

1494**BEFORE THE NATIONAL GREEN TRIBUNAL,****PRINCIPAL BENCH AT NEW DELHI**

O.A. No. 581/ 2022

In the matter of:

Vikas Kumar

...Applicant

Vs

State of Haryana & Ors

...Respondents

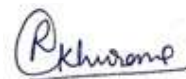
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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

ORIGINAL APPLICATION NO. 581 OF 2022

IN THE MATTER OF:

VIKAS KUMAR

.....APPLICANT

VERSUS

STATE OF HARYANA & ORS.

....RESPONDENTS

**RESPONSE OF IRRIGATION AND WATER RESOURCES
DEPARTMENT, HARYANA WITH RESPECT TO ADDITIONAL
AFFIDAVIT/RESPONSE/OBJECTIONS FILED ON BEHALF OF
MOEF&CC, NMCG AND RESPONDNET NO.8, 9, AND 10**

MOST RESPECTFULLY SHOWETH:

1. The present case concerns the permissibility of constructing temporary bridges/passage across a river, stream, or creek to facilitate mining operations by a concession holder, and the environmental impact of such temporary structures on riverine ecology, morphology, aquatic life, and any potential obstruction or diversion of the river's natural flow.
2. That to assess the permissibility and environmental impact of constructing temporary bridges, this Hon'ble Tribunal vide Order dated 25/05/2023 constituted a Joint Committee comprising the following expert members:-
 - i. Chairperson, Godavari River Management Board;
 - ii. Representative of Secretary, MOEF&CC (not below rank of Joint Secretary/Director);
 - iii. Representative of Secretary, Ministry of Jal Shakti (not below rank of Joint Secretary/Director);
 - iv. Member Secretary, CPCB,

to carry out a study and submit report regarding the following aspects:-

- a. Whether any mining activity be allowed across different streams of river, if more than one at any place and any temporary bridge be allowed to be constructed for



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facilitating extraction/transportation of the mined material and other allied activities.

- b. Whether permitting such mining activity and construction of such temporary bridge has any adverse environmental impact on the river morphology, ecology, discharge and aquatic life, etc.
 - c. Whether construction of any such temporary bridge across river for facilitating mining/allied activities be completely prohibited or permitted by imposing conditions to ensure minimum impact on river ecology and aquatic life.
 - d. In case construction of any such temporary bridge is to be kept in the category of regulated activities, by which authority and in which manner the aspects of grant of permission ought to be dealt with.
3. That also, vide this Order dated 25/05/2023, the earlier interim injunctive order dated 23/02/2023 directing that no further permission for construction of any temporary bridge across the river Yamuna shall be granted was modified to the extent that all temporary bridges already constructed may continue and further, temporary bridges may be allowed to be constructed on the basis of permissions already granted or on the basis of applications submitted before or after this order by the concerned department as may be warranted by the facts and circumstances of each case.

Subsequently, on 30/04/2024, the interim order pertaining to permissibility of usage of bridges was again modified and the following order was passed:-

"31. In view of the fact that respondent no.6-MoEF & CC and respondent no.7-MoJS have not objected to construction of temporary bridge for carrying out such mining and allied activities and recommendations of the Joint Committee regarding permitting of construction of temporary bridge for carrying out mining and allied activities with requisite environmental safe guards and the fact that adjudication of the environmental questions involved including requirement of permission from NMCG is likely to take time, order dated 25.05.2023 passed in respect of State of Haryana is modified to the extent that till further orders to the contrary permission for construction of temporary bridge on river

Yamuna in the State of Haryana may be granted by the Irrigation and Water Resources Department as per Haryana Government Policy. In view of urgency explained, application for grant of permission for construction of temporary bridge for carrying out mining and allied activities across channels of river Yamuna during the period preceding forth coming monsoon may be dealt with expeditiously preferably within one week from the date of receipt of the application and permission may be granted depending upon the facts and circumstances of each case with the condition that such temporary bridge will be removed on or before the date as may be mentioned in such permission."

