

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

ORIGINAL APPLICATION NO. 538/ 2022

IN THE MATTER OF:

Swarn Singh ...Applicant
versus
 State Of Uttarakhand & Ors. ...Respondents

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N.D.O.H. - 08.05.2023

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FILED BY:





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Dated: 06.05.2023

Place: New Delhi

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 538/ 2022

IN THE MATTER OF:

Swarn Singh

...Applicant

versus

State Of Uttarakhand & Ors.

...Respondents

**PRELIMINARY REPLY
ON BEHALF OF RESPONDENT NO. 10 KRIPAL SINGH**

Most Respectfully Showeth:

1. The present Preliminary Reply is being filed on behalf of Respondent No. 10 **Kripal Singh** ("**Respondent No. 10**" or "**Answering Respondent**"), to the Original Application registered by this Hon'ble Tribunal pursuant to the letter petition sent by the Applicant.
2. At the outset, it is stated that save and except what is a matter of record, the contents of all paragraphs, each and every single averment, submission and contention made by the Applicant in the Application are denied as wrong, incorrect and untenable in law as well as in facts of the present case, and the same are denied in entirety as if the same have been traversed and replied to individually, until and unless any of the contents are specifically admitted.

3. Furthermore, it is submitted at the outset, without prejudice to the submissions stated hereinafter, that the present preliminary reply is being filed in compliance with this Hon'ble Tribunal's order dated 01.03.2023 to raise preliminary objections and submissions regarding the maintainability of the present proceedings and the tenability of the report dated 17.01.2023. The Answering Respondents reserves liberty to submit a further and detailed reply on the merits of the matter if so required in facts and circumstances.
4. Briefly stated, the Answering Respondent was granted permission by the District Magistrate vide office order dated 22.10.2021. The permission stipulates that the Answering Respondent will be carrying out the excavation over subject land for the purpose of constructing basement parking for the hotel to be built over the said subject land. The said permission was subject to the conditions laid down to be followed while carrying out the operation.
 - A. **EXCAVATION PERMISSION DATED 22.10.2021 IS ISSUED UNDER UTTARAKHAND MINOR MINERAL (CONCESSION) RULES, 2001 AND THERE IS NO VIOLATION OF ANY ENACTMENTS IN SCHEDULE 1 OF NGT ACT.**
5. It is respectfully submitted that the excavation of RBM was carried out by the Answering Respondent strictly in accordance with the terms of the permission dated 22.10.2021 and not in contravention thereof. The allegations made by the Applicant and in the report dated 17.01.2023 are denied in toto.

6. In any case, it is respectfully submitted that the permission dated 22.10.2021 having been granted under the provisions of the Uttarakhand Minor Mineral (Concession) Rules, 2001, which in turn are framed in exercise of powers under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. Therefore, any alleged violations of the permission dated 22.10.2021 have to be dealt with as per the provisions of the Uttarakhand Minor Mineral (Concession) Rules, 2001 and the principal Act. The said enactments not being included in Schedule 1 of the National Green Tribunal Act, 2010; the present proceedings are *ex facie* not maintainable.
7. It is submitted that it is settled law that this Tribunal's jurisdiction is vis-à-vis the enactments specified under Schedule 1 of the NGT Act. In the present matter, even if the contents of the report dated 17.01.2023 are taken as demurrer, the contents of the said report do not reveal any pollution or environmental degradation so as to attract the jurisdiction of this Hon'ble Tribunal. As acknowledged and admitted in the report dated 17.01.2023:

*"The Joint inspection committee also highlighted following points.
i) Presently, neither any labelling/mining activity is observed there nor the vehicle(s) involved in transportation of mined material, were found.*

ii) All labelling/mining was carried out in private land and there is no mining in the forest area.

iii) Ambient Air quality monitoring carried out on dated 01.11.2022 to 10.11.2022 was also reported within norms (PM10 - 92.8 microgram / cubic meter and PM2.5 - 52 microgram/cubic meter."

(emphasis supplied)

8. Therefore, there is neither any alleged violation of any of the enactments specified in Schedule 1 of the NGT Act, nor does the permission dated 22.10.2021 relate to any Scheduled enactment. Therefore, there is no “substantial question relating to environment” arising in the present matter and hence the Application registered pursuant to baseless allegations by the applicant is misconceived and not maintainable and ought to be dismissed on this ground.
9. As far as the finding of the Inspection Committee that the answering Respondent did not possess a valid Consent to Operate (“**CTO**”), it is humbly submitted that the permission granted to the answering Respondent vide 22.10.2021 by the District Magistrate does not warrant the requirement to obtain CTO for carrying on the said operations. Thus, the answering Respondent undertook mining as per the permission granted to him.
10. In a judgment dated 22.02.2022 in OA No. 48/2020 and OA No. 75/2020, this Hon’ble Tribunal had directed for cancellation of mining leases by invoking provisions of the Rajasthan Minor Mineral Concession Rules, 2017. Upon appeal on the ground that such directions are beyond the limited jurisdiction conferred by Schedule 1, the Hon’ble Supreme Court has issued notice vide order dated 25.07.2022 and the appeals are pending final adjudication. A true and correct copy of the order dated 25.07.2022

by the Hon'ble Supreme Court in Civil Appeal Diary No. 8563 of 2022 is annexed herewith and marked as **ANNEXURE R-10/1**.

