

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH AT PUNE  
ORIGINAL APPLICATION NO.78 OF 2022  
(EARLIER APPEAL NO. 17 OF 2022)**

**IN THE MATTER OF**

NEWVIDHARBHAFUNDATION

...APPLICANT

V/S

STATE ENVIRONMENT IMPACT ASSESSMENT

AUTHORITY (SEIAA)

MAHARASHTRA, AND ORS.

...RESPONDENT

**N.D.o.H.21.07.2023**

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Date: 19.07.2023

Place: Pune

FILED BY:



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WESTERN ZONE BENCH AT PUNE  
ORIGINAL APPLICATION NO.78 OF 2022  
(EARLIER APPEAL NO. 17 OF 2022)**

**IN THE MATTER OF**

NEW VIDHARBHA FOUNDATION ...APPLICANT

V/S

STATE ENVIRONMENT IMPACT ASSESSMENT

AUTHORITY (SEIAA),

MAHARASHTRA AND ORS. ...RESPONDENT

**REJOINDER TO COMMON REPLY FILED BY RESPONDENT**

**NO. 2 AND RESPONDENT NO. 3 ON BEHALF OF THE ORIGINAL**

**APPLICANT**

**MOST RESPECTFULLY SHOWETH:**

1. At the outset and without prejudice to the submissions made herein below, the Applicant denies each and every allegation, averment, and/or submission made by the Respondent No. 2 and Respondent No. 3 by way of its reply which is contrary to the submissions of the applicant. The denial may be treated as specific and in seriatim, save and except what has been specifically admitted.
2. It is submitted that the Reply filed by Respondent No. 2 and Respondent No. 3 suffers from serious deficiency, with it being tough to decipher and even tougher to understand on account of blatant copy-pasting of the Applicant's Original Application. The Applicant's Original Application text has been copied and only perfunctory replies have been given. Despite the glaring lacunae, the Applicant is filing the present reply in order to obviate any difficulties that may arise.
3. That in the common reply filed by Respondent No. 2 and Respondent No. 3, many serious issues with respect to environment have arisen in

which the Respondents No.2 and Respondent No. 3 have admitted to their lapse. These issues have been listed below:

- I. District survey report has been prepared in a haphazard manner in total abeyance with letter of law**
- II. Sand Ghats Auctioned after EC's have been issued**
- III. No Loss Despite more than ½ available sand mined has been mined**
- IV. DSR does not require appraisal from SEAC/SEIAA**
- V. Point wise reply on Replenishment Study details that no sand mining is possible**
- VI. No Fresh Study Carried out in Preparation of District Survey Report.**

These issues are tackled in depth one by one below:-

**I. DISTRICT SURVEY REPORT HAS BEEN PREPARED IN A HAPHAZARD MANNER IN TOTAL ABEYANCE WITH LETTER OF LAW**

4. It is pertinent to note that a District Survey Report must be prepared in a scientific manner, following letter of the law, otherwise, disaster may befall on the district. It is submitted that the District Survey Report, prepared by the District of Akola, through the aegis of Respondent No.2 and Respondent No.3 suffers from serious lacunae, which by itself has made the entire district vulnerable to mining, especially sand mining operations. It is the contention of the Respondent No.2 and Respondent No. 3 that the DSR has been prepared scientifically. It is submitted in the common reply it is admitted that an erstwhile DEAC/DEIAA of Akola has prepared the District Survey Report by following notifications of MoEF&CC dated

15.01.2016 and 25.07.2018 as well as Enforcement and Monitoring Guidelines, 2020. (Kindly refer to Para 8 on Page 6&7 of the reply filed by Respondent No.2 and Respondent No. 3- Pages 1814 and 1815 of the Court File). It is submitted that the Hon'ble NGT on 13.09.2018, in Satendra Pandey vs Union of India & Ors. Original Application No. 186 of 2016, examined the legality of the EIA Amendment Notification dated 15.01.2016. The Hon'ble Tribunal observed serious problems with the notification directing the MoEF & CC to revise the procedure provided under the amendment notification for grant of environment clearance in accordance with the judgement passed by the Hon'ble Supreme Court in the matter of Deepak Kumar vs. State of Haryana. It is further submitted that since the constitution of DEAC/DEIAA has itself become invalid, the DSR becomes invalid ab initio. Since, the constitution of DEAC/DEIAA has been disbanded since Satendra Pandey, any DSR prepared henceforth requires appraisal. Such a position has been reiterated by the Hon'ble NGT in Pawan Kumar Vs State of Bihar [2020 SCC OnLine NGT 2848] and the Hon'ble Supreme Court in State of Bihar and Others Vs Pawan Kumar and Others [(2022) 2 SCC 348] wherein it was decided by the Hon'ble Supreme Court that all draft DSR's prepared by erstwhile District Environmental Impact Assessment Authorities be scrutinized by State Expert Appraisal Committee and then the State Environmental Impact Assessment Committee within a period of 6 weeks. Further in a catena of judgements of the Hon'ble National Green Tribunal, such as Prabhat Mohan Pandey vs MPSEIAA (with Appeal No 25 to 27 of 2021, Appeal No. 29 to 65 of 2021 and Appeal No. 67 of 2021 & other connected matters (CZ) ) in a five judge bench

with order dated 22.02.2022 and Ram Babu Gour vs State of Madhya Pradesh and Ors (O.A. No. 10 of 2022 (CZ) in a two judge bench with order dated 12.04.2022 have reiterated the applicability of the judgement passed by the Hon'ble Supreme Court in State of Bihar and Others Vs Pawan Kumar and Others [(2022) 2 SCC 348]. A copy of the judgement of the Hon'ble NGT (CZ) in Prabhat Mohan Pandey vs MPSEIAA with order dated 22.02.2022 is annexed as **ANNEXURE A-1**. A copy of the judgement of the Hon'ble NGT (CZ) in Ram Babu Gour vs State of Madhya Pradesh and Ors. Original Application No. 10 of 2022 (CZ) with order dated 12.04.2022 is annexed as **ANNEXURE A-2**.

## **II. SAND GHATS AUCTIONED AFTER EC'S HAVE BEEN ISSUED**

5. It is submitted that Environmental Clearances have been issued by Respondent No.1 in favour of DMO, Akola, arrayed as Respondent No.3. It is submitted that immediately upon receiving impugned Environmental Clearances for sand mining for the district of Akola, Respondent No.2 and Respondent No.3 decided to issue notice inviting tender for these sand mines. Ultimately, a total of 21 sand mines were auctioned in the district of Akola. It is submitted that sand Ghats were auctioned for a total of 90543 brass, in total violation of the law as the Environment Clearance was sought by the District Mining Officer as the Project Proponent. (**Kindly refer to Para 14 on Page 16 & 17 of Common Reply of Respondent No. 2 and Respondent No. 3- which is 1824 and 1825 of the Court File**). It is submitted that a total of 21 sand ghats stand auctioned in the district

of Akola for FY 2021-2022 as admitted by R2 and R3. It is further submitted that if mines were sought to be auctioned finally, why was there a need for the Respondent No.3, i.e. District Mining Officer to seek Environmental Clearances for them as the Project Proponent? It is also interesting to note that the District Survey Report has been prepared by the District Mining Officer, Akola, the same being prepared without any application of mind and in conflict with Nemo judex in causa sua- no man should be a judge in his own cause. Further, in a recent case, this Hon'ble Tribunal in Gaurav Ashok Dhote vs Mining Officer, Nagpur & Ors. Original Application No.30 of 2022(WZ) has advanced the principle that mining can only happen by the project proponent that has the relevant EC. Relevant para is provided below:-

*30. We find from the record that only one sand block was in the name of M/s. Ashtha Associates and only one lease regarding the sand mining was issued by the District Collector, Nagpur in the name of M/s. Ashtha Associates, which we find defective on account of inappropriate EC as the same is not found to be in his name rather the same is found to be in the name of District Mining Officer, it will be treated that he excavated the sand without any valid EC. Therefore, the total amount for which the sand has been excavated by him i.e. 2800 brass shall be recoverable from him*

A copy of the judgement dated 19.10.2022 of this Hon'ble Tribunal in Gaurav Ashok Dhote vs Mining Officer, Nagpur & Ors. Original Application No.30 of 2022 (WZ) is annexed as **ANNEXURE A-3**.

**III. NO LOSS DESPITE MORE THAN ½ AVAILABLE  
SAND ADMITTEDLY HAS BEEN MINED**

6. It is submitted that the Respondents No.2 and No.3 have advanced the position that no environmental loss has happened even though more than half of the available sand available has been mined (**kindly refer to Para 14 Page 16 of the common reply of R2 & R3- which is available at Pages Pages 1824 and 1825 of the Court File**). It is submitted that total quantity of sand available is only 0.98 MT as per the District Survey Report. According to the reply filed by R2 & R3, the total available sand amounts to 123675 Brass out of which 90543 Brass was auctioned. It is the contention of Respondents No.2 and No.3 that since only half of the available sand has been lifted, hence no illegal mining has taken place. It would be pertinent to state that the Respondents No.2 and No.3 have accepted that mining has taken place. It is further submitted that mining has taken place even though sand mines were auctioned to private players, despite the fact that the project proponent was the DMO, in whose name the Environmental Clearances were held. It is further submitted that no proper survey was carried out on the said mines that were auctioned before beginning mining operations. Hence, sand lifted from these 21 sites, as admitted to by R2 and R3 has led to illegal mining. Further, in the draft DSR published by R2 and R3, on the website of R2, total sand production has been put forth as 90543 Brass.

**IV. DSR DOES NOT REQUIRE APPRAISAL FROM  
SEAC/SEIAA**

7. It is submitted that the contention of the Respondents No.2 and No.3 is that the question of appraisal of the District Survey Report does not arise. It is submitted that since no notification for the same has been made by MoEF&CC, hence no appraisal is necessary. Such a position taken by R2 and R3 is untenable and wholly wrong. It is submitted that decisions of the Hon'ble NGT and Hon'ble Supreme Court of India have to be complied with. These decisions are binding on public at large, and in particular to those whom these decisions are concerned with. The Respondents No.2 and No.3 have said that DSR was submitted to SEAC and SEIAA. **(Kindly see Para 14, Page 17 of Common Reply of R2 and R3- which is available at Page 1825 of the Court File)**. On the other hand, Respondent No.1 has admitted that SEAC and SEIAA have no mandate to approve the DSR. According to Respondent No.1, the approving authority for DSR is the Department of Geology and Mines, Government of Maharashtra. **(Kindly see Point No. 7, Page No.4 of Reply filed by R-1 which is available at Page No 1801 of the Court File)**. Such conjectures and surmises, especially by Governmental authorities does not present a handsome picture for sand mining in the District of Akola, Maharashtra. It is a matter of record that DSR has not been appraised by SEAC/SEIAA. It is a further matter of record that there is a mandatory requirement of appraisal of District Survey Report, which has been recognised repeatedly in the Hon'ble NGT in Pawan Kumar Vs State of Bihar [2020 SCC OnLine NGT 2848] and the Hon'ble Supreme Court in State of Bihar and Others Vs Pawan Kumar and Others [(2022) 2 SCC 348]. Subsequently as well, in decisions of the Hon'ble NGT, Principal Bench in O.A. No. 221 of 2021, in

Dheerendra vs State of U.P. has held the requirement of appraisal of District Survey Report by SEAC/SEIAA as a mandatory criterion, even though EC's granted ranged from 2018-2020. This is because, as the constitution of DEAC/DEIAA was quashed by Satender Pandey judgement, any DSR prepared by erstwhile DEAC/DEIAA would automatically become void and would be competent only with the approval of SEAC/SEIAA. Hence, the reasoning of the Hon'ble NGT has consistently been that DSR must be appraised by SEAC/SEIAA on preparation by erstwhile DEAC/DEIAA. Respondents No.2 and No.3 have argued that since Hon'ble Supreme Court had passed a judgement on 22.11.2022 in State of Bihar and Others Vs Pawan Kumar and Others [(2022) 2 SCC 348], and DSR was uploaded on 22.09.2021, hence the judgement would not be applicable (Kindly see Para 15, reply to Para 17, Page No. 21 of common reply of R2&R3). It is humbly submitted that the judgement of the Hon'ble Supreme Court was a reiteration of earlier judgements of the Hon'ble NGT in Satendra Pandey vs Union of India & Ors, O.A. No. 186 of 2016 and Pawan Kumar Vs State of Bihar [2020 SCC OnLine NGT 2848]. This has been further highlighted by the judgement passed by the Hon'ble NGT, Principal Bench in O.A. No.221 of 2021, in Dheerendra vs State of U.P, on 04.07.2022, considering a batch of Environmental Clearances from 2018-2020, wherein the Hon'ble Principal Bench has taken a consistent view of appraisal of District Survey Report. Relevant excerpts of order passed by the Hon'ble Principal Bench of NGT in O.A. No. 221 of 2021, in Dheerendra vs State of U.P, on 04.07.2022 have been provided hereinbelow:-

*It is not disputed that there is no replenishment study. Cluster procedure has not been followed as per procedure laid down by the MoEF&CC in Notification dated 15.01.2016. In two cases the PPs do not have requisite CTO while in the remaining illegal extraction of ground water has been observed. Since requirement of DSR and replenishment studies are laid down by the MoEF&CC under the EMGSM, 2020 in the light of judgment of the Hon'ble Supreme Court in Deepak Kumar vs. State of Haryana & Ors. read with orders of this Tribunal dated 14.10.2020 in OA No. 40/2020/EZ with OA No. 57/2020/EZ, Pawan Kumar vs. State of Bihar & Ors. and earlier orders, reiterated by the Hon'ble Supreme Court vide recent judgment dated 10.11.2021 in Civil Appeal No. 3661-3662 of 2020, State of Bihar & Ors. Vs. Pawan Kumar & Ors., we are of opinion that ECs/other permissions granted by SEIAA need to be revisited. This view has been taken by this Tribunal repeatedly, including in a recent order dated 01.07.2022 in O.A. No.319 of 2022, Dileep Singh vs. State of Uttar Pradesh & Ors.*

A copy of the judgement passed by the Hon'ble Principal Bench of NGT in O.A. No. 221 of 2021, in Dheerendra vs State of U.P, on 04.07.2022 is annexed and marked as **Annexure A-4**.

8. Further, the judgement of the Hon'ble National Green Tribunal in Ajit Kumar vs State of Madhya Pradesh and Ors. (OA No. 38 of 2022) (CZ) dated 17.10.2022 where the question about appraisal of the District Survey Report was talked about in detail. In finality, the issue was decided as such in Para 45 which is reproduced hereinbelow:-

*(i) Question No. 1: Requirement of DSR and its finality.*

*Answer: The Sustainable Sand Mining Management Guideline, 2016 & 2020 provides for the preparation of DSR and MoEF has issued necessary directions. It is settled Law that District Survey Report for Sand Mining shall be prepared before the auction/eauction/grant of mining lease by the Mining Department or department dealing with the mining activities in the respective States. DSR is to be approved at the level of SEIAA with the help of SEAC. The DSR becomes final on the date when it is approved by the SEIAA. With regard to the DSR relating to the district Raisen it was approved on 23.05.2022. Thus, the valid DSR/approved DSR came into existence on 23.05.2022 district Raisen, the question is replied accordingly.*

*ii. Question no. 2: Sanctity of NIT in absence of DSR or DSR duly approved by SEIAA. Answer: In view of the discussion made above and in view of Prabhat Mohan Pandey case (Supra) and the direction issued in the Pawan Kumar Case, the action of NIT in absence of valid DSR is in violation of Sand Mining Guidelines issued in 2016 & 2020, it becomes final only after the approval of the SEIAA. Any NIT before the date of approval of DSR by SEIAA is in contravention of the Rules, Guidelines and the directions issued by the Hon'ble Supreme Court. The question is replied accordingly.*

A copy of the judgement passed in the Hon'ble National Green Tribunal in Ajit Kumar vs State of Madhya Pradesh and Ors., (OA No. 38/2022) (CZ) dated 17.10.2022 is annexed as **ANNEXURE A-5**.

**V. POINT WISE REPLY ON REPLENISHMENT STUDY  
DETAILS THAT NO SAND MINING IS POSSIBLE**

9. It is submitted that Respondents No.2 and No.3 have admitted that no replenishment study has been carried out within the District Survey Report no sand replenishment is mentioned within DSR. **(Kindly see Para 18, Reply to Para 20 on Page No. 36 and Page No.37 of the Common Reply-Available on 1843-1845)**. The Respondents have also provided a point-wise explanation on the Replenishment study **(Kindly see Annexure L from Pages 750-756 of the Common Reply filed by R2 and R3- Available on pages 2556-2562)**. It is pertinent to note that the Annexure L as has been cited by the Respondents No.2 and No.3 admits that *no river has replenishment rate to replenish excavated sand from the river bed, excess excavation will impact groundwater affecting bank erosion and stability of banks and that there is no certainty that excavated sand can suit back to back year excavation of sand*. It has further said that since the replenishment rate is not certain considering the data available, as rivers in the district are unstable. This poses a fundamental question; In light of the material presented by R2 and R3, whether sand mining itself should be permitted in a ecologically fragile area such as Akola, Maharashtra? It is verily believed by the Applicant that replenishment study has not been carried out in accordance with Enforcement and Monitoring Guidelines, 2020. It is submitted that the data presented in Annexure L lays bare to the fact that only two surveys have been mentioned in the preparation of the Replenishment Study; one in May and the other in October. No replenishment study has been annexed by the Respondents No.2 and No.3 although they have been very eager

to annex documents in their pleadings. It is submitted that guidelines state that four surveys have to be carried out initially and subsequently three surveys can be carried out. Relevant portion of the E&M Guidelines, 2020 is produced hereinbelow:-

#### 5.1 Generic Structure of Replenishment Study Initially

replenishment study requires four surveys. The first survey needs to be carried out in the month of April for recording the level of mining lease before the monsoon

XXXX

For the subsequent years, there will be a requirement of only three surveys.

XXXX

10. It is the Applicant's contention that this was the first survey carried out and that it should have had four surveys. Be that as it may, not even three full surveys have been carried out. Even in that limited capacity, the point wise explanation has itself pointed out that sand must not be excavated on account of no possibility of replenishment. Yet, Respondents have carried out sand mining.

11. Deliberately or otherwise, no replenishment study has been cited by the Respondents No.2 and No.3 in their reply.

### **VI. NO FRESH STUDY CARRIED OUT IN PREPARATION OF DISTRICT SURVEY REPORT.**

12. The most glaring problem with the District Survey Report is the absence of a fresh study in the preparation of a draft DSR for FY 2021-2022. A fresh survey must have been carried out in order to ensure that there is correct demarcation of ghats and corresponding values. Yet, very cleverly, an amendment was included by adding and

subtracting survey numbers from one sand ghat to the other. The new proposed amendment of sand ghats contains values which are inconsistent with those in the District Survey Report which has been highlighted in detail in the OA. Respondents No.2 and No.3 have admitted that quantity far in excess of that mentioned in the DSR has been mined already. It is submitted that in case of Virwada, EC was only granted for 3049 Brass, while more than 3804 Brass has been lifted till June, 2022 (**Kindly see Page 58 and 59 of the Common Reply, where this has been answered by R2 and R3 in detail-Available 1866 and 1867**). It is submitted that this is merely the tip of the iceberg. In all the auctioned sites, survey numbers are inconsistent with those present in the District Survey Report and quantities far in excess to those that are permissible according to DSR. This is primarily the reason that no appraisal has been carried out by the SEAC/SEIAA of the DSR. Further, since replenishment is not possible, sand lifting itself has been illegally carried out. It is submitted that within the Structure of the District Survey Report as specified in the SSMG-2016, under Point 3 that there must be a list of mining leases in the District with location, area and period of validity. No amendment as proposed cannot be outside the main text of the DSR. Hence, the entire DSR is liable to be declared illegal.

Date: 19.07.2023

Place: Pune

FILED BY:



**AKSHAR BHATT**

ADVOCATE FOR THE APPLICANT

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH AT PUNE**



**ORIGINAL APPLICATION NO.78 OF 2022  
(EARLIER APPEAL NO. 17 OF 2022)**

**IN THE MATTER OF**

New Vidharbha Foundation ...APPLICANT

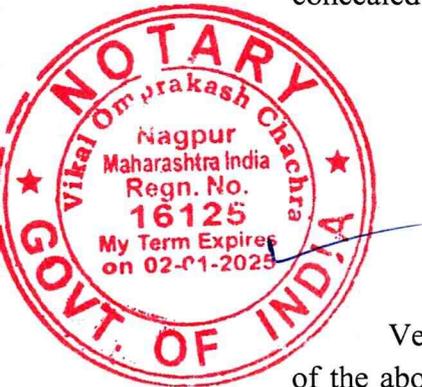
V/s

State Environment Impact Assessment Authority (SEIAA), Maharashtra and Others. ...RESPONDENT

**AFFIDAVIT**

I, Aditya Damle, S/o Mohan Damle aged about 42 years, currently serving as President of New Vidharbha Foundation, the Applicant, R/o B/305 Rama Empire Apartment, Birla Mandir Road, Jatharpeth, Akola -444005 do affirm and state as under:

1. That I am presently the President and Authorized Representative of New Vidharbha Foundation and well conversant with the facts and circumstances in the abovementioned case and as such, I am competent to swear this affidavit.
2. That the contents of the accompanying rejoinder to the common reply of Respondent No.2 and Respondent No.3 is true and correct and nothing material has been concealed therefrom.



*(Signature)*

**DEPONENT**  
**(A. Damle)**

**VERIFICATION**

Verified and signed at Nagpur, on this 18<sup>TH</sup> day of July, 2023 that the contents of the above mentioned affidavit are true and correct and nothing material has been concealed therefrom and no part of it is false.

*(Signature)*

**DEPONENT**  
**(A. Damle)**

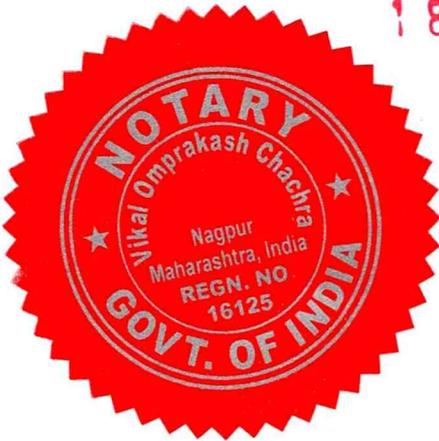


Sworn before me on this 18<sup>th</sup>  
day of July 20 23 at Nagpur by  
Shri/Smt./Ku. A. M. Dawde  
R/o. Akola who has been identified  
by Shri/Smt. self  
Advocate, Nagpur

*(Signature)*

NOTARY  
GOVT. OF INDIA  
Nagpur (M.S.) INDIA

18 JUL 2023



Item Nos. 01 to 51

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH**

(By Video Conferencing)

Appeal Nos. 25/2021 to 27/2021(CZ),  
Appeal No. 29/2021 to 65/2021(CZ),  
Appeal No. 67/2021 to 72/2021(CZ)

Prabhat Mohan Pandey

Appellant

Versus

MP SEIAA

Respondent

**WITH**

Appeal No. 02/2021 to Appeal No. 05/2021(CZ)  
(I.A. No. 13/2021)

Prabhat Mohan Pandey

Appellant

Versus

Madhya Pradesh State Environment Impact  
Assessment Authority & Anr.

Respondent(s)

**WITH**

Original Application No. 96/2020(CZ)

Prabhat Mohan Pandey

Applicant

Versus

State of M.P. & Ors.

Respondent(s)

Date of completion of hearing and reserving of order: 24.01.2022

Date of uploading of order on the website: 22.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER  
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

**ORDER**

**Per JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER:**

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1. A common question of law and fact has been raised in all these appeals thus are being decided by a common order.
2. Challenge in all these appeals is the order granting the Environmental Clearance (EC) or transfer of EC in violation of procedure established by law and that while transferring the EC the provision under Clause XI of the EIA Notification 2006 were not followed.

