

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

IN THE MATTER OF
ORIGINAL APPLICATION NO. 351/2023

Raja Muzaffar Bhat ... APPLICANT

VERSUS

Union Territory of Jammu & Kashmir & Ors.

...RESPONDENTS

INDEX

S.NO	PARTICULARS	PAGE NO
1.	Reply on behalf of respondent no.5	1-17
	Documents	
2.	Annexure-R-5/1 The photo copy of the District Mineral Officer letter dated 27.12.2022	18
3.	Annexure-R-5/2 The copy of map showing the distance	19
4.	Affidavit	20

PLACE: NEW DELHI

DATE: 14.12.2023

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REPLY ON BEHALF OF RESPONDENT NO. 5

The answering respondent most humbly submits the reply to the original application as under:

PRELIMINARY SUBMISSIONS:-

1. That the applicant had originally filed the present original application against 05 respondents i.e. respondents 5 to 9. However, for the reasons best known to the applicant, the applicant withdrawn the original application against the respondents no. 6,7 and 9.
2. That the applicant has not approached this Hon'ble Tribunal with clean hands and manipulated/misrepresented the facts before this Hon'ble tribunal in such a manner that the answering respondent be held responsible for illegal mining.
3. That for the reasons best known to the applicant, the applicant in the original application has categorically annexed the google images, images showing the heavy earth moving machines of the

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respondents against whom the applicant has withdrawn the original application.

4. That the conduct of the applicant for withdrawing the original application in respect of the respondents against whom the applicant has annexed the google images showing illegal mining. It is pertinent to mention here that the applicant has failed to place on record any such evidence against the answering respondent with respect to the answering respondent. Therefore, the original application deserves to be dismissed on this ground alone.

PARAWISE REPLY

1. That the contents of para I of the original application need no reply.
2. That the contents of para II of the original application need no reply.
3. That the contents of para III of the original application are not admitted in the manner stated by the applicant and are denied. It is submitted that environmental clearance conditions have been violated by the answering respondent.
4. That the contents of para IV of the original application are not disputed to the extent of conditions stipulated in the environment clearance. However, the remaining contents with respect to use of excavators and earthmovers and loaders are baseless and denied.

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5. That the contents of para V of the original application need no reply from the answering respondent.
6. That the contents of para VI of the original application are not admitted in the manner stated by the applicant and are denied.
7. That the contents of para VII of the original application are not admitted in the manner stated by the applicant and are denied to the extent of answering respondent.
8. That the contents of para 1 of the original application are not admitted in the manner stated by the applicant. It is submitted that from the averments made in the preliminary submissions, it is undisputed that the applicant has not approached this Hon'ble Tribunal with clean hands.
9. That the contents of para 2 of the original application need no reply.
10. That the contents of para 3 of the original application are not disputed to the extent of grant of environment clearance. However, allegations regarding violations of environment clearance conditions are denied with respect to answering respondent.
11. That the contents of para 4 of the original application are not disputed to the extent of

conditions stipulated in the environment clearance. However, allegations regarding violations of environment clearance conditions are denied with respect to answering respondent.

12. That the contents of para 5 of the original application need no reply from answering respondent.
13. That the contents of para 6 of the original application are not admitted in the manner stated by the applicant and are denied.
14. That the contents of para 7 of the original application are not admitted in the manner stated by the applicant and are denied, same being misleading. It is pertinent to mention here that the google images annexed by the applicant alongwith original application pertains to the mining leases of the respondents, in respect of whom the applicant has already withdrawn this original application, as evident from order dated 29.05.2023. It is further submitted that the applicant is trying to frame the answering respondent on the basis of images pertaining to other mining leases and surprisingly, the applicant has withdrawn the original application in respect of those mining leases.

15. That the contents of para 8 of the original application are completely baseless and are denied to the extent of answering respondent.
16. That the contents of para 9 of the original application are not admitted in the manner stated by the applicant and are denied. It is submitted that there is no violation of environment clearance conditions by the answering respondent.
17. That the contents of para 10 of the original application are not admitted in the manner stated by the applicant and are denied. It is submitted that the applicant has failed to prove any allegations against the answering respondent.
18. That the contents of para 11 of the original application are not disputed to the extent of conditions stipulated in the environment clearance issued to the answering respondent.
19. That the contents of para 12 to 14 of the original application are not admitted in the manner stated by the applicant. It is submitted that the answering respondent has complied with the environment clearance conditions.
20. That the contents of para 15 of the original application are not admitted in the manner stated by the applicant and are denied. It is submitted that as per the mining plan the heavy boulders