B. THE REPORT BY THE JOINT COMMITTEE IS NOT IN TERMS OF THIS HON'BLE TRIBUNAL'S ORDER DATED 05.09.2022.

11. The Answering Respondent is constrained to file a preliminary reply instead of a comprehensive reply owing to the fact that the Report dated 17.01.2023 filed by the Joint Inspection Committee is not in compliance with the directions of this Hon'ble Tribunal passed vide order dated 05.09.2022:

*“Accordingly, we constitute a Joint Committee comprising of representative of State PCB, Director, Mines and Geology, Uttarakhand, Divisional Forest Officers, RTOs and District Magistrates, Nainital and Udham Singh Nagar and **direct the same to meet, undertake visits to the site, look into the grievances of the applicant, associate the applicant and representative of the concerned project proponents, verify the factual position and submit its report within one month by e-mail....”***

(emphasis supplied)

12. The directions issued vide order dated 05.09.2022 expressly required the representatives of the Joint Committee to visit the site and basis the inspection and observations, a report was required to be submitted.
13. However, a perusal of the report dated 17.01.2023 clearly depicts that the findings under the report are based on the earlier inspections conducted on 25.11.2021 and 27.12.2021 and not any inspection conducted as per the order dated 05.09.2022.
14. It is also necessary to note that the inspection conducted at the Answering Respondent's site on 27.12.2021 (much prior to the

initiation of the present proceedings) was in absence of the answering Respondent or his representative. It is this purported inspection which alleges illegal excavation of 200547 m³. However, inasmuch as this inspection was conducted without the Answering Respondent's presence and in any case much prior to the initiation of the present proceedings and the order dated 05.09.2022, this inspection cannot be relied upon to impose any consequences or penalties on the Answering Respondent.

15. Thus, the report dated 17.01.2023 by the Joint Committee is in complete contravention of the directions of this Hon'ble Tribunal passed vide order dated 05.09.2022, solely on the basis of the earlier inspection reports and cannot be relied on by this Hon'ble Tribunal and the findings thereof ought be discarded at the very outset.
16. This Hon'ble Tribunal took cognizance over the present Application upon receiving of letter issued by the Applicant herein, wherein he mentioned about the operations of mining being conducted illegally over the agricultural land in the villages of Uttarakhand. It has been further alleged by the Applicant that the said illegal mining has created big ditches approximately 50-100 feet deep. It was also stated that plying of heavy vehicles causes accidents and creates dust pollution which is posing grave health problems for the local residents and is also subjecting endangered species to extinction.

However, it is worthwhile to mention that no such findings corroborating to the said allegations are there in the Report dated 17.01.2023 by the Joint Committee. Thus, in the absence of any such findings of any environmental damage in the Report, the present Application is ought to be dismissed.

C. THE REPORT DATED 17.01.2023 LACKS ANY RATIONALE OR PRINCIPLES FOR IMPOSING PENALTY/COMPENSATION AND HENCE IS MISCONCEIVED.

17. A bare perusal of the report dated 17.01.2023 shows that the Committee has recommended highly disproportionate and exemplary penalties on the Answering Respondent amounting to Rs. 31,04,640/- and Rs. 15,44,21,400/- on the basis of the purported inspection conducted on 25.11.2021 and 27.12.2021 by the concerned authorities, respectively. However, the report lacks any rationale or principles for recommending the said penalty/compensation.
18. In a matter concerning illegal mining in Rajasthan, the Hon'ble Supreme Court vide order dated 11.11.2021 in SLP 10587/2019, *Bajri Lease Lol Holders Welfare Society Through its President v. The State of Rajasthan and Ors.* did not accept a recommendation for exemplary penalty by the Central Empowered Committee (CEC), since the recommendation was not backed by any rationale:

"18. However, the basis for imposition of exemplary penalty of Rs. 10 lakh per vehicle and Rs. 5 lakh per cubic metre of sand

has not been stated by the CEC in its report. The CEC is directed to follow the directions given by the NGT in respect of imposition of penalty / determining scale of compensation for illegal mining and the provisions of the 2020 Sand Mining Guidelines and determine the penalty / compensation afresh and submit a report to this Court within a period of eight weeks from today."

A true and correct copy of order dated 11.11.2021 passed by Hon'ble Supreme Court in SLP 10587/2019, *Bajri Lease Lol Holders Welfare Society Through its President v. The State of Rajasthan and Ors.* is annexed herewith and marked as **ANNEXURE R-10/2**

19. It is further submitted that the imposition of such exorbitant unproportionate penalty by the concerned authority is against the well settled position of law that damages when imposed must have a correlation with the magnitude of environmental damage caused. The Hon'ble Supreme Court in ***Deepak Nitrite Ltd v. State of Gujarat & Ors (2004) 6 SCC 402*** has held that environmental damages cannot be imposed in absence of any finding as to environmental degradation:

"6. The fact that the industrial units in question have not conformed with the standards prescribed by GPCB, cannot be seriously disputed in these cases. But the question is whether that circumstance by itself can lead to the conclusion that such lapse has caused damage to environment. No finding is given on that aspect which is necessary to be ascertained because compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise but also with the harm caused by it. Maybe, in a given case the percentage of the turnover itself may be a proper measure because the method to be adopted in awarding damages on the basis of "polluter-to-pay" principle has got to be practical, simple and easy in application. The appellants also do not contest the legal position that if there is a finding that there has been degradation of environment or any damage caused to any of the victims by the activities of the industrial units certainly damages have to be paid.