**A. Brief facts:**

Case set out by the appellants is that Madhya Pradesh Sand Mining Rules, 2019 were introduced on 30<sup>th</sup> August, 2019 by the State of Madhya

Pradesh wherein every districts, it was required to have its own contractor or a group of contractors to carry out sand excavation from the declared and demarcated sand queries. Thereafter in the month of October 2019 the notice inviting tenders were floated by the state of Madhya Pradesh in 43 districts of Madhya Pradesh and after acceptance of the technical bid and financial bid, the group contractors/successful tenders were appointed for these 43 districts. Under rule 12 of the Sand Mining policy of 2019, the statutory permissions/formalities for each sand quarry of the group were required to be obtained by the successful tender after which the sand mining operations were to be started in the state of Madhya Pradesh. The statutory permissions include mining plan, environment clearance, consent from the board etc.

3. For grant of fresh environment clearance and the transfer of existing environment clearance, applications were made by the successful tenders before MPSEIAA, which is a body constituted solely for the purposes of considering the environment clearance as per the EIA notification issued by Ministry of Environment, Forest and Climate Change. After an application for grant of fresh environment clearance portal for transfer of the existing environmental clearance is made to MPSEIAA, MPSEAC is required to carry out technical scrutiny of the applications. After the recommendations from the appraisal committee of MPSEAC, the application for EC is referred back to MPSEIAA, which shall have the final authority of granting or rejecting the environment clearance. It becomes pertinent to mention here that the minutes of meeting of MPSEAC and MPSEIAA are available online on the web portal of MPSEIAA and that on analyzing the minutes of meeting and comparing the same with the information of sand quarries mentioned in the tender document, it was realized that out of 409 environmental clearances granted by MPSEIAA to the successful tenderers for excavation of sand from their respective sand

quarries, there are discrepancies in 222 number of environmental clearances.

4. A chart depicting the discrepancy prepared on the basis of the information available online has been filed by the Applicant as Annexure-A1, which highlights the detail of 33 districts wherein the information of fresh environmental clearance and the transferred environmental clearance have been mentioned and number of environmental clearances where discrepancies have also been mentioned as follows:

Sr. No	Name of the district	EC granted (transfer)	EC granted (new)	Total EC granted	Discrepancy in nos. of EC granted till date
1	Chhatarpur	20	Nil	20	19
2	Datia	28	1	29	27
3	Harda	15	Nil	15	15
4	Katni	17	8	25	18
5	Khargon	4	9	13	11
6	Narshighpur	15	Nil	15	14
7	Singaruli	17	7	24	10
8	Umaria	4	13	17	4
9	Alirajpur	2	10	12	9
10	Annupur	5	Nil	5	3
11	Barwani	2	2	4	3
12	Betul	6	Nil	6	Nil
13	Bhind	18	Nil	18	2
14	Bhurhanpur	Nil	3	3	Nil
15	Chindawada	13	12	25	4
16	Dewas	4	Nil	4	2
17	Dhar	8	5	13	13
18	Dindori	1	Nil	1	Nil
19	Guna	4	Nil	4	3
20	Gwalior	6	Nil	6	6
21	Jabalpur	11	Nil	11	10
22	Mandsaur	9	Nil	9	2
23	Panna	5	1	6	2
24	Raisen	11	Nil	11	9
25	Ratlam	1	2	3	1
26	Seoni	5	Nil	5	Nil
27	Shadol	4	6	10	Nil
28	Shivpuri	Nil	6	6	2
29	Sidhi	6	4	10	3
30	Sihore	6	Nil	6	2
31	Tikamghar	8	8	16	7
32	Vidisha	5	Nil	5	1
33	balaghat	13	36	52	20
<b>Total</b>		<b>273</b>	<b>133</b>	<b>409</b>	<b>222</b>

5. By submitting the Annexure-A3, it is submitted that MPSEIAA has accorded EC over more quantity of sand than mentioned in the tender document. In the case of district Chhatarpur a total number of 48 sand quarries were floated through tender for a total quantity of 15,00,000 cubic meters of sand. Till date, fresh EC/transfer EC has been accorded only in 20 sand quarries out of 48 sand quarries but the environment clearance has been issued for 27,43,633 m<sup>3</sup> of sand. An excess of 12,43,633 m<sup>3</sup> of sand is already granted by MPSEIAA despite the fact that the fresh

EC/transfer of EC is yet to be done for over 28 sand quarries. This is done solely for the purposes of promoting illegal extraction of sand. The tabular showing variation as annexed A-3 is as follows:

Sr. no	Name of district	Environmental clearance						E tender notice of as per NIT		Excess EC granted as compare to NIT	Nos of mines for which EC no issued
						Total		No of mines	CM		
		No.s of mines	Cubic mtr transferred	No of mines	C M new	Nos of mine	CM				
01	Chhatarpur	20	2743633	0	0	20	2743633	48	150000	1243633	28
02	Datia	28	1501608	1	94800	29	1596408	30	700000	896408	1
03	Harda	15	1517500	0	0	15	1517500	16	600000	917500	1
04	Katni	17	919681	8	469500	25	1389181	49	120000	189181	24
05	Khargon	4	166500	9	225000	13	391500	28	300000	91500	15
06	Narsighpur	15	2026404	0	0	15	2026404	36	200000	26404	21
07	Singaruli	17	1433818	7	582360.50	24	2016178.5	58	180000	216178.5	34
08	Umaria	4	374680	13	543881	17	918561	27	850000	68561	10
09	Balaghat	13	979219	39	1939528.7	52	2918747.70	69	150000	1418747.7	17
10	Alirajpur	2	39725	10	66800	12	106525	49	800000	693475	37
11	Anuppur	5	581535	0	0	5	581535	22	700000	118465	17
12	Badwani	2	10745	2	15573	4	26318	24	40000	13682	20
13	Betul	6	106500	0	0	6	106500	47	100000	893500	41
14	Bhind	18	1501480	0	0	18	1501480	75	250000	998520	57
15	Bhurhanpur	0	0	3	120000	3	120000	9	300000	180000	6
16	Chindwada	13	401858	12	276802	25	678660	58	100000	321340	33
17	Dewas	4	450400	0	0	4	450400	28	800000	349600	24
18	Dhar	8	8500	5	8500	13	17000	40	50000	33000	27
19	Dindori	1	117000	0	0	1	117000	4	300000	183000	3
20	Guna	4	16631	0	0	4	16631	23	100000	83369	19
21	Gwalior	6	499960	0	0	6	499960	10	50000	40	4
22	Jabalpur	11	448462	0	0	11	448462	47	600000	151538	36
23	Mandsaur	9	10800	0	0	9	10800	21	35000	24200	12
24	Panna	5	297268	1	18387	6	315655	27	120000	884345	21
25	Raisen	11	840150	0	0	11	840150	56	100000	159850	45
26	Ratlam	1	1640	2	7000	3	8640	14	35000	26360	11
27	Seoni	5	124331	0	0	5	124331	11	400000	275669	6
28	Shadol	4	270000	6	503640	10	773640	50	150000	726360	40
29	Shivpuri	0	0	6	145080	6	145080	15	250000	104920	9
30	Sidhi	6	460781	4	121219	10	582000	24	140000	818000	14
31	Sihore	6	951370	0	0	6	951370	30	220000	1248630	24
32	Tikamghar	8	382462	8	219000	16	601462	22	700000	98538	6
33	Vidhisha	5	23000	0	0	5	23000	16	50000	27000	11

6. On the basis of above ground the OA No. 96 of 2020 was filed with the prayer to refrain MPSEIA and MPSEAC from issuing any further EC without actually carrying out the environmental assessment of the Sand quarry and carrying out the technical scrutiny of the same.
7. During the pendency of the original application, since the EC was granted by the MPSEIAA, thus, (all) appeals have been filed challenging the order

granting the EC on the grounds as mentioned in the Original application in addition to the other grounds.

8. In all the appeals in addition to the above grounds the Appellant/Applicant has raised the issue of failure of the Respondent to strictly follow the mandatory procedure for preparation of a District Survey Report, which is a prerequisite for auction/E-auction/granting any mining lease/Letter Of Intent (LOI) under the provisions of the Environmental Impact Assessment as amended by the MoEF vide notification dated 15.01.2016 and notification dated 25.07.2018. Further that the non-preparation of the DSR contravenes the various decisions passed by this Tribunal as well as the decision of the Hon'ble the Supreme Court of India.
9. Reply in Original Application of 96 of 2020 as submitted by the Respondent, State Mining Corporation, Madhya Pradesh are that there is no mismatch in the quantity mentioned in the EC letter and approved mining plan and that the production capacity mentioned in the EC letter is different from the quantity of sand mentioned in the NIT, because SEIAA processed all the applications as per EIA Notification and thus NIT is not a relevant mandatory document. It is further submitted that Rule 12 of the Sand (Mining, Transportation, Storage and Trading Rules), 2019 (Madhya Pradesh) provides the mining up to mineable quantity fixed in Mining Plan, Environmental Clearance, Water and Air consent.

#### **B. Issues for determination**

10. From the perusal of above facts, the issues for determination of appeals and original applications are as follows:
  - I. Requirement of NIT and description of area and quantity of mining.
  - II. Requirement of Environmental status and transferability of EC.
  - III. Whether the mining can be permitted about the excess quantity of the sand more than mentioned in the environmental clearance.

- IV. Whether the mining can be permitted in excess of the area (Khasra and rakba) more than mentioned in the tender documents or in environment clearance.
- V. Whether the mining can be permitted in excess of the quantity mentioned in the tender document.
- VI. The quantity of sand which has already been excavated over a sand quarry which was belonging to the previous lease holder has not been subtracted while transferring the environment clearance in favour of the successful tender.
- VII. The details of Sand quarry are not mentioned in the tender document but EC has been granted by MPSEIAA in some cases.
- VIII. Whether the issuance of Notice Inviting E-Auction of mining areas without the preparation of a valid District Survey Report, is a direct and serious contravention of the mandatory procedure stipulated under the MOEF Notification dated 15.01.2016 and the Sustainable Mining Management Guidelines, 2016 and & Enforcement Monitoring Guidelines for Sand Mining, 2020?
- IX. Whether the decision of the Hon'ble Supreme Court on 10.11.2021 in Civil Appeal No. 3661 of 2020 in State of Bihar Vs Pawan Kumar and this Court in the case of Anjani Kumar v. State of UP 2017 SCC Online NGT 979 is directly applicable to present case.
- X. Whether the Respondents are bound to prepare a District Survey Report as per the provisions of the Notification dated 15.01.2016 & 25.07.2018, the Guidelines framed by the Central Government in 2016 and 2020.

### **C. Proceedings before the Tribunal**

11. In Original Application No. 96/2020 (CZ), this Tribunal constituted a Joint Committee comprising members from CPCB, MPPCB and MPSEIAA. The meeting was held and the Committee examined some files randomly after detailed discussion and going through the files, it was

decided by the Committee to re-examine all concerned files to find out if there is any mismatch in details of the mines i.e. area, Khasra, production, etc. the report of the Committee is as follows:

“Since, the main issue raised by the applicant in the present case is regarding the mismatch in area and quantity of sand mentioned in the EC letter and the tender document; detailed explanation was given by SEIAA regarding the procedure followed while dealing with the EC applications and the list of documents that are replied upon.

#### **SUBMISSIONS BY SEIAA**

1. Being an authority constituted by the Central Government to decide the applications filed for obtaining Environmental Clearances, SEIAA follows the procedure laid down in the Environment Impact Assessment Notification, 2006 dated 14.09.2006. The list of documents relied upon while deciding the EC applications are enclosed.
2. That the tender process is the preliminary process carried out by the State mining corporation as per the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 for allotting sand quarries to successful bidders. It is an independent process adopted by the Mining Corporation. The mining lease is then transferred in favour of the successful bidder. Thereafter, the application is filed before SEIAA for obtaining EC along with the copy of all required documents including the mining plan approved by the competent authority in light of the EIA notification, 2006, SEIAA OM dated 20.06.2019 and 14.01.2020.
3. That, it has also been provided in Rule 12 (4) of the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 as under:-  
 'Rule 12 (4) Permissible Quantity — The mining shall be permitted upto mineable quantity fixed in the mining plan, environmental clearance, water and air consent (whichever is less)."
4. This rule gives further clarity in the matter as the documents required to be relied upon for determining the permissible quantity are mining plan, EC and Air/Water consent. The tender document is not relevant document as per the Rule 12(4) while determining the permissible mineable quantity.

5. SEIAA briefed that all the application for fresh / transfer ECs are processed as per the EIA notification 2006 & its amendments. SEIAA does not consider the quantity of sand mentioned in Notice Inviting Tender [NIT] so there may be mismatch in the production capacity mentioned in issued/transferred EC with the quantity of sand mentioned in Notice Inviting Tender [NIT].

As decided by the committee in its 1st meeting dated 31.03.2021, the committee examined all the cases mentioned by the applicant in OA no. 96/2020 wherein ECs have been issued / transferred by SEIAA. A tabular chart was put up before the Committee indicating the case wise details of the ECs/transferred by SEIAA from December, 2019 to October, 2020. The details of mining lease area, Khasra no. production capacity as per approved/revised mining plan etc were provided in the tabular chart.

In order to verify the list prepared by SEIAA, the original case files of 4 districts, namely, Jabalpur, Narsinghpur, Harda & Chhatarpur, were checked by the committee for all the ECs granted / transferred by SEIAA in these districts. These districts were picked up on random basis.

#### **D. THE FINDINGS OF THE COMMITTEE:-**

1. During the scrutiny, committee found that the production capacity mentioned in EC's issued/transferred by SEIAA is as per the mining plan and replenishment plan approved by the competent authority and there is no mismatch in quantities mentioned in the EC letter and approved mining plan. **Although the production capacity mentioned in the EC letter is different from the quantity of sand mentioned in NIT because SEIAA processed all the application as per EIA notification 2006 & its amendments and SEIAA OM dated 20.06.2019 and 14.01.2020 wherein NIT is not a relevant/mandatory document.**
2. In transfer cases, the production capacity mentioned in the EC transferred by SEIAA is same as per the original EC issued by SEIAA and approved Mining Plan and Replenishment Plan, in compliance with the provisions laid down under Para 11. Transferability of Environmental Clearance (EC) of MoEF&CC notification issued on 14.09.2006.
3. It was also found that the Mineral Resource Department (MRD), GoMP has issued the individual lease sanctioned/transferred order of each mine by mentioning the area and khasra no. and there is no disparity regarding area & khasra in EC issued/transferred by SEIAA with the individual lease transfer order of MRD, GoMP. **However, in**

**some cases, the committee found that there is a slight variation in the area / Khasra No. mentioned in the EC letter and in the mining plan/ lease transfer order. This appears to be a typographical error and shall be rectified by SEIAA in its upcoming meeting.**

**E. OBSERVATION AND RECOMMENDATION OF THE COMMITTEE :-**

1. It has been observed by the committee, that the discrepancy (as highlighted by the applicant) arises due to the difference in the quantity of sand mentioned in the notice inviting tender issued by the mining department and the mining plan approved by the mining department. Once the mining plan is prepared and approved by the mining department, the application is submitted before SEIAA in prescribed format. The quantity of sand in ECs issued/transferred by SEIAA is as per the mining plan and replenishment plan approved by the competent authority.
2. It has been recommended by the committee that, SEIAA shall rectify the typographical errors found by the committee in its upcoming SEIAA meeting.

**F. The Committee found some variation in the area/Khasra No. which is reproduced as below:**

**“Table 1: In Compliance of the order of Hon’ble NGT dated 02.03.2021 in O.A. No. 96/2020 list of cases need rectification in SEIAA meeting**

S. No.	District	Case No.	As per Lease Sanctioned/MRD letter				As per Mining Plan			As per EC issued by SEIAA					Remarks (mismatched if any)
			L. No.	Date	Area (ha.)	Khasra No.	Area (ha.)	Khasra No.	Production Capacity (cum/year)	L. No.	Date	Area (ha.)	Khasra No.	Production Capacity (cum/year)	
1.	Katni	3441/15	651/132/20 20/12/1/	07.02.2020	13.350	391,415	13.350	319,415	106800	4589/ SEIAA/ 20	25.02.2020	13.350	319,415	106800	Khasra no. in earlier issued EC, mining plan and transferred EC is 319,415, although it is 391,415 in MRD letter
2	Balaghat	7060/20	2436/132/2 020/12/1	11.06.2020	4.00	164	4.50	164	51300	649/ SEIAA/ 20	06.06.2020	4.50	164	51300	Area in MRD letter is 4.0 ha although in rest of the documents including Ekal Praman Patra & approved Mining Plan , it is 4.50 ha
3.	Chhatarpur	7246/ 2020	1187	29.02.2020	2	2/2	2	2/2	57000	1499	30.06.2020	2	2/2	57000	In Lease order, Mine plan and other documents Khasra no. 2/2 mentioned but in Lol Khasra no. 2/1

4.	Chhatarpur	7251/ 2020	1185	29.02.2020	4	472/2	4	472/2	114693	1487	30.06.2020	4	472/2	114693	In Lease order, Mine plan and other documents Khasra no. 472/2 mentioned but in Lol Khasra no. 472/1
5.	Tikamgarh	4194/ 2015	1304	04.03.2020	5.066	1	5.066	1	43000	5279	23.03.2020	5.666	1	43000	EC Transfer letter issued in an area of 5.666 but in mine Plan & Lease order area is 5.066 ha
6.	Datia	6919	1157	02.03.20	4.6	765,2222	2.3	765(MP) 2222 (MP)	27000 27000	5024	09.03.20	4.6	765,2222	54000	PC of MP & EC not matched
7.	Raisen	2881	1313	4.3.20	0.405	317	0.405	317	12150	5301	23.3.20	0.405	317	12150	PC of MP & EC not matched
8.	Vidisha	6987	717	11.02.20	5	1,29,220	5	1,29,220	3000	5307	23.02.20	5	1,29,220	3000	Khasra no. 129,239 mentioned in all order but MP/EC mention 129,220

**G.** Madhya Pradesh State Environment Impact Assessment Authority (MP SEIAA) has submitted the reply which is almost same in all the Appeals. We deem it necessary to mention the reply submitted in one of the Appeal (Appeal No. 5/2021) which is as follows:-

“4. That, two main contentions have been raised by the appellant in the present appeal. The first contention is regarding the mismatch in the quantity of sand tendered **and in the production capacity mentioned in EC letter and the second contention is regarding the validity of EC.**

5. That, the answering respondent, being an authority constituted by the Central Government to decide the applications filed for obtaining Environmental Clearances, duly follows the procedure laid down in the Environment Impact Assessment Notification, 2006 while deciding the EC applications.

6. That, the para 11 of the notification is of utmost importance while dealing with this appeal as it pertains to **“Transferability of Environmental Clearance (EC)”** and it reads as under:-

**“Transferability of Environmental Clearance (EC):**

*A prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written "no objection" by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases."*

7. That, answering respondent has followed the requirements of para 11 of the EIA Notification in its true letter and spirit while deciding the applications filed for the transfer of mining leases. While dealing with the cases of the transfer of EC and para 11 of the EIA Notification, the most important environmental concern is that, there should be no change in the terms and conditions under which the prior environmental clearance was initially granted, and transferred EC

shall also be valid for the same terms and conditions and validity period. The same has been ensured by the answering respondent while deciding the applications.

8. That, the applications for the transfer of EC are filed along with the letter from the State mining department regarding the transfer of the mining lease, notarized affidavits of the previous and new project proponent revised approved mining plan with replenishment plan and revised EMP [Environment Management Plan].

9. That, the sand quarry in the instant case was auctioned by the State Mining Corporation after issuing notice inviting tender in terms of the new sand policy, 2019 and was allotted to the Respondent NO, 2. The said mine was transferred in favor of the Respondent No. 2 vide letter dated 16.12.2020 [and corrigendum dated 24.12.2020], also stating that the mining lease shall be valid upto 30.06.2023.

10. It is pertinent to note that the tender process is the preliminary process carried out by the State mining corporation as per the New Sand Policy 2019 for allotting sand quarries to successful bidders. It is an independent process adopted by the Mining Corporation. The mining lease is then transferred in favor of the successful bidder. Thereafter, the application is filed before SEIAA for obtaining EC.

11. That, as per the EIA Notification 2006, the documents that are relied upon by SEIAA include the approved mining plan, no objection certificates issued by the forest department, gram panchayat, environment management plan, replenishment plan etc. The complete procedure followed by SEIAA while issuing/ transferring EC including the details of all supporting documents has been enclosed herewith as **Annexure R-01**. The Office Memorandum dated 20.06.2019 and 14.01.2020 issued by SEIAA enumerating the list of documents to be submitted has been enclosed herewith as **Annexure R-02**.

12. It is clear from the above-mentioned documents that, the primary document in the entire process is the mining plan that is approved by the mining department. In the present case also, the revised mining plan has been submitted by the respondent no. 2 wherein the proposed production capacity is 1,16,500 cum/yr and not 60,000 cum/yr as shown in the tender document. The copy of the relevant extract of revised mining plan has been enclosed herewith as **Annexure R-03**.

13. That, it has also been provided in Rule 12 (4) of the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 as under:-

Rule 12 (4) Permissible Quantity — The mining shall be permitted upto mineable quantity fixed in the mining plan, environmental clearance water and air consent (whichever is less).

This rule gives further clarity in the matter as the documents required to be relied upon for determining the permissible quantity are mining plan, EC and Air/Water consent. The tender document is not relevant document as per the Rule 12(4) while determining the permissible mineable quantity.

14. The second contention raised by the appellant is regarding the validity of the EC. As stated above the validity of EC cannot be changed while transferring the EC. The transferred EC shall be valid for the same period as that of the original EC. In the present case it was stated that the EC shall be valid upto the validity of the lease period. As per the lease transfer letter dated 16.12.2020, the mining lease is valid upto 30.06.2023 therefore the EC shall also be deemed to be valid upto 30.06.2023.

15. It has been wrongly alleged by the appellant that, as per the EC letter the validity of EC is upto 31.03.2021. For the sake of further clarity following paras of the EC letter must be analysed :-

- a. In the EC letter dated 01.01.2021, the minutes of the 652"SEIAA meeting dated 30.12.2020 have been reproduced verbatim, wherein it has been written that "the applicant M/s R. K Transport & construction has submitted following documents in support of his request"
- b. Thereafter in point no (ii) it has been provided that "(ii) No objection letter received from the main lessee, MPSCMC vide letter dated 30.12.2020 and 10.06.2020 mentioning that the mine is operating by contractor and has validity upto 31.03.2021"
- c. Thereafter in point no, (vii) it has been provided that "Lease transfer order issued by Mineral Resource Department to M/s R.K. Transport & constructions ltd 65-A Transport Nakar

Korha, Dint. Korha (CG) vide letter no. 5527/132/2020/12/1 dated **16.12.2020** and 5662/132/2020/12/1 dated 24.12.2020.

- d. Whereas, the last para of the EC letter is the relevant para by virtue of which the transfer of EC has been approved. The last para reads as under :-

Hence, it was decided to transfer the EC in the name of M/s R. K. Transport & constructions ltd, 65-A Transport Nagar Korba, Distt. Korba (CG) with the same terms and conditions under which prior Environmental Clearance was initially granted and **for the same production capacity and validity period.**

16. It is pertinent to note that the document mentioned in point no. (ii) is the NO Objection Certificate issued by the OIC of the mining department being the main leasee stating that since the mine has been transferred to the new contractor, they have no objection in the transfer of EC in favour of new contractor.

Whereas, the document referred in point no. (vii) is the lease transfer order by virtue of which the mining lease has been transferred in favor of new contractor and also states the validity of the mining lease period. The lease transfer document is the relevant document to ascertain the validity of the lease period and not the NOC issued by the OIC of mining department. And in case there is a difference in the validity of the mining lease period, like it present case, the lease transfer order shall prevail.

