BEFORE THE HON'BLE NATONAL GREEN TRIBUNAL PRINCIPAL BENCH NEW DELHI

OA NO 163 OF 2024 & IA 436 OF 2025

Rasikh Rasool Bhat

.....Applicant

VS

UT of J&K,through Chief secretary and others

.....Respondents

In the matter of : Rejoinder by the Applicant to the Reply of commissioner /secretary Forest, Ecology & Environment Department Govt of J&K and others

MOST RESPECTIFULLY SHOWETH

Preliminary Submissions

1. **Primacy of Article 21 and Environmental Rights:**

   At the outset, it is most respectfully submitted that Article 21 of the Constitution of India guarantees the fundamental right to life, which has been consistently interpreted by the Hon'ble Supreme Court to include the right to a clean, healthy, and pollution-free environment. This constitutional guarantee is further strengthened by Articles 48A and 51A(g), thereby imposing a binding obligation upon the State to ensure environmental protection. Any action resulting in environmental degradation or dilution of environmental safeguards is, therefore, a direct infringement of Article 21 of the constitution.

2. **Polluter Pays Principle as a Binding and Non-Suspendable Constitutional Mandate:**

   It is submitted that the *Polluter Pays Principle* forms an integral and inseparable part of Article 21 jurisprudence and has attained the status of binding law. The principle mandates that the polluter must bear the entire cost of environmental damage, including restitution and restoration. Crucially, this principle is non-derogable and incapable of being suspended, waived, diluted, or modified by any administrative or executive order. Any attempt to do so whether by policy decision, executive instruction, or administrative convenience is ex facie unconstitutional, void ab initio, and liable to be struck down. The State lacks the authority to relax or bypass this obligation, as it flows directly from constitutional guarantees and binding judicial precedents.

3. **Illegality of Partial or Conditional Environmental Compensation:**

   Any action permitting the use of forest land for non-forest purposes, or allowing

environmentally harmful activities, without imposing full and complete environmental compensation, or by granting whole or partial exemption from such liability, is in direct contravention of the Polluter Pays Principle. Such dilution effectively shifts the burden of environmental harm from the polluter to the public, thereby violating Article 21 and undermining the rule of law.

4. **Impermissibility of Administrative Override and Statutory Violations:**

It is a settled position that administrative or executive actions cannot override fundamental rights or dilute binding environmental principles. Any diversion of forest land, illegal mining, or use of heavy machinery such as JCBs without requisite permissions and without enforcing full environmental liability is illegal, void, and constitutionally impermissible.

5. **Public Trust Doctrine and Consequences of Non-Enforcement:**

The State holds natural resources in trust for present and future generations. Failure to enforce the Polluter Pays Principle, or any attempt to suspend it through administrative means, constitutes a breach of this fiduciary duty. Unauthorized mining and mechanized activities cause irreversible ecological damage and attract strict and absolute liability, including compensation, restoration, and penal consequences. Any inaction or dilution is arbitrary, unconstitutional, and violative of Article 21.

6. **Arbitrariness, Constitutional Invalidity, and Need for Strict Enforcement:**

In view of the above, any administrative action that seeks to suspend or dilute the Polluter Pays Principle amounts to a direct assault on the constitutional framework and environmental rule of law. Such actions are manifestly arbitrary, unreasonable, and liable to be set aside. It is therefore respectfully submitted that strict and uncompromising enforcement of the Polluter Pays Principle is indispensable to uphold Article 21 and ensure environmental justice.

SUBMISSIONS IN DETAIL

In response to para number 1, 2,3,5,6,16,17 and 18 is submitted as under

7. That during the last hearing, Respondent No. 1 sought four weeks' time to file a comprehensive report before this Hon'ble Tribunal. In its earlier report dated 24.12.2025, Respondent No. 1 itself disclosed that an administrative order issued by the J&K State Administrative Council dated 30.07.2024 had, in effect, suspended and diluted the Polluter Pays Principle, thereby seriously undermining the mandate of Article 21 of the Constitution of India, which guarantees the right to a clean and healthy environment

8. It is further submitted that the said administrative order permitted road construction and allied projects in forest areas without ensuring mandatory payment of compensatory levies, in blatant violation of environmental laws, including the Compensatory Afforestation framework. The report further reveals that approximately 154 projects resulted in the felling of 82,511 trees, creating a compensatory liability of about ₹84.82 crore, out of which a substantial amount of ₹49.07 crore remains unpaid to

date.Applicant had already raised objections to these actions, which strike at the very root of sustainable development, environmental protection, and rule of law.

9.Despite the specific time granted by this Hon'ble Tribunal, Respondent No. 1 failed to file meaningful report within the stipulated period. No material has been placed on record to demonstrate compliance, corrective measures, or recovery of outstanding compensatory amounts.

10. Subsequently, a response dated 30.04.2026 was filed by the Commissioner/Secretary, Forest, Ecology & Environment Department, J&K. However, the said response is not made with clean hands, as it merely reiterates previously filed reports which already stand objected to by the Applicant. The response fails to address the core violations, does not disclose any accountability, and is completely silent on corrective action.

11. It is submitted that the said response reflects complete non-application of mind and appears to shield grave environmental violations through vague, evasive, and unsupported assertions, thereby raising a serious apprehension of institutional collusion with other Respondents.The response further relies upon outdated and untenable legal positions, ignoring binding constitutional mandates and settled environmental jurisprudence, including the Polluter Pays Principle, Precautionary Principle, and Public Trust Doctrine. In such circumstances, the response deserves to be rejected outright, being misleading, inadequate, and contrary to law.

12. Without prejudice to the above, and in order to place the factual and legal position beyond doubt, it is submitted that the Handwara–Bangus Road, constructed by PWD (R&B), J&K, along with its allied activities, and J&K State Administrative council suspending Polluter Pay Principal is illegal and unsustainable, being in violation of both the erstwhile J&K State laws as well as applicable central environmental and forest laws. The Applicant, therefore, proceeds to respond as under:

13 .That the present case, though initially confined to the Handwara–Bangus Road project, has unearthed grave, continuous, and deliberate violations of environmental laws. The amount of ₹3.81 crore towards Compensatory Afforestation (CA) remained unpaid from 2017 till 2025, despite repeated communications, and was deposited only pursuant to the intervention of this Hon'ble Tribunal in OA No. 163/2024.It is submitted that the Forest Department permitted and allowed construction activities from 2017 onwards till date without obtaining mandatory prior forest clearance, in clear violation of the Forest (Conservation) Act, thereby constituting a continuing illegality.

14. That the present matter reveals a systemic and institutionalized illegality, wherein the Polluter Pays Principle, forming an integral part of environmental jurisprudence and flowing from Article 21 of the Constitution of India, has been consciously diluted/suspended by administrative orders of the J&K Government.It is submitted that the said principle mandates that any entity causing environmental degradation must bear the cost of restoration and compensation prior to undertaking such activity. However, in the present case, forest land has been diverted and utilized without prior payment of Compensatory Afforestation and other statutory dues, which is ex facie illegal, arbitrary, and ultra vires the Constitution as well as statutory mandates.It is further submitted that upon perusal of the report submitted by the Chief Secretary, the Applicant has identified an Annexure on pages 498 to 509, wherein the Government itself

acknowledges/assumes that forest land was allowed to be utilized without prior payment of statutory dues. This constitutes a clear admission of illegality and exposes deliberate administrative failure. Reputed National Newspaper The Indian Express has analysed the Report of Chief Secretary J&K Newspaper cutting is Annexed herewith as **ANNXURE A**

15 .The scale and gravity of violations are further analysed and reported by The Indian Express, which highlights that pursuant to a 2019 decision, approximately 154 projects were permitted, involving the felling of about 82,511 trees, with a total liability of around ₹84.82 crore, out of which ₹49.07 crore remains unpaid. such actions amount to a direct and continuing violation of Article 21 of the Constitution of India, as the right to life includes the right to a clean and healthy environment. By allowing large-scale deforestation without ensuring compensatory mechanisms, the State has abdicated its constitutional duty, endangering ecological balance, public health, and environmental sustainability. and violated the Environmental Protection Act below mentioned sections

Section 3 The State failed to regulate or prohibit activities causing environmental degradation.

