

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO.585 OF 2023
(Under Section 14 and Section 18 of the
National Green Tribunal Act, 2010)

IN THE MATTER OF:

ARIF KIDWAI

....APPLICANT

VERSUS

UNION OF INDIA & ORS.

....RESPONDENTS

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PLACE: NEW DELHI
DATE: 04.11.2024

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**REPLY ON BEHALF OF RESPONDENT NO.5 IN COMPLIANCE
WITH THE ORDER DATED 31.07.2024**

MOST RESPECTFULLY SHOWETH:

1. That this Hon'ble Tribunal vide its order dated 31.07.2024 was pleased to direct the newly added respondent to file response within two weeks.
2. That the respondent in compliance of the order dated 31.07.2024 is hereby referring to the instant reply to the Original Application No.585 of 2023.

PRELIMINARY SUBMISSIONS

3. The present reply to the Original Application No. 585 of 2023 has been filed under Section 14 of the National Green Tribunal Act 2010(herein after referred to as "NGT Act"). It is submitted that apart from bald averments made by the petitioner in its original application in Paragraph 3, a blissful silence has been adopted by the petitioner as to how is he a victim of pollution or is entitled to compensation within the scheme of Section 14 of the NGT Act. In

the absence of any locus of the petitioner, the present application is not maintainable and hence, the subject matter cannot be adjudicated by this Hon'ble Tribunal.

4. Without causing prejudice to the objection of the answering respondent viz. the maintainability of the present application, the answering respondent prefers its objections/reply as hereinunder.
5. The fundamental grieving of the petitioner appears to be that the notification dated 28.03.2020, environmental clearance is not required for those brick kins unit which are manufactured in bricks manually through extraction of ordinary clay up to 2 meters. The grievance of the petitioner is further premised upon the letter dated 1-05-2020 where it has been alleged that the state of Uttar Pradesh has acted in contravention to the law laid down by the Hon'ble Supreme Court of India in Deepak Kumar vs State of Haryana and others, Special Leave Petition (C) No.19628-19629 of 2009.
6. A notification was issued by the Union of India on 28.03.2020, introducing certain amendments to the EIA notification of 2006. According to the newly amended Appendix 9, activities declared by the state government under legislation or rules as non-mining activities shall not require environmental clearance.
7. The notification detected 01.03.2020 issued by the State of Uttar Pradesh is in strict compliance with the notification issued by the MOEF on 28.03.2020.

8. That an Original Application No.190 of 2020 was filed before this Hon'ble tribunal wherein one of the prayers made by the applicant was to quash the Notification dated 28.03.2020 for being violative of principles of polluter pay, non-regression, sustainable development and precautionary principle the matter ultimately reached the hon'ble Supreme Court of India.
9. The Hon'ble Supreme Court of India, in the matter of Noble M. Paikada v. Union of India, Civil Appeal Nos.1628-1629 of 2021, while adjudicating upon the notification dated 29.03.2020, struck down item 6 of the substituted Appendix-IX of the Notification dated 28.03.2020 only and did not even address the legality of Clause 13 of the notification dated 28.03.2020. This implies that Clause 13 has received implicit approval from the Hon'ble Supreme Court of India in Noble (Supra). In other words, because the Supreme Court of India struck down only item 6 of the substituted Appendix-IX of the Notification dated 28.03.2020 in the case of M. Paikada v. Union of India, Civil Appeal Nos. 1628-1629 of 2021, and did not address the legality of Clause 13 of the same Notification, it implies that Clause 13 has received implicit approval from the court. A copy of judgment passed by Hon'ble Supreme Court in the matter of Nobel M. Paikada Vs. Union of India bearing Civil Appeal No.1628-1629 of 2021 is annexed herewith and marked as **ANNEXURE R-1**.
10. Various other states have issued notifications similar to the letter dated 01.03.2020. Some examples highlighting the standard

practice prevalent across the length and breadth of India are provided below:

- State of Punjab

The State of Punjab vide its Notification bearing No.G.S.R. 165/C.A.67/1957/Ss.15 and 23C/Amd.(9)/2021 dated 13.12.2021 has issued similar Notification akin to the Notification dated 01.03.2020 passed in the State of Uttar Pradesh; the relevant extracts of which are: “In the Punjab Minor Minerals Rules, 2013 (hereinafter referred as the said rules)

.....

and for sub-rule (1), the following sub-rule shall be substituted, namely:

“(1) Notwithstanding anything contained in these rules, after obtaining the application for grant of license in the Form ‘A1’, the Director or any other officer authorized by him in this behalf, may issue a license in Form ‘B1’ for an area up to two acres and depth up to three feet from any specified land for excavation of Brick earth for a period of one financial year commencing from 1st day of April to 31st day of March. The excavation of brick earth from area up to 2 acres and depth up to 3 feet shall be considered as non-mining activity.”

A copy of Notification bearing No.G.S.R. 65/C.A.67/1957/Ss.15 and 23C/Amd.(9)/2021 dated 13.12.2021 issued by State of Punjab is annexed herewith and marked as **ANNEXURE R-2**.

- State of West Bengal

The State of West Bengal vide a Notification bearing No.No.378-ICE / O / MIN / GEN / MIS / 04 / 2021 dated

24.09.2021 provides for the following:

“In the said rules, after rule 4, insert the following rule: “4A. Exemption for removal of brick earth- Removal of earth for the purpose of brickkiln shall be deemed as non- mining activity and shall not require Environmental Clearance if the depth of quarry/removal is not more than 1.5 meters from the adjoining ground level. 'Explanation- The removal of brick earth shall be guided by the orders issued by the Department of Land & Land Reforms and Refugee, Relief & Rehabilitation from time to time”.

A copy of Notification bearing No.No.378-ICE / O / MIN / GEN / MIS / 04 / 2021 dated 24.09.2021 issued by The State of West Bengal is annexed herewith and marked as **ANNEXURE R-3**.

- The State of Tamil Nadu

“44. Removal of earth for betterment of agricultural lands(1) Notwithstanding anything contained in rule 18 and sub-rule (2) of rule 19, extraction or removal of earth in ryotwari lands manually for improvement of agricultural lands or lands that are not suitable for cultivation purpose, for an optimum depth based on the topographical condition to be specified by the Assistant Director of Geology and Mining or Deputy Director of Geology and Mining, as the case may be, not exceeding 1 ½ meters shall not be treated as mining activity.”

A copy of Notification bearing No.G.O.(Ms). No.213 dated 03.09.2021 issued by State of Tamilnadu is annexed herewith and marked as **ANNEXURE R-4**.

11. Thus, it can be seen that any interference by this Hon’ble Tribunal requires that the letter dated 01.03.2020 is no different from the

rules and regulations being promulgated across the length and breadth of India.

12. The MOEF identified the difficulties faced by the brick kiln manufacturer which recorded the difficulties faced by the brick kiln manufacturer recorded in the notification dated 24.06.2013, the relevant extracts of which are reproduced herein below for kind reference for this Hon'ble Tribunal:

“MOEF has received a number of representations conveying problems being faced by the brick kiln manufacturers in obtaining EC for ‘brick earth’ mined by them for making bricks and by the developers of road projects in respect of mining of ‘ordinary earth’ used for road construction. The brick kiln manufacturers have requested that as the digging of ‘brick earth’ for making bricks is a small scale activity requiring digging only up to a certain depth, the activity may be kept outside the purview of EC. The project proponents developing roads have represented that the ‘ordinary earth’ required for road construction is generally taken from the farmers / individuals along the road alignment from their borrows. It would be impractical to ask the farmers / individuals to being put forth are that while digging of ‘brick earth’ for brick making and ‘ordinary earth’ for road making do not have serious environmental implications, the provisioning for EC for such operations is impeding these development activities because of practical problems in obtaining EC.”

A copy of Notification bearing No. L-11011/47/2011-IA.II(M) dated 24.06.2013 issued by MOEF is annexed herewith and marked as **ANNEXURE R-5**.

13. Thus, it can be seen that the operations surrounding the brick kilns

are non-hazardous in nature and after considering the special nature of the activities carried out, the executive in its' wisdom has come up with the Letter dated 01.03.2020.

14. The executive in its own wisdom has issued the letter dated 01.03.2020. It is most respectfully submitted that this Hon'ble Tribunal should be most circumspect while interfering with the letter dated 01.03.2020 in light of the observations made by the Hon'ble Supreme Court of India in M/S. N.G. Projects Limited v. M/s Vinod Kumar Jain & Ors., Civil Appeal No.1846 of 2022 which are herein as under:

“most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain.”

PARAGRAPH WISE REPLY

1. That the contents and averments of paragraphs 1 and 2 of the original application are matter of record which does not warrant any reply by the answering respondent at this stage.
3. That the contents and averments of paragraph 3 are denied for want of knowledge. It is respectfully submitted that apart from making bald averments, the applicant is blissfully silent as to his credentials and the nature of his grievance. Needless to say, the present original application falls short of fulfilling the ingredients required to knock the doors of this Hon'ble Tribunal under Section 14 of the National Green Tribunal Act, 2010 (herein after to refer to as “NGT Act”)
4. **Reply to substantial questions relating to environment**

It is submitted that the substantial questions of law framed by the

applicant do not any consideration by this Hon'ble Tribunal. It is submitted that to be a "*substantial question of law*", such question of law must be debatable, not previously settled by the law of the land or a binding precedent and must have a material bearing on the decision of the case. It is submitted that the questions of law framed by the applicant are not at all debatable in light of the law of the land which has been dealt earlier by the answering respondent in its preliminary submissions.