However, to say that mere violation of the law in not observing the norms would result in degradation of environment would not be correct.

... We, therefore, direct the High court to re-examine this aspect of the matter as to whether there is degradation of environment and as a result thereof any damage is caused to any victim, and what norms should be adopted in the matter of awarding compensation in that regard. ...”

20. Further, even punitive compensation for recovery of entire price of mineral mined cannot be imposed under Section 21(5) of the Mines and Minerals (Development and Regulation) Act, 1957 without applying the doctrine of proportionality and without taking into consideration the extent of environmental damage or loss caused. The same has been laid down by the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd v. Rohit Prajapati and Ors.*** (2020) 17 SCC 157:

“41. Guided by the precepts that emerge from the above decisions, this Court has taken note of the fact that though the three industries operated without an EC for several years after the EIA Notification of 1994, each of them had subsequently received ECs including amended ECs for expansion of existing capacities. These ECs have been operational since 14-5-2003 (in the case of Alembic Pharmaceuticals Ltd.), 17-7-2003 (in the case of United Phosphorous Ltd.), and 23-12-2002 (in the case of Unique Chemicals Ltd.). In addition, all the three units have made infrastructural investments and employed significant numbers of workers in their industrial units.

42. In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality...”

(emphasis supplied)

21. It is also pertinent to mention that in a matter concerning limestone mining in Gujarat, wherein this Hon'ble Tribunal had vide judgment dated 14.11.2022 in OA No. 58/2018 (WZ) imposed exorbitant penalties even though the expert committees had recorded that there had been no pollution or environmental degradation, the Hon'ble Supreme Court has vide order dated 02.02.2023 issued notice and directed that no coercive steps be taken for recovery of the penalty:

“(iii) This Court has held in Kantha Vibhag Yuva Koli Samaj Parivartan Trust vs State of Gujarat¹ that the National Green Tribunal has to carry out its adjudicatory functions which cannot be dedicated to a third party agency.

2. Issue notice, returnable in six weeks.

3. Pending further orders, no coercive steps shall be taken against the petitioner on the basis of the impugned order.”

A true and correct copy of the order dated 02.02.2023 passed by the Hon'ble Supreme Court in CA No. 480/2013, *M/s R.J. Trivedi and Co. & Ors. v. Union of India* is annexed herewith and marked as **ANNEXURE R-10/3**.

22. Lastly, it is also relevant to mention that the same issue pertaining to the same respondents as in the present Application was also filed before Hon'ble High Court of Uttarakhand in public interest litigation bearing no. WPPIL No. 200 of 2021. A Division Bench of the Hon'ble High Court vide order dated 01.12.2021 was pleased to dispose of the said petition with directions to the concerned authorities to conduct inquiry and take appropriate actions in

accordance with law. True and correct copy of the order dated 01.12.2021 is annexed herewith and marked as **ANNEXURE R-10/4.**

23. In light of the same, it is humbly submitted that if the Applicant herein was not satisfied with the actions taken by the concerned authority pursuant to the said order, then he ought to have moved Hon'ble High Court by reviving the said PIL and should have reagitated his issues. However, the Applicant chose to move this Hon'ble Tribunal by without disclosing the earlier litigation before the Hon'ble High Court.
24. It is hence respectfully submitted that the application under reply ought to be rejected in light of the preliminary submissions.

FILED BY:



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Dated: 06.05.2023

Place: New Delhi

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 538 OF 2022**

IN THE MATTER OF:

Swarn Singh

...Applicant

Versus

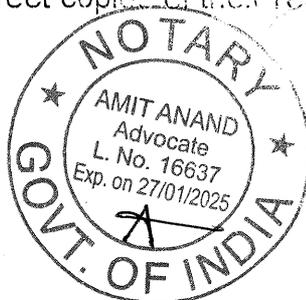
State of Uttarakhand & Ors.

...Respondents

AFFIDAVIT

I, Kripal Singh, son of Sh. Kartar Singh, aged about 44 years, resident of Village-Sood Colony, Tehsil- Bajpur, District- Udham Singh Nagar, Uttarakhand – 262401, do hereby solemnly affirm and state on oath as follows:

1. I state that I am Respondent No. 10. I state that I am well conversant with the facts and circumstances of the matter and thus competent to affirm the present affidavit in support of the accompanying reply.
2. I state that the accompanying reply has been drafted by my counsel under my instructions. I have read and been explained the contents of the accompanying reply. I state that I have understood the same and the contents thereof are true and correct to the best of my knowledge and belief.
3. I state that the annexures enclosed to the accompanying reply are true and correct copies of their respective originals.



