded after proving as to who has carried illegal mining, if any. There has been no recovery of illegal mined material from the Applicant, nor has there been any confiscation which would show that the applicant is involved in any illegal mining.

16. The Applicant reserves the right to submit objections to the survey reports which have been conducted behind the back of the Applicant. Further, the applicant had submitted a proper survey report in response to a notice by the vigilance, the same has also

not been considered. The entire proceedings are in complete violation of the principles of natural justice and the procedure envisaged under the applicable rules.

Paragraph-wise Reply:

1. That the contents of paragraph 1 are a matter of record as to the issuance of the said letters. The Letter by the director has been communicated to the Applicant. However, the contents of the letters are denied and the.
2. That the contents of paragraph 2 are denied as being of any relevance for the present purposes and as forming any basis for the issuance of the notice dated 22.08.2203. That it is matter of record that the State Vigilance Bureau had got registered FIR No. 9 of 2022 at P.S. SVB Panchkula on 25.08.2022 which is a subject-matter of pending investigation and onset of trial in accordance with the law. The applicant has already filed his objections accompanied by survey report which explains the true position of mining. Though the applicant has submitted monthly reports to the mining department, no objection has been raised at any stage. The present proceedings are an afterthought. The contents of the preliminary submissions or reiterated in this regard.
3. That the contents of paragraph 3 are denied and it is submitted that Tirupati has not mined below than the permissible depth. That the notice is totally silent on the aspect as to the base-level depth from which the alleged depth of the mined land is calculated. That on that basis alone, the very finding that Tirupati has mined beyond the permissible depth becomes wholly

unsustainable and factually baseless. It is submitted that the calculation of the depth of land mined has to be reckoned from the level mentioned in the mining plan and after considering the inclination of the river. That with respect to the Committee's visit on 23.11.2022, in the earlier letter bearing number Mining/Panchkula/94 dated 17.01.2023, it was stated that the said excavation of 0.42 meters i.e. depth more than 1.33 meter and up to 1.75 meters) beyond permissible depth was on area 7.86 acres and quantity of 18,467 MT was estimated for said area. That however, in notice dated 22 08 2023 it has been stated that in the remainine 2/3rd area of the contract, the committee could not have assessed the depth of excavation as same was filled with water, so even as per its own case the committee could not have estimated the depth of excavation so quantity of mineral excavated form said part from depth beyond permissible depth could not be estimated. Moreover, it is submitted that the depth of water-logged area could also have been estimated /measured using well established modes, however, that would have shown that there is no excess mining. In this regard it may be pointed out that even if depth could not have been measured, there was no logical reason to justify as to why area of water logged part was not measured and only estimated by observing that it was 2/3rd of the contracted area. Such casual approach reflects the predetermined mind set of the alleged survey team. That the total area of the contract is 45 hectares (112.50 acres). In such situation if statement of 2/3rd area being under water is taken as such to be true (though same is

strongly disputed/ denied) it may be about 37 acres of land. Thus, the entire survey lacks any application of mind.

4. That the contents of paragraph 4 are denied and it is submitted that Tirupati has not mined anything in the area falling beyond its contract area. That in any case, Tirupati is neither responsible nor can be held responsible for any alleged illegal mining said to be taking place outside of the contract area. That the responsibility to protect and conserve resources such as minerals in non-contract areas vests solely with the Department. Further the as per the notice, the Committee on 23.11.2022 also found that illegal excavation outside mining contracted area was also noticed between Pillar No. 01 and 17. The Committee for said part pointed out that over an area of 3.13 acres illegal mining outside contracted area was done up to the depth of 10.75 meters, below ground level and illegally excavated 2,75,456 MT. This fact was mentioned in your earlier letter dated 17.01.2023. It was claimed that vide other notices referred in above notice directed the company to deposit the penalty of Rs. 5,87,99,600/- against the quantity of 18,467 MT (found to have been excavated for depth more than permissible depth in contracted area) +275456 MT (found to have illegally mined / alleged illegal over an area of 3.13 acres outside contacted area) total 2,93,923 MT. Vide Letter no. TRW/PKL/SAND/22-23/047 DT. 21.01.2023 in reference to letter memo no Mining/Panchkula/94 Dt 17.01.2023, Tirupati had requested for the Survey Report of the inspection done on 23.11.2022 and also the details of how the said quantities have been calculated. That admittedly, no representative of Tirupati was ever associated by