17. Now for determining the validity of EC following points are required to be relied upon:-

- a. As per the EC letter dated 01.01.2021 the EC shall be valid upto the same period as provided in the original EC granted to M/s A.D. Agro Pvt Ltd dated 02.03.2017 enclosed herewith as **Annexure R-09.**
- b. As per the original EC dated 02.03.2017, The EC shall be valid upto the validity of the lease period.

- c. *As per the lease transfer letter dated 16.12.2020, the mining lease is valid upto 30.06.2023 therefore the EC shall also be deemed to be valid upto 30.06.2023.”*

**H. Madhya Pradesh Sand Mining Transportation, Storage and Trading Rules, 2019**

12. Learned Counsel for the MP SEIAA has taken help of provisions contained in Madhya Pradesh Sand Mining Transportation, Storage and Trading Rules, 2019, the relevant provisions are quoted below:-

*“3. Restrictions.-*

*The following restrictions shall be applied with regard to mineral sand,-*

*(1) No vehicle shall cause to be transported the mineral sand from the sanctioned quarry or storage place without prescribed transit pass.*

*(2) No vehicle shall cause to be transported without substantial entry in Transit Pass (as quantity of mineral, date/time of transport, time to be taken to reach to destination place, etc.).*

*(3) No person, except the valid contractor, shall be permitted to store mineral sand for commercial purpose or for use in commercial construction, quantity more than the quantity specified in these rules.*

*(4) The vehicles engaged in sand transportation without GPS or establishing of machine of equivalent technique as prescribed, shall be prohibited after the date of notification by the State Government.*

*(5) Extraction and removal of sand from the following area shall be prohibited as provided in sustainable sand mining guidelines, 2016 issued by Government of India,-*

- (a) within 200 meters from any bridge;*
- (b) within 200 meter upstream and downstream areas of any water supply scheme or water resources scheme;*
- (c) within 100 meter from edge of national highway and Railway line;*
- (d) within 50 meter from any canal, reservoir or building;*
- (e) within 50 meter from edge of state highway and 10 meters from edge of other village road;*
- (f) within fixed distance from any areas which has been built to control the flood;*
- (g) within 200 meter distance from the place of cultural, religious, historical, and archaeological importance or within the distance as provided in the Act/Rule;*
- (h) such areas which have been declared prohibited by Collector due to environmental or other reasons: Provided that, on receipt of representation, permission to grant for mining within the limit of prohibited area*

*may be considered, after getting NOC/Consent from the concerned administrative department.*

*(6) There shall be complete ban on mining, loading and storage of sand by machines from the sanctioned quarries in river Narmada. Sand mining, loading and storage from quarries having area up to 5.00 hectare situated on other rivers shall be done by the committee of local labourers and quarries having area more than 5.000 hectare, local labourers shall be given priority for sand mining, loading and storage. The use of machines for sand mining in other rivers may be given depending upon the requirement and approval in mining plan and environmental clearance.*

*5. (1) Demarcation of sand quarries*

*The Collector, shall identify new sand bearing areas in rivers or on other places of the State. D.G.P.S. survey shall be carried out and its location on revenue map alongwith Latitude and Longitudes shall be marked:*

*Provided that the sand quarries demarcated and declared prior to the commencement of these rules, may be amended by following the same procedure as required.*

*(2) Declaration of sand quarries*

*The sand quarry identified as per sub-rule (1) above shall be declared by the Collector, after making such inquiry as he deems fit, on receipt of information/application/proposal. Prior to declaring sand quarry, opinion from the concerned Gram Panchayat/Urban Body shall be obtained and for this purpose a formal order shall be issued:*

*Provided, if no opinion/advise of the concerned Gram Panchayat/Urban Body is received within a period of 15 days, the Collector, by presuming that there is no objection, shall declare new sand quarries in non-scheduled areas only:*

*Provided further that, if any objection is received from concerned Gram Panchayat/Urban Body within stipulated period, the Collector by disposing off the objections on merit shall take appropriate decision regarding declaration of quarry: Provided further that, prior to declaration of sand quarry consent/no objection of Gram Sabha shall be mandatory in scheduled areas: Provided also that, the declaration of such sand bearing areas shall not be necessary separately which are operational or have been auctioned earlier.*

*(3) Making of group of the sand quarry.-*

*(a)The Collector shall make the group of sand quarries and send proposal to the Director along with details of area, boundary, revenue map, Khasra-Panchsala, Latitude-Longitude for each quarry included in group.*

*(b) The group shall be constituted on the basis of geographical location and revenue boundary (Tehsil, District) as for as possible.*

(c) While making the group, total area of sand quarries included in the group and approximate available quantity of sand shall be taken into consideration.

(d) The proposal of constituted group sent by the Collector shall be finalised by Director.

## 12. Statutory Permissions

The statutory permissions/formalities for each sand quarry of the group may be obtained/completed, as per rule. **All the statutory permissions (e.g. Mining Plan, Environmental Clearance, Water and Air Consent etc.) required for the operation of the sand quarry shall be obtained by the successful tenderer.** The successful tenderer may start mining operation only after obtaining the statutory permissions as per rule 14. Excavation without statutory permission or excavation in excess quantity than permitted quantity in statutory permission, in such condition 100% cost of the excavated mineral **and amount of compensation towards environmental damage shall be recoverable from the contractor.** The statutory permission are as follows:-

### (1) Mining Plan-

(a) The successful **tenderer shall submit mining plan for approval** to the Collector within a period of one month from the date of issuance of letter of intent. The Mining Plan shall be prepared by the Recognised Qualified Person (R.Q.P.), authorised by the Director.

(b) The mining plan shall consist of the location (latitude/longitude) of the **mines, quantity of mineable sand** available in the sand quarry and other issues, as provided for in Madhya Pradesh Minor Mineral Rules 1996.

(c) The Collector shall approve the mining plan on the basis of recommendations of the technically qualified officer (Post Graduate Degree Holder in Geology/Applied Geology) of the department posted in the district and in case if in any district technically qualified officer is not posted, in such case concerned Regional head or Director shall approve the mining plans.

(d) The mining plan shall be prepared only on the basis of actual quantity available/estimated and all the Mining operations shall be carried-out in accordance with the approved mining plan.

(2) Environmental Clearance- The successful tenderer after getting approved mining plan, within a maximum period of 15 days, shall submit application before the competent authority to obtain Environmental Clearance in accordance with notification issued by Ministry of Environment, Forest and Climate Changes.

(3) Water and Air Consent- The successful tenderer after getting environmental clearance within a maximum period of 7 days, shall submit application before the competent authority for obtaining the consent under the Water (Prevention of pollution and control) Act, 1974 and the Air (Prevention of Pollution and Control) Act 1981.

(4) **Permissible Quantity-The mining shall be permitted up to mineable quantity fixed in mining plan, environmental clearance, water and air consent (whichever is less).**

(5) *The annual contract amount shall not be reduced in any case if there is reduction in mineable quantity in approved mining plan, environmental clearance, water and air Consent.*

(6) *All the above statutory permissions shall be obtained within a time limit. The corporation shall supervise for the permissions being taken for each group by the group contractor. In case of any delay, carelessness or lack of interest proceedings for cancellation of letter of intent may be initiated.*

#### 14. Commencement of the Mining Operations.—

(1) *The successful tenderer, after execution of agreement and registration but prior to commencement of the mining operation, shall inform to the Collector about such intention. After Commencement of the mining operation the objection regarding available quantity of mineral in quarry, approach road and other related issues shall not be acceptable.*

(2) *On the condition of depositing the contract amount of the group on the prescribed date as mentioned in the agreement, the mining operation of the quarry may be started as and when the statutory permission is received. It shall not be compulsory to obtain statutory permission for all the quarries of the group simultaneously.*

#### 26. Provisions for transition period.—

(1) *After commencement of these rules, there may be delay in complete execution of these rules, and due to nonoperation of sand quarries, deficiency in supply of sand may result, hence these provisions are being made. Some of the sand quarries which were auctioned previously and are in operation, the **period of those quarries is up to March 2022**. Besides this, some quarries which have been handed over/allotted to Gram Panchayat under provision of Madhya Pradesh Sand Rules 2018 are also in operation at present, the contractors of the group shall start immediately proceedings of transfer of permissions under environmental rules of such quarries.*

(2) **Other sand quarries transferred to panchayat in which operations have been started after the completion of formalities, all such quarries may remain date of start of operation be operated by Panchayat/Urban Bodies till 31st March 2020** or by the new group contractor from after execution of agreement, whichever is earlier.

(3) *From the date of commencement of these rules, the contractors of the auction quarries, may surrender the quarries. Surrender of such sand quarries shall be accepted, giving exemption in condition of agreement and security amount shall be refunded as per eligibility.*

(4) *Such quarries which have been surrendered or the period has been expired, shall be deemed to be included in the group which have been identified at the time of inviting tender. The*

*contractor of the group shall complete all the statutory formalities for operation of such included quarries. In respect of this new quarry included additionally in the group, the amount of royalty as calculated per cubic meter shall be paid on the basis of the highest tender amount received for that group. The period of new quarry included shall be up to the period of expiry of contract.*

*(5) If during the period of operation of contract, any proposal for new quarry is received to the Collector, the Collector after such enquiry, as deems fit may include quarry in the nearest suitable group. The period of new quarry shall be the period of expiry of contract. The contractor of the group for despatch of sand from such new quarry shall deposit the amount on the basis of the highest tender amount received at the rate of per cubic meter for that group. Maximum of 25% of total permitted quantity for the group contract shall be allowed to be added in case of new quarry.*

*(6) The group or" quarries of the group remained vacant temporarily under the provisions of this rule or due to other reasons may, in public interest, be operated by the department or by the corporation for ensuring availability of sand."*

13. Bare reading of the provisions contained under Section 26 of the Act provides that it is a transition period and since there may be delay in completion of execution of these rules, the provisions of sand quarries has been made by formulating the rules. Learned Counsel for the appellant has raised the question that in absence of lease there cannot be transfer of the EC and in reply thereof learned Counsel for the respondent had submitted that the word used in section 26 is sand quarries and it is stated that due to non-operation of sand quarries, deficiency in supply of sand may result, hence these provisions are being made. The intention of the legislature was to make the balance between the supply and demand of the sand which is essential part of the development of the building constructions. It is further argued that the legislative intent is beneficial and should be interpreted in this way. It is to be noted that the above provisions should be read in light of the Sustainable Sand Mining Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020 issued by the MoEF&CC.
14. Further, Clause 11, Transferability of Environmental Clearance which was added in the EIA Notification, 2006 should be read in light of the Mineral

Law Amendment Act, 2020 which was notified with effect from 10.01.2020 which enacted a new Section- 8B relating to the provision for transfer of statutory clearance, after which MoEF&CC issued a Notification dated 27.03.2020 and amended the Environment Impact Assessment Notification, 2006. The Notification states that it is lawful for the new lessee to continue mining operation on the land in which mining operation were being carried out by the previous lessee for a period of two years from the date of commencement of main lease, as per the terms and condition of Environmental Clearance granted to the previous lessee on the said lease area **for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier provided that the successful bidder would apply and obtain prior environmental clearance from the Regulatory Authority within a period of two years from the date of grant of new lease.** The grounds as raised by the appellants may be classified in three categories.

15. Cases in which EC has been transferred without considering the present environmental status of the area of mining or presently available quantity of sand, which can be mined sustainably. The quantity allowed in EC is much higher than the quantity described in NIT or finally bided. Respondent R-1, MPSEIAA has contended that it has observed the provision contained in para 11 of EIA Notification 2006. According to para 11, a prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written "no objection" by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such

cases. MPSEIAA has very conveniently ignored the subsequent requirements contained in amendments introduced by MOEF &CC vide EIA Notifications dated 15th January 2016 as well as Notification dated 25<sup>th</sup> July 2018, **which prescribes the requirement of preparing District Survey Report before according Environmental Clearance** and also lay down the processes to prepare District Survey Report. The main objective of the preparation of District Survey Report (as per the Sustainable Sand Mining Guideline 2016) is to ensure the identification of areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area. In absence of these details mining cannot be done in sustainable manner. MoEF &CC has come out with Sustainable Sand Mining Guidelines 2016 as well as Enforcement and Monitoring Guidelines for Sand Mining 2020 in consultations with the States for strict implementation. Transfer of EC without taking the environmental considerations into account is brazen breach of law and abetment of destructive practices of sand mining. Hon'ble the Supreme court in case of Goa foundation vs union of India 2014 (6) SCC,738 has observed that **before transferring EC, environmental status of the quarry has to be ascertained as follows :-**

*"9. We also find that in **Samaj Parivartana Samudaya and Others v. State of Karnataka and Others, (2013) 8 SCC** this Court has held in Paragraph 20:*

*"20. The permissible annual production for the mining lease would be based on:*

- a. the mineral reserves in the lease area;*
- b. area available for overburden/waste dumps, sub grade iron ore and other land uses;*
- c. existing transport facilities in relation to the traffic load of the mining lease; and*
- d. overall ceiling on the annual production from all the mining leases in the district (as dealt with*

earlier)."

10. We are, therefore, of the view that a Committee of experts must conduct a Macro EIA Study on what should be the ceiling of annual excavation of iron ore from the State of Goa considering its Iron Ore resources and its carrying capacity keeping in mind the principles of sustainable development and inter-generational equity and all other relevant factors. For such Macro EIA Study, we constitute an Expert Committee comprising:

1. An ecologist
2. A geologist
3. A mineralogist
4. An expert on Forestry
5. A representative of Department of Mines, Government of Goa to be nominated by the Chief Secretary, Goa.
6. A representative of Ministry of Environment & Forests, Government of India to be nominated by the Secretary, Ministry of Environment & Forests, Government of India.

16. It is submitted by the MPSEIAA that mining leases of 19 districts have been cancelled and/or handed over in Chattarpur, Hosangabad and Panna District. Therefore, out of the 50 appeals filed by the appellants, 31 appeals falling under these districts have become infructuous as 17 cases are from Chattarpur district and 8 cases are from Hosangabad district wherein the leases have been cancelled and 6 cases are from Panna district wherein the lease has been handed over. The list of district where the leases have been surrendered or cancelled has been communicated vide letter dated 07.01.2022 which are as follows:

Sl. No.	District	Handed Over/Cancelled	Handed Over/Cancelled date
1	Bhopal	Cancelled	31.12.2021
2	Raisen	Cancelled	05.04.2021
3	Hosangabad	Cancelled	31.12.2021
4	Ratlam	Handed over	30.09.2021
5	Dhaar	Cancelled	24.06.2021
6	Alirajpur	Cancelled	05.04.2021
7	Khargon	Cancelled	31.12.2021
8	Badwani	Cancelled	31.12.2021
9	Shivpuri	Cancelled	20.07.2021
10	Jabalpur	Cancelled	31.12.2021
11	Bhind	Handed over	30.06.2021
12	Damoh	Cancelled	31.12.2021

13	Chattarpur	Cancelled	24.06.2021
14	Panna	Handed over	30.06.2021
15	Tikamgarh	Cancelled	31.12.2021
16	Mandsaur	Cancelled	05.04.2021
17	Reewa	Cancelled	24.06.2021
18	Rajgarh	Cancelled	24.06.2021
19	Saajapur	Cancelled	25.10.2021

17. It is further argued that State has initiated the compliance of Sustainable Sand Mining Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020 and nominated an agency to submit the district survey plan in accordance with the rules.

18. On the basis of above facts, it is submitted by the MPSEIAA that the appeals relating to the following districts, which have been challenged in the appeals mentioned in the list have become infructuous as the sand mining contracts awarded in these districts have either been cancelled or handed over. The list is as follows:

Sr. No	Appeal	District	Reason
1	Appeal No. 25/2021	Chhatarpur	Contract cancelled
2	Appeal No. 27/2021	Chhatarpur	Contract cancelled
3	Appeal No. 31/2021	Chhatarpur	Contract cancelled
4	Appeal No. 37/2021	Chhatarpur	Contract cancelled
5	Appeal No. 60/2021	Chhatarpur	Contract cancelled
6	Appeal No. 49/2021	Chhatarpur	Contract cancelled
7	Appeal No. 48/2021	Chhatarpur	Contract cancelled
8	Appeal No. 30/2021	Chhatarpur	Contract cancelled
9	Appeal No. 42/2021	Chhatarpur	Contract cancelled
10	Appeal No. 39/2021	Chhatarpur	Contract cancelled
11	Appeal No. 45/2021	Chhatarpur	Contract cancelled
12	Appeal No. 69/2021	Chhatarpur	Contract cancelled
13	Appeal No. 29/2021	Chhatarpur	Contract cancelled
14	Appeal No. 50/2021	Chhatarpur	Contract cancelled
15	Appeal No. 36/2021	Chhatarpur	Contract cancelled
16	Appeal No. 41/2021	Chhatarpur	Contract cancelled
17	Appeal No. 35/2021	Chhatarpur	Contract cancelled
18	Appeal No. 32/2021	Hosangabad	Contract cancelled
19	Appeal No. 02/2021	Hosangabad	Contract cancelled
20	Appeal No. 05/2021	Hosangabad	Contract cancelled

21	Appeal No. 38/2021	Hosangabad	Contract cancelled
22	Appeal No. 34/2021	Hosangabad	Contract cancelled
23	Appeal No. 33/2021	Hosangabad	Contract cancelled
24	Appeal No. 03/2021	Hosangabad	Contract cancelled
25	Appeal No. 04/2021	Hosangabad	Contract cancelled
26	Appeal No. 51/2021	Panna	Handed over
27	Appeal No. 53/2021	Panna	Handed over
28	Appeal No. 57/2021	Panna	Handed over
29	Appeal No. 54/2021	Panna	Handed over
30	Appeal No. 64/2021	Panna	Handed over
31	Appeal No. 55/2021	Panna	Handed over

I. Mineral Laws (Amendment) Act 2020, as notified with effect from 10th of January 2020 has enacted a new section 8 (B) which is relating to the provisions for transfer of statutory clearances. After which the MoEF&CC issued a notification dated 27th March, 2020 and amended the Environmental Impact Assessment Notification 2006. The Notification states that 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 2 years from the date of commencement of the new lease. The notification dated 27th March, 2020 is as follows :-

*“Now therefore in exercise of the powers conferred by Sub Section (1) and Clause (v) of Sub Section (2) and 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 No. S.O. 4307 (E) dated 29th November 2019 hereby makes the following further amendments in the EIA Notification 2006 namely –*

*(i) In paragraph 11 after sub-paragraph (2) the following subparagraph shall be inserted namely –*

*(3) The successful bidder of the mining leases expiring under the provisions of Sub-Section (5) and (6) of section 8A of the Mines and Minerals Development and Regulation Act 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made there under shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee **for a period of two years, from the date of commencement of new lease** and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee **on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier :***

*Provided that the successful bidder shall apply and obtain prior environmental clearance from the regulatory authority within a period of two years from the date of grant of new lease.”*

#### **J. Requirement of preparation of District Survey Report**

19. Consequent upon the decision taken at the United Nation Conference on Human Environment held in Stockholm, the Parliament enacted the Environment (Protection) Act, 1986 in September, 2006. The parent EIA Notification dated 14.09.2006 was issued by the MoEF & CC under Section 3 of the EP Act with an endeavour to provide a substantive legal framework and comprehensive procedural mechanism for evaluation, assessment and monitoring of the Environmental Impact on the land, air and water due to various projects undertaken by person in all sectors throughout the territory of India. The EIA Notification dated 14.09.2006, regulated certain activities including mining of minor mineral as laid down in the schedule therein and provided that a prior environmental clearance is mandatory for such regulated and specific projects across all sectors. The notification

provided for constitution of central and state level environmental impact assessment authorities, SEIAA manned by professional, experts and technical individuals that shall screen, scope and appraise projects from an environmental prospective and further monitor the same from time to time, in order to achieve much desired goals of sustainable development. The MoEF & CC issued notification dated 15.01.2016 which amended the EIA Notification, 2006 by introducing clause 7 (III) (A) which mandated for the preparation of DSR for sand mining or River Bed Mining and mining of other mineral. Vide another notification dated 20.01.2016, the MoEF & CC constituted the DEIAA and the DEAC. The DEIAA comprised of 04 members and headed by District Magistrate whereas DEAC comprised of 11 members, who were mostly the government officer's bureaucrats. Further, MoEF & CC issued the Sustainable Sand Mining Management Guidelines, 2016 with an endeavor to ensure that sand and gravel mining is done in an environmentally sustainable and socially responsible manner, and to further ensure the conservation of river equilibrium and its natural environment by protection and restoration of the ecological system. One of the key and nodal objectives enumerated in the SMMG, 2016 was the preparation of the DSR report that would identify the areas of aggradations/deposition where mining can be allowed, and identification of areas of erosion and proximity to infrastructural structures and installation wherein mining should be prohibited.

20. This Tribunal, in the case titled Anjani Kumar v. State of U.P. 2017 SCC Online NGT 979 vide its Judgment dated 8.12.2017 held that a **District Survey Report (DSR) is a pre-requisite and conditional precedent before the grant of any mining leases of sand and bajri**. The Relevant portion is extracted below:

*“31. From the extracted portion, it could well be understood that to begin with the process prescribed for preparing of survey document mapping the status of the sand sources in a District is an integral*

*but an essential part. The Survey has to be conducted and report be prepared for each District. It must also be noticed that while taking into consideration the fact that rivers cut across districts and States and every river is an ecosystem in itself but keeping in mind the fact that district is a most established unit of administration conduct of survey, planning and monitoring can be ensured effectively, the scheme proposed that every district will prepare this document (District Survey Report) taking river stretch in that district as an ecological and inventorising other sources of sand in the district...*

*65. Thus there is merit in the contention of the applicant that the District Survey Report is not only an important act but it should be conducted prior to sanctioning of the permission/concession.*

*71. In other words it is evident that absence of the factual District Survey Report after due inspection grant of mining lease will be in conflict of the environmental laws as sand mining lease could be granted in an area only when aspect of replenishment of miner mineral especially in river sand is clearly established.*

*96. It is true that under the Mining Policy, Rules the State is empowered to conduct survey for the purpose of inviting bids opine. The preparation of DSR and obtaining if Environmental Clearance is also a conditional precedent to carrying on mining activity. It is for the State Government to ensure that there is no conflict between two and they are balanced so as to ensure that neither there is scope for illegal mining nor there should be environmental degradation.*

21. State of Madhya Pradesh in its rules named Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 has provided the procedure for procurement of mining leases in State with the statutory permissions in accordance with the environmental rules as contained in

Chapter-6 Section 12 which has been quoted above. In addition to above, the MoEF & CC, in supplement and addition to the Sustainable Sand Mining Management Guidelines, 2016 issued the Sustainable Sand Mining Management Guidelines, 2020 giving importance to the DSR and monitoring mechanism. The guidelines issued in 2020 in point no.4.1.1 (A) requires that DSR for sand mining shall be prepared before the auction/e-auction/ grant of the mining lease/ Letter of Intent (LOI) by Mining Department or department dealing in the mining activity in the respective state. The DSR is to be prepared in such a way that it not only identified the mineral bearing area but also define the mining and no mining zones considering various environmental and social factors. The State Government shall issue Letter of Intent as per procedure laid down in there Mine and Mineral Concession Rules with due consideration of final DSR and that all districts have been required to prepare a comprehensive mining plan as per the provisions of District Survey Report and these report shall be put on the website of district administration. No mining shall be allowed in the area which had not been identified in the comprehensive mining plan of the district.