4. That pursuant to the order dated 25/05/2023, the Joint Committee submitted its report dated 25/08/2023. The relevant portion of the report is reproduced below:-

"4.(a) Whether any mining activity be allowed across different streams of river, if more than one at any place and any temporary bridge be allowed to be constructed for facilitating extraction/transportation of the mined material and other allied activities;

There are adverse impacts of sand mining but considering ban would result into illegal sand mining and destruction of hills/mountains to obtain construction material, which would be far more damaging, The Joint Committee submits that mining activity be allowed with certain regulatory measures. During lean season, river may flow in different streams with islands in between. Sand mining near the banks, especially towards convex bends would attract flood flows causing bank erosions, which needs to be avoided. Naturally access either through river bed/boats need to be provided to approach islands or sand mining area. The excavation/transportation of mined material may be resorted to with different methods, but most efficient, cost effective and less environment damaging would be through temporary bridges with following regulatory measures;

- (i) Construction of temporary bridge should not restrict waterways and natural streams and entire range of expected river flows can flow uninterruptedly without any constriction.*
- (ii) Temporary bridges must be removed before monsoon so that flood flows uninterrupted and sections be stacked away from river banks*
- (iii) Temporary bridge may be preferably built using removable box sections so that integrity of natural river bed can remain intact and aquatic movement across remain uninterrupted.*

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- (iv) *Absolute riverbank/ riverbed/ sand mining levels be determined and periodically monitored to ensure no excessive sand mining.*

4.(b) *Whether permitting such mining activity and construction of such temporary bridge has any adverse environmental impact on the river morphology, ecology, discharge and aquatic life, etc.;*

Yes. But as explained in part 4(a) above non permitting would result into more damaging scenario. More detailed study on the impact of temporary bridge is required and Hon'ble NGT may consider directing State Government instituting a detailed study on impact of temporary bridges for sand mining with following Terms of References;

- (i) *Collection of Baseline data on physical regime of the river (river discharge, flow depth/velocity, sediment load, aquatic flora and fauna, etc.) during pre-monsoon (April-May)*
- (ii) *Construction of temporary bridge where valid license/permission hold good with half width with circular hume pipe, another one half width removable box sections to study hindrances in aquatic movement and river regime (river discharge, flow depth/velocity, sediment load) under two scenarios.*
- (iii) *Repeat collection of data mentioned in part 4(b)(i) during post monsoon season (November-December) to see permanent impact, if any.*
- (iv) *Evaluate impacts on river regime and on aquatic flora/fauna*

The above study may be carried out through reputed National Institutes. The study would provide authentic data/evidence to review existing guidelines for construction of temporary bridges for sand mining. State Governments may review their existing policies accordingly.

4.(c) *Whether construction of any such temporary bridge across river for facilitating mining/allied activities be completely prohibited or permitted by imposing conditions to ensure minimum impact on river ecology and aquatic life, and*

As explained in part 4(a) above, during lean season, river may flow in different streams with islands in between. These islands (aggraded due to sand deposition and being away from the riverbanks) are most potential sand mining areas. Access may be evolved to approach to avoid river stream channel crossing. In the event of infeasible access otherwise, access either temporary bridge may need to be provided to approach islands and/or sand mining area for transportation

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of mined material taking adequate environment safeguard measures.

4.(d) In case construction of any such temporary bridge is to be kept in the category of regulated activities, by which authority and in which manner the aspects of grant of permission ought to be dealt with.

As explained above, construction of such temporary bridges should be considered as a regulated activities and be considered along with appraisal of sand mining proposal(s). Since sand mining is in the domain of the State Governments, State Environment Appraisal Committee (with representative from irrigation department to be co-opted, if not otherwise) should be the authority, which should consider the sand mining proposal along with river maps with absolute levels ensuring sand sustainability without river aggradation/degradation, that is, increase or decrease in natural river bed levels. Procedure prescribed in Sustainable Sand Mining Management Guidelines, 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020 of Ministry of Environment, Forest & Climate Change may need to be adopted.