5. Reply to jurisdiction of the National Green Tribunal

It is submitted that in absence of establishment of locus by the applicant, the present original application is not entertainable by this Hon'ble Tribunal.

- 6(a) That the contents and averments of paragraph 6(a) of the original application pertaining to the dictum laid down by the Hon'ble Supreme Court of India Deepak Kumar etc., Vs. State of Haryana & Ors. Special Leave Petition (C) No.19628-19629 of 2009 are correct. However, it is imperative to clarify that the law laid down by the Hon'ble Supreme Court of India in Deepak Kumar (supra) is not applicable to the letter dated 01.03.2020 issued by the State of Uttar Pradesh. The notification dated 28.03.2020 issued by the MoEF explicitly clarifies that any activity may be declared as non-mining activity by the State Government as per the amended EIA Notification 2006, which has also met implicit approval by the Hon'ble Supreme Court of India in Noble M. Paikada v. Union of India, Civil Appeal Nos.1628-1629 of 2021. Thus, the letter dated 01.03.2020 is in compliance and consequence of the notification

dated 28.03.2020, which is not even under challenge in the present proceedings.

6(b)-(d) That the contents and averments of paragraphs 6(b)-(d) are matter of record.

6(e) That the contents and averments of paragraph 6(e) is denied. It is submitted that it is erroneous to contend that any free hand has provided to the State Government as per the notification dated 28.03.2020, as the notification dated 28.03.2020 express provides that any activity shall be declared as non-mining activity only as per the legislation or the rules. especially in the light of the statutory provisions under Section 15 r/w Section 23 C of the Mines & Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as “MMDR Act”). While, it is true that the earlier notifications and the legislations pertaining to the requirement of MOEF&CC, Government of India have been done away with; does not render the State Government powerless to lay down rules and regulations pertaining to the minor minerals.

Section 15 of the MMDR Act is reproduced hereinbelow:

“Power of State Governments to make rules in respect of minor minerals. (1) The State Government may, by notification in the Official Gazette, make rules for, regulating the grant of [quarry leases, mining leases or other mineral concessions] in respect of minor minerals and for purposes connected therewith. [(1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the person by whom and the manner in which,

applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day;

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

(h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

(i) the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any

other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

(j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concession may be transferred;

(k) the construction, maintenance and use of roads power transmission lines, tramways, railways, serial rope ways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;

(l) the form of registers to be maintained under this Act;

(m) the reports and statements to be submitted by holders of quarry or mining leases or other mineral concessions and the authority to which such reports and statements shall be submitted;

(n) the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefore, and the powers of the revisional authority; and

(o) any other matter which is to be, or may be, prescribed.]

(2) Until rules are made under sub-section (1), any rules made by a state Government regulating the grant of 3[quarry leases, mining leases or other mineral concessions] in respect of minor minerals which are in force immediately before the commencement of these Act shall continue in force.

[(3) The holder of a mining lease or any other mineral concession granted under any rule made

under subsection (1) shall pay [royalty or dead rent, whichever is more] in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals: Provided that the State Government shall not enhance the rate of [royalty or dead rent] in respect of any minor mineral for more than once during any period of 7[three] years.]

[(4) Without prejudice to sub-sections (1), (2) and subsection (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:-- (a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under subsection (2) of section 9B; (b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and (c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A.]” The Hon’ble Supreme Court of India in the matter of State of Gujarat and Others etc. V. Jayeshbhai Kanjibhai Kalathiya etc.; CIVIL APPEAL NOS.10373-10374 of 2010 held as in under:

“Further, as Section 14 categorically states that provisions of Section 5 to 13 are not applicable in respect of minor minerals, rule making power of the Central Government contained in Section 13 does not extend to minor minerals. It is in this context Section 15 gives power to the State Government to make rules in respect of minor minerals. The State Government, thus, is given power under Section 15. It is also given power under Section 23-C.

.....To support the above plea, he invited the attention of this Court to the judgment in D.K. Trivedi & Sons and Others v. State of Gujarat and Others wherein

this Court considered the power of the State Governments to make rules under the said Section 15 to enable them to charge dead rent and royalty in respect of leases of minor minerals granted by them and to enhance the rates of dead rent and royalty during the subsistence of such leases – a power exercised by the State to govern conditions subsequent to the grant of the lease. After tracing the legislative history in respect of minor minerals, it was observed that by virtue of the Act the whole of the field was taken over by Parliament and thereafter all powers in respect of minor minerals had been delegated to the State Governments. The Court also observed, inter alia, that the power to regulate minor minerals under Section 15 is extremely wide; that control over minor minerals fell exclusively within the domain of the State Governments; that minor minerals have historically been viewed by the Legislature, both pre and post Independence, as being for the use of local areas and local purposes; and it is left to the State Governments to prescribe such restrictions as they think fit by rules made under Section 15(1).”

Thus, a perusal of the above judgment shall make it abundantly clear that the power of State to regulate Minor Minerals wide and the State Government was very much competent to pass the Regulation dated 01.03.2020. Furthermore, the Supreme Court of Indian in D.K. Trivedi And Sons & Ors. Etc. Etc. vs. State of Gujarat & Ors. Etc.; 1986 AIR 1323 held as in under:

(1) Sub-section (1) of Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, is constitutional and valid and the rule-making power conferred thereunder upon the State Governments does not amount to excessive delegation of legislative power to the executive.

(2) There are sufficient guidelines provided in the 1957 Act for the exercise of the rule-making power of

the State Governments under Section 15(1) of the 1957 Act. These guidelines are to be found in the object for which such power is conferred, namely, "for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith; the meaning of the word 'regulating'; the scope of the phrase "for purposes connected therewith"; the illustrative matters set out in Sub-section (2) of Section 13; and the restrictions and other matters contained in Sections 4 to 12 of the 1957 Act.

- 6(f) That the contents and averments of paragraph 6(f) is matter of record.
- 6(g) That the contents and averments of paragraph 6(g) are denied. The letter dated 01.03.2020 is tenable and in compliance with the law of the land. As the judgment relied upon by the applicant in the matter of Deepak Kumar (supra) is not applicable to the facts and circumstances of the present matter in light of the passing of the notification dated 28.03.2020 by the MoEF. It is further imperative to state here that the applicant has nowhere challenged the notification dated 28.03.2020, which grants the State Government the power to declare any activity as a non-mining activity.

It is submitted that even though Office Memorandum dated 18.05.2012 & 15.01.2016 is not applicable in the facts and circumstances of the present matter in light of notification passed by the MoEF on 28.03.2020. It is clarified that the notifications relied upon by the Applicant are only applicable viz. the activities which qualify as mining activities as not upon the non-mining activities.

7. That the contents and averments of paragraph 7 are denied. It is submitted that the entire gamut of the original application filed by the applicant is an inherently contradictory in nature and suffers from material suppression as the applicant has failed to take into consideration let alone challenging the notification dated 28.03.2020, which grants the State Government to declare any activity as non-mining activity as per the prevailing legislation or rules.
8. That the contents and averments of paragraph 8 are denied. It is submitted that no question to apply for environmental clearance arises where no question to acquire such environmental clearance is mandated under the law.
9. That the contents and averments of paragraph 9 are denied. It is submitted that to be a “substantial question of law”, such question of law must be debatable, not previously settled by the law of the land or a binding precedent and must have a material bearing on the decision of the case.
10. That the contents and averments of paragraph 10 are denied. The original application fails to disclose any cause of action, which could warrant any interference by this Hon’ble Tribunal.

REPLY TO GROUNDS:

That the grounds relied upon by the applicant in its original application are based on surmises and conjectures and fall miserably fall short to demonstrate as to how the data has been arrived at by the applicant. As already demonstrated in the present reply there are no grounds, which

could warrant any interference by this Hon'ble Tribunal and the impugned letter dated 01.03.2020 is in compliance with the law of the land.

PRAYER

In the facts and circumstances of the case and in the interest of justice this Hon'ble Tribunal may graciously be pleased to: -

- (a) Dismiss the present Original Application No.585 of 2023 with imposition sever costs; and /or
- (b) May pass such other and further orders as this Hon'ble Tribunal deems fit and proper in the premises of the case.

AND FOR THIS THE APPLICANT SHALL EVER PRAY


RESPONDENT NO.5

THROUGH


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....RESPONDENTS

AFFIDAVIT

I, Chandra Prakash Srivastava, S/o Shri Satyanaraian Srivastava, aged about 54 years, R/o 104A/7 Ram Bagh Kanpur, present at New Delhi, do hereby solemnly affirm and declare as under:


1. That I am General Secretary and Authorized Representative of the Respondent No.5 in such capacity and am well conversant with the facts and circumstances of the case and thus competent to swear this affidavit.
2. That the Reply has been drafted under my instructions, which have been read by me, which I have understood. I further state that the averments made therein are true and correct to my knowledge and belief.
3. The Annexure filed herewith are true copies of their respective originals.


DEPONENT

VERIFICATION

Verified at New Delhi on this 04th day of November, 2024, that the contents of my aforesaid affidavit are true and correct to my knowledge and belief. No part of it is false and nor anything material has been concealed therefrom.


DEPONENT

ATTESTED

MINATI RANI MOHAPATRA
ADVOCATE (NOTARY)
Mob. No.: 8130128457


IDENTIFIED

04 NOV 2024



ATTESTED

MINATI RANI MOHAPATRA
NOTARY DELHI-R-16971
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND NEW DELHI
REGISTER Pg./Sl. No.