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weighing in tonnes were initially removed with the help of JCB, as it was impossible for humans to manually remove such heavy boulders. It is further submitted that going by the observation of the committee at Sr no. 1, it is pointed out that JCB was initially used for loading. It is felt that while describing geology of the area in the approved mining plan, RQP has indicated presence of quaternary sediments comprising, Nalla Bajri, Boulders & Nallah Muck in the river bed. The removal of boulders would not be possible manually and as such use of JCB for removal of such boulders at the start of operation. Making of haulage road into the river bed would be possible only with the help of JCB. Otherwise the manual extraction with the help of hand showels, Pie axes, Crow bars, Jumpers has been resorted to & shall be done so even at the resumption of such activities.

The answering respondent has never used any excavators, heavy earth moving machines for carrying out mining, this is evident from the joint committee report also. Further, the answering respondent is not doing any mining activity beyond the area of allotted lease, this is also evident from the joint committee report. The operative part of the joint committee report is as under:-

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'The summary of the report of joint committee with respect to Mining Block nos. 11/12 Budgam is as under:-

- 1) No mining activity was taking place in the blocks at the time of inspection of the joint committee.
- 2) The Project Proponent (PP) has not gone beyond the demarcated area of the e-auctioned block.
- 3) Heavy machinery was not being used for extraction/ loading of minerals at present, though at the start of the operation of these blocks JCB loaders were used for loading of heavy boulders which was permitted as per the approved Mining Plan. However, this was in violation of the EC conditions granted for the Blocks by JKEIAA (J & K Environmental Impact Assessment Authority) vide its approval dt. 11-10-2020.
- 4) That Doodhganga Nallah has no scope for keeping the mining patches outside stream because of less width of the Nallah. As such the mining activities go parallel to the running waters of the stream by diverting the water.'

It is further submitted that the District Mineral Officer vide letter dated 27.12.2022 to the District Officer, J & K Pollution Control Committee, Budgam has categorically informed about

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the illegal mining in Doodhganga Nallah and penalty thereof as under:-

"Kindly refer to the subject cited above. In this context, it is to inform that the lease holders of Minor Mineral Block No. 11 (Chadoora old bridge to Hanjigund D/S Doodhganga Nallah) and Block No. 12 (Chadoora Foot Bridge to Sogam Bridge U/S Doodhganga Nallah) have not been found involved in illegal mining within or outside the peripheries of their respective blocks. The fine realized as communicated in the Action Taken Reports furnished from time to time from this office has been collected from tractor/tipper/machine owners found indulged in illegal extraction/transportation of minerals from Doodhganga Nallah. It is worthwhile to place on record that the seized vehicles/machinery as communicated in the above said ATRs are not recorded on the name of Lease Holders of the said Blocks."

The photo copy of the District Mineral Officer, Budgam letter dated 27.12.2022 is annexed herewith and marked as **Annexure-R-5/1**.

21. That the contents of para 16 of the original application are not admitted and are denied being misleading this Hon'ble Tribunal. It is submitted

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that the photographs showing the mining activities being undertaken with the usage of heavy machinery within active water channels in Chadoora area does not pertain to answering respondent.

22. That the contents of para 17 of the original application are not admitted in the manner stated by the applicant and are denied. It is submitted that the google earth image annexed at page 136 as annexures A-3 pertains to respondent no. 9, against whom the applicant has already withdrawn this original application. Further, the google image annexed at page 137 alleged to have been of the area allotted to the answering respondent, however, the applicant again misleading this Hon'ble Tribunal by intentionally not disclosing the GPS coordinates of the google image annexed at page 137 so that nobody could verify the authenticity of the image. Therefore, the allegations of the applicant are completely baseless, misleading and with a clear intention to make undue benefits from the answering respondent.

23. That the contents of para 18 of the original application are false and completely baseless without any evidence, hence denied.

24. That the contents of para 19 of the original application are not disputed to the extent of

orders passed by the Hon'ble Tribunal. However, in the present original application, the allegations made by the applicant are false, hence, the order passed by the Hon'ble Tribunal referred herein by the applicant cannot be relied upon.

25. That the contents of para 20 and 21 of the original application are not admitted being false and baseless. The detailed reply has already been submitted in the preceding paras, hence, need no reply.
26. That the contents of para 22 of the original application are not disputed to the extent of orders passed by the Hon'ble Tribunal.
27. That the contents of para 24 of the original application need no reply from answering respondent.
28. That the contents of para 25 of the original application are not admitted in the manner stated by the applicant. It is submitted that the answering respondent has submitted the compliance report regularly to the competent authorities.
29. That the contents of para 26 of the original application need no reply from the answering respondent.