Section 6 Standards for maintaining environmental quality were disregarded; illegal deforestation and construction caused soil and biodiversity degradation.

Section 7 Activities adversely affecting public health and environment were allowed without controls.

Section 15 Authorities failed to penalize non-compliance, despite clear statutory obligations.

Section 16 Any company/agency executing work without clearance may be held liable for violations.

16. The dilution of the Polluter Pays Principle and non-payment of statutory dues effectively shifts the burden of environmental degradation onto the public, which is arbitrary, illegal, and violative of sustainable development and intergenerational equity, posing a serious threat to both present and future generations. Had the Applicant not approached this Hon'ble Tribunal, these systemic illegalities would have remained concealed and continued unchecked

In response to paras 4, 7, 8, 9, 10, 11, 12, 13, 14, 15,18,19,20,21 and 22, it is most respectfully submitted as under:

17. It is respectfully submitted that the so-called Handwara–Bangus Road project is ex facie illegal, void ab initio, and unconstitutional, having been undertaken in flagrant violation of the provisions of the *Jammu & Kashmir Forest Conservation Act, 1997* and the *J&K Forest Conservation and Afforestation Rules, 2000*, which unequivocally mandate prior statutory approval and payment of Compensatory Afforestation (CA) as a condition precedent before diversion of forest land. Admittedly, no such compliance was ensured at the relevant time, rendering the entire exercise legally unsustainable.

18.It is further submitted that the project also stands in direct contravention of the J&K Wildlife Protection Act, 1978, as it involves intrusion into ecologically sensitive forest areas

and wildlife habitats without obtaining mandatory wildlife clearances or adopting requisite environmental safeguards, thereby endangering fragile ecosystems.

19. The aforesaid actions constitute a direct infringement of the fundamental right to life under Article 21 of the Constitution of India, which has been consistently interpreted by the Hon'ble Supreme Court to include the right to a clean and healthy environment. The Respondents, by proceeding in such an unlawful manner, have acted in derogation of settled constitutional and environmental jurisprudence, including the Precautionary Principle and the Polluter Pays Principle.

20. It is emphatically submitted that the issue at hand is not merely one of road alignment, as sought to be portrayed, but rather a matter involving grave illegality, arbitrariness, and mala fide exercise of power. An already existing, well-developed, all-weather road from the Rajwar area, approximately 33 feet in width and constituting the shortest available route of about 17km, from Handwara to wadder from wadder only 10 kms from forest were required to connect it Bangus same deliberately ignored and effectively abandoned without any cogent justification.

21. Instead, a new alignment has been proposed and executed through pristine forest area of Rajwar forests parallel to existing route 17 km existing road under a deceptively similar nomenclature-commonly referred to as the *Defence Road / Handwara–Bangus Road with the* existence of an approximately 60-year-old established route constructed and maintained by the Border Roads Organisation (BRO).

22. Such diversion is not only environmentally destructive but also arbitrary and legally untenable, and appears to have been undertaken with ulterior motives. It is submitted that the real intent behind this deviation is to confer undue benefits upon a select group of private individuals having land holdings along first 5–6 km stretch adjoining areas and few adjoining locations, thereby constituting a colourable exercise of power.

23 This Hon'ble Tribunal may kindly take note that public forest resources and ecological assets have been sacrificed to serve narrow private interests, which strikes at the very root of the rule of law, public trust doctrine, and principles of sustainable development.

24 That in the contemporary times of Jammu & Kashmir time has long passed when vested interests could seek to deliberately mischaracterize environmentally destructive and legally untenable projects such as the Handwara–Bangus Road project undertaken by the Public Works Department (R&B) as matters pertaining to 'Defence' or 'National Security,' with the apparent objective of circumventing statutory safeguards and evading regulatory scrutiny. Such a position is wholly untenable both in law and on facts."

25. It is further submitted that, under the settled administrative framework, defence-related road infrastructure is ordinarily planned and executed through the designated nodal agency, namely the Border Roads Organisation (BRO), in accordance with established legal procedures and statutory compliances. The attempt to cloak civil infrastructure projects with the label of national security is not only misleading but also constitutes a colourable exercise of power aimed at bypassing environmental laws.

26. Moreover, attributing such environmentally destructive and procedurally flawed projects to the requirements of national defence is deeply concerning and unjustified. It tends to cast an unwarranted aspersion on the integrity and discipline of the armed forces

of India , which are known for their strict adherence to law and institutional protocols. Such misrepresentation appears to be a deliberate attempt to shield illegal actions under the guise of national interest, thereby undermining both environmental governance and the rule of law.

27 Section 2(c)(ii)(c) of the Jammu & Kashmir Forest Conservation Act, 1997 defines "border roads" as roads constructed primarily for defence purposes by the Army, the Border Roads Organisation (BRO), or its agencies.

A plain reading of the provision makes it unequivocally clear that the classification of a road as a "border road" is contingent upon two essential conditions: (i) the road must be primarily for defence purposes; and (ii) it must be constructed by the Army, BRO, or its agencies.

28.In the present case, the Handwara–Bangus Road is being constructed by the Public Works Department (PWD), which is a civilian agency, and not by the Army, BRO, or any defence agency. Furthermore, there is no material on record to demonstrate that the project is primarily for defence purposes.

Accordingly, the said project does not fall within the ambit of "border roads" as defined under Section 2(c)(ii)(c) of the Act.

Act annexed herewith as **ANNEXURE B**

28. That Section 2(c)(ii)(a) of the Jammu & Kashmir Forest Conservation Act, 1997 unequivocally mandates that permission for such activities shall be accorded only once, and no further extension shall be granted under any circumstances. Further, Section 2(c)(ii)(b) stipulates that such permission can be granted only upon the satisfaction of the Principal Chief Conservator of Forests that the proposed road is required for the upliftment of the rural area and does not have any adverse impact on the ecosystem.However, in the present case, the forest proposal placed on record (at page 285) itself categorically records that the proposed project area constitutes habitat for endangered and protected wildlife species, including the Himalayan Black Bear, leopard, jackal, Himalayan deer, and Himalayan snowcock (jungle fowl). It is further acknowledged therein that the area may serve as a breeding ground for such fauna and that the execution of the project would adversely affect flora and fauna by disturbing their natural habitat, thereby adversely impacting the ecology of the area

29. That, as a matter of fact, since the inception of the impugned road project, there has been a significant and alarming increase in human-wildlife conflict incidents in the Rajwar area, which continues unabated. Official records (at page 286) indicate that from the year 2017 till 15.02.2025, approximately 128 human-wildlife conflict incidents have been reported, along with 136 SOS calls, resulting in 4 fatalities and 9 injuries. These figures clearly demonstrate the severe ecological disturbance caused due to the disruption of wildlife habitats and corridors.

30 . That the impugned project is also in direct contravention of the provisions of the *Jammu & Kashmir Wildlife Protection Act, 1978* as well as the *Wildlife (Protection) Act, 1972 (Central)*, both of which mandate strict protection of wildlife and their habitats.

31. Under the Wildlife (Protection) Act, 1972:Section 9 expressly prohibits hunting of any wild animal specified in Schedules I to IV. The term "hunting" under Section 2(16) is of wide amplitude and includes not only the killing or capturing of animals but also any act of disturbing, damaging, or destroying the habitat of wildlife, including breeding sites.

32. It is submitted that the admitted position on record that the project area is a habitat and possible breeding ground of protected species and that the project will adversely affect flora and fauna squarely attracts the mischief of the above provisions. The disturbance caused by road construction, deforestation, blasting, and human intrusion amounts to constructive hunting and habitat destruction, which is impermissible in law.

33. Further, under the Jammu & Kashmir Wildlife Protection Act, 1978, analogous provisions prohibit: Destruction or disturbance of wildlife habitats,Interference with breeding grounds,Activities leading to increased human-wildlife conflict.

34 That the sharp rise in human-wildlife conflict incidents in the Rajwar area post initiation of the project clearly establishes that the natural habitat and movement corridors of wildlife have been severely disrupted. This amounts to a continuing violation of the statutory mandate to protect wildlife and maintain ecological balance.