22. The present litigation consists of cases where EC has been accorded without DSR and the quantity allowed in EC is much higher than the quantity given in the NIT. MPSEIAA has responded in its reply that the procedure adopted by mining department for allotment of mining lease by issuing Notice Inviting Tender (NIT) is a preliminary process and is not a concern of SEIAA. Once the mining lease is allotted and mining plan is prepared and approved by the mining department, the EC application is filed before SEIAA for grant of EC. It has further mentioned that as provided in Rule 12 (1)(d) of the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 the mining plan shall be prepared only on the basis of actual quantity available/estimated and all the mining operations shall be carried out in accordance with the approved mining plan. It has further been provided in Rule 12 (4) of the Madhya Pradesh Sand (Mining,

Transportation, Storage and Trading) Rules, 2019 that the mining shall be permitted upto mineable quantity fixed in the mining plan, environmental clearance, water and air consent (whichever is less). MPSEIAA argues that this rule gives further clarity in the matter as the documents required to be relied upon for determining the permissible quantity are mining plan, EC and Air/Water consent. The tender document is relevant document as per the Rule 12(4) while determining the permissible mineable quantity. The above mentioned provisions also clarify that the approved mining plan is the basis on which further permissions and approvals are given. The procedure adopted prior to the preparation of mining plan is relevant for SEIAA while dealing with the EC applications. Obviously MPSEIAA in defending its stand and is misinterpreting the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019.

#### **K. Notice Inviting Tender (NIT)**

23. The rules provide for a conservative estimation of the permissible quantity and in no way discounts the importance of NIT or accord primacy to mining plan. NIT is primary document and it is the constitutional requirement to give level playing field to all the bidders as held in *Manohar Lal Sharma vs principal secretary (SC) 2014 all SCR 3470* as follow:-

49. ....The constitutional philosophy about law making in relation to mines and minerals and List I Entry 36 (Federal Legislative List) and List II Entry 23 (Provincial Legislative List) in Schedule VII of the Government of India Act, 1935 which correspond to List I Entry 54 (Union List) and List II Entry 23 (State List) in our Constitution has been noticed by this Court in ***Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1***. Speaking through one of us (R.M. Lodha, J., as he then was) in ***Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1***, this Court has noted the statement of the learned Solicitor General in the House of Commons made in the course of debate in respect of the above entries in the Government of India Bill that the rationale of including only the "regulation of mines"

and "development of minerals" and that, too, only to the extent it was considered expedient in the public interest by a federal law was to ensure that the provinces were not completely cut out from the law relating to mines and minerals and if there was inaction at the Centre, then the provinces could make their own laws. Thus, power in relation to the mines and minerals was accorded to both, the Centre and the States. The Court in **Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1** said:

"130. .... The management of the mineral resources has been left with both the Central Government and the State Governments in terms of List I Entry 54 and List II Entry 23. In the scheme of our Constitution, the State Legislatures enjoy the power to enact legislation on the topics of "mines and minerals development". The only fetter imposed on the State Legislatures under Entry 23 is by the latter part of the said entry which says, "subject to the provisions of List I with respect to regulation and development under the control of the Union". In other words, the State Legislature loses its jurisdiction to the extent to which the Union Government had taken over control, the regulation of mines and development of minerals as manifested by legislation incorporating the declaration and no more. If Parliament by its law has declared that regulation of mines and development of minerals should in the public interest be under the control of the Union, which it did by making declaration in Section 2 of the 1957 Act, to the extent of such legislation incorporating the declaration, the power of the State Legislature is excluded. The requisite declaration has the effect of taking out regulation of mines and development of minerals from List II Entry 23 to that extent. It needs no elaboration that to the extent to which the Central Government had taken under "its control" "the regulation of mines and development of minerals" under the 1957 Act, the States had lost their legislative competence. By the presence of the expression "to the extent hereinafter

provided" in Section 2, the Union has assumed control to the extent provided in the 1957 Act. The 1957 Act prescribes the extent of control and specifies it. We must bear in mind that as the declaration made in Section 2 trenches upon the State legislative power, it has to be construed strictly. Any legislation by the State after such declaration, trespassing the field occupied in the declaration cannot constitutionally stand ".....

83. Two recent decisions viz., (1) **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** and (2) **Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1** directly deal with the question of auction as mode for the disposal or allocation of natural resources. But before we consider these two decisions, reference to some of the decisions of this Court, which had an occasion to deal with disposal of natural resources, may be of some help in appreciating this aspect in correct perspective.

84. P.N. Bhagwati, J. in **Kasturi Lal Lakshmi Reddy & Ors. v. State of J&K & Anr., (1980) 4 SCC 1** had said that where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging setting up of industries within the State, the State was not bound to advertise and tell the people that it wanted a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. It was also observed that if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose.

85. In **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295** this Court had observed that ordinary rule for disposal of State-owned or public-owned property, was by way of public auction or by inviting tenders but there could be situations where departure from the said rule may be necessitated but then the reasons for the departure must be rational and should not be suggestive of discrimination and that nothing should be done which gives an appearance of bias, jobbery or nepotism.

86. The statement of law in **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295** was echoed again in **Haji T.M.**

**Hassan Rawther v. Kerala Financial Corporation, (1988) 1 SCC 166**, wherein this Court reiterated that the public property owned by the State or by an instrumentality of State should be generally sold by public auction or by inviting tenders. It was emphasised that this rule has been insisted upon not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities and to obviate the factors like bias, favoritism or nepotism. Clarifying that this is not an invariable rule, the Court reiterated that departure from the rule of auction could be made but then it must be justified.

87. The above principle is again stated by this Court in **M.P. Oil Extraction & Anr. v. State of M.P. & Ors., (1997) 7 SCC 592**, in which this Court said that distribution of largesse by inviting open tenders or by public auction is desirable but it cannot be held that in no case distribution of such largesse by negotiation is permissible.

88. In **Netai Bag & Ors. v. State of West Bengal & Ors., (2000) 8 SCC 262** this Court said that when any State land is intended to be transferred or the State largesse is decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people as that would be a sure method of guaranteeing compliance with mandate of Article 14 of the Constitution but non-floating of tenders or not holding public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner.

89. In **Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors., (2009) 7 SCC 561** the matter before this Court related to the selection of contractor for development of the port of Pondicherry without floating a tender or holding public auction. The Court said that where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging development of the port, the State was not bound to advertise and tell the people that it wanted development of the port in a particular manner and invite those interested to come up with proposals for the purpose.

90. There are numerous decisions of this Court dealing with the mode and manner of disposal of natural resources but we think it is not necessary to refer to all of them. Having indicated the view taken by this Court in some of the cases, now we may turn to **2G case, Centre for Public Interest**

***Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1.*** In that case, the two-Judge Bench of this Court stated that a duly publicised auction conducted fairly and impartially was perhaps the best method for alienation of natural resources lest there was likelihood of misuse by unscrupulous people who were only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. Court laid emphasis that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.

91. The above view in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** necessitated the reference by the President of India to this Court under Article 143(1) of the Constitution. The first two questions ? Question 1 and Question 2 ? referred to this Court for consideration and report read as under:

“Question 1	Whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions?
Question 2	Whether a broad proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to several judgments of the Supreme Court including those of the larger Benches?

92. The Constitution Bench which dealt with the above reference observed that the answer to the following three questions would provide comprehensive answer to the parent question, viz., Question 1:

- (i) Are some methods ultra vires and others intra vires the Constitution of India, especially Article 14?
- (ii) Can disposal through the method of auction be elevated to a constitutional principle?
- (iii) Is this Court entitled to direct the executive to

*adopt a certain method because it is the "best" method? If not, to what extent can the executive deviate from such "best" method?*

93. The Constitution Bench clarified that the statement of law in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction was confined to the specific case of spectrum and not for dispensation of all natural resources. The Constitution Bench said that findings of this Court in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** were limited to the case of spectrum and not beyond that and that it did not deal with the modes of allocation for natural resources other than spectrum.

94. The Constitution Bench while dealing with the aspect of disposal of natural resources other than auction, divided the consideration of this aspect under two heads, viz., "Legitimate deviations from auction" and "Potential of abuse". Under the head "Legitimate deviations from auction" the Court considered the earlier decisions of this Court in **Kasturi Lal Lakshmi Reddy & Ors. v. State of J&K & Anr., (1980) 4 SCC 1**, **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295**, **Haji T.M. Hassan Rawther v. Kerala Financial Corporation, (1988) 1 SCC 166**, **M.P. Oil Extraction & Anr. v. State of M.P. & Ors., [(1997) 7 SCC 592]**, **Netai Bag & Ors. v. State of West Bengal & Ors., (2000) 8 SCC 262** and **Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors., (2009) 7 SCC 561**, which we have briefly noted above, and it was held that there is no constitutional mandate in favour of auction under Article 14. In the main judgment (paras 129 to 131, pg. 92), the Constitution Bench stated as under:

"129. Hence, it is manifest that there is no constitutional mandate in favour of auction under Article 14. The Government has repeatedly deviated from the course of auction and this Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. Essentially whenever the object of policy is anything but revenue maximization, the Executive is seen to adopt methods other than auction.

130. *A fortiori*, besides legal logic, mandatory auction may be contrary to economic logic as well. Different

resources may require different treatment. Very often, exploration and exploitation contracts are bundled together due to the requirement of heavy capital in the discovery of natural resources. A concern would risk undertaking such exploration and incur heavy costs only if it was assured utilisation of the resource discovered; a prudent business venture, would not like to incur the high costs involved in exploration activities and then compete for that resource in an open auction. The logic is similar to that applied in patents. Firms are given incentives to invest in research and development with the promise of exclusive access to the market for the sale of that invention. Such an approach is economically and legally sound and sometimes necessary to spur research and development. Similarly, bundling exploration and exploitation contracts may be necessary to spur growth in a specific industry.

131. Similar deviation from auction cannot be ruled out when the object of a State policy is to promote domestic development of an industry, like in *Kasturi Lal's case*, discussed above. However, these examples are purely illustrative in order to demonstrate that auction cannot be the sole criteria for alienation of all natural resources."

95. While dealing with the argument that even if the method of auction was not a mandate under Article 14, it must be the only permissible method due to the susceptibility of other methods to abuse, the Court under the head "Potential of abuse" held that a potential for abuse cannot be the basis for striking down the method as ultra vires the Constitution. The Court noted two decisions of this Court in **R.K. Garg v. Union of India & Ors., (1981) 4 SCC 675** and **D.K. Trivedi & Sons & Ors. v. State of Gujarat & Ors., 1986 Supp SCC 20** and held that neither auction nor any other method of disposal can be held ultra vires the Constitution merely because of a potential abuse. The Constitution Bench (para 135, pgs. 93-94) stated as under:

"135. Therefore, a potential for abuse cannot be the basis for striking down a method as ultra vires the Constitution. It is the actual abuse itself that must be brought before the Court for being tested on the anvil of constitutional provisions. In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an unconstitutional methodology either. These drawbacks include cartelization, "winners curse" (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or

where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licenses for exploitation of more resources than he can pragmatically execute), etc. However, all the same, auction cannot be called *ultra vires* for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximization is a priority. Therefore, neither auction, nor any other method of disposal can be held *ultra vires* the Constitution, merely because of a potential abuse."

96. In **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]** the Constitution Bench, in the main judgment, thus, concluded that auction despite being a more preferable method of alienation/allotment of natural resources cannot be held to be constitutional requirement or limitation for alienation of all natural resources and, therefore, every method other than auction cannot be struck down as *ultra vires* the constitutional mandate. The Court also opined that auction as a mode cannot be conferred the status of a constitutional principle. While holding so, the Court held that alienation of natural resources is a policy decision and the means adopted for the same are, thus, executive prerogatives. The Court summarised the legal position as under:

"146. To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction *vis-a-vis* other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are *ultra vires* and *intra vires* the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is

*patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.*

*147. Finally, market price, in economics, is an index of the value that a market prescribes to a good. However, this valuation is a function of several dynamic variables: it is a science and not a law. Auction is just one of the several price discovery mechanisms. Since multiple variables are involved in such valuations, auction or any other form of competitive bidding, cannot constitute even an economic mandate, much less a constitutional mandate.*

*148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.*

*149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."*

*97. J.S. Khehar, J., while concurring with the main opinion has stated that auction is certainly not a constitutional mandate in the manner expressed, but it can be applied in some situations to maximise revenue returns, to satisfy legal and constitutional requirements. In his view, if the State arrives at a conclusion, in a given situation, that maximum revenue would be earned by auction of the particular natural resource, then that alone would be the process which it would have to adopt. In the penultimate para of his opinion, J.S. Khehar, J., observed," there can*

be no doubt about the conclusion recorded in the "main opinion" that auction which is just one of the several price recovery mechanisms, cannot be held to be the only constitutionally recognised method for alienation of natural resources. That should not be understood to mean, that it can never be a valid method for disposal of natural resources ".

98. In **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]**, the Constitution Bench said that reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). In the main judgment, with reference to Article 39(b), the Court stated as follows:

"113. The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on "distribution" built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing "distribution" is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word "distribution". Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately sub-serve the "common good".

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115. It can thus, be seen from the aforequoted paragraphs that the term "distribute" undoubtedly, has wide amplitude and encompasses all manners and methods of distribution, which would include classes, industries, regions, private and public sections, etc. Having regard to the basic nature of Article 39(b), a narrower concept of equality under Article 14 than that discussed above, may frustrate the broader concept of distribution, as conceived in Article 39(b). There cannot, therefore, be a cavil that "common good" and "larger public interests" have to be regarded as constitutional reality deserving actualization.

116. *The learned counsel for CPIL argued that revenue maximization during the sale or alienation of a natural resource for commercial exploitation is the only way of achieving public good since the revenue collected can be channelized to welfare policies and controlling the burgeoning deficit. According to the learned counsel, since the best way to maximise revenue is through the route of auction, it becomes a constitutional principle even under Article 39(b). However, we are not persuaded to hold so. Auctions may be the best way of maximizing revenue but revenue maximisation may not always be the best way to subserve public good. "Common good" is the sole guiding factor under Article 39(b) for distribution of natural resources. It is the touchstone of testing whether any policy subserves the "common good" and if it does, irrespective of the means adopted, it is clearly in accordance with the principle enshrined in Article 39(b).*

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119. *The norm of "common good" has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional yardstick?it would depend on the economic and political philosophy of the Government. Revenue maximisation is not the only way in which the common good can be subserved. Where revenue maximisation is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method. Where revenue maximisation is not the object of a policy of distribution, the question of auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations.*

120. *Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximisation, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies? Article 14 does not predefine any economic policy as a constitutional mandate. Even the mandate of Article 39(b) imposes no restrictions on the means adopted to sub-serve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/ allocation of natural resources to the highest bidder may not necessarily be the only way to sub-serve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."*

99. *In light of the above legal position, the argument that auction is a bestway to select private parties as per Article 39(b) does not merit acceptance. The emphasis on the word "best" in Article 39(b) by the learned senior counsel for the intervener does not deserve further discussion in light of the legal position exposted by the Constitution Bench in **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]** with reference to Article 39(b). We are fortified in our view by a recent decision of this Court (3-Judge Bench) in **Goa Foundation v. Union of India and Others, (2014) 6 SCC 590** wherein following **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]**, it is stated, "...it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made thereunder and in consonance with the constitutional provisions?"*

24. As described in the EMGSM 2020, Mining Plan is an important document to assist the mine owner to operate the mine in a scientific manner. There is no practice for regular replenishment study to ascertain the rate of depositing, plan and section needs to be prepared based on the restrictions provided in letter of intent and provisions of Sustainable Sand Mining Management Guidelines 2016. Therefore, granting EC on the basis of Mining Plan is in violation of the Guidelines and against the principles of sustainable sand mining. Considering the importance of district survey report, the Ministry of Environment Forest and climate change, after consultation with experts dealing with mining-related matters, formulated the guidelines for the preparation of comprehensive District Survey Report for sand mining. It accordingly, prescribed that District Survey Report for sand mining should be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (LoI) by Mining department or department dealing the mining activity in respective states. DSR is to be approved at the level of SEIAA with the help of SEAC. It is surprising that MPSEIAA is not

taking DSR or Annual Replenishment Study (ARS) into consideration. Had DSR and ARS taken into consideration the discrepancy between the quantity of sand given in NIT and EC can be easily avoided and sand mining would be sustainable. In addition to that it would also eliminate the chances of misuse of EC for illegal mining.

25. Another category of cases includes those in which the mining areas (Khasra/survey numbers) are not given in NIT but EC are granted even for them. Obviously such EC can lead to illegal mining as well as loss of exchequer to the State. It would also disrupt the system of sustainable mining and escape all kinds of monitoring and supervision, as EC would be available but the mining department would not be looking after them. It is completely out of sync so far as the mining administration in States exists.

**L.** The matter of procedure for DSR was considered by Principal Bench of this Tribunal in O.A. No. 360/2015 vide order dated 26.02.2021 and necessary directions and the method of implementation were discussed in the following manner :-

***“Procedure for DSR/EC***

*13. Vide order dated 14.10.2020 in O.A. No. 40/2020, Pawan Kumar v. State of Bihar & Ors., the issue of preparation of District Survey Report (DSR) by Experts was considered. Vide Notification dated 25.07.2018 issued by the MoEF&CC, under Section 3(2)(v) of the EP Act, 1986 amending EIA Notification dated 14.09.2006, procedure for preparation of DSR for sand mining/riverbed mining was laid down. The DSR is crucial as it contains Environment Management plan, including the replenishment study and other safeguards and is the basis to consider the environment impact of mining based on which decision to grant the Environmental Clearance is taken. The Tribunal held that for such crucial exercise, the Experts should be out of those accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India (NABT/QCCI) in terms of O.M. of MoEF&CC dated 16.03.2010. Verification by the District Magistrate and evaluation*

by the SEAC was also necessary. Accordingly, following directions were issued in relation to a matter arising from the State of Bihar:-

“(ii) As the DEIAA is not functioning as a consequence of the decision of the Tribunal in Satendra Pandey (supra), the DSR shall be prepared through a consultant(s) accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India in terms of O.M. of MoEF&CC dated 16.03.2010.

(iii) The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the parameters prescribed in the SSMMG2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regard to the fact that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements.

(iv) While preparing the DSR, the MoEF&CC Accredited Agency/Consultant shall scrupulously follow the procedure and the parameters laid down under the SSMMG-2016 and EMGSM2020 read in sync with each other.”

14. Considering the above, vide order dated 04.11.2020 in O.A. No. 726 of 2018, *Rupesh Pethe v. State of M.P. & Ors.*, the Tribunal directed that the above direction ought to be followed pan India, as follows:-

“5. The above direction may be followed by the State of MP also for the sake of uniformity. Further information required to be furnished is about the extent of illegal mining, extent of action taken, including the compensation recovered, vehicles seized and other coercive measures and impact of such action. The State of M.P. may compile relevant directions on the subject including the binding order of any Courts or Tribunal. This exercise may be undertaken jointly by the Secretary Geology and Mining, Member Secretary State PCB and Member Secretary SEIAA. In light of above, the State may further revise its policy and exercise. Let further compliance status be

*furnished before the next date by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.*

*6. We are of the view that the above directions need to be followed by all other States where the issue of mining is relevant.*

*7. A copy of this order be forwarded to the Chief Secretaries of all the States and UTs by e-mail for compliance.”*

### ***Adverse impact of unscientific/unregulated Sand Mining***

*15. It is undisputed that there is huge degradation of environment on account of unregulated sand mining remains which is otherwise lucrative activity. It poses threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird species, increase saline water in the rivers. It has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand. The Hon'ble Supreme Court (in Deepak Kumar, supra) noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and ground waters. A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3*

*meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. It was noted that in-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.*

16. *In State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, at page 790, it was observed :*

*“32. The policy and object of the Mines and Minerals Act and Rules have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature. The Court cannot lose sight of the fact that adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service Report. As per the contents of the Report, lack of proper scientific methodology for river sand mining has led to indiscriminate sand mining, while weak governance and corruption have led to widespread illegal mining. While referring to the proposition in India, it was stated that sand trading is a lucrative business, and there is evidence of illegal trading such as the case of the influential mafias in our country.”*

*“33. The mining of aggregates in rivers has led to severe damage to rivers, including pollution and changes in levels of pH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal of more than 12 million tonnes of sand a year from Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 cm a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a*

*loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.*

*34. The Report also dealt with the astonishing impact of sand mining on the economy. It states that tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.*

*35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors—beaches themselves. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on instream*

*biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow paths.*

*.....Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand and gravel mining from riverbeds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the streambed and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from riverbeds may also cause the entire stream-bed to degrade to the depth of excavation.”*

26. Mining within the State is required to be regulated not only by the Mining Department but also by the State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and by the MoEF& CC under the Environment (Protection) Act, 1986. The Environmental Laws override other laws and any provision contrary in the Mines Act, 1952 will not stay in the way of enforcing environment norms. The Enforcement and Monitoring Guidelines for Sand

Mining, 2020 (EMGSM-2020) seeks to provide effective enforcement and monitoring from the stage of identification of source to its dispatch and in use which requires environment of all stakeholders, Central Government, State Government, Lease Holders, Mine Owners, Distributors, Dealers, Transporters and Consumers. The guidelines issued from the MoEF&CC makes EC mandatory irrespective of the area of mining lease, followed by monitoring in terms of the Environment Management Plan, using IT and IT enabled services.

27. Dealing the similar matter in O.A. No. 173/2018(EZ) Sudarsan Das Vs State of West Bengal & Ors. vide order dated 04.09.2018 this Tribunal observed as follows :-

*“18. We may note the salient features of the EMGSM-2020, which are supplemental to existing SSMG-2016 and seek to provide effective enforcement and monitoring from the stage of identification of source to its dispatch and end use which requires involvement of all stakeholders viz. Central Government, State Government, Leaseholders/Mine Owners, Distributors, Dealers, Transporters and Consumers (bulk & retail). EMGSM refer to the judgment of the Hon’ble Supreme Court in Deepak Kumar Vs. State of Haryana & Ors. (2012) 4 SCC 629 making EC mandatory irrespective of the area of mining lease, followed by monitoring in terms of the Environment Management Plan, using IT and IT enabled services. Monitoring has to be with reference to quantity of mined material, transportation with a view to promote environmental protection, limit negative physiological, hydrogeological and social impacts underpinning sustainable economic growth. Observations in the order of this Tribunal dated 04.09.2018 in O.A. 173/2018 in Sudarsan Das vs. State of West Bengal & Ors. has also been referred to as follows:*

*“There can be no two views that an effective institutional monitoring mechanism is required not only at the stage when Environmental Clearance is granted but also at subsequent stages”.*

*“The guidelines focus on the preparation of District Survey Report and the Management Plan” ...*

*We are of the view that all the safeguards which are suggested in sustainable sand mining guidelines as well as notification dated 15.01.2016 ought to be scrupulously followed.” ...*

*It is a known fact that in spite of the above-suggested guidelines being in existence, on the ground level, illegal mining is still going on. The existing mechanism has not been successful and effective in remedying the situation.”*

*...*

*Since there is an utter failure in the current monitoring mechanism followed by the State Boards, SEIAAs and DEIAAs, it is required to be revised for effective monitoring of sand and gravel mining and a dedicated monitoring mechanism be set up.”*

*Further reference has been made to the directions in the order dated 05.04.2019 requiring the 17 States, which were party before the Tribunal viz. West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh, to follow the revised Guidelines and to review their respective monitoring mechanism. It is then stated that with the object of regulating the mining, the sources of sand and steps required are mentioned which provide for District Survey Report (DSR), Mining Plan, replenishment study, consideration of environment impact while granting EC, laying down conditions for EC, monitoring of transportation to the end user to ensure that only legally mined material is transported. There is need to balance between deposition and extraction of sand as per replenishment study, maintaining surveillance, using Unmanned Artificial Vehicles (UAVs)/Drone for reserves estimation, quantity estimation, land use monitoring. Details about all these aspects have been mentioned in the said Guidelines. With regard to post EC monitoring, there is a provision for environment audit, monitoring of sale and purchase by developing online portal and laying down the levels of monitoring i.e. Level 1- Reach/ Stockyard level monitoring, Level 2 - Transportation monitoring, Level 3 - End consumer monitoring/ bulk consumer, Level 4 - Indirect monitoring.*

Reference has then been made to the High-Powered Committee incorporating safeguards to be adopted by the project proponents. There is also provision for assessment of compensation for the ecological damage by the State/ PCB/ any other Authority. Inter District and Inter State boundaries are separately dealt with. The uniform monitoring mechanism stipulates:

**“ 9.4. Monitoring Mechanism**

xxx

.....xxx.....xxx.....