04 NOV 2024


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**Reportable****IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS. 1628-1629 OF 2021****Noble M. Paikada****... Appellant*****versus*****Union of India****... Respondent****J U D G M E N T****ABHAY S. OKA, J.****FACTUAL ASPECTS**

1. These appeals take exception to the judgment and order dated 28th October 2020 (for short, 'the impugned judgment') passed by the National Green Tribunal, Principal Bench, New Delhi (for short, 'the NGT'). There is also a challenge to the order dated 24th December 2020, by which, the NGT rejected the review petition filed by the appellant for seeking review of the impugned judgment.

2. A notification was issued on 14th September 2006 (for short, 'the first EC notification') by the Ministry of Environment and Forests (for short, 'MoEF') in exercise of powers under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (for short, 'the EP Act') read with clause (d) of sub-rule (3) of Rule 5 of the Environment

(Protection) Rules, 1986 (for short, 'the EP Rules'). Clause 2 of the first EC notification is material, which reads thus:

“2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range.”

3. The notification provided that the projects falling under categories A and B set out in the Schedule to the notification will require prior Environmental Clearance (EC) from the concerned Regulatory Authority. The Regulatory Authorities for different projects have been named in clause (2) of the first EC notification. For the A category, the Central Government in the MoEF was named as the Regulatory Authority. For projects in the B category, the State Environment Impact Assessment Authority (for short, 'SEIAA') was named as the Regulatory Authority. Various procedural aspects regarding applying for a grant of EC, its processing, etc., have been incorporated in the first EC notification. There were subsequent modifications to the first EC notification. Another notification was issued on 15th January 2016 (for short, 'the second EC notification'), by which the first EC notification was partly modified. Clause 7B and Appendix-IX were added to the first EC notification, providing for an exemption to specific categories of projects from the requirement of obtaining EC. Item 6 in the said Appendix-IX reads thus:

“Appendix-IX

Exemption of certain cases from requirement of Environmental Clearance

The following cases shall not require prior environmental clearance, namely:

.....

6. Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their

maintenance, upkeep and disaster management.

.....”

Though the NGT struck down a part of the second EC notification, Appendix-IX was not touched.

4. In the Original Application subject matter of these appeals, the challenge before the NGT was to the notification dated 28th March 2020 (for short, ‘the impugned notification’), which modified earlier EC notifications. Appendix IX to the second EC notification provided for exempting certain cases from the requirement of obtaining EC. By the impugned notification, Appendix-IX was substituted. The substituted Appendix-IX provided that the prior EC will not be required in the thirteen cases set out therein. We are concerned with items 6 and 7 of the substituted Appendix-IX, which read thus:

“Appendix-IX

Exemption of certain cases from requirement of Environmental Clearance: The following cases shall not require Prior Environmental Clearance, namely:-

.....
.....

6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.

.....”

Thus, item 6 in Appendix IX of the second EC notification was maintained but was renumbered as item 7. Item 6 was newly added.

5. Before we go into the challenge to the impugned notification, we must note here that items 6 and 7 were substituted by further notification dated 30th August 2023 (for short, ‘amended impugned notification’) issued during the pendency of these appeals. Substituted items 6 and 7 in the amended impugned notification read thus:

“6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. shall be subject to the compliance of standard operating procedures and environmental safeguards issued in this regard from time to time.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management shall be subject to the compliance of environmental safeguards issued in this regard from time to time.”

6. The impugned notification was challenged on several grounds before the NGT by filing the Original Application subject matter of these appeals. Apart from other grounds, it was contended that the impugned notification violated the directions issued by this Court in the case of **Deepak Kumar**

& Ors. v. State of Haryana & Ors¹. Even the ground that the impugned notification was arbitrary and violative of Article 14 of the Constitution of India was invoked. We must note that in the Original Application, the specific challenge was only to item 6 of the impugned notification.

7. By the impugned judgment, it was held that the exemption under item 6 should strike a balance. The finding recorded on this aspect in paragraph 8 of the impugned judgment reads thus:

“8. The second issue is exemption from requirement of EC for extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc and for dredging and desilting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management. **It is possible to take a view that the EC can be exempted for these situations on account of assessment already made or for extraction of earth for linear project but such blanket exemption must be balanced by sustainable development concept. The exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum. Similarly, in respect of item 7, safeguards are required to be incorporated in terms of disposal of dredged material. These aspects are not shown to have been considered and the reply does not provide any**

¹ (2012) 4 SCC 629

explanation thereon. Learned counsel for the MoEFCC is also unable to provide any justification why these aspects be not addressed and incorporated in the notification for ensuring sustainable development concept which is required to be enforced by this Tribunal under section 20 read with section 15 of the NGT Act, 2010.”

(emphasis added)

Accordingly, the Original Application was disposed of by directing the Ministry of Environment, Forest and Climate Change (for short, ‘MoEF&CC’) to revisit the impugned notification within three months. An application for review was filed, which was dismissed by the second impugned order dated 24th December 2020.

8. Notice was ordered to be issued on 13th December 2021 on the appeals. On 10th August 2023, submissions were heard, and the judgment was reserved. After the judgment was reserved, the respondent-Union of India filed an affidavit of Dr Sujit Kumar Bajpayee, Joint Secretary, MoEF&CC, dated 12th September 2023. Along with the affidavit, two documents were also filed on record. The first document was the Office Memorandum dated 21st August 2023 issued by the MoEF&CC, purportedly laying down the enforcement mechanism for items 6 and 7 in the impugned notification. The second document brought on record was the amended impugned notification. In view of the issuance of the amended impugned notification, even after the verdict was reserved, the

parties were permitted to make further submissions on the legality and validity of the amended impugned notification.

SUBMISSIONS

9. The learned senior counsel appearing for the appellant submitted that the object of the EP Act is to provide for the protection and improvement of the environment. She invited our attention to Section 3 of the EP Act, which confers a power on the Central Government to take such measures as it deems necessary or expedient for protecting and improving the quality of the environment and preventing and abating environmental pollution. She pointed out that the first EC notification was issued in the exercise of powers conferred under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act. Clause (v) empowers the Central Government to take measures for restrictions of the areas, in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. She also invited our attention to the EP Rules and, in particular, Rule 5 thereof. It lays down that the Central Government may consider the factors set out in sub-rule (1) while prohibiting or restricting the location of industries and carrying out operations and processes in different areas. She pointed out that before issuing the first EC notification, the process laid down in sub-rule (3) of Rule 5 was followed.

10. The learned senior counsel invited our attention to a decision of this Court in the case of ***Hanuman Laxman***

Aroskar v. Union of India². She also relied upon a decision of this Court in the case of ***Deepak Kumar***¹. She pointed out that as a result of item 6, there will not be any regulation of the extraction of ordinary earth for utilisation in linear projects, such as, roads, pipelines, etc. She submitted that such a blanket exemption will defeat the very object of enacting the EP Act and, in particular, Section 3 thereof. She submitted that the decision of this Court in the case of ***Deepak Kumar***¹ and subsequent decisions mandated that there must be a requirement to obtain EC for the minor minerals pertaining to materials used for linear projects. The learned senior counsel submitted that allowing the extraction of the earth in such an indiscriminate manner is wholly arbitrary and violative of Article 14 of the Constitution of India.

11. Inviting our attention to the amended impugned notification, the learned senior counsel pointed out that the substituted item 6 provides that extraction of ordinary earth for linear projects shall be subject to compliance with the Standard Operating Procedure (SOP) and safeguards issued in this regard from time to time. Thus, the exemption remains. However, an SOP will be laid down to avail the exemption. She urged that the substituted item 6 is more arbitrary.

12. The learned senior counsel also pointed out that the whole issue was directed to be reconsidered under the impugned judgment. But nothing has been placed on record to

² (2019) 15 SCC 401

show that the Central Government made reconsideration in true letter and spirit.

13. The learned senior counsel pointed out that the decision of this Court in the case of *Deepak Kumar*¹ still holds the field, which directs that the leases of minor minerals, including their renewal for an area less than 5 hectares, shall be granted by the States/Union territories only after getting EC. She submitted that the impugned notification and the amended impugned notification, insofar as item 6 is concerned, are completely contrary to the directions issued by this Court in *Deepak Kumar*¹. She also urged that before publishing the draft of the impugned notification, objections to the draft notification were not invited. She submits that this action contravenes the provisions of sub-rule (3) of Rule 5 of the EP Rules.

14. The learned Additional Solicitor General appearing on behalf of the respondent – Union of India, submitted that in view of the insertion of Section 8B in the Mines and Minerals (Development and Regulation) Act, 1957 (for short, ‘the MMDR Act’), the amendment to the first EC notification was required to be made. Our attention was invited to Section 8B, incorporated on 13th March 2020 and amended Section 8B, effective from 28th March 2021. She submits that the provisions of the first EC notification must conform with the amended provisions of the MMDR Act, and therefore, the amendments were necessitated. She also pointed out that in terms of the impugned order, the matter was placed before the

Expert Appraisal Committee (EAC), non-coal mining and EAC, MoEF&CC and others in a meeting. Thereafter, the issue was deliberated in the meeting convened on 30th June 2022 under the chairmanship of the Joint Secretary of the concerned department. She invited our attention to the minutes of the said meeting held on 30th June 2022. She submitted that the ultimate endeavour is to uphold the principles of sustainable development. Relying upon the amended impugned notification, she submitted that now the exemption granted by items 6 and 7 cannot be said to be arbitrary, and it will be subject to compliance with the SOP issued on this behalf from time to time. Therefore, safeguards have been introduced, and the exemption is not blanket. She also pointed out that the Office Memorandum dated 21st August 2023 takes care of the safeguards. It was also submitted that the grant of exemption from the first EC notification is a matter of policy for the Central Government and no interference be called for with policy matters.

