

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

ORIGINAL APPLICATION NO. 351 OF 2023

IN THE MATTER OF:

Raja Muzaffar Bhat

...Applicant

Versus

Union Territory of Jammu & Kashmir and Ors.

...Respondents

INDEX

S.NO	PARITCULARS	PAGE NOS.
1	Response to Site Visit Report of Joint Committee dated 08.08.2023	185-191

FILED BY



RITWICK DUTTA



RAHUL CHOUDHARY

ADVOCATES FOR THE APPLICANT

N-73, Lower Ground Floor, Greater Kailash-I,

New Delhi – 110048

Mobile No. 9312407881

Email:- Litigation.life@gmail.com

PLACE:- NEW DELHI

DATE: 21.09.2023

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

ORIGINAL APPLICATION NO. 351 OF 2023

IN THE MATTER OF:

Raja Muzaffar Bhat ...Applicant

Versus

Union Territory of Jammu & Kashmir and Ors. ...Respondents

**RESPONSE TO SITE VISIT REPORT OF THE JOINT COMMITTEE
DATED 08.08.2023**

MOST RESPECTFULLY SHOWETH:-

1. That the above-titled Application was filed under Section 14, 15 read with 20 of the National Green Tribunal Act, 2010 raising the issue of mining activity in violation of conditions in the Environmental Clearances granted by Jammu & Kashmir Environment Impact Assessment Authority (JKEIAA) under the EIA Notification, 2006 (issued under Rule 5(3) of Environment (Protection) Rules, 1986). The Environmental Clearances have been granted to the Respondents No. 5 and 6 for undertaking mining of boulders, gravel, sand and other minor minerals (Riverbed material) in Doodhganga River flowing through Budgam district of Jammu & Kashmir.
2. That vide Order dated 29.05.2023, this Hon'ble Tribunal considered the Environmental Clearances granted to Respondent No. 5 and 6 for mining activities to be undertaken in Block 11 and Block 12 in Doodhganga River in District Budgam of Jammu & Kashmir.
3. That vide the same Order, the Hon'ble Tribunal constituted a Joint Committee comprising of the Jammu & Kashmir State Pollution Control Board, State Environment Impact Assessment Authority, Jammu & Kashmir, Director, Geology and Mining Department and

District Magistrate, Budgam to undertake a site visit and provide the on-ground status.

4. That the Joint Committee submitted a Report dated 08.08.2023, in compliance with the Order dated 29.05.2023 of this Hon'ble Tribunal.
5. It is the submission of the Applicant that the site visit was only conducted by the representatives of Jammu & Kashmir State Pollution Control Board, Director, Geology and Mining Department and District Magistrate, Budgam. No representative of State Environment Impact Assessment Authority, Jammu & Kashmir was part of the site visit, as per the Joint Committee Report. This was in violation of the Order of the Hon'ble Tribunal that directed representative of SEIAA to be a part of the Joint Committee.
6. That the Joint Committee has also conducted the site visit when mining was not taking place at the site, therefore, no clear picture about the status on ground can be drawn from the Joint Committee Report.

Violations of the conditions of the Environmental Clearance by the project proponents, as noted in the Joint Committee Report

i. That JCB loaders were used for loading of heavy boulders, in violation of the Specific Condition No. 53 of Environmental Clearance

7. That the Joint Committee has noted that the District Mining Officer, Geology & Mining Department had provided information to the Joint Committee that JCB loaders were used for loading of heavy boulders, which was in violation of the conditions of the Environmental Clearance.
8. That usage of heavy machinery is in violation of the Specific Condition No. 53 of the Environmental Clearance which states that:

*"Mining shall be done manually minimally supported by semi-mechanized methods. **Heavy machinery like***

JCBs, L&T hydraulic excavators etc. should not be allowed."

9. That the Applicant had put on record multiple Orders of this Hon'ble Tribunal (at Page 29 and 30 of the Original Application- **Udaya Suvarna & Anr. v. Deputy Commissioner, Udupi District Sand Monitoring Committee & Ors., M. C. Mehta & Ors. v. Union of India & Ors. and Dnyanesh Kisanrao Phadtare v. Balaji Enterprises & Ors.**) to show that usage of heavy machinery for in-stream mining has been restricted and environmental compensation has been imposed on the project proponents.

10. That the Sustainable Sand Mining Guidelines, 2016 also state that preferring manual method of mining over any other method of mining is a sustainable mining practice.

ii. That mining activities are being undertaken by diverting the flow of water in the streams in violation of Specific Condition No. 56 and 65

11. That the Joint Committee Reports states that mining activities are being undertaken within active water channels because there is no scope of mining outside the stream. This is being done by diverting the water:

"That Doodhganga Nallah has no scope for keeping the mining patches outside stream because of less width of the Nallah. As such the mining activities go parallel to the running waters of the stream by diverting the water."

12. That the Environmental Clearances granted for mining in Block 11 and 12 were granted on the condition that no mining activities can take place in active water channels and the mining activities should be undertaken without impacting the water quality and aquatic life:

"56. No mining activity shall be carried out in flowing water channel area within the mining block and adequate measures shall be taken to safeguard water quality and aquatic life including fisheries if available in the same."

...

65. The EC is subject to condition that the project proponent shall not change the water course of the river and no mining activity shall be carried out in active channel area, if any in the mining block."