30. That the contents of para 27 of the original application need no reply from answering respondent.
31. That the contents of para 28 of the original application need no reply.
32. That the contents of para 29 of the original application need no reply.
33. That the contents of para 30 of the original application are not admitted in the manner stated by the applicant and are denied. It is submitted that the answering respondent is not engaged in use of heavy machines for carrying out mining activity.
34. That the contents of para 31 of the original application need no reply.
35. That the contents of para 32 to 34 of the original application are not disputed to the extent of orders passed by the Hon'ble Tribunal. However, in the present original application, the allegations made by the applicant are false, hence, the order passed by the Hon'ble Tribunal referred herein by the applicant cannot be relied upon.
36. That the contents of para 35 of the original application need no reply.
37. That the contents of para 36 of the original application need no reply.

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38. That the contents of para 37 of the original application need no reply.
39. That the contents of para 38 of the original application are not admitted and denied. It is submitted that the answering respondent has not used any heavy machine to carry out mining operations.
40. That the contents of para 39 of the original application are not disputed to the extent of orders passed by the Hon'ble Tribunal. However, in the present original application, the allegations made by the applicant are false, hence, the order passed by the Hon'ble Tribunal referred herein by the applicant cannot be relied upon.
41. That the contents of para 40 to 44 of the original application need no reply.
42. That the contents of para 45 to 46 of the original application are not disputed to the extent of orders passed by the Hon'ble Tribunal. However, in the present original application, the allegations made by the applicant are false, hence, the order passed by the Hon'ble Tribunal referred herein by the applicant cannot be relied upon.
43. That the contents of para 47 of the original application are not admitted in the manner stated by the applicant and are denied. It is submitted

that the answering respondent is not using any heavy machines for the purpose of mining, mining is being done manually only.

44. That the contents of para 48 of the original application are not admitted in the manner stated by the applicant and are denied being misleading to this Hon'ble Tribunal. Firstly, the applicant has intentionally not provided the GPS coordinates of the google image annexed at page 149, therefore, it cannot be verified whether the google image pertains to the mining lease area of the answering respondent. Further, the District Mineral Officer, has categorically verified that no mining is being done outside the allotted area by the answering respondent. Therefore, the allegations made by the applicant are false and baseless.

Further, use heavy machinery at a distance of 300 metres from the mining lease area of the answering respondent as claimed by the respondent, nowhere proves that such illegal mining was done by the answering respondent. The applicant should have rather filed an FIR against the illegal mining before the competent authorities.

45. That the contents of para 49 of the original application does not pertain to answering respondent, hence need no reply.

46. That the contents of para 50 of the original application does not pertain to answering respondent, hence need no reply.

47. That the contents of para 51 of the original application does not pertain to answering respondent, hence need no reply. However, in the interest of justice and to prove the mala fide intention of the applicant, it is necessary for this Hon'ble Tribunal to consider the averments made in para 51.

It is pertinent to mention here that the applicant has relied upon an KML file submitted by the respondent no. 9 and has made allegations with respect to illegal mining being carried out by respondent no. 9. However, surprisingly the applicant has withdrawn this original application against the respondent no. 9, as evident from Hon'ble Tribunal order dated 29.05.2023. Further, the applicant using the images of respondent against whom the original application has already been withdrawn, framing the answering respondent for illegal mining which is clearly a mala-fide intention of the applicant.

48. That the contents of para 52 to 53 of the original application does not pertain to answering respondent, hence need no reply. However, the

applicant has made specific allegations of illegal mining against the respondent no. 7 by showing the GPS coordinates as well, but later on withdrawn the original application against the respondent no. 7. The conduct of the applicant clearly shows his intention to make undue benefits by harassing people in the name of environment protection. It is pertinent to mention here that the distance of the mining leases of the answering respondent, from the GPS coordinates shown in the image is about 9-10 kms. The copy of map showing the distance is annexed herewith and marked as **Annexure-R-5/2**.

49. That the contents of para 54 of the original application are not disputed to the extent of orders passed by the Hon'ble Tribunal. However, in the present original application, the allegations made by the applicant are false, hence, the order passed by the Hon'ble Tribunal referred herein by the applicant cannot be relied upon.

50. That the contents of para 55 & 56 of the original application are not admitted in the manner stated by the applicant and are denied. It is submitted that the answering respondent has not used any heavy machinery for carrying out mining.