CONSIDERATION OF SUBMISSIONS

15. We have carefully considered the submissions. The EP Act was brought into force on 19th November 1986. The statement of objects and reasons of the EP Act specifically refers to the substantive decline in environmental quality due to increasing pollution, loss of vegetal cover, etc. It also notes the growing risk of environmental accidents and threats to life support systems. It refers to the decisions taken at the United Nations Conference on the Human Environment held in

Stockholm in June 1972. In the said Conference, the world communities resolved to protect and enhance the environmental quality. Clause (3) of the statement of objects and reasons reads thus:

“(3) In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with advocate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.”

(emphasis added)

Even from the preamble of the EP Act, it is apparent that the object is to provide protection to the environment and to improve the environment. Section 3 of the EP Act confers power on the Central Government to take measures to protect and improve the environment. Sub-sections (1) and (2) of Section 3 read thus:

“3. Power of Central Government to take measures to protect and improve environment.-

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such

measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--

(i) co-ordination of actions by the State Governments, officers and other authorities--

(a) under this Act, or the rules made thereunder, or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the

emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.”

(emphasis added)

Section 3 of the EP Act must be read with Rule 5 of the EP Rules. Rule 5 has been enacted to give effect to clause (v) of sub-section (2) of Section 3 of the EP Act, which empowers the Central Government to put restrictions on the areas in which industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. Rule 5 of the EP Rules reads thus:

“5. Prohibition and Restriction on the location of industries and the carrying on processes and operations in different areas.

(1) The Central government may take into consideration the following factors

while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas-

(i) Standards for quality of environment in its various aspects laid down for an area.

(ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.

(iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(iv) The topographic and climatic features of an area.

(v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.

(vi) Environmentally compatible land use.

(vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life

(Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

(x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the

industries and carrying on of process or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may within 1 [three hundred and sixty-five days] from such day of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3).”

(emphasis added)

SCOPE OF ADJUDICATION

16. As far as the scope of adjudication in these appeals is concerned, it is necessary to refer to the Original Application

no.190 of 2020 filed by the appellant. There were three prayers made in the said Original Application, which read thus:

“(a) Pass an Order quashing newly inserted Clause 6 of the Impugned Notification dated 28.03.2020 as being violative of Article 14 and 21 of the Constitution of India, ultra vires the provisions of the EPA Act, 1986, the EIA Notification dated 14.09.2006, and in further violation of the Judgment passed by the Hon’ble Supreme Court in the Deepak Kumar case (supra);

(b) Pass an appropriate Order quashing the Impugned Notification dated 28.03.2020 as being violative of the principles of Polluter Pay, Non-regression, sustainable development and Precautionary Principle;

(c) Pass an appropriate Order directing the Respondent not to allow any mining of ordinary earth without a prior environmental clearance.”

From the prayers mentioned above in clauses (a) to (c), it is apparent that the specific challenge was to item 6. Regarding clause (b), perhaps the only ground of challenge taken in the application was that no public interest was involved in exercising the power under sub-rule (4) of Rule 5 of the EP Rules for dispensing with public notice.

17. After perusal of the impugned judgment, we find that the submissions made by the learned counsel appearing for the appellant before the NGT were not recorded therein. The order

dated 29th June 2021 passed by this Court in the present appeals is relevant, which reads thus:

“X(name masked), learned senior counsel appearing for the appellant, submits that the learned counsel appearing for the appellant before the National Green Tribunal argued that exemption could not have been granted by the Notification of the Ministry of Environment, Forest and Climate Change which has not been considered by the Tribunal. Y(name masked), learned counsel who appeared before the Tribunal, is directed to file an affidavit that he, in fact, raised this point before the Tribunal during the course of hearing.

List the matter after two weeks.”

The advocate filed an affidavit dated 11th December 2021. In paragraph 5(a) of the affidavit, he stated thus:

“5.

(a) That the OA No. 190/2020 was listed for hearing before the Hon'ble Tribunal by way of video conferencing on 28.10.2020. On that day the Deponent appeared before the Hon'ble Tribunal and was granted a hearing. **During the course of the hearing the Deponent raised his submissions inter-alia including the fact that the Ministry of Environment and Forests did not have the power to exempt the removal of ordinary earth from the purview of the EIA Notification and that the exemption as granted for the removal of ordinary earth was illegal and ultra vires the Environment Protection Act as well as the**

judgment of this Hon'ble Court in Deepak Kumar's Judgment. It is submitted that the aforesaid point was raised, however the Hon'ble Tribunal did not find merit in the said submission as is evident from the judgment dated 28.10.2020.”
(emphasis added)

Thus, the Advocate-on-Record stated in the affidavit that what was argued before the NGT was the challenge to the exemption granted for the removal of ordinary earth for linear projects. We may note here that item 7 in the substituted Appendix-IX brought on record by the impugned notification was already there as item 6 in Appendix-IX to the second EC notification dated 15th January 2016. The appellant did not challenge the notification dated 15th January 2016. Even if we set aside or strike down item 7 regarding dredging/desilting in the impugned notification, it will continue to exist as item 6 in the second EC notification. The second EC notification is not under challenge. Therefore, we restrict the challenge to item 6 in the substituted Appendix-IX to the impugned notification.

CHALLENGE TO ITEM 6 IN THE IMPUGNED NOTIFICATION
Failure to follow the procedure prescribed by sub-rule (3) of Rule 5

18. We have already quoted Rule 5 of the EP Rules. There is no dispute that the first EC notification, the second EC notification and the impugned notification were issued in the exercise of powers under sub-rule (1) of Rule 5 of the EP Rules. Sub-rule (2) of Rule 5 provides that while passing an order prohibiting or restricting the location of industries and carrying

on processes and operations, the Central Government shall follow the procedure laid down in Rule 5. Sub-rule (3) of Rule 5 requires the Central Government to publish a notice of its intention to do so in the official Gazette and in such other manner as the Central Government deems fit. Any person interested is entitled to file objections against the proposed prohibition or restriction. The Central Government is required to consider the objections before issuing the final notification. The said procedure was followed before publishing the first EC notification.

19. Sub-rule (4) of Rule 5 empowers the Central Government to dispense with the requirement of publication of notice under sub-rule (3) of Rule 5 when it appears to the Central Government that it is in the public interest to do so. Thus, sub-rule (4) of Rule 5 is an exception to sub-rule (3). The exception can be invoked only on the grounds of public interest.

20. Now, we turn to the impugned notification dated 28th March 2020. The recitals of the said notification are important, which read thus:

“S.O. 1224(E).—WHEREAS, vide the Mineral Laws (Amendment) Act, 2020 (2 of 2020), the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (hereinafter referred to as MMDR Act) has been amended with effect from the 10th day of January, 2020 and, inter alia, new section 8B relating to the provisions

for transfer of statutory clearances has been inserted;

AND WHEREAS, sub-section (2) of section 8B of the MMDR Act provides that notwithstanding anything contained in this Act or any other law for the time being in force, the successful bidder of mining leases expiring under the provisions of sub-sections (5) and (6) of section 8A and selected through auction as per the procedure provided under this Act and the rules made thereunder, shall be deemed to have acquired all valid rights, approvals, clearances, licences and the like vested with the previous lessee for a period of two years;

AND WHEREAS, sub-section (3) of section 8B of the MMDR Act provides that notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the new lessee to continue mining operations on the land, in which mining operations were being carried out by the previous lessee, for a period of two years from the date of commencement of the new lease;

AND WHEREAS, in pursuance of the aforesaid amendment to the MMDR Act, the Central Government deems it necessary to align the relevant provisions of the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1533 (E), dated the 14th September, 2006 (hereinafter referred to as the EIA Notification, 2006);

AND WHEREAS, the Ministry of Environment, Forest and Climate Change is in the receipt of representations for waiver of requirement of prior environmental clearance for borrowing of ordinary earth for roads; and manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government, after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of the rule 5 of the said rules, in public interest, and in supersession of the notification number S.O. 4307(E), dated the 29th November, 2019, hereby makes the following further amendments in the EIA Notification, 2006, namely:-

.....”

(emphasis added)

By the impugned notification, after sub-paragraph (2) of paragraph 11 of the first EC notification, sub-paragraph (3) was inserted to give effect to Sections 8A and 8B of the MMDR Act. An entry has been made in the Schedule against Item 1(a) in column (5) for inserting a clause dealing with the evacuation or removal and transportation of already mined out material.

Appendix IX, which contains the list of projects exempted from obtaining EC, was substituted by the impugned notification.

21. We have quoted above the recitals of the impugned notification. The first three recitals refer to the necessity of giving effect to Sections 8A and 8B of the MMDR Act. Thereafter, the last recital refers to the Ministry receiving representations for waiver of the requirement of prior EC for borrowing of ordinary earth for roads. After that, without giving any details, it is mentioned that in the public interest, the requirement of publication of notice under sub-rule (3) of Rule 5 was dispensed with. At this stage, we may refer to the relevant ground specifically taken in the Original Application filed by the appellant before the NGT. Ground J was specifically taken on this aspect, which reads thus:

“J. Because the Respondent has deliberately and ostensibly circumvented the requisite procedures before issuing the Impugned Notification, including evading previous publication, inviting public objections under Rule 5(3) of the EP Rules, 1986, and by wrongly exercising its powers under Rule 5(4) of the EP Rules under the garb of "public interest" during the Covid-19 national lockdown without offering even a shred of reasoning for its actions. It is most respectfully submitted that the amendments brought forth by the Impugned Notification serve and further the interest of private miners and contractors, and the actions of ratifying such illegal and mala fide acts of disregard and disobedience to

environmental norms is in fact against public interest at large.”