6. General Recommendation:

It is proposed that sand mining proposals be regulated as under;

A. Permitting Mining Activities/ River management Aspects:

- (i) State Governments (may in association with Central Water Commission and using remote sensing/drone technology) should monitor river profiles and cross sections at regular intervals periodically to identify areas of aggradation /deposition where mining can be allowed;
- (ii) If possible and feasible, sands deposited in reservoirs and in confluence of tributaries and main rivers be considered first for mining before resorting to in stream sand mining;
- (iii) Mining in areas of bank erosion and proximity to environmental vulnerable areas/sanctuaries/reserve forests, infra structural structures and installations should be prohibited.
- (iv) Annual rate of replenishment and allowing time for replenishment after mining in area be calculated.
- (v) On the basis of annual rate of replenishment and areas of degradation/aggradation, sand mining plans be prepared covering ways of scientific and systematic mining including provision for access through temporary bridge or otherwise be identified.
- (vi) A bench mark (BM) with respect to mean sea level (MSL) should be made essential to in stream mining channel reaches (MCR). Below which no mining shall be allowed.

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- (vii) *Permanent gauging facilities (for discharge and sediment both) should be made compulsory for the sites having excessive mining in consultation with Central Water Commission or any competent State Agency.*
- (viii) *Implementing safeguards for checking illegal and indiscrete mining including periodic inspections*

B. Construction of Temporary Bridges:

- (i) *State Government should institute a detailed study on impact of temporary bridges for sand mining with Terms of References mentioned in part 4(b) above. State Governments may review their existing policies accordingly.*
- (ii) *Removable box sections may be used to maintain integrity of the natural river bed. and full water way.*

The natural resources must be utilized in environment friendly manner in scientific and systematic way and with the objective of sustainable development the policy on the subject should have provisions for protection of environment & ecology. These factors can be accounted for in a most efficient manner at district level, though river profiling may be carried out at State level for the entire river/tributary length. These should be carried out by the State Government at regular intervals, say once in five years. The sustainable mining plan needs to be dynamic.

The Joint Committee presents its compliments to Central Pollution Control Board and State Government of Haryana Department of Irrigation and Department of Geology and Mines for extending full cooperation and facilitating fruitful discussions and the site visits. The Joint Committee also extend its gratitude towards Experts, namely, Dr. S.R. Wale and Dr. R.G. Patil for providing valuable Guidance in the matter."

5. That almost after one year after filing of Joint Committee report as referred above, MoEF&CC has filed an additional affidavit dated 03.08.2024 and NMCG has filed its response dated 02.08.2024. In response thereto, Respondent NO.8,9 and 10 have also filed consolidated response. Considering those affidavits, response and objections, answering respondent seeks to present the following submissions as in succeeding paragraphs.

A. PERMISSIBILITY OF TEMPORARY BRIDGES

6. The Joint Committee has unequivocally recommended that access to islands or cordoned-off sand mining areas is essential for facilitating sand mining operations. It has further concluded that, among the various methods available for the excavation and transportation of minor minerals, the construction of temporary bridges is the most efficient, cost-effective, and least damaging to the environment. The Committee has also emphasized that these temporary bridges must be designed to ensure that waterways and natural streams remain unobstructed and that they must be dismantled and removed prior to the onset of the monsoon season.
7. The Ministry of Environment, Forest and Climate Change (MOEF&CC) has expressed the view that a more detailed study is necessary to assess the impact of temporary bridges. While recognizing the need for such a study to evaluate potential adverse effects, the MOEF&CC has stated:-

“It is submitted that, the construction of temporary bridges for carrying out mining and allied activities may cause changes in channel configuration and flow-paths impacting the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on in-stream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow-paths.”

8. It is most respectfully submitted that the concerns raised by the MOEF&CC are not founded on any actual data, material, or study, but rather on speculative, perceived, or hypothetical adverse consequences. These apprehensions appear to be driven by an outlook of abundant caution rather than any concrete evidence/study.
9. In any case, it is pertinent to note that the above submission of MOEF&CC is contrary to that of the Joint Committee has reported that non permitting of temporary bridge would result into more damaging scenario. This Joint Committee was comprised representatives of MOEF&CC as well as MoJS and CPCB.

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Therefore, it is an acknowledged position that not allowing the construction of temporary paths would result in greater adverse environmental impacts compared to allowing their construction.