35 In light of this explicit admission on record, the statutory precondition contained in Section 2(c)(ii)(b) of the Jammu & Kashmir Forest Conservation Act, 1997 stands patently violated. Once it is acknowledged that the project would adversely affect the ecosystem and wildlife habitat, the grant of permission becomes legally impermissible, arbitrary, and contrary to the express mandate of law.

36 That it is further submitted that the local inhabitants of the area have consistently opposed the said road project and the allied mining activities, on account of their detrimental impact on the environment and their natural livelihood. The concerns and objections raised by the residents have been duly communicated to various authorities of the Government from time to time, seeking immediate cessation of the project. The same is substantiated from the record at pages 144 to 150.

37 Accordingly, the continuation of the impugned project is not only in blatant violation of the provisions of the Jammu & Kashmir Forest Conservation Act, 1997, but also in direct contravention of the Jammu & Kashmir Wildlife Protection Act, 1978 and the Wildlife (Protection) Act, 1972. The project amounts to unlawful habitat destruction, disturbance of wildlife, and constructive hunting, thereby posing a grave threat to biodiversity and ecological balance.

38 That the term "minimum forest land requirement" embodies a mandatory statutory and administrative principle, requiring that diversion of forest land be confined strictly to the bare minimum extent indispensable for achieving the stated public purpose, and no more. In the instant case, the declared objective of the project was to provide road connectivity to Bangus Valley from Handwara via Rajwar. It is an admitted position on record that a functional and motorable road already existed from Rajwar up to Wadder, thereby limiting the actual requirement of forest land diversion to a narrow stretch of approximately 8–10 kilometers only.

39 However, in patent disregard of this governing principle, the project proponents sought and obtained approval for diversion of approximately 14 hectares of forest land. Such

diversion is manifestly excessive, disproportionate, and wholly unjustified in the facts and circumstances of the case. The approval granted, therefore, defeats the very object and spirit of the regulatory framework, which mandates minimization of forest land use and prioritization of least invasive alternatives.

40 It is respectfully submitted that the impugned certification of "minimum forest land requirement" is ex facie arbitrary, lacking in due application of mind, and contrary to the material available on record. Rather than reflecting an objective assessment, it discloses a conscious and wilful departure from established norms, resulting in avoidable environmental degradation, fragmentation of wildlife habitat, and unwarranted financial implications for the State exchequer.

41 Such conduct, viewed in its entirety, constitutes a serious dereliction of statutory duty and renders the decision-making process vulnerable to judicial scrutiny on grounds of arbitrariness, mala fides, and abuse of administrative discretion.

42.That the execution of the impugned project was commenced and tenders were floated prior to the grant of mandatory Forest Clearance, which is not a mere allegation but an established and admitted fact borne out from the official record, and duly placed on record before the Hon'ble Tribunal by the Divisional Forest Officer, Langate. The same is further substantiated by the registration of an FIR at Police Station Handwara in the year 2018.

43.That the activities undertaken were not confined merely to approximately 7 kilometers of private land, but were in fact carried out over a substantial stretch of forest land as well, without obtaining the requisite statutory clearances, thereby constituting a gross and continuing violation of applicable forest and environmental laws.

44.That it is further submitted that bills amounting to nearly ₹9 crores have been drawn towards earth cutting alone. It is inconceivable and implausible that such an enormous expenditure could have been incurred solely for earth cutting over 7 kilometers of private land, which clearly indicates that the work was in fact executed over forest land as well, Respondents reply is in a deliberate attempt to conceal the true extent of illegal activity and to circumvent statutory safeguards.

45. That the change in classification of the subject road from Other District Road (ODR) to Major District Road (MDR) is not a mere alteration in nomenclature, but has, in fact, resulted in a substantial and impermissible extension of the road length. While the road, under its original classification as ODR, measured approximately 29 kilometers, its reclassification as MDR reflects an increased length of about 39 kilometers, thereby evidencing an unauthorized enhancement of nearly 10 kilometers without obtaining the requisite Forest Clearance under the applicable law. While in indent total length of road is mentioned 29kms while forest land required is 20km

46 That the impugned road project, now spanning over more than 40 kilometers, is not a mere allegation but an established ground reality, which the Applicant unequivocally affirms. The same stands duly corroborated by the report of the Executive Engineer, PWD Handwara, as reflected at page no. 207 para B of the report dated 03/04/2025

46 That the averment made by the Chief Conservator of Forests, Kashmir Division, alleging that the Applicant's concern is not environmental protection but merely the alignment of the Handwara–Wadder road on account of his village location, is wholly false, baseless, and misleading. The said assertion is not only a blatant misrepresentation of facts but also amounts to clear misconduct on the part of the public servant.

47 It is respectfully submitted that, in the event it is established that the Applicant resides along the Handwara–Wadder road stretch or owns any property therein, the Applicant shall be liable to face appropriate legal consequences. However, in the absence of any such proof, the said allegation deserves outright rejection. Instead of discharging his statutory duties with fairness, transparency, and objectivity, the said officer being a public servant drawing salary from the State exchequer has made reckless, unfounded, and defamatory statements, thereby attempting to justify and shield the impugned actions. Such conduct is arbitrary, unprofessional, and contrary to the settled principles governing public administration.It is further submitted that such misuse of official position not only undermines public trust but also obstructs the cause of environmental justice.

48.That the allegations made by the Respondents, asserting that the geo-tagged photographs submitted by the Applicant on record at page 385 , 386 and 387 depicting heavy machinery (JCB) engaged in extraction of River Bed Material (RBM) are self-created and that no mining activity has taken place within 500 meters downstream of the bridge located at Zachaldara on the Zachaldara–Satkoji road, are not merely misleading but constitute a deliberate and mala fide attempt to conceal the illegal activities carried out at the site.

49 .It is submitted that the said contention is factually incorrect and untenable. On the contrary, the Respondents themselves have placed on record certain photographs as Annexure R-VIII, which are admittedly not geo-tagged and appear to be self-serving in nature. The submission of such unverified and unauthenticated material reflects gross irresponsibility and amounts to clear misconduct, particularly in proceedings of this nature where accuracy and transparency are paramount.

50 That the location in question, namely Dobigat, lies between two vital bridges Sultanpora-Galgazna–Khaipora Bridge and Zachaldara Bridge situated along the Zachaldara–Satkoji road, with an approximate distance of merely 1100 meters between them. The Applicant categorically affirms that illegal mining activities have been carried out within this stretch in blatant violation of applicable laws and environmental regulations. It is further submitted that heavy machinery, including JCBs, has been deployed for extraction purposes without obtaining any lawful permission or clearance from the competent authorities, thereby aggravating the illegality and causing serious environmental degradation.

51.It is further submitted that such illegal mining activities are not confined to the Zachaldara location alone but have also been carried out at other locations, including Chalpora, which is duly reflected in the material placed on record by the Respondents themselves in their Annexures. The Respondents' own documents, instead of rebutting the Applicant's case, in fact corroborate the existence of such activities at multiple sites,

thereby establishing a consistent and continuing pattern of violations across the entire stretch in question.

52. That the Respondents, while attempting to deflect from their own wrongdoing, have gone to the extent of seeking imposition of penalty upon the Applicant on wholly baseless and misconceived grounds. Such conduct is not only unjustified but also amounts to a clear abuse of authority, intended to suppress and obscure the illegal acts brought to light by the Applicant. Public servants making such reckless and unfounded assertions, in an attempt to shield their own lapses, ought not to be countenanced and deserve to be dealt with appropriately by this Hon'ble Tribunal.

53.That the recommendation made by the Executive Engineer, PWD Handwara, permitting or advocating mining activity in close proximity to bridges is not a mere allegation, but a material fact duly borne out from the record, as reflected at page 134 of the case file.

54. It is further submitted that the damage caused to the bridges in question cannot be attributed solely to flash floods, as is being contended by the Respondents. On the contrary, the degradation of the nallah and the consequent weakening of the bridge structures had already occurred due to indiscriminate extraction of River Bed Material (RBM) through the use of heavy machinery, including JCBs, in clear violation of applicable environmental and mining regulations.

55. Flash floods are a recurring and well-recognized natural phenomenon in the Jammu & Kashmir, or any part of our country or world and all infrastructure, particularly bridges, is designed and constructed keeping such contingencies in view. It is precisely for this reason that stringent legal frameworks and regulatory norms have been established to safeguard riverbeds and bridge structures from anthropogenic interference.

