

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SITTING AT NEW DELHI
I.A. NO. OF 2024
IN**

ORIGINAL APPLICATION NO. 481/ 2023

IN THE MATTER OF:

Balbir Sandhu & Ors

..... Applicant

Versus

State of UP & Ors

....Respondents

AND IN THE MATTER OF:

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

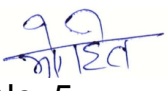
... APPLICANT No. 5

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Applicant No .5

Through


Pallavi Pratap

PALLAVI PRATAP

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Dated: 03.10.2024

1. That the answering Applicant has been impleaded as Applicant no. 5 in the above noted Original Application *vide* order dated 20.03.2024 passed by this Hon'ble Tribunal.
2. That the applicant no. 5 is a resident of Gram Kurdi Kheda, Kaluwala, Jahanpur, Saharanpur and the applicant is a farmer and carrying out agricultural work on his agricultural field bearing Khata no.429, 421, 140, 422, 423 and 385 as a co-sharer in the aforesaid land.
3. That by means of the present letter Petition registered as Original Application the Applicant No. 1 had raised multiple grievances regarding illegal mining in District Saharanpur, Uttar Pradesh including but not limited to Illegal mining in the area of Yamuna on the basis of MM-11 permits issued for mining in agricultural land, misappropriation of amount of Rs. 350 crores in the name of reclaiming agricultural land for cultivation, misappropriation of GST reverse charge on mining in agricultural land, violation of Sustainable Sand Mining Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020, concealment of

information regarding mining in agricultural land by non-inclusion thereof in DSR etc.

4. That this Hon'ble Tribunal *vide* order dated 04.08.2023 has been pleased to direct District Magistrates and Senior Superintendent of Police, District Yamuna Nagar and District Saharanpur respectively to ensure that no mining and crushing is carried out in District Yamuna Nagar and District Saharanpur respectively without grant of EC, CTE and CTO as may be under the relevant environmental laws.
5. That in the meantime various I.A.s were filed by persons claiming to be agriculturists praying for grant of interim relief in the form of continuance of existing system of short term permit to the Bhumidhars of agricultural land in terms of Rule 52 (1) of the U.P. Minor Mineral Concession Rules 2021.
6. That *vide* order dated 24.04.2024 this Hon'ble Tribunal was pleased to observe the following:

“45. However, till such time the validity of exemption of short term permits for removal of sand deposited on agricultural land by flood from prior environmental

clearance is adjudicated upon, we consider it to be appropriate that order dated 07.11.2023 regarding requirement of EC for the same be modified and Order dated 07.11.2023 is modified accordingly to that extent in respect of "removal of sand deposit on agricultural fields by farmer" which will not require "prior environmental clearance" till further orders to the contrary.

46. However, while granting such short term permits to the farmers for removal of sand deposited on agricultural land by flood, the District Magistrate shall mention environmental safeguards/remedial measures required to be implemented by the farmers while carrying out sand mining on short term basis (three months) to avoid adverse environmental impact/pollution."

7. That from the aforesaid observation of the Hon'ble Tribunal it becomes apparent that this Hon'ble Tribunal only permitted for the manual removal of sand by such farmers who claimed to be rendered destitute by the advent of floods on their agricultural lands and that too till such time the validity of exemption of short term permits for removal of sand

deposited on agricultural land by flood from prior environmental clearance is adjudicated upon by this Hon'ble Tribunal.

8. That however, there has been a huge violation of the observations laid down by this Hon'ble Tribunal despite the order dated 24.04.2024, on the part of numerous stakeholders and the applicant has brought forth the same on record *vide* written objections dated 09.08.2024.
9. That thereafter an in response to the written objections dated 09.08.2024 filed by the applicant no. 5, an affidavit of compliance dated 07.09.2024 was filed by the District Magistrate Saharanpur.
10. That the applicant therefore seeks leave of the Hon'ble Tribunal to submit the *para-wise* reply to the affidavit filed by the District Magistrate Saharanpur dated 07.09.2024 as under:-
11. That the contents of paragraphs 1, 2 and 3 of the affidavit dated 07.09.2024 are a matter of record and hence need no comments.