10. In response to the submission of the National Mission for Clean Ganga (NMCG), it is respectfully stated that a plain reading of Paragraph 42 of the River Ganga (Rejuvenation, Protection, and Management) Authorities Order, 2016, clearly indicates that the requirement for NMCG's permission applies only to the construction of bridges, associated roads, and embankments over the river Ganga. Furthermore, the Order explicitly permits the construction of bridges, associated roads, and embankments, which signifies that there is no prohibition on such activities. Moreover, Paragraph 42 specifically deals with permanent structures and does not extend to temporary bridges. This is evident from a thorough reading of Paragraph 42, where **all referenced structures are permanent in nature**. The temporary bridges are dismantled and removed upon the expiry of the permission period. These temporary bridges are installed with due consideration in accordance with applicable policy, ensuring that there is no adverse impact on river flow, riverbed, or related environmental factors.
11. Additionally, it is pertinent to note that in the aforesaid Order dated 25/05/2023, it is categorically recorded that even the Ministry of Environment, Forests and Climate Change (Respondent No. 6) and National Mission for Clean Ganga (NMCG) (Respondent No. 7) have not objected to the construction of temporary bridges as being a prohibited activity.
12. It is respectfully submitted that, at present, only riverbed mining is permitted for the extraction of sand, boulder, and gravel, with no mining activities allowed outside the riverbed due to the absence of Environmental Clearance from the competent authority. Furthermore, the uninterrupted supply of building materials is crucial for developmental projects, as any disruption could lead to a scarcity of essential minerals, adversely affecting public works. It is humbly submitted that non allowing construction of temporary paths as allowed vide policy dated 18.09.2021 would greatly

impact the mining activity which would result in a surge in illegal mining activities, which would have a far greater negative impact on the environment.

13. It is further submitted that if mining is not permitted through the construction of temporary paths across river channels, it would result in the accumulation of minerals in the riverbed due to sedimentation during the monsoon season. This accumulation could cause the river to swell, leaving the watercourse without a defined channel, potentially leading to flood-like situations during heavy rainfall. Such outcomes would not only harm the area's biodiversity but also pose significant risks to human life.
14. It is most humbly submitted that this Hon'ble Tribunal must also consider that the State Government grants mining leases over riverbeds for the extraction of sand, and access to the entire allotted area is essential for effective extraction of minerals. To achieve this, permission is required for constructing temporary paths to access different parts of the lease area. As the State Government charges lease fees for the entire area, it becomes their duty to grant the necessary permissions to ensure full access. Moreover, mining operations in riverbed areas contribute substantially to the state exchequer, underscoring the economic significance of these activities.
15. It is respectfully submitted that the Reply dated 30.01.2023 filed through Irrigation and Water Resources Department, Haryana, comprehensively explains the necessity of temporary bridges within mining leases. The reply also addresses the restrictions to be implemented to ensure that the natural flow of water remains unobstructed.
16. In view of the above, the Answering Respondent respectfully submits that the Policy dated 19/10/2021 has been meticulously designed to safeguard against any adverse environmental impact from the construction of temporary bridges over the river Yamuna for sand mining activities, ensuring the unrestricted flow of the river, the extraction of sand minerals from sandy looms formed between creeks, and their transportation to stock sites. In fact, all the recommendations of the Joint Committee pertaining to

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construction of temporary bridges are duly addressed in the Policy in question. This policy incorporates comprehensive measures aligned with the recommendations of the Joint Committee, including:-

- a. Explicit prohibition on any construction across the entire width of the river, permitting only temporary structures within creeks formed naturally by the river's flow, and that too under the strict supervision of the department.
- b. Detailed specifications for the design and the RCC pipes to be used in the construction of temporary bridges.
- c. Clear stipulations requiring that the pipes/path should be laid in a manner that ensures the natural flow of water is not obstructed, with the discharge at the relevant point being specifically defined and certified by the concerned SDO and Executive Engineer In-charge.
- d. A mandatory provision requiring that the design and drawings of the temporary paths are approved by the Irrigation and Water Resources Department, Haryana on the basis of standard design vetted by the National Institute of Technology, kurukshetra.
- e. A requirement that all temporary paths must be removed or dismantled before the onset of the monsoon season each year.