56 Therefore, where such statutory safeguards are violated, the resulting damage cannot be casually attributed to natural causes like flash floods. Rather, even ordinary rainfall events are sufficient to cause structural damage when the foundational integrity of bridges has already been compromised due to illegal and unscientific mining activities carried out in their vicinity.

57.Despite repeated protests and objections raised by local residents, highlighting that the ongoing mining activities were adversely affecting river bridges as well as surrounding agricultural and horticultural lands, the authorities failed to take corrective measures and instead proceeded in an arbitrary manner. In particular, the Executive Engineer, PWD Handwara whose primary duty is to ensure the safety and protection of public infrastructure, especially bridges acted in clear abuse of his position by recommending to the District Mineral Officer, Kupwara, the extension of the mining permit. This recommendation, rather than safeguarding public assets, facilitated the continuation of activities causing damage, and the same stands duly recorded at page 136 of the record.

58.That Respondents' assertion that steps were taken to restore or repair the bridge at check Mohalla Zacha;dara,is not merely misleading but constitutes a deliberate misrepresentation of the facts, to the applicants knowledge , no mining or related activity have occurred at Check Mohalla nor has the Applicant placed any material on record suggesting otherwise.such statements by the Respondents are a clear attempt to distort the factual record and evade accountability for the illegal activities undertaken.

59. The Respondents, in a brazen attempt to justify the ongoing illegal mining operations, have placed reliance on Appendix IX of the Guidelines issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) vide notification dated 28 March 2020, which governs mining and desilting operations and prescribes certain safeguards for jyfextraction of riverbed material. Such reliance is wholly misconceived, legally untenable, and cannot shield illegal actions from scrutiny.

60. That the Respondents' reliance on Appendix IX of the MoEF&CC Guidelines dated 28.03.2020, pertaining to de-silting/dredging activities in dams, reservoirs, barrages, rivers, and canals under the guise of maintenance, upkeep, and disaster management, to contend that no Environmental Clearance (EC) is required, is wholly misconceived, legally untenable, and contrary to settled law.

61.It is respectfully submitted that the Hon'ble National Green Tribunal, in **O.A. No. 142 of 2022 (SZ)**, by judgment dated **23.03.2023**, has categorically and unequivocally held that **Environmental Clearance is mandatory wherever the de-silted or dredged material is put to commercial use**, irrespective of the nomenclature or label assigned to such activity. The Tribunal, taking serious note of repeated violations, has expressly observed:

> **(VIII) "In spite of the orders of the National Green Tribunal holding repeatedly that Environmental Clearance is required when de-silted material is used for commercial purpose, the current orders of the District Collector is in gross violation of the same... desilting/dredging of water bodies... shall not be permitted without prior Environmental Clearance when the dredged material... is sold either to the public or for Government projects."**

62.It is further submitted that the Respondents themselves have repeatedly placed on record that the extracted material was **sold upon levy of charges**, and receipts to that effect have also been produced. Such admissions constitute clear and unequivocal evidence that the dredged/desilted material was put to **commercial use**, including utilization in Government projects.

63.In light of the aforesaid binding pronouncement and the Respondents' own admissions, the attempt to cloak the impugned activity under the pretext of "maintenance" or "disaster management" is nothing but a deliberate misinterpretation of the governing guidelines and a calculated device to circumvent mandatory environmental safeguards. Consequently, the permits issued by the District Mineral Officer, Kupwara, in the absence of prior Environmental Clearance, are **ex facie illegal, void ab initio, and unsustainable in law**.

Such conduct not only violates the EIA Notification framework but also constitutes a wilful and conscious disregard of binding judicial mandates, thereby rendering the impugned actions liable to be quashed with appropriate directions and consequences.

The copy of the Order passed by the Hon'ble National Green Tribunal in O.A. No. 142 of 2022 (SZ) dated 23.03.2023 is annexed herewith and marked as **ANNEXURE C**.

64. In view of the foregoing, the Applicant respectfully submits that the Respondents' conduct constitutes a manifest violation of law and a deliberate disregard of binding statutory obligations. Such conduct cannot be regarded as mere environmental non-compliance but represents a systematic and premeditated abuse of authority, amounting to a deliberate scam (Handwara-Bangus Road) designed to subvert legal safeguards and undermine the public interest.

Dated:03/04/2026
Place : Ahgam Handwara J&K

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(Applicant in Person)
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Mobile No +91 9103097097
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NOTARY AB. WADOOD MIR JURISDICTION OF SESSION DISTRICT Regn. No. 531/2013 TERRITORIAL JAMMU & KASHMIR U/T

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

O.A No 163 of 2024

IN THE MATTER OF:

Rasikh Rasool Bhat.

.....APPLICANT

VS

UT of Jammu & Kashmir & Ors.

.....RESPONDENTS

Affidavit in support of accompanying RESPONSE/ REJOINDER

1. I, Rasikh Rasool Bhat age 36 years s/o Gh Rasool Bhat R/o Ahgam Rajwar Handwara 193221 Applicant in the above mentioned OA/IA is well conversant with the facts and circumstances of the present case and competent to depose the same on the present affidavit.

2. That I have gone through the contents of the accompanying reply/rejoinder '
3. All statements of facts made by the deponent are true to my personal knowledge and all the statements of law are correct according to the information received by me from Department and I believe the same to be true..
4. That the contents of the accompanying application may kindly be read as part of the present affidavit as the same are not being repeated herein for the sake of brevity and to avoid prolixity.

DEPONENT

VERIFICATION:.

I, the above-named deponent do hereby verify that the contents of the above affidavit from Para 1 to 4 are true and correct to the best of my knowledge and belief and nothing material has been concealed herein.

Identified by
F ROOP
Faroog Ahmad.
S/o- Hakim-ud-din
R/o: Sathraji Rajwar

Certified that Sh Rasikh Rasool Bhat
who is identified by Faroog Ahmad
presented this affidavit be
today on 02/04/2026 **administered oath to him. Who swore solemnly a firmed to the contents of this affidavit.**

DEPONENT

ABDUL WADOOD MIR
NOTARY PUBLIC
DISTRICT COURT BARAMULLA
Regd. No: 531/2013

INDIA NON JUDICIAL

Government of Jammu and Kashmir

सत्यमेव जयते

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Property Description	:	Affidavit
Consideration Price (Rs.)	:	0 (Zero)
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ANNEXURE A

PROJECTS CLEARED WITHOUT PRIOR PAYMENT OF ENVIRONMENTAL LEVIES

82,000 trees felled, Rs 49 crore unpaid: J&K govt cites 2019 decision to NGT

Vineet Bhalla
New Delhi, February 17

Policy decision taken just days before abrogation of Article 370, says report

The complainant has argued before the tribunal that the 'polluter pays' principle cannot be suspended by any administrative order

THE JAMMU and Kashmir administration has acknowledged, in a report filed with the National Green Tribunal (NGT) on December 23, that a policy decision taken just days before the reorganisation of the erstwhile state in 2019 allowed government projects to divert forest land without prior payment of mandatory environmental levies.

As a result, while over 82,000 trees have been felled for various infrastructure projects since then, user agencies such as the Public Works Department and the Pradhan Mantri Gram Sadak Yojana are yet to deposit over Rs 49 crore in statutory dues intended for forest regeneration.

This information is present in a compliance report filed by J&K Chief Secretary Atal Dulloo before the NGT in the case of Rasikh Rasool Bhat v. Union Territory of J&K. While the original case pertains to alleged violations in the construction of the Handwara-Bangus road that was sanctioned in 2017 and work for which began in 2019, the government's affidavit has brought to light an issue affecting 154 projects across the UT.

Under the Forest (Conservation) Act, 1980, any agency seeking to divert forest land for non-forest purposes must first pay the Net Present Value – the monetised value of the forest being cleared – and charges for Compensatory Afforestation. Final approval is granted only after these funds are deposited.

However, the chief secretary's report reveals that on July 30, 2019 – less than a week before the abrogation of Article 370 of the Constitution – the State Administrative Council (SAC) headed by the then Governor passed a decision that for government-executed projects, the sanction for diversion of forest land "shall be issued... without imposing the condition of prior payment of compensatory levies by the indenting agencies".