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1. All precaution shall be taken to ensure that the water stream flows unhindered and process of Natural river meandering doesn't get affected due to mining activity.
2. River mining from outside shall not affect rivers, no mining shall be permitted in an area up to a width of 100 meters from the active edge of embankments or distance prescribed by the Irrigation department.
3. The mining from the area outside river bed shall be permitted subject to the condition that a safety margin of two meters (2 m) shall be maintained above the groundwater table while undertaking mining and no mining operation shall be permissible below this level unless specific permission is obtained from the Competent Authority. Further, the mining should not exceed nine-meter (9 m) at any point in time.
4. Survey shall be carried out for identifying the stretches having habitation of freshwater turtles or turtle nesting zones. Similarly, stretches shall be identified for other species of significant importance to the river ecosystem. Such stretch with adequate buffer distance shall be declared as no-mining zone and no mining shall be permitted. The regulatory authority as defined for granting Environmental Clearance, while considering the application of issuance of ToR and/or EC for the adjacent block (to non- mining zone) of mining shall take due precaution and impose requisite conditions to safeguard the interest of such species of importance.
5. District administration shall provide detailed information on its website about the sand mines in its district for public information, with an objective to extend all information in public domain so that the citizens are aware of the mining activities and can also report to the district administration on any deviation observed. Appropriate feedback and its redressal mechanism shall also be made operational. The details shall include, but not limited to, lease area, geo- coordinates of lease area and mineable area, transport routes, permitted capacity,

regulatory conditions for operation including mining, environmental and social commitments etc.

6. *A website needs to be maintain to track the movement of centralised sand mining and a Centralised server system should be made to manage the data related to sand mining across India.*
7. *The mineral concession holders shall maintain electronic weighbridges at the appropriate location identified by the district mining officer, in order to ensure that all mined minerals from that particular mine are accounted for before the material is dispatched from the mine. The weighing bridge shall have the provision of CCTV camera and all dispatch from the mine shall be accounted for.*
8. *The mineral movement shall be monitored and controlled through the use of transit permit with security features like printing on IBA approved MICR papers, Unique bar/QR, fugitive ink background, invisible ink mark, void pantographs and watermarks papers or through use of RFID tagged transit permits and IT /IT-enabled services. Such monitoring system shall be created and made operationalised by State Mining department and district level mining officer shall be responsible for ensuring that all legal and operational mines are connected and providing the requisite information on the system. Regular check and associated report shall be submitted to DLTF and uploaded on the website.*
9. **State Government shall constitute a District Level Task Force (DLTF) under the Chairmanship of Deputy Commissioner/District Magistrate/Collector with Superintendents of Police and other related senior functionaries (District Forest Officer, District transport officer, Regional officer- SPCBs, Senior Officer of Irrigation Department, District Mining Officer) with one/two independent member nominated by the Commissioner concerned. The independent member shall be retired government officials/teacher or ex-serviceman or ex-judiciary member.**

**The DLTF shall keep regular watch over the mining activities and movement of minerals in the district. The DLTF shall have its regular meeting, preferably every month to reconcile the information from the mining activity, and other observations made during the month and take appropriate corrective and remedial action, which may include a recommendation for revoking mining lease or environmental clearance. The DLTF may constitute an independent committee of the expert to assess the environmental or ecological damage caused due to illegal mining and recommend recovery of environmental compensation from the miner's concern. The recommendation may also include action under the provision of E(P) Act, 1986.**

10. *The area not identified for mining due to restriction or otherwise are also to be monitored on a regular basis by the DLTF. Any observations of mining activity from the restricted area shall be reported and corrective measures shall be initiated on an urgent basis by the DLTF.*
11. *The dispatch routes shall be defined in the Environmental Clearance and shall be avoided through densely habituated area and the increase in the number of vehicle movement on the road shall be in agreement with the IRC guidelines / carrying capacity of the road. The alternate and dedicated route shall be explored and preferred for movement of mining to avoid inconvenience to the local habitat. The mining production capacity, by volume/weight, shall be governed by total permissible dispatch calculated based on the carrying capacity of dispatch link roads and accordingly, the production should be regulated.*
12. *The movement of minerals shall be reconciled with the data collected from the mines and various Naka/check posts. Other measures may also include a general survey of the potential mineable area in the district which has not been leased/auctioned or permitted for mining due to regulatory or other reasons.*
13. *The location and number of check post requirement shall be reviewed by DLTF on a regular basis so that appropriate changes in location/number could be made as per the requirement. Such review shall be carried out on a regular basis for the district on inter-state boundary or district providing multiple passages between two districts of different states.*
14. ***The district administration shall compile the information from their district of the permitted and legal mined out minerals and other details and share such information and intelligence with the officials of the adjoining district (Inter or/and Intra State) for reconciliation. The information shall include the area of operation, permissible quantity, mined out minerals (production) the permitted route etc., and other observations, especially where the mine lease boundary is congruent with the district boundary. Such coordination meeting shall be held on a quarterly basis, alternatively in two district headquarters or any other site in two districts decided mutually by the District Magistrate.***
15. ***The mining department shall include submission of an annual environmental audit report as one of the conditions in the mining lease agreement. The annual audit for each river bed mining lease shall be carried out and the audit report shall be uploaded on the website of district administration. The audit shall be carried out by an independent team of 3 members nominated by District Collector/Magistrate/Commissioner comprising of Ex- Serviceman, Ex-Government officials of repute, Professor or Person having***

**experience of mining/environment. The guidelines and method of the audit shall reflect adequately the monitor-able parameters and output and reflect the compliance status with respect to the conditions imposed by the regulatory authorities including conditions of Environmental clearance.**

16. *The in-situ and ex-situ environmental mitigative measures stipulated as EMP, CER, CSR and other environmental and safety conditions in mines including the welfare of labours shall properly reflect in the audit report.*

#### **9.5 Suggestive additional requirements are-**

##### **i. The requirement at the Mine Lease Site:**

- a. *Small Size Plot (Up to 5 hectares): Android Based Smart Phone.*
- b. *Large Size Plots (More than 5 hectares): CCTV camera, Personal Computer (PC), Internet Connection, Power Back up.*
- c. *Access control of mine lease site.*
- d. *Arrangement for weight or approximation of the weight of mined out mineral on the basis of the volume of the trailer of vehicle used.*

##### **ii. Scanning of Transport Permit or Receipt and Uploading on Server:**

- a. *Website: Scanning of receipt on mining site can be done through barcode scanner and computer using the software;*
- b. *Android Application: Scanning on mining site can be done using Android Application using a smartphone. It will require internet availability on SIM card;*
- c. *SMS: Transport Permit or Receipt shall be uploaded on the server even by sending SMS through mobile. Once Transport Permit or Receipt get uploaded, a unique invoice code gets generated with its validity period.*

##### **iii. Proposed working of the system:**

*The State Mining Department should print the Transport Permit or Receipt with security features and issue them to the mining leaseholder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferable with pre-fixed quantity, so the total quantity gets determined for the receipts issued. When the Transport Permit or Receipt barcode gets scanned and invoice is generated, that particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.*

**iv. Checking On Route:**

*The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using the website, Android Application and SMS.*

**v. Breakdown of Vehicle:**

*In case the vehicle break-down, the validity of Transport Permit or Receipt shall be extended by sending SMS by the driver in specific format to report the breakdown of the vehicle. The server will register this information and register the breakdown. The State can also establish a call center, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server or call center.*

**vi. Tracking of Vehicles:**

*The route of the vehicle from source to destination can be tracked through the system using checkpoints, RFID Tags, and GPS tracking.*

**vii. Alerts or Report Generation and Action Review:**

*The system will enable the authorities to develop a periodic report on different parameters like daily lifting report, vehicle log or history, lifting against allocation, and total lifting. The system can be used to generate auto mails or SMS. This will enable the District Collector or District Magistrate to get all the relevant details and shall enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle shall be tracked.*

*The monitoring of mined out mineral, environmental clearance conditions and enforcement of Environment Management Plan will be ensured by the regulatory authority and the State Pollution Control Board or Committee. The monitoring arrangements envisaged above shall be put in place. The monitoring of enforcement of environmental clearance conditions shall be done by the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change and the agency nominated by the Ministry for the purpose.*

*Some of the State has followed the SSMMG-2016 and has also improvised or customized on the provisions given therein, and are successfully in operation. Salient provision adopted at different stages of sand mining in the state of Tamil Nadu is given as Annexure VIII.*

**9.6 Actions against illegal excavation and transport**

*Solapur district administration in Maharashtra had adopted a multi-pronged strategy to penalize the persons involved in illegal excavation and transport which resulted in a significant increase in revenue earned by the state. Following rules and procedures as mentioned in these guidelines will add to the costs of PP. Those involved in illegal activities are not required to bear these costs and this will make their supply in the market cheaper (though illegal). This will put the players running their business by following rules and procedures laid down by the government to disadvantage as far as the selling price is considered. Therefore, it is necessary to come down heavily on those involved in illegal excavation/transport, so that there is no incentive for players to abide by the rules.*

**The following action may be taken to achieve this deterrence against illegal business:**

1. *The action should be taken under all legal options available simultaneously. Thus, after identifying the case of illegal excavation, storage and/or transport of minor minerals (including sand), fine should be levied as per the land revenue laws/code(s) of the state. In addition, FIR should be lodged in the police station under relevant sections of law including sec 379 IPC. In addition, action under the Motor Vehicle Act, 1989 and relevant rules should initiate to cancel/suspend the driving license of the driver and permit of the vehicle. Further, action should be initiated under provisions in the Income Tax Act, 1961 for unaccounted income and under the Central Goods and Services Act, 2017 for nonpayment of GST. (Earlier this was done under the state act pertaining to Value Added Tax/Sales Tax). Habitual offenders should also be taken up under local state laws for externment and/or preventive action. It is clarified that as per law, it is possible to take all actions under various laws simultaneously for one offence. What is prohibited in law is an action under the same law for the same act more than once.*
2. *The action should be taken against all persons responsible. Often, there is a tendency to penalize only the drivers of the vehicles. The mafia of illegal mining and transport is much bigger and drivers are only one part of the system. It is necessary to identify all those involved in the offence. It is usually not possible to reach the place of excavation without creating a motorable pathway up to the same through land which may be private land. Such role of such landowners needs to be looked into for each offence and proceeded against simultaneously. Further, the role of vehicle owners needs to be probed. Role of the person who allowed his land to be used for illegal excavation and storage should also be examined. Lastly, the person who purchases such sand should also be probed. The legal proceedings stated above needs to be initiated against all of these together. An attempt should*

*be made to fix the financial responsibility in joint and several ways so that recovery is easier.*

3. *There may be discretion available in law about the extent of the penalty to be levied. If such discretion is very wide, then it is advisable that guidelines may be laid down to reduce such discretion in law for levying penalties. For example, in Maharashtra, Land Revenue Code, fine of any amount of penalty up to thrice the value of the sand can be levied. Solapur district administration had instructed Tahsildars and SDMs not to use discretion and levy the fine of three times the value. Availability of discretion makes junior level functionaries susceptible to pressures and it may also lead to corrupt practices.*
4. *It is emphasized that actions, as stated above, are most important to ensure that the IT-based system works. If these exemplary actions are not taken against everyone, it shall create a strong disincentive to those involved in legal excavation and transportation. For IT-based (or any other) legal system to work, it is necessary to ensure that illegal system stops working altogether.”*

**M.** Hon’ble the Supreme Court of India in State of Bihar and Ors vs. Pawan Kumar and Ors etc (Civil Appeal No. 3661-3662 of 2020) decided on **10<sup>th</sup> November, 2021** considered the essentiality and prerequisite of DSR and held as follows:

*“7. It cannot be in dispute that though the developmental activities are not stalled, the environmental issues are also required to be addressed. A balanced approach of sustainable development ensuring environmental safeguards, needs to be resorted to. At the same time, it also cannot be ignored that when legal mining is banned, it gives rise to mushroom growth of illegal mining, resulting into clashes between sand mafias, criminalization and at times, loss of human lives. It also cannot be disputed that sand is required for construction of public infrastructural projects as well as public and private construction activities. A total ban on legal mining, apart from giving rise to illegal mining, also causes huge loss to the public exchequer.*

*8. Taking into consideration these aspects of the matter, we propose to issue certain interim directions.*

*9. The Tribunal, in the case of Satendra Pandey (supra), has found that the notification dated 15th January 2016, which provided Environmental Clearance to be given by the District Environment Impact Assessment Authority (hereinafter referred to as the “DEIAA”)*

was not in consonance with the judgment of this Court in the case of *Deepak Kumar v. State of Haryana and Others*<sup>2</sup>. The Tribunal therefore in *Satendra Pandey (supra)*, had directed Ministry of Environment, Forest and Climate Change (hereinafter referred to as “MoEF and CC) to take steps to revise the procedure laid down in the notification dated 15th January 2016. It is to be noted that MoEF and CC, in accordance with the directions of the Tribunal, had issued *Enforcement and Monitoring Guidelines for Sand Mining* (hereinafter to referred to as “the 2020 guidelines”) in the month of January 2020. Chapter 4 of the 2020 guidelines deals with identification of possible sand mining sources and preparation of DSR. It will be relevant to refer to Clause 4.1.1 (a), (o) and (p) of the 2020 guidelines:

**“4.1 Identification of possible sand mining sources and preparation of District Survey Report (DSR)**

**4.1.1 Preparation of District Survey Report.**

*District Survey Report for sand mining shall be prepared before the auction/ e-auction/ grant of the mining lease/ Letter of Intent (Loi) by Mining department or department dealing the mining activity in respective states.*

*o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc, shall be avoided. For this, a sub divisional committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as Annexure II. The Sub Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure III. The details of the transportation need to be provided as in Annexure IV.*

*p) **Public consultation-** The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining' lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the sub divisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/ Khatedari land, de-*

*siltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure-V. The details regarding cluster and contiguous cluster needs to be provided in Annexure-VI. The details of the transportation need to be provided in Annexure-VII.”*

*10. It could thus be seen that in accordance with the 2020 guidelines, the DSR is required to be prepared before the auction/e-auction/ grant of mining lease by Mining Department or Department dealing with mining activity in the respective States. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a sub divisional committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The sub divisional committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexure appended to the said policy.*

*11. It is further to be noted that Appendix-X of the notification dated 15th January 2016, issued by MoEF and CC also provides for composition of the sub divisional committee:*

*“A Sub Divisional Committee comprising of Sub Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.”*

*12. It is to be noted that with the advent of modern technology, various technological gadgets like Drones and satellite imaging etc. can be used for identification of the potential sites and preparation of the DSR and also to check misuse and unauthorized mining.*

*13. We further find that when the 2020 guidelines as well as the notification issued by MoEF and CC of 2016 itself provide for constitution of sub divisional committees comprising of the officers of the State Government from various Departments for identification of the potential sites for mining, there would be no necessity of the DSRs being prepared through private consultants as directed by the Tribunal in the impugned order. The sub divisional committee consists of various officers from Revenue Department, Irrigation Department, State Pollution Control Board, Forest Department and*

Geology Mining Department of the State Government. They are better equipped to visit the sites and prepare the draft DSR for the concerned district. Apart from that, preparation of DSR through private consultants would also unnecessarily burden the public exchequer. We are therefore of the view that the direction in that regard issued by the Tribunal requires to be modified. We are further of the considered view that until the DSRs are finalized and granted approval by SEAC and SEIAA, it is appropriate that certain necessary arrangements are permitted so that the State can continue with legal mining activities. This apart from preventing illegal mining activities, would also ensure that the public exchequer is not deprived of its share in legalized mining.

14. We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14th October 2020, with the following directions:-

**(i) The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the sub divisional committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or mining officer. The same shall be prepared by** undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon;

**(ii) Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed;**

**(iii) Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.”**

**N. Conclusions****Issue No. 1**

28. Learned counsel appearing for the MPSEIAA has submitted that the procedure adopted by Mining Department for allotment of mining lease by issuing Notice Inviting Tender (NIT) is a preliminary process and is not a concern of SEIAA. Once the mining lease is allotted and mining plan is prepared and approved by the Mining Department and application is filed before SEIAA for grant of EC. When state land or natural resource is intended to be transferred, resort should be had to public option or transfer by way of inviting tender from the people that would be a sure method of guarantying compliance with the mandate of the Article 14 of the Constitution of India. Duly published auction conducted fairly and impartially is the best method of alienation of natural resources lest there is likelihood of misuse by unscrupulous people, who were only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. The disposal of natural resources is a facet of the use and distribution of such resources.

29. In view of the above, the answer is that where there is transfer of natural resource, the requirement of NIT is necessary and there must be description of area and quantity of mining in the document. If there is any expansion of business in the form of change of area, increasing area or increasing the quantity of sand mining it is within the definition of expansion of business and required fresh EC thus, the description of area and the quantity of mining is essential part to be included in the NIT.

**Issue No. 2**

30. In light of the settled proposition of law in Goa Foundation vs. Union of India 2014 (6) SCC 738 before transferring EC, environmental status of the sand quarry has to be ascertained. Transfer of EC without taking the

environmental considerations into account is brazen breach of law and abetment of destructive practices of sand mining.

The issue is decided accordingly.

**Issue 3, 4 and 5**

31. The contention of the Applicant/Appellants are that there are discrepancies in the quantity of sand mining sand quarry mentioned in the tender document and that is different in the Environment clearance granted for the specific quarry and the area (Khasra and Rakba) of the sand quarry mentioned in tender document is different in the Environmental Clearance granted for that specific sand quarries and that quantity over which environmental clearance is granted for a specific sand quarry is much above the quantity for which tender was floated over that specific sand quarry. The applicant in Original application No. 96 of 2020 has attached list A-1 (Para-4) which shows the discrepancies in number of mines and list annexure A-3 (Para-5) which shows that excess EC was granted as compared to NIT and there are certain number of mines for which EC was not granted. The list contains 33 numbers including the details of the districts and no detailed reply has been submitted by the MPSEIAA. During the course of hearing of Original Application this Tribunal constituted Committee of Expert members of State Authorities and after examination of some of the records they have filed a detailed chart in which it was found that there were discrepancies in the area of the lease mine and also in the quantity to be excavated. The list attached with the Joint Committee Report (F) shows mismatch not only the area but also in the quantity of sand to be excavated. Considering the discrepancies mentioned in the NIT and the EC granted the state has taken its decision to cancel the contract and a list has been submitted with the detail of 31 appeals/matter (Para 16, 18) relating to district Chhatarpur, Hosangabad and Panna where the lease has been cancelled or handed over and thus it is said that the appeal in these matters are infructuous. Though on the

grounds mentioned above, the appeals no. Appeal No. 25/2021, Appeal No. 27/2021, Appeal No. 31/2021, Appeal No. 37/2021, Appeal No. 60/2021, Appeal No. 49/2021, Appeal No. 48/2021, Appeal No. 30/2021, Appeal No. 42/2021, Appeal No. 39/2021, Appeal No. 45/2021, Appeal No. 69/2021, Appeal No. 29/2021, Appeal No. 50/2021, Appeal No. 36/2021, Appeal No. 41/2021, Appeal No. 35/2021, Appeal No. 32/2021, Appeal No. 02/2021, Appeal No. 05/2021, Appeal No. 38/2021, Appeal No. 34/2021, Appeal No. 33/2021, Appeal No. 03/2021, Appeal No. 04/2021, Appeal No. 51/2021, Appeal No. 53/2021, Appeal No. 57/2021 Appeal No. 54/2021, Appeal No. 64/2021, Appeal No. 55/2021 **stands disposed of** as being infructuous but the points for determination that there is mismatch in the production capacity mentioned in the Notice inviting Tender and the Environmental Clearance and the quantity of sand quarry mentioned in the tender document is different in the Environmental Clearance granted for specific sand quarry and there is Khasra and rakba which were not made clear and there is change in the Khasra no. and also the quantity of the sand mining and all these mining lease where there is change of Khasra no. and increase in the quantity to be excavated are in violation of environmental rules, intended to defeat or defraud the provisions of environmental rules. We direct the MPSEIAA and MPSEAC to refrain themselves from issuing any further EC without actually carrying out the Environment Impact Assessment of the sand quarry and carry out the technical scrutiny of the same.

**Issue No. 6 and 7**

32. The perusal of the record reveals that the quantity of sand which has already been excavated or a sand quarry which was belonging to the previous lease holder has not been subtracted while transferring the environmental clearance in favour of the successful bidder/tenderor and the details of sand quarry has not been mentioned in the tender document and inspite of all these facts the EC has been granted by the MPSEIAA. Madhya Pradesh rules, 2019 provides the Mining Plan which consist the

location of the mines, quantity of mineable sand available in the sand quarry and mining plans shall be prepared only on the basis of actual quantity available/estimated and all the mining operation shall be carried out in accordance with the approved mining plan. The permissible quantity shall be up to the mineable quantity fixed in mining plan and it is required to calculate the mine which has been excavated by the previous lease holder and to reduce and subtract the amount which has already been mined while transferring the EC but the same has not been done by the mining department while proceedings in case of transfer of EC. Accordingly, we are of the view that quantity of sand which has already been excavated over a sand quarry which was belonging to the previous lease holder must be subtracted and in the cases where nothing has been done in accordance with the rules, it is in violation of environmental rules and directly or indirectly result the damage of environment. The issue is decided accordingly. It is further clarified that Section 26 of the MP Rules, 2019 which empowers the operation of the mining till March, 2022 or for two years from date of lease in accordance with the provisions of rule issued under MP Rules, 2019 shall be read with the notification issued by the MoEF & CC as contained in Para 11 Sub Clause 3 which provides the lease in favour of successful bidder, only for two years from the date of commencement of new lease and further provides that it shall be lawful for the new lessee to continue mining operation as per terms and conditions of Environmental Clearance granted to the previous lessee for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance.

**Issue No. 8**

33. Requirement of District Survey Report (DSR), Environmental status of the quarry before transferring EC- As already discussed in above paragraphs, MoEF & CC has issued a guidelines named SSMG, 2016 as well as EMGSM, 2020 and before transferring EC environmental status of the quarry has to

be ascertained and transfer of EC without taking the environmental considerations into account is a brazen breach of law and abetment of destructive practices of sand mining and shall be in violation of Goa Foundation case (Supra). Thus, NIT in absence of any environmental status while transfer of EC should be taken into account in accordance with the sustainable guidelines. The issue is disposed of accordingly.

**Issue No. 9, 10**

34. The applicability of the law laid down by the Hon'ble Supreme Court of India in *State of Bihar Vs Pawan Kumar*.

We have gone through the orders and directions passed by the Hon'ble Supreme Court of India vide order dated 10th November, 2021 in Civil Appeal No. 3661-3662 of 2020 in *State of Bihar Vs Pawan Kumar & Ors*, where in the case of Bihar, certain directions were issued and substituted with reference to preparation of DSR. We deem it appropriate that the guidelines and directions issued by the Hon'ble Supreme Court of India vide order referred above are fully applicable in the present matter and State authorities are directed to act in accordance with direction issued by the Apex Court till the finalization of the DSR. In view of the above reference and in light of the directions issued in Goa Foundation case and the guidelines issued by the MoEF & CC in 2016, 2018 and 2020 referred above, the respondents, the State Authorities and the Mining Department are bound to prepare a District Survey Report.

