

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

OA No. 163

Rasikh Rasool Bhat

.....Applicant

Versus

Govt of UT of J&amp;K and others

.....Respondents

In the matter of: **Reply to compliance report of respondent no; 10 secretary of Jammu and Kashmir pollution control committee and additional submissions by the applicant**

Respectfully showeth:

That after perusal of the report of JKPCCA applicant found that submissions in the Report from page No 1to6 / General page no. 101 to 106 are not reflecting the actual observations of the report of three member committee constituted by Respondent No 10 to prepare the comprehensive report in the above mentioned OA. However Report submitted by the committee Annexures from page no 107 to 128 is having some substantial material.

### ENVIROMENTAL CLEARANCE

That Communication from Executive Engineer R&B PWD Handwara, reflected in Report page no 3 and 4 / General page no 103 to 104 regarding classification of the impugned Road Project is incorrect and misleading because of below mentioned facts:

A. That in terms of Definitions mentioned in the Jammu and Kashmir Road Gazette , there is no separate definition of State High and MDR ( Major District Road) there is common/clubbed definition of both Highways ( Extract of Definition annexed herewith mentioned as Annexure A. which reads

***State Highways and Major District Roads:***

***State Highways (SHs) and Major District Roads (MDRs) constitute the secondary system of road transportation in the J&K. The SHs provide linkages with the National Highways, district headquarters of the State, important towns and tourist centres. Major District Roads run within the district connecting areas of production with markets, connecting the rural areas to the district headquarters and to State Highways and National Highways. These roads also carry medium to heavy traffic. It is assessed that this secondary system of roads carries about 40percentof the total road traffic. They are major carriers of road traffic within the UT and with***

*some neighboring states / UTs traffic. Besides, by serving as linkages between the rural and urban areas, the State Highways and Major District Roads contribute significantly to the rural economy as also to the industrial development of the J&K by enabling movement of industrial raw materials and products from and to the interior of the Union Territory*

B. That impugned Forest clearance of road project in question in its objectives is mentioning that:

*“The road will convert the destination into a major tourist attraction as Gulmarg and with much wider meadows and vast majority of flora and fauna”*

C. That Gulmarg is famous tourist destination in J&K. National Highway 701A (NH701A) is the road connecting Gulmarg to rest of the country

D. That R&B (PWD) in its various communications related to aforesaid OA is mentioning that Handwara-Bangus Road Project is a Tourist Corridor

E. That impugned Road project ie Handwara-Bangus Tourist corridor begins/link from NH701 at Chotipora Handwara passes reserved ecologically fragile Various compartments of Rajwar Handwara forests with almost earth and mountain cutting. Ranging terrain from 2000 to 10000 Above main sea level (AMSL) and ends/connects/link NH701 again at Chokibal via Bangus valley.

F. That there is no human/residential Population nor any small or major industry ,Hotels on impugned Road project or within Bangus Valley hence there is no scope of Production and Marketing which is basic aim of Major District Road (MDR) However there are 3 to 4 habitations near the forests areas on this particular Road Project, but all that Habitations are already connected to different Highways via well-built Macadamized Rural Roads since more than 3 decades

G. That impugned Road Project connects two Tourist Reception centers (TRCs) of Kupwara District ie TRC Handwara and TRC Kupwara and one Major Tourist Centre ie TRC Srinagar Kashmir via NH701.

H. That impugned Road Project’s width at almost places is more than 15 to 25 meters

I That impugned Road Project is funded under Central Road & Infrastructure Fund.(CRIF)with the allocated Funds of near about fifty crores. 50,00,00,000.

**Keeping in view above mentioned facts, impugned Road Project is a State Highway or National Highway cannot be ruled out, hence under the provisions of EIA notification 2006 and under various Environmental Norms it was mandatory to obtain EC and gone through Public hearing prior to start of the work**

## EXTRACTION OF GRAVEL

There is no in-depth details reflected in the Report.

That Applicant is submitting that extraction was done in violations of laws with below mentioned facts.