The report states that following this decision, cases that were earlier held up solely due to non-payment "were cleared and sanction orders were issued".

The impact of this policy is detailed in a 12-page list in the report titled "Projects with outstanding compensatory levies where felling is done". *The Indian Express* analysed details of the 154 listed projects and found that a total of 82,511 trees were felled. While the total liability for these projects was approximately Rs 84.82 crore, the outstanding dues currently stand at Rs 49.07 crore.

In the compliance report, the J&K chief secretary attributes the delay in remitting these funds to the "administrative transition following the reorganisation of the erstwhile state of Jammu and Kashmir with effect from 05.08.2019", coupled with disruptions caused by the Covid pandemic.

The chief secretary has submitted that the government is now "actively pursuing recovery" of these outstanding levies. The report notes that in recent meetings held in July and December 2025, specific directions were issued for the reconciliation of dues.

The administration has also signalled a reversal of the 2019 policy. The report states that a "categorical and prospective policy decision" has now been taken that no future cases for forest land diversion will be processed unless all outstanding levies are fully cleared. Twenty-three fresh proposals from the Jal Shakti, Public Works and Rural Development departments have been returned due to pending payments.

The applicant, Bhat, however, argued in an objection filed to the report that the 2019 policy was legally untenable from the outset, asserting that the "polluter pays" principle cannot be suspended by an administrative order, regardless of the urgency of infrastructure projects.

The NGT has listed the matter for final hearing on April 9.

ANNEXURE B

THE JAMMU AND KASHMIR FOREST (CONSERVATION) ACT, 1997

(Act No. XXX of 1997)
[29th September, 1997]

An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

Be it enacted by the Jammu and Kashmir State Legislature in the Forty-eighth Year of the Republic of India as follows:

1. Short title, extent and commencement

(1) This Act may be called the Jammu and Kashmir Forest Conservation) Act, 1997.

(2) It extends to the whole of the State of Jammu and Kashmir.

(3) It shall come into force at once.

(4)

2. Restriction on denotifying of demarcated forest or deservation or use of Forest land for non-forest purpose

Notwithstanding anything contained in any other law for the time being in force,

(a) the Government shall not, except on a resolution of the l[the Council of Ministers based on the advice of the Advisory Committee constituted under section 3 of the Act].

(i) make or issue any order or notification directing that any demarcated forest or any portion thereof shall cease to be a demarcated forest;

(ii) make any order directing that any forest land or any portion thereof may be used for any non-forest purpose;

(b) no officer of the Government or other authority shall have power to make or issue any order or notification in respect of any matter specified in clause (a):

(1) Provided that the Administrative Department (Forest) shall be competent authority to accord permission after obtaining the approval of the Minister Incharge on the recommendations of the Advisory Committee constituted under section 3 of this Act, for the construction of Border/R & B/Irrigation roads when passing through the demarcated or undemarcated forest lands:

(2) Provided further that the Principal Chief Conservator of Forests may, on the recommendations of a Committee comprising the concerned Chief Conservator of Forests, Conservator of Forests, District Development Commissioner and the Divisional Forest Officer, accord permission for construction of,

(i) rural roads not exceeding 5 hectares of forest land; and

(ii) Border/R&B roads: and irrigation works not extending 2.5 hectares of forest land, when passing through the demarcated or undemarcated forest land subject to the condition that:

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a) permission shall be accorded only once in a case and no further extension shall be granted;

b) permission shall be accorded only when the Principal Chief Conservator of Forests satisfies himself that the road is needed for the upliftment of the rural people and does not have any, adverse impact on eco-system of the area; and

c) all other conditions as laid down in this Act are complied with:

Provided also that the Chief Conservator of Forests may, on the recommendation of a Committee comprising the concerned Conservator of Forests, District Development Commissioner and Divisional Forest Officer, accord permission for construction of rural roads not exceeding 2.5 hectares of forest land when passing through the demarcated or undemarcated forest land subject to the conditions that

(i) permission shall be accorded only once in a case and no further extension shall be granted;

(ii) no permission shall be accorded unless the Chief Conservator of Forests satisfies himself that the road is needed for the upliftment of the rural people and does not have any adverse impact on eco-system of the area; and (iii) that all other conditions as laid down in this Act are complied with.]

Explanation I. - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for -

(a) the cultivation of oil bearing plants, horticultural crops or medicinal plants;

(b) any other purpose other than re-afforestation but does not include any work relating or ancillary to conservation, development and management of forest and wildlife, namely, the establishment of check posts fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholds, trench marks, boundary marks, pipe lines or other like purposes.

I[Explanation II. - For the purposes of this section,

(a) "demarcated forest" and "undemarcated forest" shall have the same meaning as assigned to them in the Jammu and Kashmir Forest Act, Samvat 1987 (1930 A.D.);

(b) "rural roads" means the roads including paths to be constructed by the District Rural Development Agency under the technical and administrative control of the concerned District Development Commissioner; and

(c) "border roads" means any kind of roads to be constructed mainly for the defence purpose by the Army or Border Roads Organization or any of its agencies.

Constitution of Advisory Committee

The Government may constitute a Committee consisting of such number of persons as it may deem fit to advise the Government with regard to

(i) any matter referred to in section 2;

(ii) any other matter connected with the conservation of forests which may be referred to it by the Government:

4. Penalty for contravention of the provisions of the Act

Whoever contravenes or abets the contravention of any of the provisional of section 2

 ANNEXURE B

shall be punishable with simple imprisonment for a period which may extend to fifteen days.

5. Offences by authorities and Government Department

(1) Where any offence under this *Act* has been committed

(a) by any department of Government, the Head of the Department; or

(b) by any authority, every person who, at the time of offence was committed, was directly in charge of and was responsible to the authority for the conduct of the business of the authority as well as the authority, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the head of the Department; or any person referred to in clause (b) liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

5-A. Cognizance of the **offences**

The congnizance of the offences under this Act shall be taken by the Forest Officers in the same manner as is done under the provisions of the Jammu and Kashmir Forest Act, Samval1987 (1930 A.D.) and the procedure laid down therein shall mutatis mutandis apply to cognizance of such offences.

Explanation: - For purposes of this section, "Forest Officer" shall have the same meaning as assigned to it under clause (f) of section 2 of the Jammu and Kashmir Forest Act, Samvat 1987 (1930 A.D.)].

6. Power to make rules

The Government may, by notification in the Government Gazette, make rules for carrying out the purpose of this Act.

7. **Repeal and saving**

(1) The Jammu and Kashmir Forest Conservation) Act, 1992 Presidents Act No.5 of 1992) is hereby repealed.

(2) Notwithstanding such repeal, anything done, any action or any order issued or any rule made under the said Act shall be deemed to have been done, taken, issued or made under this Act.

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Original Application No. 142 of 2022 (SZ)
(Through Video Conference)

IN THE MATTER OF

Sarvabhoum Bagali,
S/o Late Satagouda,
R/o Kachari Road,
Opp. Head Post Office, Indi,
Vijayapur District, Karnataka- 586101

...Applicant(s)

Versus

1. **State of Karnataka**
   Through its Director,
   Department of Mines and Geology,
   49, Khanija Bhawan,
   Race Course Road, Bengaluru- 560001

2. **Ministry of Environment, Forests and Climate Change,**
   Through its Secretary,
   Indira Paryavaran Bhavan,
   Jorbagh, New Delhi- 110003.

3. **Karnataka State Environment Impact Assessment Authority (SEIAA),**
   Through its Member Secretary,
   Room No. 709, VII Floor, IV Gate, M.S. Building,
   Bengaluru- 560001.

4. **Deputy Commissioner- Dakshina Kannada District,**
   Deputy Commissioner's Office,
   Mangalru, Dakshina Kannada District,
   karnataka- 575001.

5. **Karnataka State Minerals Corporation Ltd.,**
   Through its Managing Director,
   Registered office at:
   V Floor, 'A'Block, TTMC Building,
   BMTC, Shanthinagar, Bengaluru
   Karnataka- 560027.

...Respondent(s)

For Applicant(s): Mr. Aagney Sail

For Respondent(s): Mr. Rajat Jonathan Shaw for
Mr. Darpan K.M. for R1.
Mr. H.K. Vasanth for R3.
Mr. R. Bharadwajaramasubramaniam for R5.