**O. Considering the facts narrated above, the conclusions and directions are as follows:-**

- I. We direct the State to follow the guidelines issued in Sustainable Sand Mining Guidelines 2016 (SSMG-2016) as well as Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM-2020) and also enforce the mechanism for the preparation of DSR, Environment Management Plan,

Replenishment Studies, Mine Closure Plan, grant of EC, assessment and recovery of compensation, seizure and release of vehicles involved in illegal mining and other safeguards against violation, grievance redressal, accountability of the designated officers and periodical review at higher level of the State.

- II. A mechanism should be developed for periodic inspection by a five-members Committee, headed and coordinated by the SEIAA and comprising CPCB, State PCB and two expert members of SEAC dealing with the subject as directed by this Tribunal in O.A. No. 360/2015.
- III. The Authority constituted/nominated under Section 3(3) of the Environment (Protection) Act, 1986 as envisaged by Hon'ble the Supreme Court in Goa Foundation Vs. Union of India & Ors. and in the matter of T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SSC 61 may take further action. The monitoring must be ensured through the Chief Secretary by holding a meeting and issue the necessary guidelines and actions in accordance with the order passed by this Tribunal in O.A. No. 360/2015.
- IV. 31 appeals relating to 19 districts (Para-18) and the cases as contained in the letter dtd.07.01.2022 (Para-16) issued from the Madhya Pradesh State Mining Corporation Limited whose mining lease have been cancelled or surrendered became infructuous.
- V. The matter relating to 08 cases given in Table-1 (F) & discrepancies and variations as shown in Para 4 and 5, where there is a mismatch of khasra number, area, period or quantity of lease shall be reconsidered by the SEIAA and to take necessary action according to law.

- VI. E-auction/auction/tender should be done in accordance with Sustainable Sand Mining Guidelines 2016 as well as Enforcement and Monitoring Guidelines for Sand Mining 2020 and only where details of approved DSR and Annual Replenishment Study are available.
- VII. EC should be accorded only to the limit of auctioned and sustainably permissible quantity.
- VIII. In cases where ECs are transferred, present status of mining areas should be ascertained through ARS and DSR. ECs which have been transferred without the assessments of present environmental status, damages must be revisited by MPSEIAA before any mining is taken up on the basis of transferred ECs.
- IX. The orders and directions passed by Hon'ble Supreme Court of India vide order dated 10<sup>th</sup> November, 2021 in Civil Appeal No. 3661-3662 of 2020 in *State of Bihar Vs Pawan Kumar* must be complied with and to be effected in the State of Madhya Pradesh also.
- X. The conclusions as drawn in **Para-N** referred above must be complied with by the MPSEIAA and SEAC while dealing with the mining leases.

**Accordingly, all the Appeals and Original Applications stand disposed of.**

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

Dr. Arun Kumar Verma, EM

Dr. Afroz Ahmad, EM

February 22, 2022  
Appeal Nos. 25/2021 to 27/2021(CZ),  
and other connected matters  
PU

-TRUE COPY-

Item No. 2

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONE BENCH, BHOPAL**  
(Through Video Conferencing)

**Original Application No. 10/2022 (CZ)**

**(I.A. No. 13/2022)**

**(I.A. No. 28/2022)**

**(I.A. No. 29/2022)**

Ram Babu Gour

Applicant(s)

Versus

State of Madhya Pradesh &amp; Ors.

Respondent(s)

Date of hearing: **12.04.2022**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER**

**HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s):

Ms. Sadapurna Mukherjee, Adv.

For Respondent(s):

Ms. Parul Bhadoria, Adv.  
Mr. Sachin K. Verma, Adv.  
Dr. Sapna Aggarwal, Adv.  
Mr. Mayank Pandey, Adv.  
Mr. Amit Upadhayay, Adv.  
Mr. Vansdep Dalmia, Adv.

**ORDER**

1. The issues raised in this application are enforcement of Sustainable Sand Mining Management Guidelines 2016 and Enforcement and Monitoring Guidelines for Sand Mining 2020 for scientific and sustainable sand mining in the district of Raisen (Madhya Pradesh) in accordance with MoEF&CC Notification dated 15.01.2016 as amended on 25.07.2018 thereby identifying the potential sand Ghats and only thereafter auctioning the same in accordance with the District Survey Report (DSR).
2. It is further prayed to issue appropriate order restraining the respondents from auctioning mineable areas and consequently setting aside Notice Inviting E-auction dated 26.11.2021 of all Ghats for sand

block issued for allowing the District Survey Report for District Raisen (Madhya Pradesh). The contentions of the applicant are :

- i. That the sand mine in the absence of a final/ proper DSR obtained by the lessee contravenes the various decisions passed by the supreme court vide order Civil Appeal no.361 of 2020 in State of Bihar vs. Pawan Kumar and order in Special Leave Petition (C) No. 19628- 19629 of 2009 in the matter of Deepak Kumar etc. vs. State of Haryana and Others.
- ii. That an interim/draft District Survey Report was prepared for the District Raisen and the same was not finalized thereafter.
- iii. No public consultation wherein the comments of the various stockholders was sought on the list of mining lease to be auctioned
- iv. The State Government did not give any advertisement in the local and national newspaper for seeking comments of the general public on the list of mining lease included in the DSR.
- v. The DSR was not placed in the public domain for at-least one month from the date of publication of the advertisement for obtaining comments of the general public.
- vi. That final DSR being a mandatory pre-requisite for imitating the e-tendering process and an interim/Draft DSR could not have been acted upon. Thus by issuing the e-tendering notice and declaring successful bidders pursuant to the same is unreasonable and arbitrary approach of the respondents.

3. The matter was taken up by this Tribunal on 04.02.2022 and a committee headed by Principal Secretary, Mineral Resources Department, M.P. was constituted to submit the factual and action taken report. An application I.A. No. 13/2022 was also moved by the applicant, which was disposed of as follows :-

*11. The applicant has moved this application for an interim direction and argued that respondent has failed to strictly follow the mandatory procedure for preparation of a District Survey Report which is a prerequisite for granting any mining leases under the provisions of Environment (Protection) Act, 1986 as amended by the MoEF notification dated 15.01.2016 and 25.07.2018 and further that non preparation of DSR contravenes the provisions of direction issued from Hon'ble the Supreme Court passed in Civil Appeal no. 3661-3662 of 2020 in State of Bihar & Ors. vs. Pawan Kumar. & Others etc. and Tribunal's order passed in Anjaneer Kumar Vs. State of U.P. and further violates the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020.*

*12. It is further argued that all blocks of sand Ghats that are sought to be auctioned are of substantial area and any mining lease granted against the procedure under EIA notification 2006 would invariably be devastating and severe to the environment.*

*15. Learned Counsel for the applicant has referred the directions issued by Hon'ble Supreme Court of India in the case of State of Haryana Vs. Pawan Kumar & Others etc. in Civil Appeal No. 3661-3662 of 2020 order dated 10.11.2021. Relevant portions are quoted below :*

*14. We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14th October 2020, with the following directions:-*

- i) The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the sub-divisional committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation*

*Department, State Pollution Control Board or Committee, Forest Department, Geological or mining officer. The same shall be prepared by undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon;*

- ii) Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed;*
- iii) Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.”*

*16. Accordingly in light of the contentions raised by the Learned Counsel for the applicant and in view of the directions issued by the Hon’ble Supreme Court, we direct the respondents to act in accordance with the provisions of law and in accordance with the directions issued by the Hon’ble Supreme Court and we caution respondents for auctioning the Ghats as per Notice Inviting Tender dated 26.11.2021 till they are not in-consonance with the DSR prepared in terms*

*of the notifications of MoEF&CC, Sustainable Sand Mining Management Guidelines, 2016 and The Enforcement and Monitoring Guidelines for Sand Mining, 2020 and Respondents/Collector Raisen is directed to act in accordance with directions of Hon'ble Supreme Court and strictly observe, follow and enforce the directions issued by the Hon'ble Supreme Court of India.*

*17. We further direct SEIAA to strictly follow the guidelines mentioned above and to ensure strict compliance of the rules and the environmental laws. We further direct the State Pollution Control Board to enforce the rule of law and environmental laws and in-case of any violation immediate strict legal action should be initiated in addition to realisation of environmental compensation in accordance with the parameters laid down by the CPCB.*

4. In compliance of the order, the joint committee submitted the factual status as follows :-

***“The factual status :***

- i. Madhya Pradesh State Mining Corporation Ltd. has issued e-tender no. 277 on 5.10.2019 for the sand mines in year 2019 for 43 districts. Raisen district was also one of them and its 56 sand mines were included in e-tender for 1400000 m<sup>3</sup> sand quantity.*
- ii. The 56 sand mines (Copy of the 56 mines is enclosed as Annexure-III) were awarded to successful bidder Sh Rajendra Raghuvanshi, Bhopal vide letter dated 19.2.2020 for period upto 30.6.2023. The copy of the same is enclosed as Annexure-IV. The bidder has operated only 11 mines after obtaining Environmental Clearance & Consent to Operate from MP-SEIAA & MPPCB respectively.*
- iii. The District Survey Report, 2016 was valid during the allotment period. Copy of the DSR, 2016 is enclosed as Annexure-VI.*

- iv. *The successful bidder failed to deposit installment of February 2021; after due opportunity of hearing to the bidder; the bid was cancelled on 5.4.2021 by the Director, Geology and Mining, M.P. The bidder later appealed to the Mineral Resource Department of State Government with agreement to deposit the installment amount with interest against the cancellation order dated 5.4.2021. Further, vide order dated 6.7.2021; State government rejected the appeal of the bidder.*
- v. *The bidder, further approached Hon'ble High Court, Jabalpur vide W.P. 12606/2021. Hon'ble High Court vide order dated 2.9.2021 directed as:*

*“it is directed that if the petitioner deposits 50% of the amount of the demand notice issued on 26th of August, 2021, on or before 13th of September, 2021, the respondents shall not issue any fresh N.I.T. with regard to the contract in question.”*

*Further, vide order dated 14.9.2021 Hon'ble High Court extended the time to deposit the amount by 24.9.2021. Vide order dated 27.9.2021, Hon'ble court stated as:*

*“.....permitted to grant time to the petitioner upto 1<sup>st</sup> October, 2021 as last indulgence to deposit the aforementioned amount, failing which the writ petition shall stand dismissed without reference to the Court and the respondent/State would be free to go ahead with the process of issuing fresh NIT.”*

- vi. *As the petitioner haven't deposited the amount in compliance of the Hon'ble High Court order dated 27.9.2021; the petition was stand dismissed and District Collector, Raisen has issued e-tender no. 1100 on 26.11.2021 for 02 groups of the total 56 sand mines on prevailing Sand Rules, 2019 and DSR, 2016 for the remaining period upto 30.6.2023 as per the previous Notice Inviting e-Tender. The sand mines of the District*

*have been auctioned in two groups as per Notice Inviting e-Tender i.e. group-1 and group-2.*

*The bid for group – 1 of 36 sand mines of Bareli & Udaypura tehsil was awarded to successful bidder M/s Euphoria Mines & Minerals for sand quantity of 7,19,045M<sup>3</sup>.*

*The bid for group – 2 of 20 sand mines of Bari, Devari & Raisen was awarded to successful bidder M/s Pushpa Enterprises for sand quantity of 6,80,955M<sup>3</sup>.*

*On deposition of the 50% of the bid amount, The District Collector issued letter on 21.1.2022 and 8.02.2022 to M/s Euphoria Mines & minerals and M/s Pushpa Enterprises respectively.*

*M/s Euphoria Mines & Minerals has submitted mine plan for 34 mines to mine corporation and is in process of obtaining environmental clearance from SEIAA. Similarly, M/s Pushpa Enterprises has submitted mine plans for all the 20 sand mines and is in process of obtaining environmental clearance from SEIAA.*

- vii. It is to mention here that NEITHER the agreement NOR the possession of mines provided to successful bidders so far. And none of the mine is operational currently.*
- viii. Due to the procedural delay in cancellation of the successful bidder of 1st NIT i.e. Sh Rajendra Raghuvanshi due to failure in depositing the installment in time and ongoing proceeding at Hon'ble High Court; they issuance of the revised NIT on valid DSR 2016 was slightly delayed.*
- ix. Further, Mining Department identified a consulting agency M/s In-Situ W Enviro Service, Bhopal on 7.10.2021 for preparing the DSR for next 5 years as per the prevailing guidelines of Sustainable Sand Mining, 2016 and notification year 2016 & 2018. Copy of the order issued to agency is enclosed as Annexure-X. The agency submitted DSR to Director, Mining & Geology, Bhopal on 22.11.2021. Further, after inputs of the*

*Mining Department, the DSR forwarded to MP-SEIAA on 15.2.2022 for approval. Presently, the DSR is under consideration at MPSEIAA.*

- x. *The field visit conducted on 26/02/2022 by the Joint Committee to verify the status of the randomly selected mine area in Tehsil Bareli revealed that none of the mining was operational. No machines, dumpers, tractors, manpower, labour camps etc were found at the site and nearby area. Also NO demarcation poles, display boards were observed at the sites.*

**Action taken:**

- i. *The DSR, 2021 submitted to MP-SEIAA on 15.2.2022 for approval.*
- ii. *Instruction issued to mining officer for installation of permanent boundary pillars as per the Sustainable Sand Mining Guideline , 2016.*

**Recommendations**

- i. *The Department of Mining District Administration to ensure that no mining activity by the successful bidders took place at these 56 mines without the Environmental Clearance & Consent to Operate. And shall be as per the Sustainable Sand Mining Guideline 2016 and Enforcement & Monitoring of Sand Mining Guideline, 2020.*
- ii. *The Department of Mining District Administration re-visits the draft DSR, 2021 and ensures its preparation as per the defined formats under notification, 2016 & 2018 with exhaustive field visit. The Mines should be operated after approval of the DSR from SEIAA.*
- iii. *MP-SEIAA shall grant the EC after verification on field in EC transfer case to ascertain the availability of minable mineral quantity.”*

**5. I.A. No. 28/2022**

This application has been moved with the prayer to prepare the DSR in accordance with the law and guidelines issued by the MoEF&CC.

6. **I.A. No. 29/2022**

This is an application for giving an opportunity of hearing and to implead the intervener.

7. We have heard learned counsel for the parties at length and gone through the records. The matters and issues which have been raised in the present application were raised, heard and already decided by the Special Bench in connected Appeal No. 25/2021 vide order dated 22.02.2022. The present **Original Application No. 10/2022 alongwith I.As stand disposed** in terms of the orders passed by this Tribunal in connected Appeal No. 25/2021.

**Sheo Kumar Singh, JM**

**Dr. Arun Kumar Verma, EM**

12<sup>th</sup> April, 2022  
O.A. No. 10/2022(CZ)  
PN

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

Original Application No.30/2022(WZ)  
I.A. No. 54/2022(WZ)

**IN THE MATTER OF:**

**Gaurav Ashok Dhote,**  
S/o Ashok Dhote, Plot No. 16,  
Koradi Road, Indoor Stadium,  
Gadgebaba Society, Mankapur,  
Nagpur- 440 030.

.....Applicant

Versus

- 1. Mining Officer, Nagpur**  
District Mining Officer,  
Collector Office, Ravindra Nath Tagore  
Marg, Civil Lines, Nagpur  
Maharashtra- 440 001.
- 2. District Collector, Nagpur**  
RavindraNath Tagore Marg,  
Civil Lines, Nagpur, Maharashtra- 440 001.
- 3. Director, Directorate of Geology and Mining**  
Government of Maharashtra  
"Khanij Bhawan, Plot No. 27,  
Shivaji Nagar, Cement Road, Nagpur- 440 010.

.....Respondent(s)

**Counsel for the Applicant(s):**

Appellant(s) : Mr. Sanjay Upadhyay, Advocate along-with  
Mr. Shubhendu Anand, Mr. Ayush Anand, Saumitra J.  
and Mr. Ajay Dhawle, Advocates

**Counsel for the Respondent(s):**

Respondent(s) : Ms. Subhangi Deshmukh, Advocate for R-1 & 2  
Mr. Aniruddha Kulkarni, Advocate for MPCB/SEIAA

**PRESENT:**

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

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**Reserved on : 19.09.2022**

**Pronounced on : 19.10.2022**  
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**JUDGMENT**

1. This Original Application has been moved under Section 14, 15 read with Section 18 of the National Green Tribunal Act, 2010, seeking quashing of tendering notice dated 04.02.2022 in the District Nagpur issued by Respondent No. 2/District Collector, Nagpur on the ground that the quantity mentioned for excavation of sands has no scientific basis, as there is no replenishment study conducted with respect to 8 mines out of 10, invited for auction. The sand mining activities are being carried out on the strength of faulty DSR, 2021 for Nagpur District for sand mining, which has been prepared in violation of the Central Guidelines of 2016 & 2020.

2. It is further prayed that inspection should be carried out by a national agency for studying replenishment pattern and quantity available, without disturbing ecological balance in the District Nagpur and the Respondent Nos. 1 to 3 be instructed to ensure that no sand excavation takes place in the District Nagpur unless the DSR and replenishment study are conducted of the area in accordance with law.

3. In the body of the application, it is submitted that vide tender dated 04.02.2022, auction of 10 sand mines of the District is done, out of which only 2 sand mines have the replenishment study regarding quantification available sand thickness and excavatable sand thickness of the respective sand Ghats. The proposal of auction has no details or record for the District Survey Report of Nagpur prepared in the year 2021 and at page 42-43 of the report, it enlists the mines where replenishment study was not complete. Therefore, it is

impossible to ascertain excavatable amount of sand, pricing of the tender and other details mentioned in the tender. All these appear to be based on speculation which might be harmful to the environment. Reference is made of the law laid down in the case of *Deepak Kumar vs. State of Haryana*, (2012) 4 SCC 629 and the Judgment of this Tribunal in *Prabhat Mohan Pandey vs. MP, SEIAA*, in Appeal Nos. 25-27, 29-65, 67-72 of 2021 (CZ) dated 22.02.2022 which provide that in absence of proper study for annual replenishment of sand for any sand mines, any mining operation is not only dangerous for the river bed eco-system but also to the environment.

4. He has also submitted that as per the earlier sand policy of the State of Maharashtra as given under Maharashtra Minor Mineral Extraction (Development and Regulation) Rule, 2013 (to be referred in short as Rule, 2013), a provision was made for survey of the area for the purpose of ascertaining the environmental impact and it was stipulated that unless the clearance was obtained from the Ministry of Environment, sand could not be excavated and that the Officer who had submitted the proposal before the environmental authority, would be treated to be the Project Proponent, in whose name the environmental clearance was to be issued. As per the new policy dated 28.01.2022, the impugned auction process would be conducted without such clearance and burden has been placed on the shoulder of successful bidder to apply for the clearance. This new policy is also in conflict with the Sand Mining Guidelines, 2016 because the studies ought to have been conducted prior to initiation of auction process or issuing tender in this regard so that clear amount of excavatable sand

can be incorporated in tender having least impact on environment. Because of this policy not being adopted, enormous degradation of the environment has happened in the river stretch of River Kanhan, Pench and Kolar of Nagpur District. The tendering of sand mines without annual replenishment study as clearly reflected in the DSR will have enormous detrimental effect on the river ecology and environment. Hence the above prayers are made.

5. After hearing this matter on 12.04.2022, this Tribunal had constituted a joint committee which has submitted its report which was found to be defective on account of SEIAA not having participated in it.

6. Thereafter, vide order dated 06.07.2022, this Tribunal having noticed the above defect, had passed an order to the effect that a revised joint inspection report be submitted with an explanation of the Member Secretary of SEIAA.

7. In pursuance of said Tribunal's order, joint committee submitted its report, the relevant part is quoted here-in below:

**“3.0 OBSERVATIONS AND FINDINGS**

*There are two rivers i.e. Kanhan River and Pench River where sand mining (retighats) were proposed. The Kanhan River is an important right bank tributary of the Wainganga River draining a large area lying south of Satpura range in Central India. Along its 275 km run through the Indian States of Maharashtra & Madhya Pradesh. The Pench River is an left bank tributary of the Kanhan River. It originates in the Chhindwara District of Madhya Pradesh and flows across Pench National Park, which is a reserve for the Tiger Project of India.*

***3.1 The chronology of events from Field Survey by Taluka Level Monitoring Committee (TLMC), Approval/permission for DSR, Mining Plans, Public***

**Hearing, Environmental Clearance, Tendering/ Auction, Allotment and operational status related to the Sand Ghats are provided as below-**

MPCB had vide letter no. MPCB/SCN/738/2022 dtd. 15/07/2022 sought urgent point wise clarification from DMO, Nagpur regarding issues raised by applicant in this Original Application. DMO, Nagpur vide letter No. Mining-3/Desk/21/WS-Q/2022 dtd. 15/07/2022. The point wise clarification have also been incorporated in this report.

**3.1.1 BACKGROUND INFORMATION:**

The District Survey Report (Draft) for the year 2021-2022 was prepared as per Notification of Ministry of Environment Forest and Climate Change (MoEF&CC) 25<sup>th</sup> July, 2018. Procedure for preparation of District Survey Report as per Sustainable Sand Mining Guidelines 2016, Sand Mining Framework 2018, Enforcement & Monitoring Guidelines for Sand Mining 2020 of Ministry of Environment Forest and Climate Change (MoEF&CC) (Chapter No 4- Requirements for Monitoring & Enforcement, Sub point 4.1 Identification of possible sand mining sources and preparation of District Survey Report (DSR), Point No- P Public Consultation, Page No-19), Government of India as well as Maharashtra Sand Mining Rules 2019 and was Published on Public Domain as per the directives given in above mentioned rules/guidelines on 9<sup>th</sup> November 2021.

**1.1** A notice was given in local Newspapers on 03.11.2022 regarding availability of Draft DSR on website- <https://Nagpur.nic.in> for information comments/ suggestions on Draft DSR for application to be made to SEAC/ SEIAA for permission for sand mining. Draft DSR was published on public portal on 09.11.2021 by the Mining Department for 30 days.

**1.2** No objections/suggestions were received on the draft DSR for a period of one month.

**1.3** The DSR was finalized by adding some information as:

- Previously there were 34 sand ghats were incorporated, after receiving feasibility report based on the TLMC 28 Sand Ghats have been finalized and incorporated in final DSR.
- Replenishment studies has been also revised.

**1.4** Draft DSR was finalized by Collector on 12.01.2022.

2. Sustainable Sand Mining Guidelines 2016 (SSMG-2016) as well as Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM 2020) Government of Maharashtra, Sand Mining Rules 2019 clause no VII (a) Mining plan mandatory. And for obtaining Environmental Clearance Mining Plan, EMP, Pre-feasibility Report are mandatory. 28 mining plans for 28 Sand Ghats were approved by Directorate of Geology and Mining (DGM), Nagpur viz 14

sand ghats were approved on 20.12.2021 and 12 mining plans were approved on 24.12.2021 and remaining 2 were approved on 19.01.2021.

3. Replenishment Plan for Kanhan and Pench Rivers have been included in Chapter-8 of Final DSR approved by Collector Nagpur on dated 20/01/2022.

4. Sand ghats were auctioned on 18.05.2022 for the year 2021-22 with prior EC which is valid till 30<sup>th</sup> September, 2022.