- A. That all the Disposal permits were issued in misinterpretation of rules
- B. NallMakh (Gravel) extraction Sites identified by the Respondent No 5 in close liaison with Respondent No 8 and 9 has been done in utter violation of laws as one of the communication made by Respondent No 5 vide no 7215-1 Dated 12/10/2023 is mentioning that "*undersigned has directed to the said contractor for obtaining river bed material from sultanpora Galgazana Bridge*" Copy annexed herewith as Annexure B.
- C. That Respondent number 5 identified another site for river bed mineral extraction at Dobigat Zachaldra 90meters of down stream near another Bridge at Zachaldara on Zachaldara-Satkoji Road vide copy annexed here with as Annexure C
- D. That despite locals objections , river bed material was extracted by force in official manipulation (Copy annexed herewith as Annexure D).
- E. That clauses of Appendix from the Notification No. S.O.1224(E) of MOEFCC is applicable in the situations where huge wastage etc has accumulated and needs removal to prevent disasters etc However in this matter the provisions of the said notification were misused by the respondent no 9 to befool the law enforcing agencies like Police.
- F. That powers conferred by the section 15 read with section 23C of the Mines & Minerals (Development and Regulation) Act 1957(central Act No.67 of 1957) was adopted by the UT Government of J&K on 15<sup>th</sup> of November 2022 vide S.O 599 (copy annexed herewith as Annexure E

*Subsequently amended the Minor Mineral Concession Storage ,Transportation of Minerals and prevention of illegal Mining rules 2016:*

**Rule 94, after clause (iii) of sub-rule (2), the following clause shall be added; namely:- "(iv River bed material shall not be extracted up to a distance of five times (5) of the span (x) of a bridge / public civil structure (including water intake points) on up-stream side and ten times (10) the span of such bridge on down-stream side, subject to a minimum of 250 meters on the upstream side and 500 meters on the downstream side.**

In terms with above mentioned facts Respondent No 5, 8 and 9 not only misused their official positions but their omissions and commission caused huge damage to Public properties like Nallahs, Bridges roads and other private and personal properties.

## OTHER ENVIROMENTAL NORMS VIOLATIONS

- A. That after getting the Notice of Hon'ble NGT ,instead of stop of further Environmental Destruction user Agency Expedite the pace of work in utter violations of laws and vandalized the Forest area at various locations
- B. That in the month of May 2024 Forest Department has communicated to Police for registration of a fresh FIR against user Agency, Contractor and Sub-let Contractors'

- C. That User Agency has worked on the 2<sup>nd</sup> Phase of the Road Project without obtaining prior Mandatorily Forest Clearance.
- D. That user Agency doesn't have any compliance report regarding first phase of impugned Forest clearance.

## ADDITIONAL SUBMISSIONS

1. Actual contractor had sub-let the work to different persons in close knowledge of the User Agency
2. Relatives of various Politicians worked on the impugned Road project to earn the money by the illegal means,
3. That lodgment of various FIRs and continues of work in violation of norms on the impugned Road Project is prima-facie revealing large scale corruption big criminal nexus

## PRAYER

in view of above mentioned facts its revealed that impugned Road Project is not only being constructed in Violation of Environmental Norms But also a Fit case to classify it a scam, therefore Applicant most respectfully pray that prayers in OA 163 of 2024 may please be granted and meantime investigation by the Central Bureau of India or Anti Corruption Bureau J&K may also please be ordered.

Dated: 30<sup>TH</sup> July 2024

Place: Handwara



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Applicant in Person  
Ahgam Rajwar Handwara  
Kupwara 193221 J&K  
Cell no. 9103097097

Email. [rasikhrasool@gmail.com](mailto:rasikhrasool@gmail.com)

## Annexur A

3. **Expressways and National Highways:**

The Expressways and National highways also called the primary system roads are a network of trunk roads owned by the Ministry of Road Transport and Highways. In J&K the National Highways comprises of least percent of total length of road network, but carries over bigger share of total traffic across the length and breadth of the Union Territory. The PW(R&B) Department, the National Highways Authority of India (NHAI), Border Road Organization (BRO) and NHIDL are the main implementation agencies.

4.

**State Highways and Major District Roads:**

State Highways (SHs) and Major District Roads (MDRs) constitute the secondary system of road transportation in the J&K. The SHs provide linkages with the National Highways, district headquarters of the State, important towns and tourist centres. Major District Roads run within the district connecting areas of production with markets, connecting the rural areas to the district headquarters and to State Highways and National Highways. These roads also carry medium to heavy traffic. It is assessed that this secondary system of roads carries about 40percent of the total road traffic. They are major carriers of road traffic within the UT and with some neighboring states / UTs traffic. Besides, by serving as linkages between the rural and urban areas, the State Highways and Major District Roads contribute significantly to the rural economy as also to the industrial development of the J&K by enabling movement of industrial raw materials and products from and to the interior of the Union Territory.