51. That the contents of para 57 of the original application are not disputed to the extent of

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orders passed by the Hon'ble Tribunal. However, in the present original application, the allegations made by the applicant are false, hence, the order passed by the Hon'ble Tribunal referred herein by the applicant cannot be relied upon.

52. That the contents of para 58 of the original application need no reply from answering respondent.

53. That the contents of para 59 of the original application need no reply from answering respondent.

54. That the contents of para 60 of the original application need no reply from answering respondent.

55. That the contents of grounds para 61 of the original application are not admitted in the manner stated by the applicant and have already been replied in the preceding paras, hence need no reply.

56. That the present original application to the extent of answering respondent is not within limitation. It is pertinent to mention here that the answering respondent was granted mining lease through e-auction way back in the year 2021. The answering respondent is not using heavy machinery in any manner in mining lease, therefore, there is no

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cause of action for the applicant against the answering respondent, hence the original application deserves to be dismissed on this ground alone.

Prayer

In view of above facts and circumstances, it is most humbly prayed that the reply on behalf of respondent no. 5 may kindly be taken on record and the original application filed by the applicant may kindly be dismissed with cost.

DATE: 14.12.2023

Humble answering respondent NO. 5

Rohit Kumar Tuteja

Lokendra Singh

**Through Counsel
Rohit Kumar Tuteja/ Lokendra Singh
Kachhawa Advocates**

OFFICE OF THE DISTRICT MINERAL OFFICER, BUDGAM

GEOLOGY & MINING DEPARTMENT

SIDCO COMPLEX OMPORA BUDGAM

email: dmobudgam12@gmail.com

Ph: 7006733395

(18)

The District Officer,
J&K Pollution Control Committee,
Budgam

No:- DMO/Bud/DGM/F-05/2903-2906

Dated: 27.12.2022

Subject:- Illegal mining in Doodhganga Nallah and penalty thereof.

Sir,

Kindly refer to the subject cited above. In this context, it is to inform that the lease holders of Minor Mineral Block No. 11 (Chadoora old bridge to Hanjigund D/S Doodhganga Nallah) and Block No. 12 (Chadoora Foot Bridge to Sogam Bridge U/S Doodhganga Nallah) have not been found involved in illegal mining within or outside the peripheries of their respective blocks. The fine realized as communicated in the Action Taken Reports furnished from time to time from this office has been collected from tractor/tipper/machine owners found indulged in illegal extraction/transportation of minerals from Doodhganga Nallah. It is worthwhile to place on record that the seized vehicles/machinery as communicated in the above said ATRs are not recorded on the name of Lease Holders of the said Blocks.

Yours faithfully,



District Mineral Officer,
Budgam

Copy to the:

1. Deputy Commissioner, Budgam for favour of information.
2. Director Geology & Mining Department, Jammu for favour of information.
3. Joint Director (K), Geology & Mining Department Srinagar for favour of information.

Annexure-R-5/2



SCALE :- 1 Cm = 300 M



Ann. A-9 (Page No. - 153/2) Ann. A-9 (Page No. - 152/2)
 Ann. A-9 (Page No. - 152/1) Ann. A-9 (Page No. - 152/1)
 Ann. A-9 (Page No. - 153/1)

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VERSUS

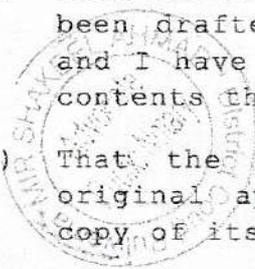
Union Territory of Jammu & Kashmir & Ors.

...RESPONDENTS

AFFIDAVIT

I Danish Yousuf S/o Mohammad Yousuf Mir, R/o Pahoo Dounghama, Kakapora, Pulwama, Jammu & Kashmir, do hereby take oath and state as under: -

- 1) That I am respondent no. 5 in the original application. I am well conversant with the facts and circumstances of the present case.
- 2) That the annexed reply to original application has been drafted by my counsel under my instructions and I have carefully read over and understood the contents thereof.
- 3) That the documents annexed with the reply to original application are true and correct photo copy of its respective original.



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DEPONENT

VERIFICATION

I, the above-named deponent do hereby verify that the contents of the Affidavit are true and correct to the best of my knowledge and belief and no material fact has been concealed.

Signed and verified on this 13/12/2023 Day of December, 2023 at

by *Khurshid Ahmed Mir*
S/o *Kh. Mohd Mir*
R/o *Doungam, Kakapora*

IDENTIFIED BY

M. J. Bhat

Danish
DEPONENT
MIR SHAKEEL
DISTRICT NOTARY
PULWAMA

A. Qadri