[Signature]
DEPONENT

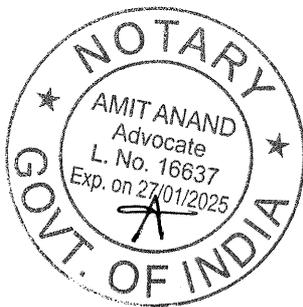
Identify the Executant Deponent
Who Has Signed in My Presence

VERIFICATION

I, the deponent above named, do hereby verify and state that the contents of this affidavit are true and correct to the best of my knowledge and nothing is false and nothing material has been concealed therefrom.

Verified at 06 MAY 2023 on this the ___ day of May, 2023.

[Signature]
DEPONENT



ATTESTED

[Signature]

NOTARY PUBLIC
DELHI (INDIA)

06 MAY 2023

NOTARY REGISTER

Page No. 38

Sl. No. 6097

R. No. V

Date 06/05/23

06 MAY 2023

CERTIFIED THAT THE DEPONENT
Shri/Smt./Mn. Kripal Singh
S/o, W/o, D/o Kantar Singh
P/o Village-Sood Colony, Dist-262401
Identified by Shri/Smt. Aparna Pandey
has solemnly affirmed before me at Delhi
Dt. 06/05/23 Sr. No. 6097
that the contents of the affidavit which have
been read & explained to him are True and
correct to his knowledge

[Signature]
NOTARY

ITEM NO.3

COURT NO.6

SECTION XVII

**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**

Civil Appeal No(s). 2675-2676/2022

SUNITA MODI & ORS.

Appellant(s)

VERSUS

KHANAN GRASTH SANGHARSH SAMITI & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.49995/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.49996/2022-STAY APPLICATION and IA No.49997/2022-EXEMPTION FROM FILING O.T.)

WITH

Diary No(s). 8563/2022 (XVII)

(FOR ADMISSION and IA No.50944/2022-STAY APPLICATION and IA No.50945/2022-EXEMPTION FROM FILING O.T. and IA No.50943/2022-PERMISSION TO FILE APPEAL)

Date : 25-07-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Appellant(s)

Mr. Devadatt Kamat, Adv.
Mr. Anand Varma, AOR
Mr. Sanbdeep Singh Shekhawat, Adv.
Mr. Adyasha Nanda, Adv.

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Annam Venkatesh, AOR
Mr. Rahul Mishra, Adv.
Ms. Garimaa Singh, Adv.
Mr. D. Shiva Shankar, Adv.
Mr. Anand Verma, Adv.
Mr. Sanbdeep Singh Shekhawat, Adv.

For Respondent(s)

Mr. Rahul Choudhary, Adv.
Ms. Srishti Agnihotri, AOR
Ms. Aarti Krupa Kumar, Adv.
Ms. Sanjana Grace Thomas, Adv.

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

Permission to file appeal(s) is granted.
Issue notice returnable in six weeks.

(NEELAM GULATI)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
COURT MASTER (NSH)

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Interlocutory Application No.29984 of 2021
In
Special Leave Petition (Civil) No. 10587 of 2019

**Bajri Lease Lol Holders Welfare Society
Through its President** **Petitioner(s)**
Versus

The State of Rajasthan & Ors.**Respondent(s)**

W I T H

Special Leave Petition (Civil) No. 10670 of 2019

J U D G M E N T

L. NAGESWARA RAO, J.

1. Realising the damage caused to lakes, riverbeds and groundwater on account of quarry/ mining leases, the Ministry of Environment, Forest and Climate Change (“**MoEFCC**”) constituted a Core Group by its order dated 24.03.2009, to look into the following points:

“(i) To consider the environmental aspects of mining of minor minerals (quarrying as well as riverbed mining) for their integration into the mining process.

(ii) Specific safeguard measures required to minimise the likely adverse impacts of mining on environment with specific reference to impact on water bodies as well as groundwater so as to ensure sustainable mining.

(iii) To evolve model guidelines so as to address mining as well as environmental concerns in a balanced manner for their adoption and implementation by all the mineral-producing States."

2. A report was submitted by the Core Group on the basis of which several recommendations were made by the MoEFCC relating to sand mining in March, 2010. Later, Model Guidelines on "Environmental Aspects of Quarrying of Minor Minerals" were formulated in 2010 for sustainable mining of minor minerals, along with draft rules titled Minor Minerals Conservation and Development Rules, 2010. In **Deepak Kumar v. State of Haryana**¹, this Court directed the State Governments and Union Territories to implement the recommendations made by the MoEFCC in its report of March, 2010 and the Model Guidelines framed by the Ministry of Mines within a period of six weeks from the date of the judgment. The State Governments and Union Territories were also directed to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 ("**MMDR Act**"). The above directions were issued by this

¹ (2012) 4 SCC 629

Court after recording the deleterious effects of sand mining on biodiversity, such as destabilization of the soil structure of river banks and loss of habitat, to name a few.

3. Pursuant to the directions issued by this Court in *Deepak Kumar* (supra), the Rajasthan Minor Mineral Concession Rules, 1986 (“**1986 Rules**”) were amended by notifications dated 23.05.2012, 19.06.2012 and 21.06.2012. By the said notifications, mining leases for sand were to be given by tender / auction for a period of five years. Letters of Intent (“**Lols**”) were to be issued to the eligible applicants by the competent authority and the eligible applicants were required to submit the requisite No Objection Certificates, Environmental Clearance (“**EC**”) and approved mining plan. As the grant of EC was likely to be delayed, the State of Rajasthan incorporated a provision in the 1986 Rules by way of the amendment dated 21.06.2012, permitting sand mining through the then existing system of Royalty Collection Contract and issue of Temporary Work Permit, till EC is granted.