### **3.1.1 Field Survey – Taluka Level Monitoring Committee (TLMC)**

- The tender for appointment of consultant for preparation of Mining Plan, District Survey Report and Environment Clearance was floated on 01.09.2021 and last date of opening of financial bid of shortlisted consultants was 15.09.2021.
- After opening of the financial bid Open Arch Design & Enviro Solutions, Vashi, Navi Mumbai firm was the lowest and Consultant had submitted letter dated 14.10.2020 as acceptance of negotiated rates further was granted with the work order dated 20.10.2021 in the month of November 2021.
- Mining office Nagpur informed that there is total 66 sand ghats in District Nagpur proposed for year 2021-2022. Out of which in the year 2020 – 2021 application for Environment Clearance for 22 sand ghats was done out of which 20 sand ghats were granted Environment Clearance which was valid till 30.09.2021. And auctioned for 3 years (2020-2021, 2021-2022, 2022-2023) with prior Environmental Clearance as per Sand Mining Policy, 2019.
- TLMC consist of Tahsildar, Deputy Engineer- Dept. of water Resource, Jr. geologist- Directorate of geology & Mining (DGM), Jr. geologist of Groundwater Survey & Development Agency (GSDA) and Representative of MPCB
- Field Survey Started on 20.10.2021 by TLMC as per letter from Additional Collector dated 18.10.2021.
- TLMC and Accredited Consultant surveyed 66 Sand Ghats for year 2021-2022 viz 29 Sand Ghat in Saoner Taluka, 16 Sand Ghat in Parseoni, 13 Sand Ghat in Mauda Taluka and 8 Sand Ghat in Kamptee & Kuhi Taluka in Nagpur District and survey completed on 15.11.2021.
- After completion of field survey of 66 sand ghat, only 28 sand ghats were proposed for Environmental Clearance by TLMC.

- *Replenishment Plan for Kanhan and Pench Rivers have been included in Chapter-8 of Final DSR approved by Collector Nagpur on dated 20/01/2022.*
- *Sand ghats were auctioned on 18.05.2022 for the year 2021-22 with prior EC which is valid till 30<sup>th</sup> September 2022.*

### **3.1.2. Methodology of Field Survey**

- *Field Survey is carried on the basis of Proposal of Taluka Level Monitoring Committee, Talathi Maps, details of adjoining survey numbers, GPS Coordinates of the area at the time of field survey by Taluka Level Monitoring Committee and representative of appointed agency. The Mineable depth has been finalized by concerned GSDA Jr. Geologist by checking total depth of sand.*
- *After completion of field survey of 66 sand ghat, only 28 sand ghats were Feasible and proposed for Environmental Clearance by TLMC by finalizing individual Sand Ghat length width and Mineable depth (The Mineable depth has been finalized by concerned GSDA Jr. Geologist by checking total depth of sand.) The details of 28 sand ghats are provided at.*

### **3.1.3 District Survey Report (DSR)**

- *A notice was given in local newspapers on 03.11.2022 regarding availability of Draft DSR on website - <https://Nagpur.nic.in> for information comments/suggestions on Draft DSR for application to be made to SEAC/SEIAA for permission for sand mining. Draft DSR was published on public portal on 09.11.2021 by the Mining Department for 30 days.*
- *No objections/suggestions were received on the draft DSR.*
- *Draft DSR was finalized by Collector on 12.01.2022.*
- *Replenishment Plan for Kanhan and Pench Rivers have been included in Chapter-8 of DSR which needs to be verified by concerned departments (GSDA & DGM).*

### **3.1.4 Mining Plans**

- *28 mining plans for 28 Sand Ghats were approved by Directorate of Geology and Mining (DGM), Nagpur viz 14 sand ghats were approved on 20.12.2021 and 12 mining plans were approved on 24.12.2021 and remaining 2 were approved on 19.01.2021.*

### **3.1.5 Public Hearing**

- *Public hearing documents as per the format of MPCB were submitted on 22.12.2021 to MPCB with copies of documents made available District Mining Officer,*

Nagpur, Gram Panchayat, Tehsildar, Talathi Office, SDO Office etc.

- *Public Hearing was conducted on 21.01.2022 through video conferencing and physical attendance by the stake holders at Bachat Bhawan, Collector Office, Nagpur and Minutes of Meeting were received from MPCB on 25.01.2022.*
- **Objections and responses in the public hearing**
  - *Mohammad Junnaid- Objections were taken by Mohd Junaid resident of Nagpur on complete process of selection sand ghats and environment clearance-*
  - *Mohd Junaid had major objection on proceedings of Public Hearing and Replenishment Studies.*
  - *His objection was that the MPCB has not covered his points completely in minutes of meeting of public hearing.*
  - *He also said that the DSR was not published on public portal as well as replenishment study of each sand ghat should be conducted.*

*Consultant along with the District Mining Officer prepared reply to the Queries of Mohd.Junaid and submitted to the SEAC on 25.02.2022.*

### **3.1.6 Environment Clearance**

- *Application for Environment Clearance (EC) for all 28 sand ghats were submitted on 27.01.2022.*
- *State Level Expert Appraisal Committee -1 (SEAC 1) published agenda of 217<sup>th</sup> meeting for grant of Environment Clearance including all 28 sand ghats between 17<sup>th</sup> to 18<sup>th</sup> February, 2022.*
- *Second SEAC 1 220<sup>th</sup> Meeting held on 11.04.2022 and MoM of 220<sup>th</sup> meeting uploaded on Portal on 25.04.2022. In MoM, Out of 28 Sand ghat SEAC 1 Defer 1 Sand Ghat i.e. Bawangaon B Taluka Saoner, District Nagpur as it was pointed out there is bridge in 600m.*
- *SEIAA 242<sup>nd</sup> Meeting held on 27.04.2022 and MoM of 242<sup>nd</sup> meeting, uploaded on Portal on 10.05.2022.*
- *SEIAA uploaded Environmental Clearance (EC) letter for 27 Sand Ghats in Nagpur District on 11.05.2022.*

### **3.1.7 Auction Status -**

- *Out of 27 sand ghats which got EC, 18 sand ghats were already auctioned for three years in the year 2020 (2020-21, 2021-22 & 2022-23), and remaining 09 sand ghats were auctioned on 18.05.2022 for the year 2021-22, as informed. Initially the e- tendering was planned on 21.02.2022 vide public notice dated*

05.02.2022. However, the date of e-auction was postponed to 18.05.2022 due to order of Hon'ble High Court (Nagpur Bench).

### **3.1.8 Operational Status of Sand Mining at Sand Ghats-**

- Though, there is auction of 27 sand ghats (18 sand ghats in 2020 for three year & 9 sand ghats in 2022 for one year), only one sand ghat is allotted for sand mining i.e. Gosewadi- A on Kanhan River at Taluka Saoner, Dist Nagpur. It is informed the other sand ghats were not taken.

## **3.2 OBSERVATIONS DURING SITE VISITS OF RETI GHATS**

### **3.2.1 Gosewadi Reti Ghat (A), Taluka Saoner, District Nagpur.**

- This sand ghat is located on right bank of Kanhan river while traversing the river from North to South direction. The details of sand ghat wrt location, dimension, (area, depth), quantity, status of EC, Auction etc. is given in the Sr. No. 1 of Table.
- The EC is obtained for the sand ghat, which is attached.
- The sand mining for this sand ghat is allotted to M/s Ashtha Associates (Shri Ayush Trivedi) as per Allotment Letter dated 27.05.2022 and started mining from 31.05.2022 to 10.06.2022 as per Mahakhanij ETP Report as provided by DMO, Nagpur. The total excavated sand is 7420 Brass as against the allotted quantity for sand mining as per EC.
- Sand mining was found not in operation during the day of visit. The photographs. It is informed that the sand mining is not permitted from 10.06.2022 as per Sand Mining Policy 2019 which is further revised in 2022.
- As per EC, the area dimensions permitted is (length) 420 mx (Width) 100 mx (depth) 0.5m. the length of sand Mining was measured and it was observed that the sand is mined before and after the demarked pole (120 m on each side) indicating the mining carried out about Total 660 m. Further, depth of excavation at number of location is also measured and it is found that sand mining was carried out behind 0.5 m depth as permitted. The average depth was found about 2.0 meter. It may inferred that the PP has mined excess quantity of sand. This is the violation of specific condition A SEAC no. 08, General Condition Sr. No. XII. There is need to properly measure the over excavated area and excess excavated quantum of sand by the concerned departments (GSDA & DGM).

- *As per EC specific condition SEAC no. 16, mining should be carried out by manual method. It is observed that mining was carried out by Poclain machine/JCB as the signs of wheels on sand & of scratches in sand pits were found, and also quantum of sand mined. It is not possible to mined 7420 brass sand in about 10 days by manual method. This is violation of EC conditions.*
- *As per EC Specific condition SEAC no. 11, Buffer zone was not earmarked at a distance of 10 % of width of River i.e.7.5 m. Sand mining carried out along the bank in buffer Zone, also. Red flags marking was in riverbed.*
- *It was observed that about3500 Brass of sand stored on the right bank of river near approach road as informed by Tahsildar Saoner vide letter dated 01.07.2022 to DMO Nagpur.*
- *Register is maintained at location mentioning details of officials visited to sand ghat. However, no record of no. of vehicles which carried sand, quantity of sand excavated, details of transit pass, and weigh bridge found at the site.*
- *No check post at entry/exit of ghat, also there was kaccha road to sand ghat.*
- *Tree plantation was carried out along roadside at some places.*
- *It is informed that water sprinkling was carried out though water tankers.*
- *Piezometers wells are not provided around sand ghat and ground water quality not carried out around the sand ghat showing violation of EC conditions.*
- *Measures for prevention and control of soil erosion were not taken.*
- *In the second site visit on 15/07/2022 the River was flowing in its full spate and no portion of the sand ghat was visible, however a large storage depot of sand was seen on the Bank.*

### **3.2.2 Saholi Reti Ghat (A), Taluka Parseoni, District Nagpur.**

- *This ghat is located on left bank of kanhan river while traversing the river from Northto South direction. The details of sand ghat wrt location, dimension, (area, depth), quantity, status of EC, Auction etc. is given in the Sr. No. 5 of Table.*
- *The EC is obtained for the sand ghat which is attached.*

- Sand Ghat was not operational during the visit as the ghat is auctioned but not allotted to project proponent. However, there was illegal manual excavation of sand was observed.
- In the second site visit on 15/07/2022 the River was flowing in its full spate and no portion of the sand ghat was visible.

### **3.2.3 Saholi Reti Ghat (B), Taluka Parseoni, District Nagpur.**

- This ghat is located on left bank of Kanhan River while traversing the river from North to South direction. The details of sand gha wrt location, dimension, (area, depth quantity, status of EC, Auction etc. is given in the Sr. No. 6 of Table.
- The EC is obtained for the sand ghat, which is attached.
- Sand Ghat was not operational during the visit as the ghat is auctioned but not allotted to project proponent. However, there was illegal manual excavation of sand an transport as per the information fine imposed and recovered by Tahsildar Parseoni as per letter dated 30.06.2022.
- In the second site visit on 15/07/2022 the River was flowing in its full spate and no portion of the sand ghat was visible.

### **4.0 CONCLUSION & RECOMMENDATIONS:**

- There is need to properly measure the over excavated area and excess mining of sand by the concerned departments (GSDA & DGM) as it was inferred based on the observation during the visit that PP has mined sand before and after the demarked pole and the average depth was found about 2.0 meter.
- Replenishment Plan in relation with Sand Ghat - Gosewadi A at Kanhan Rivers shall be checked by the concerned departments (GSDA & DGM) as per Chapter-8 of DSR.
- In view of violation of EC conditions, as enumerated in para 3.2.1 by the project proponent for Sand Ghat - Gosewadi A, SEIAA/ Env. Deptt., Govt. of Maharashtra may take appropriate action based on the Standard Operating Procedure (SOP) for dealing with violation cases were issued by the MoEF&CC vide Office Memorandum (OM) F. No. 22-21/2020-IA.III dated 07/07/2021 & OM F.No.22-21/2020-IA.III (138949) of MOEF&CC dated 28.01.2022.
- MPCB has issued a Show Cause Notice to DMO, Nagpur vide letter No. MPCB/SCN/738/2022 dtd. 15/07/2022 asking for clarification on violation of

*Environmental Clearance conditions, i.e. EIA Notification 2006 & Environment (Protection) Act, 1986 the reply on the same shall be perused for further necessary action.*

- *Collector office shall take appropriate action for all others sand ghats based on the information provided by respective Tahsildars/DMO on physical inspection the sites and initiate punitary provisions if required as observed in the illegal mining carried out at Saholi Reti Ghats.*
- *Collector Office shall also seize and take possession of excess mined sand as also proceed with necessary action under MLRC, 1966.”*

8. The relevant study with respect to replenishment plan of Kanhan River which is included in chapter 8 of final DSR, is quoted here-in below:-

*“Conclusion:*

*From the above calculations, annual replenishment rate for Kanhan River is estimated at **273106.78 M. tons/yr** and that for Pench River is estimated at **183960.35 M. tons/yr** for the year **2021**. And annual replenishment rate for Kanhan river is estimated at **281567.64 M. tons/yr** and that for Pench River is estimated at **189659.45 M. tons/yr.** for the year **2020. Total Replenishment of sand in Kanhan River is 96.99 % and Total Replenishment of sand in Pench River is 96.99%.***

*Dendy -Bolton formula also says that actual sediments yield from individual drainage basins may vary 10-fold or even 100-fold from computed yields. The equations express the general relationships between sediment yield runoff and drainage area. They may provide a quick rough approximation of mean sediment yields on a regional basis for preliminary watershed planning. Because Dendy & Bolton have derived the equation from average values computed sediment yields normally would be low for highly erosive area and high for well stabilized drainage basins with high plant density.*

***Factors which have direct bearing on sediments yield & limitations of Dendy -Bolton equation:***  
*Sediment yield of a sediment basin has direct impact of local terrain, climate, vegetation, soils, agricultural practices & land use pattern of catchment area of the sediment basin aforesaid factors varies from basin to basin therefore, Dendy - Bolton has categorically stated that use of the equation to predict sediment yield for a*

*specific location would be unwise because of the wide variability caused by local factors not considered in the equation development. **Actual sediment yield from individual drainage basins may vary 10-fold or even 100-fold from computed yields.***

9. It would be pertinent for us to observe here that the replenishment study appears to have been done by methodology for replenishment study which is provided in “Enforcement and Monitoring Guidelines-2020 for Sand Mining” issued by MoEF&CC, the relevant para 5.2 of which is quoted here-in below:-

**“5.2 Methodology for Replenishment Study**

*The replenishment estimation is based on a theoretical empirical formula with the estimation of bed load transport comprising of analytical models to calculate the replenishment estimation. The iso-pluvial maps of IMD can be used for estimation of rainfall. Catchment yield is computed using different standard empirical formulas relevant to the geographical and channel attributes. eg. Strange’s Monsoon runoff curves for runoff coefficient). Peak flood discharge for the study area can be calculated by using Dickens, Jarvis and Rational formula at 25, 50 and 100 years return period. The estimation of bed load transport using Ackers and White Equation or similar can be made. A simulation model is used with basic data generated from the field in the pre-study and post-study period (preferably pre-monsoon and post-monsoon) to estimate the volume of replenished material. The particle size distribution and bulk density of the deposited material are required to be assessed from a NABL recognized laboratory. Considering the bulk density and the volume, the estimation of replenishment in weight will be calculated after considering safeguards and stability of the slopes and riverine regime.”*

10. During the argument, the learned Counsel for the Applicant had hammered the point that the replenishment study was not conducted in accordance with the said guidelines and had pointed out para 5.1 of the above guidelines which is as follows:-

**“5.1 Generic Structure of Replenishment Study**

*Initially replenishment study requires four surveys. The first survey needs to be carried out in the month of April for recording the level of mining lease before the monsoon. The second survey is at the time of closing of mines for monsoon season. This survey will provide the quantity of the material excavated before the offset of monsoon. The third survey needs to be carried out after the monsoon to know the quantum of material deposited/replenished in the mining lease. The fourth survey at the end of March to know the quantity of material excavated during the financial year. For the subsequent years, there will be a requirement of only three surveys. The results of year-wise surveys help the state government to establish the replenishment rate of the river. Based on the replenishment rate future auction may be planned.*

*The replenishment period may vary on nature of the channel and season of deposition arising due to variation in the flow. Such period and season may vary on the geographical and precipitation characteristic of the region and requires to be defined by the local agencies preferable with the help of the Central Water Commission and Indian Meteorological Department. The excavation will, therefore, be limited to estimated replenishment estimated with consideration of other regulatory provisions.”*

11. It is apparent from the said guidelines which are considered under the head “5.0 Replenishment Study” that both the kind of studies are approved as have been cited above, therefore, to say that the method which has been laid down under head “5.1 (Generic Structure of Replenishment Study) which provides for four surveys on different point of times not being adopted, would not force us to believe that the Guidelines of January, 2020 were not followed as it is apparent that the Guidelines provided under head “5.2 Methodology for Replenishment Study” as given above, appears to have been followed and according to the DSR, the Replenishment of sand in Kanhan River is found to be 96.99 % which is close to 100 %. Therefore, we do not find any infirmity as regards the preparation of DSR being defective/faulty in terms of the replenishment study.

12. The stand of the **Respondent Nos. 1 & 2/Project Proponent** is as follows:-

- (i). For the year 2021-2022, field survey was carried by Taluka Level Monitoring Committee on the basis of Talathi Maps. The Mineable depth has been finalized by the concerned Groundwater Surveys & Development Agency (GSDA), Jr. Geologist by checking total depth of sand. After completion of field survey of 66 sand ghats, only 28 sand ghats were found feasible to be forwarded to the District Level Monitoring Committee for Environmental Clearance. The District Survey Report (Draft) for the year 2021-2022 was prepared as per Notification of Ministry of Environment Forest and Climate Change (MoEF&CC) dated 25<sup>th</sup> July 2018. Procedure for preparation of DSR was as per Sustainable Sand Mining Guidelines, 2016, Sand Mining Framework 2018, Enforcement & Monitoring Guidelines for Sand Mining, 2020 issued by Ministry of Environment Forest and Climate Change (MoEF&CC) (Chapter No 4) etc. Thereafter, the final DSR was approved by the District Collector, Nagpur on 20.01.2022.
- (ii). Further, it is submitted that Application for Environment Clearance (EC) for all 28 sand ghats was submitted on 27.01.2022 before the State Level Expert Appraisal Committee-1 (SEAC 1). SEIAA after consideration uploaded

the EC later for 27 sand ghats in Nagpur District on 11.05.2022.

- (iii). Further, it is submitted that though there was auction of 27 sand ghats, only one sand ghat was allotted for sand mining i.e. Gosewadi-A on Kanhan River at Taluka Saoner, District Nagpur because the sand ghats for others were not taken for allotment.
- (iv). It is further submitted that the sole allotment was made in favour of M/s. Ashta Associates as per allotment letter dated 27.05.2022. The total quantity of sand allotted for excavation was 7420 brass. The period of excavation of sand from the sand ghat was up to 30<sup>th</sup> September, 2022 as per the EC which was also incorporated in the auction tender notice as well as in the agreement. The period of 10<sup>th</sup> June to 30<sup>th</sup> September is the period of monsoon hence excavation could not be permitted as per sand policy dated 28.01.2022. At present, no excavation activities is going on nor will take place till 30<sup>th</sup> September, 2022. The District Tahsildar, Saoner informed the District Mining Officer, Nagpur regarding illegality in the Gosewadi-A Sand Ghat, mentioning that the sand ghat owner excavated beyond the proposed area and depth. On the basis of that, Additional Collector, Nagpur issued show cause notice to the Project Proponent, asking as to why the sand ghat lease be not cancelled. In the meantime, the concerned Tahsildar has already seized the

sand stock having quantity of 2800 brass in order to ascertain the scale of violation. On the basis of report received from Tahsildar, the answering respondent's office had issued show cause notice to the Project Proponent regarding violation of EC condition on 18.07.2022 and the auction process is going on.

- (v). It is also submitted that the e-auction process being carried out by the District Administration, was challenged before the Hon'ble High Court Bench at Nagpur vide Writ Petition No. 2757/2022 which too was dismissed.

13. From the side of Member Secretary, SEIAA has submitted formal affidavit which is not related to the present dispute.

14. We have heard the arguments of the Learned Counsels for the parties and perused the record.

15. In this matter, it is apparent that the tendering notice dated 04.02.2022 for auction of sand mines is prayed to be quashed, issued in respect of sand mining in 10 sand blocks which are reproduced here-in below as given in the said notice at page no. 516 to 519 of the paper book:-

“

Sr. No.	Taluka	Name of the sand Block	Name of the river/canan	Nearest adjoining Plot No. located beside the sand block	Total extent in (Hectare-Are)	Estimated Sand Stock in Brass available for the current year 2021-22	The upset priced fixed for the year 2021-2022.	25 % Earnest money Depos. (EMD)
1	2	3	4	5	6	7	8	9

1.	Savner	Gosewadi -A	Kanhan	285, 286, & part of 287	4.20	7420	4452000	1113000
2.	Savner	Bavangao n - B	Kanhan	203, 204, 208	2.70	5724	3434400	858600
3.	Parshiv ni	Saholi-A.	Kanhan	15, 16, 17, 18, 19	2.50	7067	4240200	1060050
4.	Parshiv ni	Saholi-B	Kanhan	115/2, 112/2, 136/2, 141/2	3.60	12720	7632000	1908000
5.	Parshiv ni	Pardi-C	Kanhan	153	4.50	12720	7632000	1908000
6.	Parshiv ni	Old Kamthee  (Gadeghat) B.	Kanhan	230, 241/2	2.00	5653	3391800	847950
7.	Mauda	Kirnapur	Kanhan	103, 104, 105, 107, 109, 110, 111, 113, 115, 116, 117, 118, 119, 4, 5.	4.95	14021	8412600	2103150
8.	Mauda	Mohkheri	Kanhan	117, 118, 119	4.90	12120	7272000	1818000
9.	Koohee	Chichghat	Kanhan	43	3.00	5300	3180000	795000
10.	Kamthe e	NeriGhat	Kanhan	217/2/3, 219, 220, 221/1, 223 & Part of 224/1.	4.85	25754	15452400	3863100

16. The main emphasis in the argument made by the Learned Counsel for the Applicant is that DSR has not been prepared in accordance with the Enforcement and Monitoring Guidelines-2020 for sand mining cited above. Therefore, according to the law which has been interpreted by Hon'ble Apex Court *Deepak Kumar's case* and other cases cited by him, no mining could be permitted.

17. We have already noted at the relevant place above that the DSR will be taken to have been prepared in accordance with the said guidelines for the reasons mentioned above, therefore, that cannot be the ground to quash the environmental clearances/mining leases.

18. The Learned Counsel for the Applicant has vehemently pointed towards page no. 134 of the paper book which is a public notice by the District Collector, Nagpur, in connection with holding e-tendering and e-auction of Gravel/sand blocks for the independent Auction Years of 2020-2021, 2021-2022 and 2022-2023 and stated that this notice is for three years which is illegal as the auctioning is required to be done from year to year, to which the Learned Counsel for the Respondent Nos. 1 & 2 states that it related to only one year i.e. 2020-2021 which is apparent from the perusal of table given at page no. 135/B at Column 6.

19. In this regard, our opinion is that this public notice has not been challenged by the Applicant as the challenge is made to the notice dated 04.02.2022, therefore, this argument does not hold good.

20. He has drawn attention to page no. 151 of the paper book whereon, the relevant portion of the sand mining guidelines are issued by MoEF&CC in January, 2020 and he pointed out that based on that the District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/ Letter of Intent (LoI) by Mining Department or department dealing the mining activity in respective States.

21. Thereafter, he has drawn attention to page 163 of the paper book which relates to replenishment study regarding which we have already expressed our opinion.

22. Then, he has pointed out to para 41 at page 535 of the paper book where-in it is recorded that it is the duty of the auction bidder applicant to find out that whether enough sand stock is available or not and argued that it is wrong because it is the responsibility of the authority to find out whether enough sand stock is available or not.

23. Then, he drew attention to para 48 at page 539 of the paper book where-in it is record that no excavation activity can be indulged in by the bidder unless he ensures that the water level in the water wells of the surrounding area also not get depleted. Regarding this, necessary precaution should be taken. We do not find these arguments to be relevance in the present context.

24. We find that the DSR was finalised by the District Collector, Nagpur on 12.01.2022 where-as impugned auction notice was issued on 04.02.2022 which establishes that DSR was finalised before the e-auction notice. Therefore in this regard, there does not appear to be any lacuna.