12. That the contents of paragraph 4 of the affidavit dated 07.09.2024 are a matter of record and hence need no comments.
13. That the contents of paragraphs 5 and 6 of the affidavit dated 07.09.2024 are a matter of record and hence need no comments.
14. That the contents of paragraph 7 of the affidavit dated 07.09.2024 are misleading and hence denied. In this regard it is respectfully submitted that the Rule 52 cited by the respondent is the Rule 52 A (2) of the erstwhile U.P. Minor Minerals (Concession) Rules, 1963 which have been duly repealed by The Uttar Pradesh Minor Minerals (Concession) Rules, 2021. That the present rules of 2021 have omitted the mandate as contained in Rule 52 A (2) of the U.P. Minor Minerals (Concession) Rules, 1963 such as the mandate regarding the advent of flood etc. and the said omission is in gross violation to the SSMG 2016 and the EMGSM-2020 and further taking advantage of such omission, the private landowners are used as proxy bidders in order to evade the regular procedure involved in the grant of a mining lease such as the procurement of environmental clearance etc.

The relevant provision of Rule 52 of the U.P. Minor Minerals (Concession) Rules, 2021 is quoted as under:

“52 (1) Notwithstanding anything contained in rule 74, the bhumidhar of agricultural land may apply for grant of mining permit for removal of sand or morrum or Bajri or Boulder or any of these in mixed state deposited on his land in Form MM-8, in triplicate to the District Officer, accompanied by a non-refundable fee of Rs. 2,000/-(Rupees two thousand) Only, and two copies of a cadastral Survey map on which the area, applied for, is clearly marked. The District Officer shall cause an enquiry, if deemed necessary, through Revenue and Geology & Mining Departments regarding the title of the land and availability of minor mineral on the applied area.

(2) In the light of the report submitted by the concerned Officer, the District Officer, may grant the mining permit for a period not exceeding three months in favour of the bhumidhar, after realizing double the amount of royalty in advance.

(3) Except above mentioned provisions, the other provisions of these rules will apply mutatis mutandis to the mining permit granted under this rule.”

15. That the contents of paragraph 8 of the affidavit dated 07.09.2024 are false and misleading and hence denied as stated. That the requirement as to the ascertainment of minerals due to flood has been omitted in the Rule 52 of the U.P. Minor Minerals (Concession) Rules, 2021.

16. That the contents of paragraph 9 of the affidavit dated 07.09.2024 are false and misleading and hence not accepted in the manner stated. In reply thereto it is stated that the Rule 52 of the Rules of 2021 itself contains no provision for ascertaining whether the private landowner is an agriculturist and that sand or morrum or bajri or boulder or any of these ill mixed state have been accumulated on the applied land due to floods and whether such land prior to application was utilized for agricultural purposes or not. At this juncture it is also submitted that the Hon'ble Tribunal had only permitted for the manual removal of sand by such farmers who claimed to be rendered destitute by the advent of floods on their agricultural lands and that too till such time the validity of exemption of short term permits for removal of sand deposited on agricultural land by flood from prior environmental clearance is adjudicated upon by this Hon'ble Tribunal. In spite of that, presently Letter of Intent for more than 60 Short Term Permits of 3 months has been issued to farmers in Behat Tehsil & Sadar of District Saharanpur which are in gross violation and in non-compliance of the order dated 24.04.2024 in the instant Original Application and

Original Application No. 462/2023 titled as **Raja Ram Singh v. State of U.P. & Ors**

17. That the contents of paragraphs 10 and 11 of the affidavit dated 07.09.2024 are not accepted in the manner stated. In reply thereto it is submitted that the said observation by the Hon'ble Supreme Court of India in the dictum of **Deepak Kumar v State of Haryana**, as reported in **(2012) 4 SCC 629** is against the interest of the respondents. The Hon'ble Supreme Court of India has rightly observed that If the tenure of the mine lease is short, it would encourage the lessee to concentrate more on rapid exploitation of mineral thereby posing a serious threat to the environment and health of the workers and public at large. Moreover, the SSMG 2016 in Chapter 17 titled "The Report of the Committee headed by Secretary, MoEF - 2010" at internal page 36 and 37 while strictly laying emphasis on the protection of the environment, states that If the tenure of the mine lease is short, it would encourage the lessee to concentrate more on rapid exploitation of mineral without really undertaking adequate measures for reclamation and rehabilitation of mined out area, posing thereby a serious threat to the environment and

health of the workers and public at large. Therefore, a minimum period of mine lease should be 5 years.