4. A total of 130 mining plots were identified for conduct of auction for sand mining. Tenders were received for 105 plots. Lols were issued to each of the successful bidders with respect to the 105 plots, who were further directed to submit a mining application and obtain EC under the notification dated

14.09.2006 issued by the MoEFCC (“**EIA Notification, 2006**”) and submit the same within a period of 12 months. Between November, 2013 and March, 2016, 65 out of the 82 Lol holders presented final Environment Management Plan (EMP) after Environment Impact Assessment (EIA) study and public hearing. The Expert Appraisal Committee (EAC) constituted under the EIA Notification, 2006 by the MoEFCC recommended grant of EC to these 65 Lol holders. As EC was not granted by the MoEFCC to most of the Lol holders within a period of six months, the State of Rajasthan sought for extension of time for continuing the then existing system of sand mining by way of Royalty Collection Contract. The High Court refused the request made by the State Government by an order dated 21.10.2013. Aggrieved thereby, the State Government filed SLP (C) No. 34134 of 2013 before this Court. This Court passed an interim order dated 25.11.2013 permitting the 82 Lol holders, who had submitted their applications for obtaining EC to the MoEFCC, to carry on mining operations in accordance with the notification dated 21.06.2012 amending the 1986 Rules. Temporary Work Permits were issued to 80 out of the 82 Lol holders to carry on mining operations pursuant to the said interim order. The interim order dated 25.11.2013 was extended by this Court on 24.02.2014 and 27.03.2014. Ultimately, by an order dated 16.11.2017, this Court

restrained all the 82 mining lease / quarry holders from carrying on mining of sand and *bajri*, unless a scientific replenishment study is completed and EC is granted by the MoEFCC. This Court was concerned about the continuation of mining without EC. The State Government stopped the mining activities pursuant to the order passed by this Court on 16.11.2017.

5. Shortly after, a notification was issued by the State of Rajasthan on 28.12.2017 with respect to Rule 51 of the Rajasthan Minor Mineral Concession Rules, 2017 ("**2017 Rules**"), permitting grant of short-term permits for excavation of sand in *Khatedari* lands only for Government-related works or organisations aided by the Government. The 2017 Rules were amended on 25.06.2018 by which Rule 17A was inserted, enabling the Government to grant mining lease in *Khatedari* lands to *Khatedars*.

6. On 28.02.2018, sub-rule (4) of Rule 5 of the 2017 Rules was amended. By the said amendment, the time period of one year for fulfilment of the conditions of the Lols, including execution and registration of mining lease, was extended to 13 months from the date of commencement of the 2017 Rules, failing which the rights of the applicants would stand forfeited. According to the State Government, the Lols of 74 members of the Bajri Lease Lol Holders Welfare Society had

lapsed owing to non-fulfilment of conditions within the period of 13 months. The remaining 8 Lol holders, who had been issued EC and subsequently granted mining leases, could not continue with mining operations without the requisite replenishment study reports.

7. The Bajri Lease Lol Holders Welfare Society challenged the *vires* of sub-rule (4) of Rule 5 of the 2017 Rules in the High Court of Rajasthan. On 09.04.2019, the High Court dismissed the writ petitions. Thereafter, the Petitioner-Society filed SLP (C) No.10587 of 2019 assailing the judgment of the High Court. Notice was issued in the matter and an interim order was passed on 10.05.2019 restraining cancellation of the Lols of the members of the Petitioner-Society. On 19.02.2020, this Court, taking note of the scale of the issue of illegal sand mining in the State of Rajasthan, directed the Central Empowered Committee ("**CEC**") to submit a report on the problems relating to sand mining that are faced by traders, consumers, transporters, the State and other stakeholders and also on measures to stop illegal sand mining.

8. The CEC submitted its report to this Court dated 23.12.2020, in which the following recommendations have been made:

"A. All the Khatedari leases located within 5 kms from the river bank as well as leases where violation of the

lease conditions including misuse of e-ravannas are detected are terminated forthwith and the State Government shall not issue fresh Khatedari leases except for Palaeo deposits in the District of Binaker without the approval of this Hon'ble Court.

B. The State Government shall dispense with the Excess Royalty Collection Contract system in respect of any kind of sand mining leases forthwith and the royalty shall be paid on line by the lessee to the State Government and generate royalty paid e-ravanna before transporting of sand from the mining site;

C. The MoEF&CC will issue EC in respect of all the valid Lol holders recommended by the EAC in its meeting held during 2014-2016 without insisting on submission of scientific study report as a precondition for grant of EC within a period of three months. MoEF&CC shall also prescribe detailed methodology in consultation with CMPDI for undertaking replenishment study during the course of mining as discussed in para 11 (iii) of this Report.

D. River sand mining in Rajasthan is permitted to be conducted after obtaining all statutory clearances and payment of dues and applicable taxes following the procedure listed in para 11 (iii) of this report.