13. That the Joint Committee has noted in the site visit report that the project proponents have violated Specific Condition No. 56 and 65 of the Environmental Clearance which prohibit mining within active water channels which may lead to diverting of water channels.

Response of the Applicant to other observations of the Joint Committee

14. That the Applicant would like to point out the following regarding other observations of the Joint Committee contained in the site visit report dated 08.08.2023-

i. The site visit was not conducted by the authorities directed by this Hon'ble Tribunal, instead was conducted by their subordinates

15. That the Joint Committee that conducted the site visit consisted of the following authorities:

- i. Regional Director, Pollution Control Committee, Kashmir
- ii. *Sub- Divisional Magistrate, Chadoora Budgam*
- iii. *District Mineral Officer, Geology and Mining Department*

16. That however, the Hon'ble Tribunal had directed the following authorities to conduct the site visit vide its Order dated 29.05.2023:

- i. State PCB
- ii. SEIAA J&K
- iii. *District Magistrate, Budgam*
- iv. *Director, Geology and Mining Department*

17. It is submitted that not only SEIAA, Jammu & Kashmir was not a part of the Joint Committee that conducted the site visit, but also the site visit was conducted by only representatives of District Magistrate,

Budgam and Director, Geology and Mining Department, and not by the authorities themselves.

18. That this was in violation of the explicit direction of the Hon'ble Tribunal that required the District Magistrate, Budgam and Director, Geology and Mining Department to undertake site visit. However, the site visit has been conducted by the subordinates of the authorities that were required to conduct the site visit.

ii. The Joint Committee conducted the site visit when no mining was taking place at the site, therefore no conclusive finding can be drawn with respect to mining outside the demarcated lease area

19. That the Joint Committee (at Page 169), while providing the summary of the Report as well as specifically with respect to Block No. 11 and Block No. 12 (at Page 172) has clearly noted that:

"The committee observed that no mining was taking place in the block at the time of inspection. The concerned District Mineral Officer, Geology & Mining Deptt. Budgam (Member representing Director Geology and Mining Deptt) was asked to share all the details pertaining to this block and it was revealed that:-

1) The PP (Project Proponent) has not gone beyond the demarcated area of the e-auctioned block."

20. That the site visit was conducted at the time when no mining was being undertaken at the location. Therefore, the Joint Committee could not have made any assessment of the violation of the conditions of the Environmental Clearance with respect to mining outside prescribed lease area.
21. That the site visit was conducted on 20.07.2023, which is the monsoon season and mining activities are halted due to the rains. No proper assessment of the ground situation with respect to compliance with conditions of Environmental Clearance can be done when no activities are being undertaken at the site.

22. That the Joint Committee Report states that since no mining was taking place at the site, therefore, the information provided in the Report is based solely on the information provided by the District Mining Officer, Geology & Mining Department. This defeats the purpose of constituting a Joint Committee by this Hon'ble Tribunal as the Report is not based on the observations of the Joint Committee during the site visit but only on the information provided by the District Mining Officer.
23. That the Applicant had annexed Google Earth images in the Original Application (at Page 149) to show that there is presence of JCBs excavating riverbed sand and gravel outside the demarcated area.
24. That the project proponents have undertaken mining with the use of JCBs outside the prescribed area under the Environmental Clearances. This is not only in violation of the Environmental Clearances but also causing irreversible damage to the ecology of the rivers.
25. That the Joint Committee, as its own admission, has stated that no mining was taking place when the site visit took place. Therefore, the observation that no mining beyond the demarcated area was taking place is based solely on the information given by the District Mining Officer and cannot be relied upon, as the observation of the Joint Committee.

iii. The Joint Committee is silent on the point raised by the Applicant that the Environmental Clearances were granted without conducting adequate replenishment studies

26. That the Joint Committee Report has failed to give any finding with respect to the fact that no replenishment studies were conducted for these mining blocks and leases as well as Environmental Clearances were granted without conducting such replenishment studies.

27. That conducting mining activities without conducting prior replenishment studies is in violation of the provisions of Sustainable Sand Mining Guidelines, 2016 and Enforcement & Monitoring Guidelines for Sand Mining 2020 issued by Ministry of Environment, Forest and Climate Change which make conducting prior replenishment studies a prior step to grant of mining leases/ Environmental Clearance or start of mining operations.
28. That the Hon'ble Supreme Court in the case of ***Bajri Lease LoI Holders Welfare Society v. The State of Rajasthan & Ors.*** (at Page 35) and this Hon'ble Tribunal in the case of ***Raj Kumar v. State of Uttar Pradesh & Ors. (Original Application No. 140/2021)*** (at Page 36) have also held that no mining operations can continue if replenishment studies are not conducted.
29. That not conducting replenishment studies makes the entire process of grant of leases and Environmental Clearance void ab initio and no mining activity can be undertaken in pursuance of the same.
30. That however, the Joint Committee has failed to provide any observation with respect to the same, with respect to which the Joint Committee Report cannot be accepted.
31. In light of the above facts presented by the Applicant, the Hon'ble Tribunal may be pleased to allow the Original Application and pass suitable orders to revoke the Environmental Clearances for undertaking mining activities in violation of the conditions of the Environmental Clearances.

Through



Ritwick Dutta



Rahul Choudhary

Advocate

Counsel for the Applicant