the said Committee. That the Committee during inspection conducted on 23.11.2022 could not have estimated depth of part area of contract which was water logged. Thus, the inability expressed by the survey team itself vitiates any finding of fact by them. No demand can be raised on estimation. That arbitrariness of the rationale is apparent from the fact that that when area allegedly mined beyond 1.75 meters was waterlogged, it is not clear as to how contiguously situated alleged depth of mining pit outside contracted area having depth of 10.75 meters was not filled with water. It is beyond reason that when a pit having depth of more than 1.75 meters was filled with water as to how pit having depth of 10.75 meters was dry and depth could have been measured by the Committee. This shows that the alleged survey is a mere eyewash. Therefore, the Committee's reportage is self-contradictory. The committee neither had stated (as per any of the letters/notices) that any excavator or vehicle was caught from the said area outside our contracted area. That moreover, the Committee not having noticed any mining in any area beyond contracted area being undertaken by Tirupati, neither any of its machinery was seized from such area, the allegations based on assumptions cannot sustain in the eyes of law to claim or impose any penalty on Tirupati. The entire proceedings are being conducted with malice in law evade the responsibility of the department to conduct a proper inquiry and determine if any illegal mining was carried out in area not stipulated as such and who was responsible for the same.

5. That the contents of paragraph 5 are denied. That no reason has been furnished as to why the earlier response submitted by

Tirupati to the letter date 17.07.2023 is not satisfactory and why the survey report which forms the basis of the demand has not been supplied to the Applicant. No reason for not supplying the survey report was given. That the contents of said paragraph reveal a total non-application of mind. The contents of the preliminary submissions or reiterated in this regard.

6. That the contents of paragraph 6 are denied and it is submitted that Tirupati has not mined anything in the area falling beyond its contract area. That in any case, Tirupati is nether responsible nor can be held responsible for any alleged illegal mining said to be taking place outside of the contract area. That the responsibility to protect and conserve resources such as minerals in non-contract areas vests solely with the Government. That as per paragraph 3 of the notice dated 22.08.2023, the Committee constituted by the Director, Mines and Geology was so as to verify the Report of the vigilance department. At the cost of repetition it is stated that 2,75,456 MT alleged to have been excavated illegally from area outside mining contract has already be denied in para above and in the absence of any evidence, the same cannot be attributed to Tirupati. It may be categorically stated here that no copy of the report of the committee prepared based on inspection dated 23.11.2022 has ever been supplied to Tirupati. Taking the alleged quantity from area falling outside contract area cannot be attributed on Tirupati merely because said outside area happens to be allegedly nearby the contract area, though the said fact is also disputed as no survey report has been supplied and applicant was not associated with the work. The Committee and the Mining

Officer have failed to appreciate that the area was illegally mined by some other entities involved in illegal mining and the vehicles from said area never came to our side of contract. Furthermore, the district of Panchkula is a hotspot for illegal mining being undertaken by mining mafia. It is submitted that roughly a dozen FIRs were registered by the Department itself from 2017 to 2020 regarding illegal mining activities in Khetpurwali (area adjacent to Rattewali). This clearly indicates that even before the start of our mining activity, illegal mining is known to be regularly undertaken in that area.

7. That the contents of paragraph 7 are denied in the above terms, as once it is established that no quantity of mineral has been excavated by Tirupati illegally, no penalty can be imposed on it.

8. That the contents of paragraph 8 are denied, and it is submitted that under the Haryana Minor Mineral Concession, Stocking and Transportation of Minerals, and Prevention of Illegal Mining Rules, 2012', the mining contract of Tirupati cannot be suspended "without giving reasonable opportunity to show cause and following the procedure prescribed in the said Rules. That throughout the above- timeline, Tirupati has never been associated in any fact-finding or other exercise, and moreover, it has never been given any opportunity to demonstrate the defects flowing into the issuance of the notice dated 22.08.2023. The entire proceedings are in violation of principals of natural justice.

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Thus, it is humbly prayed that the notice dated 22.08.2023 may kindly be withdrawn with immediate effect and propotioner be associated with the inquiry and be granted a hearing with the Ld. Director to explain the entire position and satisfy the authority that there has been no excess or illegal mining at the hands of the Applicant.