E. The MoEF&CC shall arrange for scrutiny of the DSR prepared as provided in MoEF&CC Guidelines of 2016 and 2020 and the production figures approved in the

DSR are scrupulously followed by the authorities under the EP Act 1986 while issuing the EC.

F. The period of actual mining of sand under TWP should be adjusted against the five-year lease period.

G. Government of Rajasthan will constitute an Empowered Committee headed by the Chief Secretary to consider and settle claims of excess payments collected from the Lol holders during the period of working under TWP. The Committee shall examine each of the cases and take a decision in this regard within a period of six months from the date of orders. Monthly progress reports in this regard may be sent to CEC.

H. The State Government will auction the sand mining leases after proper ground demarcation and after assessing the extractable sand resources as given in the approved DSR and after obtaining no objection certificates from all concerned authorities. The sale of mining blocks objected to by any of the government departments shall not be put up for tender/auction.

I. State Government to review the amendments to Rule 5(4) of RMMCR, 2017 so that it will not be an impediment for execution of sand mining lease.

J. For brazen violation of this Hon'ble Court order dated 16.11.2017 exemplary penalty of Rs.10 lakhs per vehicle and Rs.5 lakhs per cu.m of sand seized

may be imposed as a deterrent. This will be in addition to what has already been ordered/collected by the State agencies as penalty/compensation.

K. State Government of Rajasthan is directed to conduct drone survey in respect of all the remaining Khatedari leases and complete the same within the next four months to assess the irregularities if any committed by them. A copy of this Report may also be made available to CEC."

9. The State of Rajasthan has filed Interlocutory Application No. 29984 of 2021 requesting this Court to accept the recommendations made by the CEC in respect of all points, except recommendations 'A' and 'J'. Recommendation 'A' relates to termination of *Khatedari* leases within 5 km of the river bank and restriction on the State Government to grant fresh *Khatedari* leases without the approval of this Court. Recommendation 'J' pertains to exemplary penalty of Rs.10 lakh per vehicle and Rs.5 lakh per cubic metre of sand seized for violation of the order passed by this Court on 16.11.2017.

10. The reasons given by the State of Rajasthan for its objection to the recommendation made by the CEC for cancellation of *Khatedari* leases is that mineral wealth lying in agricultural land should also be utilized. The State Government has brought to the notice of this Court that a request was made to the MoEFCC to revisit the Enforcement &

Monitoring Guidelines for Sand Mining, 2020 (“**2020 Sand Mining Guidelines**”) regarding excavation of sand within the periphery of 5 km from the river bed. In view of scanty rain fall patterns in the State, the submission of the State is that mining leases in agricultural fields should be permitted. Insofar as additional penalty recommended by the CEC for the illegal sand mining and transportation is concerned, the State is of the opinion that the penalties recommended are excessive and their recovery would be difficult.

11. Interlocutory Application No. 54981 of 2021 seeking intervention has been filed on behalf of 10 *Khatedars* who asserted that no illegal sand mining is being carried on by them. It was argued on their behalf that these *Khatedars* have been acting in accordance with the conditions of their lease. It was contended that the CEC committed an error in recommending cancellation of their mining leases. The said *Khatedars* found fault with recommendation ‘C’ of the CEC in favour of the Lol holders.

12. The CEC, in its report, has highlighted the delay in the grant of EC by the MoEFCC to the Lol holders as the cause for widening the gap in demand and supply of sand, which has resulted in proliferation of illegal sand mining activities to meet the shortfall in supply. The recommendation made by the CEC is that the MoEFCC will issue EC in respect of all the

valid Lol holders recommended by the EAC, within a period of three months, without insisting on submission of the scientific replenishment study report as a pre-condition for the grant of EC, with the replenishment study due to be undertaken during the course of mining.

13. In spite of the order passed by this Court on 16.11.2017 that no river sand shall be permitted unless a scientific replenishment study is completed and EC is granted, 194 mining leases of *Khatedari* lands have been granted in the State of Rajasthan, with most of these lands being in close proximity of the river banks of the State. 114 *Khatedari* leases are within a distance of 100 metres or less from the river bank and only 23 *Khatedari* leases have been granted beyond a distance of 5 km from the river bank. The CEC has stated in its report that the agricultural lands do not have deposits of quality sand suitable for construction, being a mixture of sand, silt and clay. The *Khatedars* have been exploiting the locational proximity to the river banks by excavating sand from the river bed, instead of restricting the mining to their leasehold areas, completely in violation of the mining plan. The quantity of sand is in excess of the permissible limit which is transported by being shown as having been mined in the *Khatedari* lands. The CEC has commented upon the involvement of sand *mafia* in the trade of sand illegally mined

by the *Khatedars* as well as the involvement of authorities in the State of Rajasthan. Therefore, the CEC has recommended the cancellation of all *Khatedari* leases located within 5 km from the river banks as well as those leases where violation of lease conditions including misuse of e-ravannas are detected. The CEC further recommended that no fresh *Khatedari* leases shall be granted, except for Palaeo deposits, without the approval of this Court.