Judgment Reserved on: 15th February, 2023.

Judgment Pronounced on: 23rd March, 2023.

CORAM:
HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

Delivered by* Smt. Justice Pushpa Sathyanarayana*, Judicial Member

1. The interesting question that arise for consideration is whether the exemption granted under EIA Notification, 2006 to dredging and de-silting of dams is applicable when it involves sand/silt mining i.e., when sand/silt is sold for commercial purpose/use of Government agencies, instead of limiting the dredging/desilting for maintenance, upkeep and disaster mitigation as stipulated in the Sustainable Sand Mining Guidelines.

2. The applicant has stated that on21.05.2020 the State of Karnataka published in State Gazette the New Sand Policy, 2020 of the Government of Karnataka issued vide Government Order dated 05.05.2020. Later on 27.11.2020, the work order was issued by the District Sand Monitoring Committee to Karnataka State Mineral Corporation Ltd. (KSMCL), which is the 5th respondent herein, for de-siltation work involving extraction of 14,51,680 MT of sand from backwaters of Adhyapadi Dam on Phalguni River In Managluru Taluka and Shamburu Dam on Nethravathi River in Bantwal Taluka, both located in Dakshin Kannada District, Karnataka.

3. While the work order was issued, there was no condition to obtain Environmental Clearance. The said work order dated 27.11.2020 was published online by the authorities for any locals to make any objection. On 01.12.2021 an amendment was brought in the

Karnataka Minor Mineral Concession Rules, 1994 incorporating Sand Mining Policy, 2020. The Deputy Commissioner, Dakshina Kannada District, who is the 4th respondent, had given a statement on 23.05.2022 that dredging of the Adhyapadi and Shamburu Dams are allowed and sand collected will be sold commercially. As any sand mining attracts requirement of an Environmental Clearance, the applicant had approached the Deputy Commissioner by giving a representation on 11.10.2022 highlighting the illegal sand mining being carried out in Adhyapadi and Shamburu Dams in the guise of dredging and de-silting without prior Environmental Clearance requesting to stop the same. Since there was no response the above Original Application is filed.

4. The case of the applicant is that:

(i) The work order dated 27.11.2020 issued by the Sand Mining Committee is not sustainable as it is in direct violation of the EIA Notification, 2006 which prohibits dredging and de-silting of dams without obtaining prior Environmental Clearance. Admittedly in the present case 14,51,680 MT of sand is going to be extracted from the silt and the sand extracted is to be sold commercially. When the EIA Notification, 2006 exempts dredging and de-silting of the dams only for the purpose of maintenance, upkeep and disaster management, it should not involve commercial sand mining. Once commercial sand mining is involved, the same can be done only by obtaining Environmental Clearance which involves several stages of screening, scoping etc.

(ii) The Sustainable Sand Mining Guidelines, 2016 (for short 'SSM Guidelines') issued by the MoEF&CC describes de-silting activity involving extraction of sand involves mining operation. The mining operation means any operation undertaken for the purpose of winning any mineral. Hence, the exemption given under Appendix-IX of EIA Notification, 2006 has to be read with Sustainable Sand Mining Guidelines, 2016.

(iii) The work order dated 27.11.2020 is issued without preparing the District Survey Report which is an important initial step before grant of the mining lease.

(iv) Even as per Rule 3A(a) of the Karnataka Minor Mineral Concession Rules, 1994 (for short 'KMMC Rules') de-silting of ponds or tanks and disposal of minor minerals extracted thereof, other than sand, is exempted from obtaining Environmental Clearance. In this case, there is extraction of sand to be used for commercial purpose which requires an Environmental Clearance.

5. On the above said grounds, the applicant has sought for a declaration that the activity of dredging and de-silting of dams and other water bodies for the purpose of mining any mineral is not qualified for exemption from obtaining the prior Environmental Clearance and to declare the work order issued on 27.11.2020 is in violation of EIA Notification, 2006.

6. In response to the above application an affidavit has been filed on behalf of the **1st respondent, which is the Department of Mines and Geology, Bengaluru**. It is contended that the dredging and de-silting of dams has arisen on account of gathering

of silt/sand in the reservoir area of the dam thereby reducing the carrying capacity of the dam. After analysis and after ascertaining the quantity, it was identified that a fixed area has gathered silt/sand. The experts have assessed through Google Image that there is deposit of silt/sand in Adyapady Dam measuring 2000 meters in length and 100 meters in width with one meter depth. There is a collection of 3.44 lakhs MT of silt/sand. Similarly, in Shamburu Dam, the experts had assessed the collection of silt/sand as 2800 meters in length and 230 meters in width with one meter depth. In order to remove the silt/sand so accumulated in the above mentioned dams, the work order was issued on 27.11.2020 by the District Sand Monitoring Committee as per the Karnataka Minor Minerals Concession (Amendment) Rules, 2021.

7. The 1st respondent further had stated that the work order issued in favour of the 5th respondent was only for removing the silt/sand i.e. deposited in the dam and not for sand mining in the river. A distinction was drawn between removal of silt and sand blocks in the river beds. The impugned work order was issued to remove the silt to the tune of 14,51,680 MTs. De-siltation has to be done by machines and if they are not removed again there will be silt deposits during the rainy seasons. It is stated that the deposit of silt being a continuous process using the scientific and technical methods to remove the silt without violation of the terms and conditions of the work order dated 27.11.2020 was issued. It is categorically stated that the work order is not issued for removal of sand blocks but it is issued for removal of silt and that de-siltation cannot be construed as sand mining. Since, the 5th respondent is a Corporation established by the State Government,

there is no private interest involved in the said process and the order is only as per the Sustainable Sand Mining Management Guidelines, 2016.

8. It was also pointed out the notification issued by the 2nd respondent dated15.01.2016 and 28.03.2020 exempts the requirement of Environmental Clearance in certain cases wherein dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management are involved. The 1st respondent also place reliance on Appendix –IX of the MoEF&CC Notification dated 28.03.2020 and contended that the work order is perfectly in order. As the work order did not involve specific sand mining it was contended that the prior Environmental Clearance is not required and that the work order issued was in compliance with the EIA Notification, 2006.

9. The reply of **the Deputy Commissioner, Dakshina Kannda, who is the 4th respondent**, also has stated that the dredging and desilting of the dams has arisen on account of gathering of silt/sand in the reservoir area of the dam which has reduced the carrying capacity of the dam and that necessitated the dredging activity which was decided as per the Google Image. The Deputy Commissioner also has repeated the same reasons given by the Department of Mines and Geology.

10. The **5th respondent, who is the project proponent, Karnataka State Minerals Corporation Ltd.,** has filed its reply. It is stated that the Government of Karnataka adopted a new Sand Policy,

2020 on 05.05.2020. In furtherance thereto the Government of Karnataka had amended the KMMC Rules with effect from 05.05.2020. The amended KMMC Rules provides for the constitution of the District Sand Committee, Taluk Sand Committee, Powers and Functions of the District Sand Committee, Replenishment Study, Prohibition of Stocking of Sand and Appeals and Revisions arising out of orders of the District Sand Committee etc.

11. The 5th respondent was appointed to take up the entire responsibility of removal of sand obtained by de-silting and transport it to the stockyard and sell it to the costumers in IV, V and VI class streams/rivers, dam/reservoir/ barrages and backwater areas of the dam in the allotted districts of Bengalurru and Mysuru division. According to the 5th respondent the conjoint reading of the SSM guidelines, New Sand Policy, 2020 and the amended KMMC Rules would amply disclose that all the modules of regulations/policy statements recognise the fact that extraction of sand by dredging and de-silting does not tantamount to extraction of sand blocks in other cases that would warrant obtaining Environmental Clearance as stipulated in the SSM Guidelines.