Regards,

Sd/-

Auth Signatory

TRUE TYPED COPY



ADVOCATE

U 70

Annexure R-10/3

To

The Inspector of Police,

State Vigilance Bureau, Haryana

Subject: Reply in pursuance of the Notice u/s 60 CrPC Memo Spl.
02 /FIR/09/2022/SVB/PKL dated 01.10.2022.

That the undersigned is filing the present representation/reply in pursuance to the above-mentioned notice.

It is submitted that the undersigned is a respectable, peace loving and law-abiding citizen of India and is a resident of District Dhanbad, Jharkhand. The undersigned belongs to respectable family and having good reputation in the society. The Undersigned has been falsely implicated in the present FIR.

1. That the facts, in brief, and which are inevitable for proper and implicit adjudication of present petition are that the undersigned is looking after the business of M/s Tirupati Roadways having its office at # 3, Sadashiv Properties, Katras Road, Bank More, Dhanbad, Jharkhand being Power of Attorney holder in terms of Power of Attorney dated 19.08.2017 executed by the proprietor (father of undersigned namely, Sh. Lakhmir Singh Sabharwal) of M/s Tirupati Roadways. That it is further submitted that the father of the undersigned Sh Lakhmir Singh Sabherwal owing to his age as well due to the fact that he is suffering from various ailments including weakening of the left side of the body is not at all involved in the day to day activities of the firm. The undersigned is carrying on with the business activities of said proprietorship firm in a lawful manner by strictly following all the norms and applicable laws. In

furtherance to the said Power of Attorney and cancellation of said Attorney dated 19.08.2017, a fresh Power of Attorney dated 09.04.2021 was executed by the proprietor (father of present undersigned) of said Proprietorship firm. Copy of said Power of Attorney dated 09.04.2021 is attached herewith for your kind perusal.

2. That in terms of auction notice issued vide notification dated 17.04.2017 and corrigendums dated 21.04.2017 and dated 12.05.2017, the bids for e-auction in respect of the Boulder, Gravel and Sand minor mineral for mine of "Rattewali Block/ PKL B-10" having tentative area of 45.00 Hectares in the District Panchkula were invited by the Department of Mines and Geology, Haryana for e-auction to be held on 24-25.05.2017. In furtherance to the aforesaid auction notice, the said proprietorship firm had participated in the auction held on 24-25.05.2017 and offered the highest bid of Rs. 11,72,50,000/- per annum against the reserve price of Rs. 8,18,00,000/- for obtaining the mining contract of Minor Mineral mine namely "Rattewali Block/ PKL B-10" for extraction of boulder, Gravel and Sand. The same was awarded to the firm and the contract was awarded to the firm for mining boulder, gravel & sand for a period of seven years.

3. That after completion of all the statutory requirements the work of mining commenced and was being carried out in the most lawful and transparent manner. That despite the fact that the said proprietorship firm was conducting the mining operations of mining of riverbed minor minerals i.e. Boulder, Gravel & Sand Minor Minerals within the permissible limits having strictly adhering to the

terms and conditions of contract and duly complying with the conditions subject to which the aforesaid Environmental Clearance and Consent to Operate have been granted by the Ministry of Environment, Forest and Climate Change and the office of Haryana State Pollution Control Board, Haryana respectively and also strictly adhering to the provisions of Mines Act, 1952; Mines & Minerals (Development & Regulation) Act, 1957; Indian Explosive Act, 1884; Forest (Conservation) Act, 1980 and Environment (Protection) Act, 1986 and the Rules made thereunder; Wild Life (Protection) Act, 1972; Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 and without there being any action or cause shown or put forth by competent and concerned officials of the Department of Mines & Geology, Haryana and/ or by the Ministry of Environment, Forest and Climate Change and the office of Haryana State Pollution Control Board, Haryana of violation of any of the terms & conditions of the said Contract and Environmental Clearance by the said proprietorship firm, the officials of State Vigilance Bureau, raided the site of said proprietorship firm at Village Rattewalli, District Panchkula and its office situated in Panchkula on 11.05.2022 and took away Registers, Documents etc. relating the mining operations conducted by the said proprietorship firm without even calling upon or associating the undersigned.