22. We have carefully perused the counter affidavit filed by the MoEF&CC before the NGT. The said affidavit does not deal with Ground J at all. It does not specify or set out reasons for concluding that in the public interest, the requirement of publication of prior notice was needed to be dispensed with. It is pertinent to note that before the issue of the second EC notification by which Appendix-IX was incorporated, the procedure of inviting objections to the draft notification was followed, and the objections were considered. There is no reason to dispense with this important requirement before publishing the impugned notification. Article 21 guarantees a right to live in a pollution-free environment. The citizens have a fundamental duty to protect and improve the environment. Therefore, the participation of the citizens is very important, and it is taken care of by allowing them to raise objections to the proposed notification. After all, citizens are major stakeholders in environmental matters. Their participation cannot be prevented by casually exercising the power under sub-rule (4) of Rule 5.

23. In the present appeals, the questions of law (e) and (f) have been incorporated regarding the illegal invocation of the power under sub-rule (4) of Rule 5 of the EP Rules. In the grounds of the challenge, ground EE has been taken explicitly on this aspect. We have perused the counter affidavit filed by the MoEF&CC in these appeals. We find from the counter

affidavit that the contention raised regarding the illegal invocation of power under sub-rule (4) of Rule 5 has not been dealt with. We are not going into the question of whether it was necessary for the Central Government to specify reasons in the impugned notification itself why it came to the conclusion that in the public interest, the requirement of public notice should be dispensed with. However, the reasons for the said conclusion ought to have been set out in the counter affidavit filed before the NGT or, at least, in the counter affidavit filed before this Court. The document recording the satisfaction of the competent authority about the existence of public interest and the nature of the public interest ought to have been produced by the Ministry. But, no such document was produced. Only one conclusion can be drawn. The drastic decision to invoke sub-rule (4) of Rule 5 was made without any application of the mind. Hence, the decision-making process has been vitiated.

24. The impugned notification was issued two days after the nationwide lockdown was imposed due to the COVID-19 pandemic. At that time, the work of linear projects, such as roads, pipelines, etc., had come to a grinding halt. So, there was no tearing hurry to modify the EC notifications. Apart from the fact that no reasons have been assigned in the counter affidavit filed by the Central Government for coming to the conclusion that in the public interest, the requirement of prior publication of notice was required to be dispensed with, we fail to understand the undue haste shown by the Central

Government in issuing the impugned notification during the nationwide lockdown. Therefore, the inclusion of item 6 of the substituted Appendix-IX will have to be held illegal. We have already given reasons for not dealing with the challenge to item 7 of the impugned notification.

ARBITRARINESS

25. There is one more important ground for striking down item 6. But for item 6 in Appendix-IX to the impugned notification, for extraction, sourcing, or borrowing of ordinary earth for linear projects, prior EC would have been required in terms of the first EC notification. The very object of issuing the first EC notification incorporating the mandatory requirement of obtaining EC for projects was that the damage to the environment must be minimised while implementing projects. When an exception is sought to be carved out by incorporating Appendix-IX to the requirement of obtaining EC in the first EC notification, the exception must be specific. Item 6 grants exemption for “extraction or sourcing or borrowing of ordinary earth for linear projects, such as roads, pipelines, etc.” There is no specification about the quantum of ordinary earth, which can be extracted on the basis of the exemption. There is no specification of the area which can be used to extract ordinary earth. It is also not provided that only that quantity of ordinary earth, which is required to implement the linear projects, is exempted. Importantly, “linear projects” have not been defined. Without the definition, it is difficult to imagine which projects will be termed linear projects. The term “linear projects” is very

vague. The process to be adopted for excavation has not been set out. Thus, item 6 is a case of completely unguided and blanket exemption, which is, *per se*, arbitrary and violative of Article 14 of the Constitution of India. There is no provision for setting up an authority which will decide whether a particular linear project is covered by item 6.

26. As stated earlier, during the pendency of the appeals, an amendment was made to item 6 by the notification dated 30th August 2023. Even the amended impugned notification does not elaborate on the concept of linear projects. The only addition to item 6 is that the extraction, sourcing or borrowing shall be subject to compliance with SOP and environmental safeguards issued in this regard from time to time. The authority to issue the SOP and environmental safeguards has not been specified. No provision has been made to enforce the SOP and environmental safeguards. No restriction is imposed on the quantum of ordinary earth, which can be extracted for linear projects. Therefore, even the amended item 6 continues to suffer from the same vice of arbitrariness, which Article 14 of the Constitution of India prohibits.

27. The learned Additional Solicitor General placed reliance on the Office Memorandum dated 21st August 2023. It provides that before carrying on activities mentioned in entry 6, the project proponents must notify the State Pollution Control Board/Pollution Control Committees. The State Pollution Control Boards are required to monitor the compliance status of the SOP/environmental safeguards. As entry 6 is arbitrary,

the Office Memorandum is of no consequence. Hence, on account of the violation of Article 14, item 6 in the impugned notification, as well as the amended impugned notification, will have to be struck down. As noted earlier, the object of the EP Act is to protect and improve the environment. Apart from the illegality committed by non-compliance with sub-rule (3) of Rule 5 of the EP Rules, the exemption granted without incorporating any safeguards is completely unguided and arbitrary. Grant of such blanket exemption completely defeats the very object of the EP Act.

NON-COMPLIANCE WITH THE DIRECTIONS OF THE NGT

28. In paragraph 8 of the impugned order, which we have quoted earlier, the NGT observed that the blanket exemption needs to be hedged by appropriate safeguards, such as, the process of excavation and quantum. Therefore, in paragraph 9, a direction was issued to MoEF&CC to revisit the impugned notification in the light of the observations made in paragraph 8. Within the three months provided by the NGT to do so, no steps had been taken to revisit item 6 of the impugned notification.

29. The Ministry has filed an additional affidavit dated 18th July 2023, and reliance has been placed on the guidelines for sand mining. As far as item 6 is concerned, in the counter affidavit, reliance was placed on the Office Memorandum dated 8th August 2022, purportedly issued in terms of the directions issued in paragraph 9 of the impugned judgment. It records that item 6 shall be subject to the SOP attached to the said

Office Memorandum. We have perused the said SOP. We find that the SOP creates no regulatory machinery to ensure the implementation of the terms of the SOP. The SOP does not refer to item 6 at all; it merely refers to the activities relating to the identification to borrow areas to obtain earth or soil materials. It does not refer to extracting ordinary earth for linear projects, such as roads, pipelines, etc. Therefore, the said SOP can hardly be said to be in terms of what the NGT ordered the Central Government to do in terms of paragraphs 8 and 9.

30. We are not entertaining a challenge to item 7 of the impugned notification. As none of the respondents have challenged the impugned notification, they will have to implement the directions issued in terms of paragraph 9 of the impugned judgment regarding item 7.

31. Thus, notwithstanding the specific directions issued in paragraph 8 read with paragraph 9 of the impugned judgment, no safeguards have been provided, such as laying down processes, the mode and the manner of excavation and quantum.

32. Therefore, we have no hesitation in striking down item 6 of the substituted Appendix-IX forming part of the impugned notification dated 28th March 2020 and item 6 of the amended impugned notification dated 30th August 2023. Accordingly, we quash item 6 in the two notifications above.

33. The appeals are, accordingly, partly allowed on above terms. There will be no order as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Sanjay Karol)

New Delhi;
March 21, 2024.



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PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF WATER RESOURCES
(MINES AND GEOLOGY)

NOTIFICATION

The 13th December, 2021

No. G.S.R. 165/C.A.67/1957/Ss.15 and 23C/Amd.(9)/2021.- In exercise of the powers conferred by section 15 read with section 23C of the Mines and Minerals (Development and Regulation) Act, 1957, (Central Act 67 of 1957), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules further to amend the Punjab Minor Mineral Rules, 2013, namely:-

RULES

1. (1) These rules may be called the Punjab Minor Mineral (Second Amendment) Rules, 2021.

(2) They shall come into force on and with effect from the date of their publication in the Official Gazette.

2. In the Punjab Minor Minerals Rules, 2013(hereinafter referred as the said rules),in the rule 27:

i. for the word "permit" wherever occurring, the word "license or permit" shall be substituted; and

ii. for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) Notwithstanding anything contained in these rules, after obtaining the application for grant of license in the Form 'A1', the Director or any other officer authorised by him in this behalf, may issue a license in Form 'B1' for an area upto two acres and depth upto three feet from any specified land for excavation of Brick earth for a period of one financial year commencing from 1st day of April to 31st day of March. The excavation of brick earth from area upto 2 acres and depth upto 3 feet shall be considered as non mining activity.

(1A) In case of area more than two acres or depth more than three feet or both is encountered, the Director or any other officer authorised by him in this behalf, may grant permit in Form 'K' in addition to license fee from any specified land for mining mineral for such a period not exceeding one year as specified therein:

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(AGHN 23, 1943 SAKA)

Provided that for the purpose of brick manufacturing, the quarrying permit for brick earth shall be for a period of three years on payment of such royalty as given in the Schedule."

3. In the said rules, in the Schedule, under heading "C. Schedule of Fees applicable", after entry no. 12, the following entry shall be inserted, namely:-

"13. Annual License fee for excavation of Brick Earth for all Brick Kilns upto area two acres and depth upto three feet 60,000/-"

4. In the said rules, after FORM 'A', the following form shall be inserted namely:-

"FORM 'A1'
(see rule 27)

Application for Licence for Extraction of ordinary clay or earth for manufacturing of bricks.