5. **Other District Roads and Village Roads**

5.1 J&K has essentially a rural oriented economy with most of its population living in its villages. In the year 2000, it was estimated that out of 3767 habitations 2923 habitations were without any all-weather road access. This affected the quality of life of the people living in villages. The road connectivity is a key component of rural development by promoting access to economic and social services and thereby generating increased agricultural income and productive

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Annexure B



Government of (UT) Jammu & Kashmir  
OFFICE OF THE EXECUTIVE ENGINEER PWD(R&B) DIVISION HANDWARA

The District Mineral officer  
Geology & Mining Kupwara

No: 7215-10  
Date: 12-10-2022

Subject: Permission for lifting of river bed material (GSB) for construction of road  
From Handwara to Bangus phase 2<sup>nd</sup> vide Chief Engineers letter no  
CE/RBK/WS/14516-18 dated 02-08-2022.

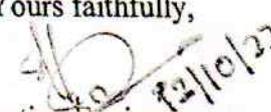
Sir,

The road from Handwara to Bangus is allotted to MS JK Construction company prop. Haji Abdul Rashid Dar under this division, the said road requires GSB that is to be laid by the contractor, the undersigned has directed to the said contractor for obtaining river bed material from Sultanpora Galgazna bridge. So that work can be completed within the stipulated time frame.

It is once again requested to your good self to provide sub base material (GSB) for the said project. Whereas it needs sub base material of 4500 cum from KM 10<sup>th</sup>-17<sup>th</sup>.

Kindly provide the said material on immediate basis. The royalty for material shall be deposited by the said contractor as per norms.

Yours faithfully,

  
Executive Engineer  
R&B Division Handwara.

Copy to the:

1. Superintending Engineer PW (R&B) circle kupwara for information
2. Additional Deputy commissioner Handwara for information
3. Assistant Executive Engineer R&B Sub division Handwara for information and follow up.



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Annexure C

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16/11/23.

GOVERNMENT OF (UT) JAMMU AND KASHMIR

OFFICE OF THE EXECUTIVE ENGINEER R&B DIVISION HANDWARA

The District Mining & Geology Officer  
Kupwara

No. 7828-31  
Date: 04-11-23.

Subject: Construction of Bungus Road Supply of material thereof from Dobighat site at Zachaldara.

Sir

Kindly recall the decision taken by the Worthy Deputy Commissioner Kupwara during her meeting in that regards undersigned alongwith Tehsildar, AEE I&FC, DDC Rajwar visited the site after long deliberation with local of the area it was consented upon that the material shall be lifted for use of Bungus road however, it was observed that there are huge boulders which needs to be removed/adjusted alongside of the land of the local in order to prevent soil erosion from sites.

It is to request to your kind self that the work cannot be executed unless an excavator not less than 210HP is required to be employed for said job. Kindly allow the same so, that no hindrance is created by the general public and the work is completed in time.

Yours faithfully



Executive Engineer

R&B Division Handwara

Copy to the:-

01. Superintending Engineer PWD R&B Circle Kupwara for information.
02. Tehsildar Handwara for Information sir.
03. SHO Handwara for information.



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Annexure D

Union Territory of Jammu and Kashmir  
Office of the Executive Engineer R&B Division Handwara  
Email : xenrbhandwara@gmail.com

✓  
The District Mining Officer  
Geology & Mining Department  
Kupwara

No: 8198-99.  
Date : 20/10/2023

Sub: Extension of Permit No 116 Dated 19.10.2023 for Construction of Bangus road phase 2<sup>nd</sup>  
Km 10<sup>th</sup> - 17<sup>th</sup>

Ref: - Your office letter No. DMO/Kup/DP/23/2360-67 dated 19/10/2023

Sir,

With reference to the above cited subject, in this context your good self is requested to extend the date of permit No 116 dated 19.10.2023 which had expired on 10.11.2023. The GSB material could not be lifted from the site of Nallah Talri (Sultanpora to Galgazna) due to the public disturbances which had been resolved now by the intervention of Tehsildar Handwara and District Administration Kupwara.