12. The 5th respondent further contended that the de-siltation is done as per the due process of law as specified in Rule 31(V) of Karnataka Minor Minerals Concession (Amendment) Rules, 2021. As per the said Rule 31(V), there is no requirement of Environmental Clearance on the part of the 5th respondent as it is exempted under the SSM Guidelines. The 5th respondent also reiterated that the exemption provided under EIA Notification,

2006 is applicable in the present case at it exempts dredging and de-silting of dams etc., only for the purpose of its maintenance, upkeep and disaster management. In the impugned work order also it is mentioned that the dredging and de-silting is being done to increase the capacity of water storage in Adyapadi Dam, Mangalore Taluka and Shamburu Dam in Bantwala Taluka which amounts to maintenance, upkeep and disaster management. With the increase in the capacity of the dam, there will be greater storage capacity and less chances of flooding. Therefore, it is stated that the work order involves only process of dredging and de-silting and not quarrying. The 5th respondent also had specifically denied that there is no commercial sand mining as per the work order.

13. From the above pleadings the questions that arise for determination are:

(i) Whether prior Environmental Clearance is mandatory for de-siltation of dams when extraction of sand for commercial use is envisaged as per Karnataka Minor Mineral Concession Rules, 1994?

(ii) Whether the exemption granted under EIA Notification, 2006 to dredging and de-silting of dam is applicable when it involves mining of sand or silt intended for commercial purpose/Government use?

14. The entire case revolves around the work order dated 27.11.2020 issued by the District Sand Mining Committee in favour of the 5th respondent. The subject in the work order dated 27.11.2020 reads as "work Order to Karnataka State Mineral Corporation Limited (KSCL) for excavation of sand from silt in backwater of Adhyapadi

Dam in Mangaluru Taluka and Shamburu Dam in Bantwal Taluka-regarding". The work order reads as follows:

> "The District Sand Monitoring Committee, in consideration of State Sand Policy 2020 and Geographical, Geological and administrative factors, has taken decision to excavate sand from silt from the backwater of Adhyapadi Dam Mangaluru Taluka and Shamburu Dam in Bantwal taluka, to make sand available regularly and easily at lower rates to Government and public construction works and to increase capacity of water storage in Adhyapadi Dam Mangaluru Taluka and Shamburu Dam in Bantwal Taluka. The District and Taluka Sand Monitoring Committee have identified areas from where sand can be extracted from the silt in backwaters of Adhyapadi Dam Mangaluru Taluka and Shamburu Dam in Bantwal Taluka. The technical officer's have informed to District Sand Monitoring Committee that in Adhyapadi Dam nearly 3,44,000 metric tons and Shamburur Dam nearly 11,07,680 metric tons of silt mixed with sand is available. As per the reference, execution of the work of silt excavation has been given to Karnataka State Mineral Corporation Limited Bengaluru (KSCL) and work order is issued for period of 5 years or until sand extraction is completed in following areas as per the conditions of work order....."

15. In the conditions prescribed in the work order, it is specifically stated that the work should be executed as per the guidelines of Ministry of Environment and Forest and Climate Change and Sustainable Sand Mining Guidelines, 2016. The condition no. 3 says the sand available in silt should be sold at the rate fixed by the Government. Condition No. 4 reads that the sand obtained during excavation of silt should be stored in stockyard and should be sold to the Government and public works at the rate fixed by Government and District Sand Monitoring Committee.

16. From the above work order, it is evident that it is not only dredging or de-silting but also mining of the sand to increase the capacity of water storage in the dams referred above. Reading of the above work order and conditions makes it clear that the work order is issued to (i) increase the capacity of the water storage, (ii) sell the sand available at the rate fixed by the Government by storing the same in the stockyard. The sale should be only in

favour of Government and public works at the rate fixed by the Government and the sand Monitoring Committee.

17. Now, it would be appropriate to advert to the Clause 7 of the EIA Notification, 2006. Clause 7 of the EIA Notification provides for the stages in the prior Environmental Clearance process for new projects which are in four stages, namely, screening, scoping, public consultation and appraisal. Appendix IX provides for the cases which are exempted from prior Environmental Clearance as per Clause 7(1)(B). Clause 6 of the Appendix IX states that

> "dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management are exempted".

The said exemption of dredging and de-silting of the dams are only for the purpose of maintenance, upkeep and disaster management and if the said activity involves commercial sand mining, then the exemption is not attracted. It would be relevant to advert to the Sustainable Sand Mining Guidelines, 2016 issued by the MoEF&CC on de-silting activity which involves extraction of sand.

18. The Sustainable Sand Mining Guidelines provide for the management of sand deposited after flooding. The Standing Committee on water resource on issues, concerning flood management, compensation, and status of ownership of submerged and eroded land in the country including compensation to farmers for loss of their crops destroyed by floods and right to disposal of the sand left in the fields of farmers in its meeting held on 29.04.2015 observed as follows:

> "The Committee further observed that due to the floods, the agricultural land of farmer is destroyed and rendered infertile. Further the farmer loses his livelihood as the produce of his land is

> destroyed by flood and become unsalable. The farmer is also deprived of the right of lifting sand from his land. He is therefore, left helpless and destitute and leave their land in search of job."

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

20. Similarly, the said guidelines discussed about the de-silting of reservoirs, barrages, annecuts, lakes and canals which is extracted as follows:

> "These structures are generally in possession and maintenance of Irrigation Department / Minor Irrigation Department / PHED of State Governments. The dams and reservoirs can be a significant source of sand. Many such structures are silted and their water holding capacity has gone down considerably. In some instances to compensate for silted capacity raising of height of dam or construction of new structures is proposed which further leads to submergence of new areas of agricultural field and forests. Taking up desilting of such projects can serve dual purpose of increasing the water holding capacity and making available the sand for other usage. In some States the Irrigation Department is permitted to use it for the departmental works free of charge and balance can be disposed of in market after paying the due royalty. A detailed study is required to be carried out to verify economic viability and environmental sustainability before contemplating dredging of storage reservoirs for sand / gravel mining.
> The de-silting of reservoir, dredging for upkeep and maintenance of structures, channels and averting natural disasters will not be treated as mining for the purpose of environmental clearance."

21. Admittedly in the given case the desilting is done not only for the upkeep and maintenance of the dams but to extract the sand from the silt to be sold at the rate fixed by the Government which is admittedly a commercial activity. As mentioned above, the mining operation means any operation undertaken for the purpose of winning any mineral. Here along with the silt, the sand which is available is extracted which is also quantified as 11,07,680 metric tons in Nethravathi River Bantwal Taluka, and 3,44,000 metric tons in Phalguni River Managluru Taluka, and in an extent of 64.4 and 20 ha. respectively. As it involves the commercial activity by any stretch of imagination, it cannot be stated that the dredging activity is exempted as provide in Clause 6 of Appendix IX of EIA Notification, 2006. Therefore, the said impugned work order dated 27.11.2020 is contrary to the EIA Notification, 2006 for not having obtained the Environmental Clearance.

22. It is to be note that the Karnataka Sand Policy was brought out in the year 2011 and as such amendments to Karnataka Minor Mineral Concession Rules, 1994 were made in the year 2011 and a separate chapter IVB for sand mining was introduced under Rule 31-R. In addition to that pursuant to the Judgement in Deepak Kumar's case by the Hon'ble Supreme Court model guidelines were issued by the Government of India for environment management of mining of minor minerals. Thereafter, an amendment to the Karnataka Minor Mineral Concession Rules, 1994 was brought on 16.12.2013 incorporating a new Chapter II A applicable to all minor minerals on systematic, scientific mining protection of environment, wherein Quarrying Plan, Environmental Management Plan and Environmental Clearance are made mandatory.

23. Amendments to Rule 31-R were also made wherein the Government, Public Works Department was entrusted with sand mining, storage and transportation under District Sand Monitoring Committee and Taluk Sand Monitoring Committee.

24. Once it becomes mandatory that such work order has to be preceded by an Environmental Clearance, all the other requirements as defined in Clause 7 of EIA Notification, 2006 have to be followed. Primarily the Sustainable Sand Mining Guidelines, 2016 requires preparation of DSR which is the first step before granting mining lease. In order to make a inventory of river bed material a detailed survey of the district needs to be carried out to identify the source of river bed material and alternative source of sand.