B. REQUIREMENT OF DETAILED STUDY

17. The Joint Committee has unequivocally recommended that a more detailed study on the environmental impact of temporary bridges is necessary. It is respectfully submitted that recommendation of joint committee for study to evaluate the impact of temporary bridges used for sand mining may kindly be considered. The Joint Committee has also proposed suggested terms of reference for the study and recommended that it be conducted through reputed National Institutes. Based on the findings of this study, the State Governments may then review and, if necessary, revise their existing policies accordingly.

18. The Answering Respondent respectfully submits that, while the Policy has been meticulously crafted to prevent any adverse environmental impact from the construction of temporary bridges over the river Yamuna for sand mining activities, the Answering Respondent is not averse to a detailed study, as recommended by the Joint Committee. Such a study would enable a comprehensive review of the existing guidelines. It is submitted that until the study is concluded and the existing guidelines are reviewed, the current policy dated 19/10/2021, along with the permissions granted thereunder for the construction of temporary bridges, may be allowed to remain in operation.
19. Additionally, it is also pertinent to note that the scope of the present case was widened by this Hon'ble Tribunal vide order dated 30/04/2024 to assess the permissibility and impact of construction of temporary bridges across river channels for carrying out mining and allied activities in its applicability to all States and UTs. Consequently, any direction passed in the present case will have far-reaching implications, affecting numerous stakeholders nationwide. In the interest of justice and fairness, it is submitted that a comprehensive and detailed study should be conducted by a reputed National Institute to evaluate the permissibility and potential adverse impacts of temporary bridges on river flow, morphology, riverbeds, and related environmental factors, before any final order is passed.
20. The Answering Respondent further submits that the Joint Committee has unequivocally concluded that a mineral concession holder requires access to the mining area, and the most efficient and environmentally sustainable means of accessing islands or blocked areas is through the construction of temporary bridges. If temporary bridges are not permitted, alternative methods would likely result in greater environmental disruption. Given this established fact, that temporary bridges represent the most practical and eco-friendly approach for undertaking mining and allied activities in areas obstructed by river channels or stream flows.

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21. It is further respectfully submitted that until the detailed study as recommended by the Joint Committee and MOEF&CC is conducted and its findings are concluded, this Hon'ble Tribunal may kindly not render any final adjudication in the matter. In the interim, it is most humbly prayed that the interim order dated 30.04.2024 passed by this Hon'ble Tribunal may be ordered to continue, ensuring that the permissions and policies presently in place remain operational and that no prejudice is caused to the ongoing activities or stakeholders involved.

C. COMPETENT AUTHORITY FOR GRANTING PERMISSION

22. The Joint Committee has concluded that since sand mining in the domain of state government, State Environment Appraisal Committee along with Irrigation Department should be the competent authority for this purpose.

23. Sand, classified as a minor mineral under Section 3(e) of the Mines and Minerals (Development & Regulation) Act, 1957 (MMDR Act), is subject to rules framed by State Governments under Section 15 of the MMDR Act for granting minor mineral concessions. Furthermore, Section 23C of the MMDR Act authorizes State Governments to enact rules to prevent illegal mining, transportation, and storage of minerals, as well as for other connected purposes. Thus, the administration of mining activities for minor minerals falls squarely within the domain of State Governments.

24. Additionally, as per the MoEF & CC notification dated 14.09.2006, mining projects are categorized based on their area and impact into "Category A" and "Category B," with the latter being managed by State Environmental Impact Assessment Authorities (SEIAA) to streamline the process for granting environmental clearances. In this context, the construction of temporary bridges for mining operations should not fall within the purview of the NMCG, which has no established guidelines or procedures for granting such permissions.

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25. In its Reply dated 20.05.2023 and further Additional Affidavit dated 03.08.2024, the MoEF & CC has made no reference to the necessity of obtaining permission from the NMCG for constructing temporary bridges over river creeks.

In view of the facts and circumstances mentioned herein, it is humbly submitted that construction of temporary path as per policy dated 18.10.2021 is in the interest of Environment. The policy may be revisited, if required in view of final come of deliberations pending before the MoEF&CC.



EIC, HOD (Spl) & PD HIRMI,
Irrigation & W. R, Deptt.,
Haryana, Panchkula.

Date: 20.11.2024

Place: Panchkula