To

Director, Mining and Geology,
Department of Water Resources,
Government of Punjab.

Sir,

I/We _____ hereby request that a licence for extraction of clay or earth for manufacturing of bricks under the Punjab Minor Mineral Rules, 2013, be granted to enable me/us for manufacturing of bricks, extract the ordinary clay or earth.

2. The fee of Rs. _____/- payable for the grant of the Licence is remitted herewith through Demand Draft No. _____(Name of the Bank) dated _____, on _____/or has been deposited in the Government Treasury under Head "0853- Non Ferrous Mining and Metallurgical Industries and receipted challan where for is enclosed.

3. The required particulars are given below:-

- (i) Name of applicant:
- (ii) Address:
- (iii) Profession of the applicant:
- (iv) Quantity of the minor mineral for which License is required:
- (v) Description of the land from which the ordinary clay or earth is to be extracted and removed:

PUNJAB GOVT. GAZ. (EXTRA), DECEMBER 14, 2021 2899
(AGHN 23, 1943 SAKA)

-
- (a) Name of the village or town with Hadbast Number/Plot No:
- (b) Tehsil:
- (c) District:
- (d) Khasra no. of the land alongwith a copy of Jamabandi:
- (vii) Agreement between the applicant and land owner:
- (viii) Existing status of land from which ordinary clay or earth extracted :
- (ix) Layout plan of the area:
- (x) Number of bricks and category of the brick kiln:
- (xi) Copy of License issued by District Food Supplies Controller.
- (xii) Copy of certificates consent to operate Air and Water issued by Punjab Pollution Control Board.
- (xiii) Undertaking by the applicant that:-
- (a) area is free from Section 4 and/or 5 of the Punjab Land Preservation Act, 1900 and any kind of forest;
 - (b) digging of the earth at the site is not prohibited by any court of law or any authority or otherwise;
 - (c) ordinary clay or earth will be used only for manufacturing of the bricks;
 - (d) he will abide by all relevant provisions for extraction of earth; and
 - (e) compensation has been settled with the land owner mutually and a copy of the agreement signed between the applicant and the landowner qua mutual settlement of the compensation is attached (in case land is owned by the applicant himself, the proof thereof)
 - (f) In case of any dispute regarding the ownership of land the applicant will be solely responsible.

Yours faithfully,

Place: _____
Dated: _____

Signature and designation of the
applicant."

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(AGHN 23, 1943 SAKA)

5. In the said rules, after FORM 'B', the following form shall be inserted, namely:-

FORM- 'B1'
(see rule 27)

Standard form for licence of extraction of ordinary clay or earth for manufacturing of bricks.

Whereas Shri/M/s. _____
_____ owner(s) of brick kiln falling in category _____
has/ have applied for Licence for extraction of ordinary clay or earth
manufacturing of bricks for a period of one year from the land measuring
_____ acres or hectares bearing khasra numbers
_____ in the revenue estate of
_____ Tehsil _____
District _____ under the rules. The applicant has paid requisite
application fee of Rs. _____. Further the applicant has also deposited the
Licence fee of _____ for _____
category of brick kiln.

The permission is hereby granted for extraction of ordinary clay or earth
and manufacture of bricks from the aforesaid area during the period
from.....to subject to the following conditions:—

1. The holder of the Licence shall keep the Government indemnified from third party claim relating to the extraction of ordinary clay or earth from the land, for which Licence is given.
2. The holder of the Licence shall extract the ordinary clay or earth in such a manner that the same shall not disturb or damage any road, public ways, buildings, premises of public grounds.
3. The holder of the Licence shall not use the ordinary clay or earth extracted from the land granted on permit for any other purpose than that of manufacturing of bricks. In case this clay or earth is to be transported up to brick kiln from the site of the excavation, the Licence holder transport the same only by issuing a weightment slip.
4. The holder of the Licence shall on expiry of the Licence either fill up the excavation or suitably fence it for safety as instructed by the Mining Officer concerned.
5. Every Licence holder shall-
 - (i) Ensure that no natural watercourse and /or water resources are obstructed due to the extraction of ordinary clay or earth. Adequate measures shall

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(AGHN 23, 1943 SAKA)

-
- be taken for protection of the older-streams, if any, emanating / passing through the mining area of License of extraction;
- (ii) ensure that Ambient Air Quality parameters conforming to the norms prescribed by the State Pollution Control Board is maintained throughout. For this purpose keep vehicular emissions under control and regularly monitor the same, take measures, for maintenance of vehicles used in extraction and in transportation of mineral, the vehicles shall not be overloaded and take effective safeguards such as regular water sprinkling in critical areas prone to air pollution and having high levels of particulate matter.
 - (iii) take all mitigative measures during the extraction to ensure that the buildings/ structures in the nearby areas shall not be affected;
 - (iv) ensure that personnel working in dusty areas shall wear protective respiratory devices and they shall also be provided with adequate training and information on safety, environment and health aspects;
 - (v) undertake no losses to the agriculture crops due to extraction of ordinary clay/earth and undertake to contribute suitably for compensation in case of loss / damage to the crops;
6. That the Licence holder shall not fell any tree standing on the land without obtaining prior permission in writing from the competent authority in the Forest Department or Collector of the district concerned, as the case may be. In case such permission has been granted, he shall abide by the terms and conditions stipulated in such permission.
 7. The Licence holder shall not carry on surface operations in any area prohibited by any authority, without obtaining prior permission in writing from the concerned authority.
 8. The Licence holder shall not enter and work in any reserved demarcated or protected Forest without obtaining prior written permission of the Forest Department.
 9. The Licence holder shall report immediately all accidents to the Deputy Commissioner and the Officer-in-Charge, concerned.
 10. The area for excavation shall not exceed 2 acres and depth of the extraction of ordinary clay / soil shall not exceed 3 feet.
 11. The brick Kiln owner shall be liable to make payment of Licence fee for the whole of the year not with standing the operation of the Kiln for any part of the year.
 12. In case of any default in due observance of the terms and conditions of

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this Licence the Licence may be cancelled by the Director or by any officer duly authorized by him in this behalf by giving one month's notice.

13. The Licence holder shall follow all the rules and regulation of the department, PMMR-2013, Punjab Pollution Control Board as well as the instructions/ Guidelines issued by the Government from time to time.

Signature _____

Designation _____

RAHUL BHANDARI,
Secretary to Government of Punjab,
Department of Water Resources , Mines and Geology.

2465/12-2021/Pb. Govt. Press, S.A.S. Nagar

CE (O&E)

Government of West Bengal
Department of Land & Land Reforms and Refugee Relief & Rehabilitation
Nabanna (6th Floor), 325 Sarat Chatterjee Road
Shibpur, Howrah-711102

CE (O&E) / CE (P)

MEMORANDUM

No. 179 - M & M/LR/A-II-26/2010

Dated- 27 /01/2022

In view of the Amendment in the West Bengal Minor Minerals Concession Rules, 2016 vide the Department of Industry, Commerce & Enterprises No. 378-ICE/O/MIN/GEN/MIS/04/2021 dated 24th September, 2021 wherein it is stated that removal of earth for the purpose of brick kiln shall be deemed as non-mining activity and shall not require Environmental Clearance if the depth of quarry/removal is not more than 1.5 metres from the adjoining ground level, the following amendment is made in the guidelines relating to operation of new brick fields/kilns which was issued vide this Department No. 2649-M & M/LR/A-II-26/2010 dated 27/10/2016:

Amendments

In the said guideline

(1) for clause (f) of sub-para 2 of Para A, substitute the following clause:-

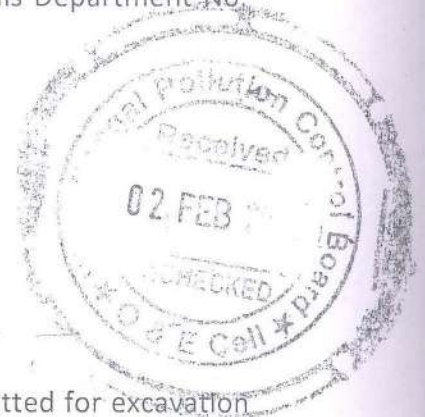
"(f) Environment Clearance from an appropriate authority is to be submitted for excavation or borrowing of brick earth or ordinary earth for the purpose of brick kiln if the depth of quarry/removal/excavation/borrowing is more than 1.5 metres from the adjoining ground level."

(2) in sub-para-3 of Para A, after the words "in any manner whatsoever." Insert the following words, letter, figures and brackets:-

"If the applicant does not submit Environmental Clearance from the appropriate authority as per (f) above, then the applicant shall also submit self declaration in the form of affidavit to the effect that the depth of quarry/removal of brick earth for the purpose of his/her brick field(s) shall in no case be more than 1.5 metres from the adjoining ground level."

(3) to sub-para 4 of para A, insert the following proviso:-

"Provided that if the depth of quarry/ removal of brick earth for the purpose of the project of the concerned brick field is not more than 1.5 metres from the adjoining ground level then no prior environmental clearance shall be required before processing the application for operation of new brick field."



Diary No. 675 Date 02/02/22
Environmental Cell

1000000000

(4) In para C, after clause 10, insert the following clauses:

"11) The removal of brick earth shall be guided by the orders/circulars issued by the Department of Land and Land Reforms and Refugee Relief and Rehabilitation from time to time. For the time being the recommendations/decisions in this regard as laid down in para-4 of the Guideline of Office Memorandum of No. L-11011/47/2011-1A.II(M) dated 24th June, 2013 of the Ministry of Environment and Forests, GoI need to be followed.