25. In the reply of the Mines and Geology Department, it is stated that assessment has been done only through Google Image that there is deposit of silt in both the dams and they have quantified the length, breadth and depth of the deposit of silt. They have not done the detailed survey as required by the EIA Notification, 2006. Rule 31(V) of Karnataka Minor Mineral Concession Rules, 2021 reads as follows:

> "Rule 31-V Regulation of sand extraction from de-siltation of dams or reservoirs or barrages-
>
> 1) De-siltation of dams, reservoirs and barrages shall only be done through the Government Department or Government owned Corporation or Board.
> 2) The District Sand Committee shall conduct inspection jointly through the officers comprising the Deputy Director or Senior Geologist concerned, the executive Engineer, Water Resource Department, Range Forest Officer of Forest Department and shall quantify the sand likely to be sourced by de-silting process.
> 3) The Joint inspection team shall submit inspection report with recommendations to the District sand Committee for the purpose of reserving the area of extraction of sand through the Government Department or Corporation or Board, which

have been notified by the State Government for sale of sand or for the purpose of the Central Government or State Government Development work.

4) After the approval of the District Sand Committee, the concerned department or Government owned Corporation or Board authorized shall take up de-siltation activities in dams, reservoirs, barrages and large tanks.

5) During de-siltation, the concerned Government department of Government owned Corporation or Board shall pay rate as specified by the State Government from time to time in advance and obtain minerals Dispatch permit for transportation of de-silted sand to stockyard.

6) The permission holder shall establish the office, computer facility, electricity supply, closed-circuit camera, weigh bridge and security at the dump yard or stock yard of sand.

7) The permission holder shall maintain an inward and dispatch register and stock register in the stock yard office and allow for inspection by the official of the District and Taluk sand Committee and such other officer authorised in this regard by the State Government.

8) The permission holder shall be adopted and obtain booking of sand from the end user general public through an app called as "Maralu Mitra" in the manner specified in rule 31U(13):
Provided that this provision shall not be applicable for the Central or the State Government agencies having the sand blocks for their own use.

9) The work executing Government department or Government owned Corporation or Board shall put in place a suitable administrative mechanism, under these rules, at the field level to efficiently supervise the de-siltation process, monitoring of dispatched sand and also to prevent any misuse of sand sourced from de-siltation.

10) The work executing Government department or Government owned Corporation or Board shall furnish month wise statement of de-siltation activities on the quantity of sand de-silted and transported to stockyard, as well as sand sold and dispatched from the stockyard to the consumers:
Provided that, this provision shall not be applicable for the Central or the State Government agencies having the sand blocks for their own use."

26. According to the 1st and 4th respondent the impugned work order is in consonance with the above rule. As per the said Rule, the project proponent is allowed to pay the rate as specified by the State Government from time to time in advance to obtain the mineral dispatch permits for transportation of de-silted sand to the stockyard. Therefore, it is contended that it is in consonance with the appendix IX of EIA Notification, 2006. But the same is assailed by the Learned Counsel for the applicant stating that even as per Rule 3(A)(a) of the KMMC Rules, 1994 desilting of ponds or tanks and disposal of minor mineral extracted thereof other than sand is

exempted from obtaining quarry lease and Environmental Clearance. Rule 3(A) of KMMC Rules reads as follows:

> "31(A) Exemption of certain Rules in certain cases-
> The following activities are exempted from obtaining quarry lease and from provisions of sub-rule 1(A) of Rule 8 and Chapter 2(A) namely-
> (a)The digging of wells for water [desilting ponds or tanks other than sand] and digging of earth for foundation of building and disposal of the minor mineral extracted thereof."

27. In the above rule, the words "desilting of ponds and tanks other than sand" was inserted by the amendment dated 18.07.2017. Therefore, even for the purpose of desilting which involves disposal of sand extracted from desilting prior Environmental Clearance, approved mining plan and quarry lease are mandatory as required under Rule 8(1)(A) and Chapter 2(A). As the work order itself speaks about the extraction of sand from the silt which is to be sold commercially by a rate fixed by the Government without having a prior Environmental Clearance, the said activity cannot be done.

28. In this regard, **the SEIAA, Karnataka, which is the 3rd respondent, has filed their reply**. In Para-10 of their reply, the SEIAA has stated de-silting/dredging in dams and reservoirs, barrages, river, canals cannot be construed as sand mining since the primary purpose of both are different. The Primary purpose of de-silting/dredging in dams and reservoirs, barrages, river, canals is maintenance, upkeep and disaster management. The primary purpose of sand mining is winning the mineral for commercial purpose which requires prior Environmental Clearance as per EIA Notification, 2006.

29. If that be so, the work order specifically states that silt mixed with sand is available and the same can be extracted from the silt in the backwaters as identified by the District Sand Monitoring Committee and the sand available in the silt can be sold at the rate fixed by the Government after transporting the same to the stockyard and sand available in the stockyard should be transported with mineral dispatch permit in vehicles fixed with GPS. So, the work order itself is very clear that in the garb of dredging and desilting, sand mining is being done and already it is being defined as to what is mining operation. When there is sand mining involved for commercial purpose and as stated by the SEIAA prior Environmental Clearance is required and the 5th respondent should be permitted only after obtaining an Environmental Clearance preceded by the necessary approvals, mining lease etc. In spite of the same, the SEIAA remains as a mute spectator.

30. To be noted is the decision of the Hon'ble Karnataka High Court in W.P No. 5031 of 2021 which was a challenge to the impugned E-tender invitations dated 07.11.2020 for de-silting of sand in Shamburu Dam and tender notice dated 07.12.2020 for de-silting of and in Adhyapadi Dam. The Hon'ble High Court has found that there is no sand block which is being identified or mentioned in the tender notification. The dredging and desilting of the dams have arisen on account of gathering of silt in the reservoir area of the dam thereby reducing the carrying capacity of the dam. Since, it has been ascertained that there is a fixed area which has gathered silt the quantity has also been ascertained and identified by experts dealing with the same. The Hon'ble High Court also referred to the identification of the quantified sand and the location

with the Google Image. The Hon'ble High Court has only stated that there is no sand block which will be involved in the dredging or desilting in the reservoir area, therefore, it would not be a quarrying activity.

31. The Hon'ble High Court has only opined whether the restrictions imposed under Rule 31(R) and 31(ZB) of the Rule would apply to the work contemplated under the E-tender which was challenged under the proceedings and the order is passed without any reference to the EIA Notification, 2006, therefore, the said order will not be of any assistance to the respondents especially when desilting/dredging is done for commercial purpose be it sale for public or use in Government projects.

32. **In the above circumstances, we are of the view that:**

(i) The work order issued on 27.11.2020 in favour of the 5th respondent is in violation of EIA Notification, 2006 as the said activity requires prior Environmental Clearance.

(ii) Dredging and desilting of dams is not exempted from obtaining prior Environmental Clearance as the sand is being extracted for commercial purpose.

(iii) It is open to the 1st respondent to apply for a prior Environmental Clearance as contemplated under EIA Notification, 2006 for sand mining while involving in the dredging and de-silting activities by following the procedure.

(iv) The respondents can proceed with their activity only after obtaining proper Environmental Clearance for the dredging and de-silting in Adhyapadi and Shamburu Dams.

(v) Till such time Environmental Clearance is obtained the 5th respondent is restrained from carrying on the activity pursuant to the work order dated 27.11.2020.

(vi) The de-siltation/extraction of sand from silt for sale undertaken is held as illegal.

(vii) A penalty of Rs.50 crores is to be paid by the Irrigation Department, Government of Karnataka to Central Pollution Control Board and the said amount will be utilised for pollution abatement in river stretches with priority to stretches in and around Bengaluru.

(viii) In spite of the orders of the National Green Tribunal holding repeatedly that Environmental Clearance is required when de-silted material is used for commercial purpose, the current orders of the District Collector is in gross violation of the same for which the Chief Secretary is directed to issue orders to Collectors to follow all the rules and regulations scrupulously and strictly instruct them that desilting/dredging of water bodies/rivers/reservoirs/waterways shall not be permitted without the prior Environmental Clearance when the de-silted/dredged material be it silt, sand or

any other mineral is sold either to the public or for Government projects.

33. With the above directions, Original Application is disposed of.

Sd/-
.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

Sd/-
.....E.M.
(Dr. Satyagopal Korlapati)

Internet – Yes/No
All India NGT Reporter – Yes/No

O.A. No.142/2022(SZ)
23rd March, 2023.(AM)