18. That in practice, in the garb of “removal of minerals”, these proxy bidders are being granted short-term mining leases by the State without performing the requisite checks and these permit holders in turn concentrate on rapid exploitation of mineral by indulging in mechanised mining and thus are posing a serious threat to the environment and public at large. That even in the present case the Letter of Intents granted for deposits on agriculture lands have been issued again by demonstrating deposit due to flood on the basis of tehsil report. Whereas, such deposits are geologically and naturally part of lesser Himalaya Shivalik mountain range which are naturally present as part of mountain formations due to ages and not due to advent of any flood. Under such aspect the matter in question categorizes as mountain mining for which there is no exemption permitted under EIA Notification or by this Hon’ble Tribunal.

19. That the contents of paragraph 12 of the affidavit dated 07.09.2024 are not accepted in the manner stated. In reply

thereto it is submitted that the item 3 in Appendix IX to EIA notification dated 14.09.2006 (Inserted vide S.O. 141 (E) dated 15th January – 2016 and substituted vide S.O. 3611 (E) dated 25th July, 2018 and S.O. 1224 (E) dated 28th March, 2020) has exempted removal of only sand deposit on agricultural fields by farmer from requirement of “prior environmental clearance”. However, in the instant case the Letter of Intents have been issued for the excavation of RBM which is gross violation of the aforesaid Notification and NGT directives.

20. That moreover, the exemption was always for “sand” in the notification and not RBM (sand/bajri/boulder in mixed state). It is submitted that geologically the sand/silt deposited by floods accumulate over the fertile land of *bhumidars* upto a marginal depth of 1-2 feet in *tarai* areas, whereas RBM does not accumulate in such manner. Since the flow of Yamuna river in the upper basin (*Shivalik foot hills*) is considerably very high, as it has velocity power to carry the RBM size varying range of 4 inches to even 1 meter, the process in such area is the high velocity river first “Cuts” the fertile soil upto a considerable depth and then RBM

accumulates over it, in in such case the agricultural land is degraded and very less is left for reclamation. This is the reason the RBM since ages of such process is available upto a considerable depth in such areas as it has lost its agricultural fertility by large.

21. That the contents of paragraphs 13 and 14 of the affidavit dated 07.09.2024 are not accepted in the manner stated. In reply thereto it is submitted that the flood plan of Yamuna river has yet not been categorized and the so called farmers / backend operators and District Administration are taking advantages of such Short Term Permit applications and granting illegal Short Term Permits deliberately categorizing it as flood removal. It is again reiterated by the applicant that the said exemption as provided by the Sustainable Sand Mining Guidelines 2016 is only for the removal of minerals in case of the advent of a flood in which the farmer has been rendered destitute, however in recent past there has been no advent of flood in the areas where such short term permits are granted. Even in any Government Record and literature there is no mention of advent of flood in such areas. Under

such circumstances the operation of mines without EC/CTO is illegal and against Notification and Law.

22. That the contents of paragraph 15 of the affidavit dated 07.09.2024 are denied. In reply thereto it is submitted that the Government Order annexed with the affidavit of compliance is of 17.07.2023, and not of 30.08.2019, as explained in the averments of paragraph 15.

23. That the contents of paragraphs 16, and 17 of the Affidavit dated 07.09.2024 are misleading and hence are vehemently denied. In reply thereto it is submitted that the said demonstration is merely a sham and an empty formality on the part of respondents, if the said checks have been substantially implemented by the respondents, then how come more than 60 Letter of Intents permitting a total of approximately 20 Lacs cubic Meters have been issued for a period of just one month for the deposits that are geologically and naturally part of lesser Himalaya Shivalik mountain range which are naturally present as part of mountain formations due to ages and not due to advent of any flood.