4. That thereafter on the basis of predominantly 2 allegations the present FIR was registered. The allegations along with the respective submissions are as follows:

i. That during the period from 05.05.2022 to 11.05.2022, a total number of 1868 Trucks/Dumpers were found to have taken out the excavated material, whereas, bills mentioning GST and Royalty etc. of only 518 Trucks/Dumper were found to be issued:

It is submitted that while excavating boulders, minerals and sand there are layers of mud/clay constituting the top layer of the soil. The approx percentage of mud or soil found over the river bed material which has to be removed first and then the actual river bed material is extracted is around 20%-40%. That the mentioned trucks dumpers were used/ engaged to dump the mentioned clay/mud free of cost to the agriculturists, or other parties as per their requirement as the firm does not have any area to dump the same. The fact would be further clear from the fact that in case the firm or the undersigned had some malafide intentions with regard to concealing the extraction of minerals beyond the admissible limits, the truck numbers and other details would not have been mentioned in the registers maintained by the firm.

II. Report received from HARSAC, Gurugram, which allegedly revealed that total volume extracted from the said mine was 4766079.68 MT (47.66 LTPA), whereas, as per clause 21 (A) Specific Conditions of Environment Clearance letter No. J-11015/75/2017-IA. II(M) dated 21.02.2020 issued to M/s Tirupati Roadways, Rattewall, Panchkula, the permissible mining of river bed material (Boulder, Gravel and Sand) was limited to only 8.39LTPA (8,39,000 MT) from an effective mineable area of 24.25 Ha with a maximum mineable depth of 1.33 Meter from the original ground level

That with regard to the above-mentioned allegations the undersigned would respectfully submit the following:

i. The allegations by measurement by HARSAC, Gurugram, allegedly reveal that total volume extracted from the said mine was 4766079.68 MT (47.66 LTPA), whereas, as per clause 21 (A) Specific Conditions of Environment Clearance letter No. J-11015/75/2017-JA. II(M) dated 21.02.2020 issued to M/s Tirupati Roadways, Rattewali, Panchkula, the permissible mining of river bed material (Boulder, Gravel and Sand) was limited to only 8.39LTPA (8,39,000 MT) it is submitted that neither it has been disclosed as to how the measurement was done or as to which level was compared while taking the measurements nor was the undersigned joined while taking the measurements.

ii. That it is further submitted that the information with regard to the allowed/permissible extraction and the alleged extraction has been not shown in a proper manner. It is submitted that the permissible mining of river hed material (Boulder, Gravel and Sand) was limited to 8.39 LTPA (8,39,000 MT) per tender year. That as the site had been allotted to the firm of the undersigned and the extraction work began on 22.03.2020 the total permissible limit for Boulder gravel and sand would be as follows:

22.03.2020-15.06.2020 -8.39 LTPA

16.06.2020 -15.06.2021-8.39 LTPA

16.06.2021-15.06.2022-8.39 LTPA

Meaning thereby that even if the alleged figures calculated by HARSAC are taken to be true for the sake of arguments (though

specifically denying the same) the total permissible limit was 8.39x 3- 25.17 against which alleged extraction of 47.66.

iii. That the undersigned has also engaged the services of an independent agency Mining 360 Services which is an ISO 9001:2015 certified agency and specializes in geological and hydro-geological services, and exploration of mines to conduct a detailed analysis/report as to how much river bed material (Boulcer, Gravel and Sand) has been excavated and the mentioned agency has conducted the pre-mining and post mining survey and also conducted drone survey on 12.09.2022. The result report is awaited and would be available in 15 days time as communicated by the agency. The undersigned undertakes to produce the certified copy of the report with regard to the excavation as soon as it is available.

iv. It is further submitted that the undersigned is ready to join investigation and get the levels measured by the same agency (HARSAC) in his presence at his cost.

That it is further most respectfully submitted that no offence u/s 379/414/420 IPC is made out as the material was been extracted out of the land for which the license was admittedly granted to the firm of the undersigned. That even if the contents of the FIR are admitted to be true (though specifically denying the same) the best case against the undersigned would be violation of the terms of the contract through which the tender was awarded to the undersigned.

That it is further submitted that, the breach, non-compliance, violations of the terms & conditions, its consequences and the

procedure to deal with the same is incorporated in Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012.

That the undersigned is a law-abiding citizen and respectable person and undertakes that he will join the investigation as and when required by the investigating agency and fully cooperate with them.

Dated: 10.10.2022

Sd/-

Gurpreet Singh Sabharwal
For M/s Tirupati Roadways

TRUE TYPED COPY



ADVOCATE