12) The plots of the lands on which the brick field under consideration will be established are to be converted first u/s 4C of the WBLR Act in accordance with the existing law, rules and guidelines under it."


Land Reforms Commissioner and Secretary

to the Government of West Bengal

No. 179/1(56) M & M/LR/A-II-26/2010

Dated-27/01/2022

Copy for information and necessary action to:

- 1) The Additional Chief Secretary/Principal Secretary/Secretary to the Government of West Bengal, Environment/ Irrigation and Waterways/Agriculture/PWD/Industry, Commerce and Enterprises Department.
- 2) The Commissioner, Jalpaiguri/Malda/Bardhaman/Presidency/Medinipur Division.
- 3) The Member Secretary, West Bengal Pollution Control Board.
- 4) The D.L.R. & S, West Bengal, Alipur, Kolkata.
- 5) The District Magistrate & Collector-----All.
- 6) The Additional District Magistrate & Collector (L & LR)-----All


Joint Secretary

to the Government of West Bengal



ABSTRACT

Industries Department - Mines and Minerals – Minor Minerals – Extraction of earth in ryotwari lands for improvement of agricultural lands on short term basis - Amendment to the Tamil Nadu Minor Mineral Concession Rules, 1959 – Notification – Orders - Issued.

Industries (MMC.1) Department

G.O.(Ms).No.213

Dated: 03.09.2021

பிலவ வருடம், ஆவணி 18
திருவள்ளூர் ஆண்டு 2052

Read:

- (1) From the Commissioner of Geology and Mining,
Letter No.723/MM6/2020, dated 12.02.2021.
- (2) From the Director of Geology and Mining,
Letter No.723/MM6/2020 dated 18.08.2021.

ORDER:

In the letters read above, the Director of Geology and Mining has sent amendment proposal to Government for extraction or removal of Earth in ryotwari lands manually for betterment of agricultural land, for an optimum depth based on the topographical condition to be specified by the Assistant Director/Deputy Director of Geology and Mining, not exceeding one-and-a-half metres shall be treated as non-mining activity in tune with Serial No.13 in Appendix IX to the Notification S.O.No.1224(E), dated 28.03.2020 issued by the Ministry of Environment, Forest and Climate Change.

2. The Government have examined the proposal of the Director of Geology and Mining carefully and have decided to accept the same with certain modifications. Accordingly, the Notification appended to this Order will be published in the Extra-ordinary issue of *Tamil Nadu Government Gazette*. The Works Manager, Government Central Press, Chennai – 600 079 is requested to supply 50 copies of the Notification each to this Department, Director of Geology and Mining, Chennai – 600 032 and to all District Collectors.

3. The Director, Tamil Development and Information (Translation) Department is requested to send the Tamil Translation of the Notification appended to this Order to the Works Manager, Government Central Press, Chennai - 600 079 for publishing in the *Tamil Nadu Government Gazette* and to the Collectors of all Districts for publishing it in the District Gazettes immediately.

(BY ORDER OF THE GOVERNOR)

**N. MURUGANANDAM
PRINCIPAL SECRETARY TO GOVERNMENT**

To
The Works Manager,
Government Central Press,
Chennai - 600 079.
The Director,
Tamil Development & Information (Translation) Department,
Chennai - 600 009.
The Director of Geology and Mining,
Guindy, Chennai - 600 032.
All District Collectors. (Through DGM)
All the Assistant Directors/Deputy Directors of Geology and Mining (through DGM)
The Accountant General, Chennai - 600 018.

Copy to:
The Industries (MMA/MMB/MMD/MME/E/OP.II) Department, Chennai - 600 009.
The Law Department, Chennai - 600 009.
O/o. Hon'ble Minister (Water Resources), Chennai - 600 009.
O/o. Hon'ble Chief Minister, Chennai - 600 009.
SF/SC's.

//Forwarded by Order//

F. Chandrasekhar
3/9/21.
SECTION OFFICER
LHM
9/9/2021

APPENDIX.
NOTIFICATION.

In exercise of the powers conferred by sub-sections (1) and (1A) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957), the Governor of Tamil Nadu hereby makes the following amendments to the Tamil Nadu Minor Mineral Concession Rules, 1959, namely:-

AMENDMENTS.

In the said Rules,-
(1) after rule 43, the following rule 44 shall be added, namely:-

"44. Removal of earth for betterment of agricultural lands(1)

Notwithstanding anything contained in rule 18 and sub-rule (2) of rule 19, extraction or removal of earth in ryotwari lands manually for improvement of agricultural lands or lands that are not suitable for cultivation purpose, for an optimum depth based on the topographical condition to be specified by the Assistant Director of Geology and Mining or Deputy Director of Geology and Mining, as the case may be, not exceeding one-and-a-half metres shall not be treated as mining activity:

Provided that such extraction of earth shall be carried out under a permit issued for a period not exceeding three months by the District Collector concerned:

Provided further that the soil excavated approximately upto 1 feet depth from the top may be used/replaced for improving the soil structure or fertility of lands where continuous cultivation is under taken for several decades without using organic manures and where soil nutrients got depleted which resulted in lesser yield:

Provided further that the soil extracted or removed beneath one feet depth not exceeding one-and-a-half metres may also be used for brick kilns,

bedding material for soils that were disturbed by natural calamities including floods, etc., so that vegetation in those areas can be re-established:

Provided further that if the brick earth removed is transported to a registered brick kiln unit, the permit holder shall pay due seigniorage fee for the quantum of brick earth removed from the permitted area at the rate fixed in Appendix – II to these rules:

Provided further that the permit holder may use the earth so removed for own consumption, for betterment of his own land or for any other purpose:

Provided also that the permit holder shall not remove earth after expiry of the permit period.

(2) For improvement of an agricultural land, the owner of the land may apply for permit for removal of earth. An application for the purpose shall be made to the District Collector in the Form prescribed in Appendix – XXV along with a plan for removal of earth.

(3) The plan for removal of earth shall contain the following details, namely:-

- (i) the area showing the nature and extent of the land;
- (ii) period and quantum of earth proposed for extraction;
- (iii) a certificate to the effect that the proposal is for making the land fit for cultivation, after extraction of earth obtained from the Joint Director of Agriculture.

(4) Every such application shall be accompanied with an application fee of one hundred rupees along with a copy of computerised chitta or copy of the latest sale deed registered in the name of the applicant along with extracts of village accounts.

(5) The District Collector shall dispose of the application for extraction of earth in ryotwari lands after ascertaining of objections, if any. He shall obtain No Objection Certificate from the jurisdictional Revenue

Divisional Officer to ensure the genuineness of the patta of the land applied for and non-inclusion of any Government land or Government interest, including land acquisition before grant of permit for extraction of earth. The District collector may issue permit under this rule for a period not exceeding three months, subject to the following conditions, namely:-

(i) Extraction of earth shall be carried out without affecting the interest of the adjoining land owners.

(ii) Extraction of earth shall not be done within a distance of 10 metres from the village road and cart track and distance of 50 metres from the highways, railway lines, river, reservoir, tanks and any other permanent structures.

The District Collector shall also impose terms and conditions as per provisions of the Act and these rules or guidelines, in the permit.

(6) The Assistant Director of Geology and Mining or Deputy Director of Geology and Mining, as the case may be, shall inspect the applied area and decide the optimum depth and the quantum of extraction of earth based on the topographical condition to be permitted, not exceeding one-and-a-half metres. The District Collector concerned shall ensure that the material proposed to be removed is not sand or gravel, after appropriate testing in the laboratories authorised by the Director of Geology and Mining. Every permit issued under this rule shall be entered in the register maintained for the purpose by the Assistant Director of Geology and Mining or Deputy Director of Geology and Mining.

(7) The permit holder shall also pay contribution to the District Mineral Foundation Trust Fund at the rate fixed under the Tamil Nadu District Mineral Foundation Rules, 2017.

(8) The excavated brick earth shall be transported to the Brick Manufacturing Unit along with the transport slip, as prescribed in

Appendix-XXVI to these Rules issued by the Assistant Director of Geology and Mining or Deputy Director of Geology and Mining.

(9) The permit issued under this rule shall be a one time permit and shall not be revalidated for any reason.

(10) The permit under this rule shall not be granted for removal of earth in area falling under "Hill areas" specified by the Government, from time to time and 'Protected areas' falling within 10 Kilometres from the Wildlife Sanctuaries and National Parks and in Elephant Corridors. The No objection Certificate to this effect shall be obtained from the District Forest Officer concerned.

(11) If any mineral other than earth such as sand or gravel are found to occur during extraction within the permitted depth, the permit holder shall stop the extraction works immediately and intimate the same to the District Collector concerned.

(12) The District Collector concerned, on receipt of report or otherwise on the occurrence of any minerals other than earth such as sand or gravel shall cancel the permit.

(13) If there is any contravention of the conditions of the permit, penal action will be initiated against the permit holder under the provisions of the Act and these Rules.

(14) In case of breach of the conditions of permit by the permit holder, without prejudice to any other penalty which may be imposed in respect of such breach, the District Collector shall cancel the permit after providing an opportunity of hearing to the permit holder.

(15) Any person aggrieved by an order of the District Collector may, within thirty days from the date of receipt of the order, prefer an appeal to the Director of Geology and Mining against the order.

(16) The District Level Task Force formed for prevention of illegal mining / transportation of minerals by the Government shall monitor the areas wherein permits are granted, to ensure compliance of the conditions stipulated under this rule."