24. That the contents of paragraph 18 of the Affidavit dated 07.09.2024 are vehemently denied.
25. That the contents of paragraphs 19 and 20 of the Affidavit dated 07.09.2024 are misleading and hence not accepted in the manner stated. In reply thereto it is submitted that from the quoted observation of the Hon'ble Tribunal it becomes apparent that this Hon'ble Tribunal only permitted for the manual removal of sand by such farmers who claimed to be rendered destitute by the advent of floods on their agricultural lands and that too till such time the validity of exemption of short term permits for removal of sand deposited on agricultural land by flood from prior Environmental Clearance is adjudicated upon by this Hon'ble Tribunal. However, there has been a huge violation of the observations laid down by this Hon'ble Tribunal *vide* order dated 24.04.2024 on the part of numerous stakeholders as has been demonstrated by the applicant *vide* the written objections dated 09.08.2024.
26. That the contents of paragraphs 21 and 22 of the Affidavit dated 07.09.2024 are misleading and hence not accepted in the manner stated. In reply thereto it is submitted that no

measures have been adopted by the respondent authorities in order to properly monitor and check whether the permit holders are even complying with the conditions of the Mining permits. That the permit holders are operating in blatant disregard of the environmental norms and the observations laid down by this Hon'ble Tribunal in various judicial pronouncements.

27. That the contents of paragraphs 23 and 24 of the Affidavit dated 07.09.2024 are false and misrepresented and hence are vehemently denied. In reply thereto it is submitted that all the photos as have been annexed in the annexure no. 4 of the written objections dated 09.08.2024 are geotagged and the same is evident from a mere perusal of the annexure no. 4 of the written objections dated 09.08.2024. Moreover, as is evident by a mere perusal of the annexure no. 4 of the written objections dated 09.08.2024, rampant mechanised mining and illegal mining activities are being undertaken by the permit holders and the mechanized Mining is being undertaken at such an uncontrolled rate, that the same is attracting a lot of attention from the locals and various news

outlets as has been demonstrated by the applicant in the written objections dated 09.08.2024.

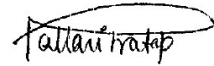
28. That the contents of paragraph 25 of the Affidavit dated 07.09.2024 are denied and in view of the averments made above, it is in the interest of justice it is most respectfully prayed that the reply filed by the applicant be allowed.

Dated: 03.10.2024



Applicant No. 5

Through



PALLAVI PRATAP

Advocate

Counsel for the Applicant No. 5

17
BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SITTING AT NEW DELHI

2871

I.A. NO. OF 2024
IN

ORIGINAL APPLICATION NO. 481/ 2023

IN THE MATTER OF:

Balbir Sandhu & Ors

..... Applicants

Versus

State of UP & Ors

.... Respondents

AND IN THE MATTER OF:

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



... APPLICANT No. 5

AFFIDAVIT

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

1. That I am the Applicant No.5 and as such I am fully conversant with the facts and circumstances of the case and thus competent to swear this affidavit.
2. That the contents of the accompanying Reply and other I.As have been explained to me in vernacular by my counsel and the same are true and correct to my knowledge and belief and nothing material has been concealed therefrom.



Hifet

2872

3. That the annexures are true copies of their respective originals.

[Handwritten signature]

Deponent

Verification:

Verified at Saharanpur on this 03rd day of October, 2024 that the contents of para 1 to 3 of this affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.

[Handwritten signature]

Deponent



...verified that ...
who is ...
at 2:00 pm ...
...
Saharanpur
U.P., INDIA
Ramesh Kumar Verma
Notary Public
31/10/24



PROOF OF SERVICE

19
kunal arya <kunalarya16111989@gmail.com>**2873**

Service of Reply on behalf of applicant no.5 to the affidavit of compliance of District Magistrate in OA No. 481/2023 Balbir Sandhu vs State of UP & ors

1 message

kunal arya <kunalarya16111989@gmail.com>

Thu, Oct 3, 2024 at 4:51 PM

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

Please find attached the copy of reply in the captioned matter.

Regards,

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 **NGT Reply to DM saharmpur in Balbir Sandhu 03 10 2024.pdf**
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