14. Section 23C of the MMDR Act empowers the State Governments to make rules for preventing illegal mining, transportation and storage of minerals. This Court in ***Deepak Kumar*** (supra) directed the State Governments / Union Territories to formulate rules in accordance with the Model Guidelines. Pursuant to the directions issued by this Court and the National Green Tribunal (“**NGT**”), the Sustainable Sand Mining Management Guidelines, 2016 were issued (“**2016 Sand Mining Guidelines**”). The responsibility for implementation of the said Guidelines was placed on the State Governments which had to create a mechanism to measure the mined-out mineral and its transportation and also to ensure that the amount of mineral mined does not exceed the quantity permitted in the EC. The 2016 Sand Mining Guidelines recommended use of Transport Permits with bar codes, for generation of reports showing the daily lifting of

sand and user performance reports. Transport Permits with bar codes would also enable vehicles carrying sand to be tracked from source to destination. Dissatisfied with the ineffective monitoring mechanism, failure of the Mines Surveillance System as well as lack of an effective institutional monitoring mechanism not only at the stage of the grant of EC but at subsequent stages with respect to illegal sand mining, the NGT, in an order dated 05.04.2019 in ***National Green Tribunal Bar Association v. Virender Singh*** in OA No. 360 of 2015 and connected matters, directed the MoEFCC and the State Governments to review extant monitoring mechanisms and consider revision of the 2016 Sand Mining Guidelines. Consequently, the MoEFCC issued the 2020 Sand Mining Guidelines.

15. The damage caused to the environment due to rampant unscientific illegal mining needs no reiteration. Unabated illegal mining has resulted in the emergence of sand *mafia* who have been conducting illegal mining in the manner of organized criminal activities and have been involved in brutal attacks against members of local communities, enforcement officials, reporters and social activists for objecting to unlawful sand excavation. The statistics provided by the State Government highlights the magnitude of the problem as about 2411 FIRs have been registered in relation to illegal mining in

the State of Rajasthan, between 16.11.2017 and 30.01.2020. When this Court has restrained 82 mining lease / quarry holders from carrying on mining of sand and *bajri* unless a scientific replenishment study is completed and EC is issued by the MoEFCC, the State of Rajasthan ought not to have issued mining leases in favour of the *Khatedars*. It is clear from the report of the CEC that the majority of the *Khatedari* leases are within 100 metres from the river bed. The 2020 Sand Mining Guidelines prescribe that mining plan for mining leases on *Khatedari* lands shall only be approved if there is a possibility of replenishment of the mineral or when there is no possibility of river bed mining within 5 km of the patta land / *Khatedari* land. Agreeing with the CEC's conclusions on the issue of mining leases in *Khatedari* lands facilitating legalisation of transportation and sale of illegally extracted sand, we approve the recommendation of the CEC that all *Khatedari* leases which are located within 5 km from the river bed and those leases where lease conditions have been violated have to be terminated forthwith and that *Khatedari* leases shall be granted only with the permission of this Court.

16. The CEC has recommended imposition of exemplary penalty of Rs.10 lakh per vehicle and Rs.5 lakh per cubic metre of sand seized, which would be in addition to what has already been ordered / collected by the State agencies as

compensation. Compensation / penalty to be paid by those indulging in illegal sand mining cannot be restricted to the value of illegally-mined minerals. The cost of restoration of environment as well as the cost of ecological services should be part of the compensation. The “Polluter Pays” principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “Sustainable Development” and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.²

17. The scale of compensation by those who are involved in illegal mining has been dealt with by the NGT in ***National Green Tribunal Bar Association v. Virender Singh*** (supra). In its order dated 26.02.2021, the NGT considered and approved the Report submitted by the Central Pollution Control Board dated 30.01.2020, in pursuance of its earlier orders, on scale of compensation to be recovered for violation of norms for mining on “Polluter Pays” principle. Additionally, para 9.2 of the 2020 Sand Mining Guidelines provides as follows:

² *Vellore Citizens' Welfare Forum v. Union of India & Ors.* (1996) 5 SCC 647

“The environmental damages incurred or resulting due to illegal mining shall be assessed by a committee constituted by District Administration having expertise from relevant fields, and also having independent representation of locals and State Pollution Control Board. Guidelines for assessment of ecological damages prescribed by the State Government or Concerned Pollution Control Boards or any other authority shall be applicable and compensation as fixed shall be paid by the project proponent, in light of Hon’ble National Green Tribunal orders.”

18. Section 21(5) of the MMDR Act empowers the State Government to recover the price of the illegally-mined mineral, in addition to recovery of rent, royalty or tax. The penalty recommended by the CEC for illegal sand mining is in addition to the penalty that can be imposed by the State Government in terms of Section 21(5) of the Act. However, the basis for imposition of exemplary penalty of Rs. 10 lakh per vehicle and Rs. 5 lakh per cubic metre of sand has not been stated by the CEC in its report. The CEC is directed to follow the directions given by the NGT in respect of imposition of penalty / determining scale of compensation for illegal mining and the provisions of the 2020 Sand Mining Guidelines and determine the penalty / compensation afresh and submit a report to this Court within a period of eight weeks from today.

19. The recommendations made by the CEC, except recommendation 'J', are approved for implementation forthwith. IA No. 29984 of 2021 and IA No. 54981 of 2021 are disposed of.