(2) After APPENDIX-XXIV, the following Appendices shall be added, namely:-

"APPENDIX-XXV

[see rule 44(2)]

**APPLICATION FOR SHORT TERM PERMIT TO EXTRACT
EARTH BY THE LAND OWNER**

From _____ To
The District Collector,

Sir,

I / We submit this application under rule 44 of the Tamil Nadu Minor Mineral Concession Rules, 1959.

2. I / We request that a short term permit for removal of earth from my patta lands may be granted.

3. The required particulars are given below:

1. Name of the applicant with :
full address
2. Particulars of challan for :
remittance of application
fee
- 3 Has the applicant filed an :
affidavit stating that the
applicant has paid all the
mining dues to the
Government?

- 4 Location of the area applied :
for the short term permit.

Taluk	Village	S.F.No.	Extent (in hectares)

- 5 Does the applicant have full ownership/rights over the land proposed? (copies of computerised chitta to be attached)
- 6 Period applied for :
- 7 Quantity applied for (in cbm) :
- 8 Plan of extraction to be attached.
- 9 Undertaking that the proposed land is not falling under "Hill areas" specified by the Government, from time to time or 10 kilometres from Wildlife sanctuaries or National Parks or in elephant corridors.
- 10 Purpose of extraction and mode of disposal.
- 11 Undertaking that the applicant will extract not more than one-and-a-half metres as per the plan of extraction submitted.

I / We do hereby declare that the particulars furnished above are correct and am /are ready to furnish any other details as may be required by the District Collector or the Deputy Director/ Assistant Director of Geology and Mining.

Place:

Date:

Yours faithfully,

(Signature of the applicant)

APPENDIX-XXVI

[see rule 44 (8)]

TRANSPORT SLIP FOR BRICK EARTH

- (1) Sl.No. :
- (2) Name and address of the permit holder :
- (3) Order No. and date of grant of short term permit issued by the District Collector concerned. :
- (4) Period of validity of short term permit From -----
To -----
- (5) Location of the excavation site :

Taluk	Village	S.F.No.	Extent (in hectares)

- (6) Details of No Objection Certificate issued by Revenue Divisional Officer. :
- (7) Details of No Objection Certificate issued by District Forest Officer. :
- (8) Quantity of brick earth permitted for transportation. :
- (9) Location and address of the brick kiln to which the brick earth is transported. :
- (a) Mode of transportation :
- (b) Registration No. of Lorry / Tractor :
- (10) Route of transport and approximate distance to the destination. :
- (11) (a) Date and time at which the vehicle left the place of excavation. :

- (b) Approximate time :
expected for transport
- (c) Signature of the driver :
of the vehicle
transporting brick
earth (should be
signed before the
vehicle leaves the
excavation site)

Signature of the short term
permit holder with seal or
the authorised person
issuing the transport slip in
the excavation site.

Signature and date of the
Assistant Director of Geology
and Mining / Deputy Director
of Geology and Mining with
Office seal.

CONDITIONS.

- 1) This Transport slip is intended for transportation of brick earth to the registered brick kiln units only.
- 2) This Transport slip is not transferable.
- 3) This Transport slip cannot be revalidated.
- 4) A copy of this Transport slip should be kept in the excavation site with the short term permit holder or with the person authorised by the short term permit holder in this behalf.
- 5) The driver of the vehicle should be in possession of the Transport slip. The Transport slip should be shown to any authorised officer checking the vehicle in which the brick earth is transported".

N.MURUGANANDAM
PRINCIPAL SECRETARY TO GOVERNMENT

//True Copy//

F. Chandrasekhar
3/9/21.
SECTION OFFICER
3/9/2021

ANNEXURE R-5

No. L-11011/47/2011-IA.II(M)
Government of India
Ministry of Environment & Forests

Paryavaran Bhawan,
C.G.O. Complex, Lodhi Road,
New Delhi-110003.

Dated: 24th June, 2013

OFFICE MEMORANDUM

Subject: Guidelines for consideration of proposals for grant of environmental clearance under EIA Notification, 2006 for mining of 'brick earth' and 'ordinary earth' having lease area less than 5 ha – regarding categorization as Category 'B2'

The Hon'ble Supreme Court, vide its order dated 27.02.2012 in I.A.No.12-13 of 2011 in SLP (C) No.19628-19629 of 2009 titled Deepak Kumar etc. Vs. State of Haryana & Ors. has inter alia ordered that leases of minor mineral including their renewal for an area less than 5 ha be granted by the State / Union Territory only after getting environment clearance (EC) from the Ministry of Environment & Forests (MoEF). In order to ensure compliance of the aforesaid order of the Hon'ble Supreme Court, MoEF issued an OM No.L-11011/47/2011-IA.II(M) dated 18.05.2012 stating inter alia that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior EC and that the projects of minor minerals with lease area less than 5 ha would be treated as Category "B" as defined in EIA Notification, 2006 and will be considered by the respective State Environment Impact Assessment Authorities (SEIAAs) notified by MoEF and following the procedure prescribed under the EIA Notification, 2006.

2. MoEF has received a number of representations conveying problems being faced by the brick kiln manufacturers in obtaining EC for 'brick earth' mined by them for making bricks and by the developers of road projects in respect of mining of 'ordinary earth' used for road construction. The brick kiln manufacturers have requested that as the digging of 'brick earth' for making bricks is a small scale activity requiring digging only upto a certain depth, the activity may be kept outside the purview of EC. The project proponents developing roads have represented that the 'ordinary earth' required for road construction is generally taken from the farmers / individuals along the road alignment from their borrows. It would be impractical to ask the farmers / individuals to obtain EC for such digging. In a nutshell, the arguments being put forth are that while digging of 'brick earth' for brick making and 'ordinary earth' for road making do not have serious environmental implications, the provisioning for EC for such operations is impeding these development activities because of practical problems in obtaining EC.

3. MoEF vide OM No.F.No.J-11013/12/2013-IA-II(I) dated 30.01.13 has constituted an Expert Committee, under the Chairmanship of Director, NEERI, Nagpur, to categorize Category “B” projects / activities into Category “B1” and “B2” under EIA Notification, 2006 and review classification of projects / activities into “A” and “B” and General conditions as contained in the aforesaid Notification. The issues raised by brick kiln manufacturers regarding ‘brick earth’ and road developers in respect of ‘ordinary earth’ were referred by MoEF to this Expert Committee to give their recommendations. The Committee deliberated upon these issues and has since given its recommendations in the matter.

4. The recommendations of the Committee have been examined by MoEF and the following has been decided:

(a) The activities of borrowing / excavation of ‘brick earth’ and ‘ordinary earth’, upto an area less than 5 ha, may be categorized under ‘B2’ Category subject to the following guidelines in terms of the provisions under ‘7.I Stage(1)-Screening’ of EIA Notification, 2006:

- (i) The activity associated with borrowing/excavation of ‘brick earth’ and ‘ordinary earth’ for purpose of brick manufacturing, construction of roads, embankments etc. shall not involve blasting.
- (ii) The borrowing/excavation activity shall be restricted to a maximum depth of 2 m below general ground level at the site.
- (iii) The borrowing/excavation activity shall be restricted to 2 m above the ground water table at the site.
- (iv) The borrowing/excavation activity shall not alter the natural drainage pattern of the area.
- (v) The borrowed/excavated pit shall be restored by the project proponent for useful purpose(s).
- (vi) Appropriate fencing all around the borrowed/excavated pit shall be made to prevent any mishap.
- (vii) Measures shall be taken to prevent dust emission by covering of borrowed/excavated earth during transportation.
- (viii) Safeguards shall be adopted against health risks on account of breeding of vectors in the water bodies created due to borrowing/excavation of earth.
- (ix) Workers / labourers shall be provided with facilities for drinking water and sanitation.
- (x) A berm shall be left from the boundary of adjoining field having a width equal to at least half the depth depth of proposed excavation.

(xi) A minimum distance of 15 m from any civil structure shall be kept from the periphery of any excavation area.

(xii) The concerned SEIAA while considering granting environmental clearance for such activity for brick earth / ordinary earth will prescribe the guidelines as stated at (i) to (xi) above and specify that the clearance so granted shall be liable to be cancelled in case of any violation of above guidelines.

(b) Notwithstanding what has been stated at (a) above, the following will apply:-

- (i) No borrowing of earth / excavation of 'brick earth' or 'ordinary earth' shall be permitted in case the area of borrowing/ excavation is within 1 km of boundary of national parks and wild life sanctuaries.
- (ii) In case the area of borrowing / excavation is likely to result into a cluster situation i.e. if the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the borrow areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

This issues with the approval of the Competent Authority.


(Dr. Saroj)
Director

Telefax : 24364067

To

1. All the Officers of IA Division
2. Chairpersons/Member Secretaries of all the SEIAAs/SEACs
3. Chairman, CPCB
4. Chairpersons / Member Secretaries of all the SPCBs/UTPCCs

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6. PPS to IG(FC)
7. Website, MoEF
6. Guard File

In re: Reply-Arif Kidwai Vs. Union of India & Ors. in O.A. No.585 of 2023

1 message

UNUC Legal LLP <unuconsultants@gmail.com>

4 November 2024 at 17:42

To: Gaurav Bansal <advocategauravkumarbansal@gmail.com>, ronz.chd-mef@nic.in, mscb.cpcb@nic.in, cs-up@nic.in, doeuplko@yahoo.com

Dear Sir,

Please find attached the advance copy of reply along with annexures in the above stated matter on behalf of Respondent No.5

With Regards,

**UNUC LEGAL LLP**
Advocates & Solicitors

P-97, South Extension - II,
New Delhi - 110049.
Tel: 011-41057587

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