Your good self is requested to extend the date of Permit from 10.11.2023 to 10.03.2024. The terms and conditions of the permit will remain same. Your co-operation in this matter is highly Solicited

Sd/  
Executive Engineer  
R&B Division Handwara  
  
Technical Officer To  
Executive Engineer  
R&B Division Handwara

Copy to:

1. Assistant Executive Engineer R&B Sub Division Handwara for Information and follow up action



Notification,

Jammu, the 15<sup>th</sup> of November, 2022

**S.O. 599** - In exercise of the powers conferred by section 15 read with section 23C of the Mines & Minerals (Development and Regulation) Act, 1957 (Central Act No. 67 of 1957), the Government hereby makes the following amendments in the Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016; namely:-

**1. In rule 13.-**

- (i) after clause (b) to first proviso, the following proviso shall be added as second proviso; namely:-

"Provided further that the cases as listed in Appendix-IX of notification S.O 1224 (E) dated 28<sup>th</sup> March 2020 issued by the Ministry of Environment, Forest & Climate Change, GoI, shall be exempted from the requirement of Environmental Clearances."

- (ii) Second proviso shall be re-numbered as third proviso and substituted by the following; namely:-

"Provided also the manual customary extraction of sand, silt and clay by local Hanjis, Khanias, Muleteers etc shall be exempted from the requirement of Environmental Clearances."

- 2. In rule 56**, in clause (vi) of sub-rule(1), the following shall be added as second proviso; namely:-

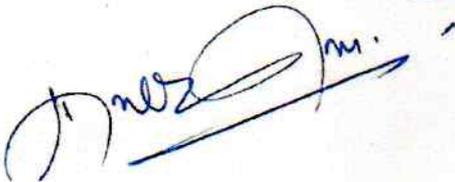
"Provided further that Short Term Permits / Disposal Permits shall also be granted for manual customary extraction of sand, silt, clay by local Hanjis, Khanias, Muleteers etc."

- 3. In rule 58**, the following shall be added as second proviso; namely:-

"Provided further that the cases as listed in Appendix-IX of notification S.O 1224 (E) dated 28<sup>th</sup> March 2020 issued by the Ministry of Environment, Forest & Climate Change, GoI, shall be exempted from the requirement of Environmental Clearances."

- 4. In rule 94**, after clause (iii) of sub-rule (2), the following clause shall be added; namely:-

"(iv) River bed material shall not be extracted up to a distance of five times (5) of the span (x) of a bridge / public civil structure (including water intake points) on up-stream side and ten times (10) the span of such bridge on down-stream side, subject to a minimum of 250 meters on the upstream side and 500 meters on the downstream side."





5. Rule-95 shall be substituted by the following; namely:-

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Annexur E

"95. Simple Interest at the rate of 15% shall be charged per annum on any rent, royalty or other sum due to the Government under the Act and rules made there under or terms and conditions of any mineral concession from the sixteenth (60) day of the expiry of the date fixed by the Government for payment of such royalty, rent, fee or other sum and until payment of such royalty, rent, fee or other sum is made."

6. In rule 107, after sub Rule (2), the following sub-rule shall be added; namely:-

"(3) Notwithstanding anything contained in these rules, extraction or digging of ordinary earth / clay used for filling, leveling or embankment of roads or railways, cement plants up to depth of two (02) meters, removal of overburden, free flowing material shall not be treated as mining operations:

Provided that such operations shall be carried out under proper Short Term / Disposal Permit with payment of royalty and other applicable charges."

**By order of the Government of Jammu and Kashmir.**

Sd/-

(Amit Sharma) IAS

**Secretary to the Government**

Dated: 15.11.2022

No: GM-MNG/281/2022-04

Copy to the:

1. All Financial Commissioner(s) (Additional Chief Secretaries).
2. Director General of Police, J&K.
3. All Principal Secretaries to the Government.
4. Director General, J&K, IMPARD.
5. All Commissioner/ Secretaries to the Government.
6. Joint Secretary (Jammu and Kashmir/Ladakh), Ministry of Home Affairs, Gol.
7. Divisional Commissioner, Kashmir/ Jammu.
8. All Heads of Departments/ Managing Directors.
9. All Deputy Commissioners.
10. Director, Information and Public Relations, J&K.
11. Director, Geology and Mining, J&K.
12. Director, Achieves, Archeology and Museums, J&K.
13. Principal Private Secretary to the Hon'ble Lieutenant Governor.
14. General Manager, Government Press, Jammu/ Srinagar.
15. Private Secretary to the Chief Secretary, J&K.
16. Private Secretary to Secretary to the Government, GAD.
17. Private Secretary to Secretary to the Government, Mining Department.
18. In-charge Website, Mining Department.

  
(Amir Ayaiz Rather) JKAS

**Under Secretary to the Government**

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