20. SLP (C) No. 10587 of 2019 and SLP (C) No. 10670 of 2019 are directed to be listed after eight weeks.

.....J.
[L. NAGESWARA RAO]

.....J.
[SANJIV KHANNA]

.....J.
[B.R. GAVAI]

**New Delhi,
November 11, 2021.**

ITEM NO.13

COURT NO.1

SECTION XVII

**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**

Civil Appeal No. 480/2023

M/S R.J. TRIVEDI AND CO. & ORS.

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

**(IA No.16240/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.16239/2023-STAY APPLICATION and IA
No.16238/2023-PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)**

Date : 02-02-2023 This appeal was called on for hearing today.

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA**

**For Appellant(s) Mr. Gopal Sankaranarayanan, Sr. Adv.
Mr. Anand Varma, AOR
Ms. Apoorva Pandey, Adv.
Ms. Adyasha Nanda, Adv.
Ms. Shivani Vij, Adv.**

**For Respondent(s) Mr. M. A. Venkata Subramanian, Adv.
Mr. Rohit K. Singh, AOR**

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

**1 Mr Gopal Sankaranarayanan, senior counsel appearing on behalf of the petitioners
submits that:**

- (i) There was a specific finding by the expert committees appointed by the
National Green Tribunal to the effect that there was no environmental
damage;**
- (ii) Despite the above finding, the National Green Tribunal has ordered the
payment of compensation merely on the basis of an averaging out of
three alternative methodologies which were suggested; and**

(iii) This Court has held in **Kantha Vibhag Yuva Koli Samaj Parivartan Trust vs State of Gujarat**¹ that the National Green Tribunal has to carry out its adjudicatory functions which cannot be dedicated to a third party agency.

- 2 Issue notice, returnable in six weeks.
- 3 Pending further orders, no coercive steps shall be taken against the petitioner on the basis of the impugned order.

(MANISH ISSRANI)
COURT MASTER(SH)

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<p><u>WPPIL No. 200 of 2021</u></p> <p><u>Shri Sanjaya Kumar Mishra, J.</u> <u>Shri Narayan Singh Dhanik, J.</u></p> <p>Mr. P.C. Petshali, Advocate for the petitioner.</p> <p>Mr. Anil Bisht, Standing Counsel for the State/respondent no. 1 to 5.</p> <p>Mr. Aditya Pratap Singh, Advocate for respondent no. 6.</p> <p>Heard learned counsel for the parties.</p> <p>In this writ petition, the petitioner has prayed for issuance of writ in the nature of Mandamus directing the respondent no. 1 to 6 to conduct an appropriate inquiry in the matter and take action against actual culprits including respondent nos. 7 to 10, in accordance with law.</p> <p>The grievance of the petitioner is that the opposite party no. 7 to 10 are carrying out mining operations and stones crushing activities in violation of the license/permit given to them. In this regard, the petitioner has also submitted a representation to the opposite party no. 3 i.e. District Magistrate, Nainital, Uttarakhand on 15.11.2021 contained in Annexure no. 3 to the writ petition.</p> <p>In that view of the matter, the writ petition is disposed of directing the opposite party no. 3 - the Collector-cum-District Magistrate, Nainital to inquire into the matter and take a decision on the grievances of the</p>

			<p>petitioner strictly in accordance with law after affording reasonable opportunity of hearing to the petitioner and to the respondent nos. 6 to 10, by speaking and reasoned order within 30 days from the date of production of certified copy of this order along with copy of the brief.</p> <p>Learned counsel for the petitioner will submit the certified copy of the order along with copy of the brief to the opposite party no. 3 within a period of 10 days from today.</p> <p>With the above observations, the writ petition is disposed of.</p> <p>(N.S. Dhanik, J.) (S.K. Mishra, J.)</p> <p>01.12.2021</p> <p>A/-</p>
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VAKALATNAMA

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 538 OF 2022

IN THE MATTER OF:

Swarn Singh

... Applicant

Versus

State of Uttarakhand & Ors.

... Respondents

KNOW ALL to whom these present shall come that I, Kripal Singh, S/o Shri Kartar Singh, Village - Sood Colony, Tehsil – Bajpur, District – Udham Singh Nagar, Uttarakhand, Respondent No. 10, do hereby appoint:

APOORVA PANDEY
Er. NO. D/2281/2019
M:9717252603
E: apoorva@aptlegal.in

ADYASHA NANDA
Er. No. D/5897/2020
M: 9668635939
E: adyasha@aptlegal.in

D-21, SF, Jangpura Extension, New Delhi - 110014

(hereinafter called the advocate) to be my Advocate in the above noted case & authorize him:-

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each court by me/us.

To sign, file, verify and present pleadings, appeals, cross-objections or petitions for executions review revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subjects to payment of fees for each stage.

To file and take back documents, to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To appoint and instruct any other Legal Practitioner authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and proposes.

And I/We undertake that I/We or my/our duly authorised agent would appear in Court on all hearings and will inform the Advocate for appearance when the case is called.

And I/We the undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain for himself.

I/We hereby agree that once fee is paid, I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHEREOF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this the 06 day of May, 2023.

Accepted subject to the terms of fees.

(APOORVA PANDEY)
Advocate

(ADYASHA NANDA)
Advocate

(KRIPAL SINGH)
(Client)

Accepted and Identified