25. Now, we would consider the Environmental Clearance, granted to the Project Proponent. In this regard, we would rely upon the EIA Notification, 2006 as amended by S.O. 141(E) dated 15<sup>th</sup> January, 2016. The relevant para of which is quoted here-in below:-

*“APPENDIX - XI  
[See paragraph 7 (iii) (b)]*

PROCEDURE FOR ENVIRONMENTAL CLEARANCE FOR  
MINING OF MINOR MINERALS INCLUDING CLUSTER

The following policy shall be followed for environmental clearance of mining of minor minerals including cluster situation: -

.....

(4). Environmental clearance shall be applied for and issued to the individual project proponent. The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management Plan shall be updated as per need keeping in view any significant change.

...

...

(8). The SEIAAs shall have supervisory jurisdiction over the DEIAAs and decisions of DEIAA shall be reviewed by the SEIAA without prejudice to any provisions under any existing law.

As per S.O. 141 (E), dated the 15<sup>th</sup> January, 2016 -

“4. District Level Environment Impact Assessment Authority: -

(1) A District Level Environment Impact Assessment Authority hereinafter referred to as the DEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of four members including a Chairperson and a Member-Secretary.

(2) The District Magistrate or District Collector shall be the Chairperson of the DEIAA.

(3) The Sub-Divisional Magistrate or Sub-Divisional Officer of the district head quarter of the concerned district of the State shall be the Member-Secretary of the DEIAA.

(4) The other two members of the DEIAA shall be the senior most Divisional Forest Officer and one expert. The expert shall be nominated by the Divisional Commissioner of the Division or Chief Conservator of Forest, as the case may be. The term and qualifications of the expert fulfilling the eligibility criteria are given in Appendix VII to this notification.”

S.O. 141(E), dated the 15<sup>th</sup> January, 2016 has been suspended by NGT in EA No. 55/2018 in OA No. 520/2016 in the matter of Vikrant Tongad vs. UoI vide order dated 11<sup>th</sup> December, 2018.”

26. From the above provision, it is clear that EC was required to be issued in the name of individual Project Proponent but in the case at

hand, the EC has been issued in the name of District Mining Officer, Office of District Collector, Nagpur which is evident from the perusal of the EC dated 11.05.2022 in respect of project Saholi A Sand Mine (M L Area 2.50 ha) on Kanhan River at Survey No 15,16,17,18,19 Village Saholi A, Taluka Parseoni, District Nagpur which is annexed at page 1226 of the paper book. Therefore, there is clear violation in issuing the EC on the part of the SEIAA in favour of the said Officer. Hence, the EC deserves to be quashed.

27. It is also to be pointed out here that the policy adopted by the Government of Maharashtra vide Revised Policy in respect of Gravel/ Sand extraction issued on 28<sup>th</sup> January, 2022 which is annexed at page 393 to 567 of the paper book from which at page 424 to 425, following relevant part is extracted here-in below:-

*“Environmental Permission for mining of Gravel / Sand for river bank:-*

*(a) In accordance with the directions given from time under the provisions made in the Notification issue by the Ministry of Environment, Forests and Climate Change, prior to the excavation of Miner Mineral, necessary Environmental Permission needs to be acquired in advance without which mining become illegal. For said purpose necessary action has to be taken and permission as necessary needs to be invariably procured prior to the commencement of mining.*

*(b) After the auction of the Sand Blocks in the District has been held, if the Sand Block has been approved in favour of the successful bidders, then a Letter of Interest (LoI) has to be issued to the successful bidder. Thereafter, on the basis of this LoI, it will become the responsibility of the successful bidder to procure necessary Environmental Permission.”*

28. It is apparent from the above that as per the policy of State Government in Maharashtra, after successful bidding, the bidder has to procure the environmental clearance and not the Government official on behalf of the State. In the case in hand, we see from the

perusal of the EC cited above that there is violation in this regard, hence EC deserves to be quashed on this count as well.

29. On the basis of above, we declare that the EC cited above stands quashed.

30. We find from the record that only one sand block was in the name of M/s. Ashtha Associates and only one lease regarding the sand mining was issued by the District Collector, Nagpur in the name of M/s. Ashtha Associates, which we find defective on account of inappropriate EC as the same is not found to be in his name rather the same is found to be in the name of District Mining Officer, it will be treated that he excavated the sand without any valid EC. Therefore, the total amount for which the sand has been excavated by him i.e. 2800 brass shall be recoverable from him.

31. We further direct the State Pollution Control Board to calculate the loss caused to the environment on account of this illegal excavation of sand by M/s. Ashtha Associates within a period of 02 (two) months after giving opportunity of hearing and the same shall be recovered from the Project Proponent and the amount so realised, shall be used for the purposes of District Environmental improvement.

32. Since the tendering notice which has been prayed to be quashed entails 10 mining leases of different blocks in Kanhan River out of which only one was finally allotted and not others, the said notice stands infructuous because of lapse of time, hence no order is required to be passed by us in regard to those tenders.

33. Accordingly, the Original Application No. 30/2022(WZ) stands disposed of.

34. I.A. No. 54/2022(WZ) also stands disposed of accordingly.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

October 19, 2022  
Original Application No. 30/2022(WZ)  
I.A. No. 54/2022(WZ)  
P.kr

Item No. 02

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 212/2021  
(Earlier Appeal No.16/2021)

Dheerendra

Applicant

Versus

State of U.P. & Ors.

Respondent(s)

Date of hearing: 04.07.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Vanshdeep Dalmia, Advocate

Respondent: Ms. Priyanka Swami, Advocate for SEIAA, UP  
Mr. Rachit Mittal, Advocate for M/s ASVP Construction-R9

**ORDER**

**The Issue - permissibility of mining without DSR, EIA/EMP, replenishment study as per judgements of Hon'ble Supreme Court and this Tribunal**

1. Grievance in this application is that mining has been permitted in violation of environmental norms prohibiting mining without the replenishment studies, environmental management plans, mine closure plans and other requisite safeguards and also prohibiting instream mining. The applicant has challenged four Environmental Clearances (ECs) dated 16.03.2018, 26.12.2018, 15.10.2020 and 15.10.2020 with respect to the four mines situated at Gata No. 2558 in village Bandhauri, Tehsil - Urai, District Jalaun, UP on the ground that such clearances

have been granted in violation of EIA Notification dated 14.09.2006 and Sustainable Sand Mining Guidelines (SSMG), 2016 read with EMGSM-2020 in favour of Respondent Nos. 7 to 9, Rupesh Kumar Chauhan, R/o 2/588, Tulsinagar Pollusheet Post Kathgodam, Haldwani, District Nainital, Uttarakhand, M/s Khajuraho Motors Pvt. Ltd., through its Director, Yashpal Singh Parmar, District Chatarpur, MP and M/s ASVP Construction, through its Partner, Sumit Saxena, District Gonda, UP, respectively. The applicant has inter alia relied upon orders of this Tribunal dated 21.05.2021 in O.A. No. 103/2021, *Shyam Babu v. State of Uttar Pradesh & Ors.*, wherein this Tribunal referred to earlier orders dated 30.05.2017 in O.A. No. 78/2015 (CZ) reported in 2017 SCC Online NGT 1097 and 26.02.2021 in O.A. No. 360/2015, *NGT Bar Association v. Virender Singh (State of Gujarat) and other connected matters*. Relevant extracts are reproduced below:-

**order dated 30.05.2017 in O.A. No. 78/2015 (CZ) reported in 2017 SCC Online NGT 1097:**

*“20. In the light of the above, we answer the question that has been referred to us that no river sand mining is permitted in the submerged area in accordance with the Sustainable Sand Mining Guidelines 2016 alternatively in so far as the issue whether it can be permitted in the submergence areas is concerned our answer to the same is that in submergence area which may be a wider area than the one actually submerged as a submergence area would encompass the full reservoir level of the river or the high flood level of the river recorded by in any case where the mineral is exposed and not in stream such sand mining in accordance with the Sand Mining Guidelines 2016 and the conditions imposed in the environmental clearance may be carried out.”*

**order dated 26.02.2021 in O.A. No. 360/2015, NGT Bar Association v. Virender Singh (State of Gujarat) etc.**

*“1to26..xxx.....xxx.....xxx*

**27. We direct all the States/UTs to strictly follow the SSMG-2016 read with EMGSM-2020 reinforced by mechanism for preparation of DSRs (in terms of directions of this Tribunal dated 14.10.2020 in Pawan Kumar, supra and 04.11.2020 in**

**Rupesh Pethe, supra), Environment Management Plans, replenishment studies, mine closure plans, grant of EC (in terms of direction dated 13.09.2018 in Satendra Pandey, supra), assessment and recovery of compensation (as per discussion in Para 25), seizure and release of vehicles involved in illegal mining (in terms of order dated 19.02.2020 in Mushtakeem, supra), other safeguards against violations, grievance redressal, accountability of the designated officers and periodical review at higher levels. As already noted, EMGSM-2020 contemplates extensive use of digital technology, including remote sensing.**

**28.** We further direct that periodic inspection be conducted by a five-members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC regional office is available, its Regional Officer will be included in the Committee. Where neither CPCB nor MoEF&CC regional office exists, Chairman, SEIAA will tie up with the nearest institution of repute such as IIT to nominate an expert for being included in the Committee. Such inspection must be conducted at least thrice for each lease i.e. after expiry of 25% the lease period, then after 50% of the period and finally six months before expiry of the lease period for midway correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on website of the SEIAA. Every lessee, undertaking mining, must have an environment professional to facilitate sustainable mining in terms of the mining plan and environmental norms. This be overseen by the SEIAA. Environment Departments may also develop an appropriate mobile App for receiving and redressing the grievances against the sand mining, including connivance of the authorities and also a mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of UP quoted earlier may be duly taken into account.

The mechanism must provide for review at the level of the Chief Secretary at least once in every quarter, in a meeting with all concerned Departments in the State. The Chief Secretary UP may ensure further action in the light of the report of the Oversight Committee.

Similarly, at National level, such review needs to be conducted atleast once in a year by the Secretary, Environment in coordination with the Secretaries Mining and Jalshakti Ministries the CPCB.”

#### **Order of NGT dated 28.06.2021 seeking factual status**

2. Vide order dated 28.06.2021, the Tribunal constituted a four-member joint Committee of CPCB, SEIAA, UP, State PCB and District Magistrate, Jalaun to ascertain the compliance status and furnish a report. It was further directed that the report may mention about the

DSR and replenishment study for the Jalaun District and whether mining being done is consistent with the same. Further, the report was to indicate functioning of Monitoring mechanism in terms of order of this Tribunal dated 26.2.2021 in OA No. 360/2015, quoted above.

**Report dated 3.11.2021 about factual status and response of one of the Project proponents (PP)**

3. In pursuance of above, report dated 03.11.2021 has been filed giving the status of mining as follows:-

**“3.3.1 M/s. Khajuraho Motor Pvt. Limited**

*The Environmental Clearance for river bed mining at Gatta No. 2558, 2559 Khand No. 03 village Bandhauri, Tehsil Orai District Jalaun (U.P.) (leased area 20.242 Ha) was obtained from SEIA dated 26/12/2018. As per EC, Salient details of the project site is presented below:*

1	Name of Project Proponent	M/s. Khajuraho Motor Pvt. Limited
2	Full Address of the Proponent	Sh. Yashpal Singh Parmar, District Chatarpur, MP
3	Name of Project	Area 50 acre (20.242 Ha) on Betwa river for sand/Morrum mining
4	Project Location (Gatta No./Khand No.)	Gatta No. 2558, 2559 Khand No. 04 village Bandhauri, Tehsil Urai District Jalaun (U.P.)
5	Name of River	Betwa river
6	Name of Minor Minerals	Sand/Morrum Mining
7	Sanctioned Lease area (in Ha)	20.242 Ha
	Minable Lease area (in Ha)	18.30 Ha
8	Max and Min MRL in leased area	114 mRL in NE and 110.0 mRL in S
9	Total geological reserve	6,00150 m <sup>3</sup> /annum
10	Total minable reserve in LOI	3,03,630 m <sup>3</sup> /annum
11	Total Proposed production per year	3,03,630 m <sup>3</sup> /annum
12	Sanctioned period of mining lease	5 years
13	Method of mining	Open cast manual/semi-mechanized method
14	Production of mine/day	1350 m <sup>3</sup> /day
15	Nos. of working days	225
16	Working hours per day	8 hrs
17	Nos. of vehicles movement per day	150 Trucks per day
18	Ultimate depth of mining	2.0 m
19	Water requirement per day	8.16 KLD

**Specific Observations of M/s Khajuraho Motor Pvt Limited, Khand No 03 village Bandhauri, Tehsil Urai district Jalaun (U.P)**

1. The project proponent (M/s Khajuraho Motor Pvt Limited, Khand 03) has not obtained consents to operate (CTO) under the Water Act.1974 and The Air Act, 1981 from concerned UPPCB since inception of the project.
2. The project proponent has not obtained permission from CGWA for abstraction of the ground water at the tube well.
3. The project proponent meets its water requirement through tube wells for domestic and plantation sprinkling purposes. Water meter at the tube wells were not installed.
4. The Project proponent has not submitted compliance reports of EC general conditions and specific conditions granted by SEIAA for effective implementation of environmental plan.

**Recommendations**

1. **The project proponent (M/s Khajuraho Motor Pvt Limited) should not be permitted the operation of mining till it obtains consents to operate from concerned SPCB.**
2. **The Project proponent should ensure compliance of EC general conditions and specific conditions granted by SEIAA to effective implementation of environmental plan.**
3. **The project proponent may be levied Environmental compensation (EC) in view of noncompliance of EC conditions as well as operations without valid CTO.**
4. **The project proponent should obtain permission from CGWA for abstraction of the ground water at the tube well.**
5. **The District Mining Department should ensure restoration plan before starting of the mining operations in rest of the mining period.**

**3.3.2** M/s Khajuraho Motor Pvt Limited the Environmental Clearance for river bed mining at Gata No 2558, 2563 Khand No. 04 Village Bandhauri, Tehsil Urai District Jalaun (U.P) (leased area 16.194 Ha) was obtained from SEIA 15/10/2021. As per EC, Salient details of the Project site is presented below:

1	Name of Project Proponent	M/s. Khajuraho Motor Pvt. Limited
2	Full Address of the Proponent	Sh. Yashpal Singh Parmar, District Chatarpur, MP
3	Name of Project	Area 40 acre (16.19 Ha) on Betwa river for sand/Morrum mining
4	Project Location (Gatta No./Khand No.)	Gatta No. 2558, 2563 Khand No. 04 village Bandhauri, Tehsil Urai District Jalaun (U.P.)
5	Name of River	Betwa
6	Name of Minor Minerals	Sand/Morrum Mining

7	Sanctioned Lease area (in Ha)	16.194 Ha
8	Max and Min MRL in leased area	113 mRL in NE and 109 in SW
9	Total geological reserve	4,85,820 m <sup>3</sup> /annum
10	Total minable reserve in LOI	2,42,190 m <sup>3</sup> /annum
11	Total Proposed production per year	2,42,190 m <sup>3</sup> /annum
12	Sanctioned period of mining lease	5 years
13	Method of mining	Open cast manual/semi-mechanized method
14	Production of mine/day	1080 m <sup>3</sup> /day
15	Nos. of working days	228
16	Working hours per day	8 hrs
17	Nos. of vehicles movement per day	120 Trucks per day
18	Ultimate depth of mining	12.75 m
19	Water requirement per day	8.12 KLD

**Specific Observations of M/s Khajuraho Motor Pvt Limited, Khand No 04 village Bandhauri, Tehsil Urai district Jalaun (U.P)**

1. The project proponent (M/s Khajuraho Motor Pvt Limited) has not obtained consents to operate (CTO) under the Water Act, 1974 and The Air Act, 1981 from concerned SPCB since inception of the mining operation.
2. The project proponent has not obtained permission from CGWA for abstraction of the ground water at the tube well.
3. The project proponent meets its water requirement through tube wells for domestic, plantation and sprinkling purposes. Water meter at the tube wells were not installed.
4. The Project proponent has not submitted compliance reports of EC general conditions and specific conditions granted by SEIAA for effective implementation of environmental plan.

**Recommendations:**

1. **The project proponent may be levied Environmental compensation (EC) of noncompliance of EC conditions as well as operations without valid Consent to Operate (CTO).**
2. **The Project proponent should ensure compliance of EC general conditions and specific conditions granted by SEIAA to effective implementation of environmental plan.**
3. **The project proponent (M/s Khajuraho Motor Pvt Limited) should not be permitted the operation of mining till it obtains consents to operate from concerned SPCB.**
4. **The project proponent should obtain permission from CGWA for abstraction of the ground water at the tube well.**

**3.3.3 M/s Rupesh Kumar Chauhan R/o 2/588, Tulsinagar Pollusheet, Post Kathgodam, Haldwani District Nanital, Uttrakhand. As per EC, Salient details of the Project site is presented below:**

1	Name of Project Proponent	M/s. Rupesh Kumar Chauhan
2	Full Address of the Proponent	R/o 2/588, Tulsinagar Pollusheet Post Kathgodam, Haldwani District Nainital, Uttarakhand
3	Name of Project	Area 30 acre (12.145 Ha) on Betwa river for sand/Morrum mining
4	Project Location (Gatta No./Khand No.)	Gatta No. 2558, 2563 Khand No. 05 village Bandhauri, Tehsil Urai District Jalaun (U.P.)
5	Name of River	Betwa river
6	Name of Minor Minerals	Sand/Morrum Mining
7	Sanctioned Lease area (in Ha)	12.145 Ha
8	Minable Lease area (in Ha)	10.672 Ha
	Zero level mRL	107.0 mRL
9	Max and Min MRL in leased area	113.5 mRL in NE & 109.0 mRL in SW
9	Total geological reserve	3,64,350 m <sup>3</sup> /annum
10	Total minable reserve in LOI	1,82,175 m <sup>3</sup> /annum
11	Total Proposed production per year	1,82,175 m <sup>3</sup> /annum
12	Sanctioned period of mining lease	5 years
13	Method of mining	Open cast manual/semi-mechanized method
14	Production of mine/day	810 m <sup>3</sup> /day
15	Nos. of working days	225
16	Working hours per day	8 hrs
17	Nos. of vehicles movement per day	90 vehicles per day
18	Ultimate depth of mining	2.75 m
19	Water requirement per day	14.60 KLD
20	Nearest metalled road from site	4.09 km

**Specific Observations of M/s Rupesh Kumar Chauhan R/o 2/588, Haldwani District Nanital, Uttrakhand, Khand No 05 village Bandhauri, Tehsil Ural District Jalaun (U.P)**

- 1. The project proponent possesses valid consents to operate upto 31/12/2024 under the Water Act, 1974 and The Air Act, 1981 from concerned SPCB.**
- 2. The project proponent has not obtained permission from CGWA for abstraction of the ground water at the tube well.**
- 3. The project proponent meets its water requirement through tube wells for domestic, plantation and sprinkling purposes. Water meter at the tube wells were not installed.**
- 4. The Project proponent has not submitted compliance reports of EC general conditions and specific**

**conditions granted by SEIAA for effective implementation of environmental plan.**

**Recommendations:**

1. The project proponent may be levied Environmental compensation (EC) in view of noncompliance of EC conditions.
2. The project proponent should obtain permission from CGWA for abstraction of the ground water at the tube well.

**3.3.4 M/s ASVP construction**

Environmental clearance for sand minning from river bed at khand No. 05/A Gata No. 2556 & 2556 village Bandhauri, Tehsil Urai district Jalaun (U. P) (leased area 36.437Ha) is granted. As per EC the salient details are as follows:

1	Name of Project Proponent	M/s. ASVP Construction
2	Full Address of the Proponent	Sh. Sumit Saxena Partner, R/o Majhara Gonda
3	Name of Project	Area 36.437 Ha acre (16.19 Ha) on Betwa river for sand/Morrum Mining
4	Project Location (Gatta No./Khand No.)	Gatta No. 2556, 2557 Khand No. 05/A village Bandhauri, Tehsil Urai District Jalaun (U.P.)
5	Name of River	Betwa river
6	Name of Minor Minerals	Sand/Morrum Mining
7	Sanctioned Lease area (in Ha)	36.437 Ha
8	Max and Min MRL in leased area	116.5 mRL & 111.5 mRL
9	Total geological reserve	10,93,110 m <sup>3</sup> /annum
10	Total minable reserve in LOI	606639 m <sup>3</sup> /annum
11	Proposed production per year	5,45,400 m <sup>3</sup> /annum
12	Sanctioned period of mining lease	5 years
13	Method of mining	Open cast manual/semi-mechanized method
14	Production of mine/day	2424 m <sup>3</sup> /day
15	Nos. of working days	225
16	Working hours per day	8 hrs
17	Nos. of vehicles movement per day	269 Trucks per day
18	Ultimate depth of mining	1.75 m
19	Water requirement per day	17.8 KLD
20	Nos. of trees to be planted	1202 trees

**Specific Observations of M/s ASVP Construction:**

1. The project proponent (M/s ASVP Construction) possess valid consents to operate upto **31/12/2021 under the Water Act, 1974 and The Air Act, 1981 from** concerned SPCB.
2. The project proponent (M/s ASVP Construction) has not obtained permission from CGWA for abstraction of the ground water at the tube well.

3. *The project proponent meets its water requirement through tube wells for domestic, plantation **and sprinkling purposes. Water meter at the tube wells were not installed.***
4. *The Project proponent **has not submitted compliance reports of EC general conditions and specific conditions granted** by SEIAA for effective implementation of environmental plan.*

**Recommendations:**

1. ***The project should ensure compliance of all terms & conditions of the consents as well as EC issued by UP-SEIAA before starting of the mining operation.***
2. ***The project proponents should obtain permission from CGWA for abstraction of the ground water at the tube wells.***
3. ***The project should install electrometric flow meter at water abstraction point and maintain records of the same.***

**4. Observations made by the Joint Committee during site visit 06/10/2021:**

1. *In compliance of NGT order, the Constituted Committee visited the river bed sand mining sites which situated at village Bandhauli, tehsil Orai District Jalaun on October 6, 2021.*
2. *During visit, no mining activities were observed at these sites and found that these sand mining sites submerged into the river Betwa due to high level of water in the river.*
3. *During visit, committee observed the ponding effect in these sand mining sites.*
4. ***The District Mining Department of Jalaun informed, replenish study report of the district was not carried out annually.***
5. ***The committee noticed that these Project proponents have not been complying with EC conditions issued by SEIAA.***
6. *The committee noticed that the Project Proponents (PPs) have not provided the details of the various heads of Expenditure under the Corporate Environmental Responsibility (CER) plan.*
7. *During visit, Committee observed the approach Kachha Roads have not been maintained as well as no plantations were developed on either both side of this approach Roads.*
8. *On the day of visit, Committee observed that the project proponents (PPs) have not made any dust control measures to take-care of dust generated during transport of the mined mineral through kachha approach Roads.*
9. *As informed by UPPCB, R.O Jhnasi, M/s ASVP Construction, Khand no. 5A, M/s Rupesh Kumar Chauhan, Khand no 5 Project Proponent have obtained consent to Operate (CTO)*

under the Water Act 1974 and The Air Act, 1981 from UPPCB. However, other two project Proponents (namely M/s Khajuraho Motor Pvt Limited for khand 03, M/s Khajuraho Motor Pvt Limited for khand 04) have not obtained consent to operate (CTO) since inception of the sand/Morrum Mining activities located at Bandhauri. Hence, it is noted that the excavation work of sand mining activities was carried out by these three Project Proponents without CTO which is a violation under E(P) Act, 1986 with respect to provision under the Water Act and the Air Act.

10. As per EC specific conditions, it is required that 04 Ambient Air Quality monitoring stations should be established in the core zone as well as in the buffer zone for monitoring PM10, PM2.5, SO<sub>2</sub> & NO<sub>x</sub>. Location of the station should be decided based on the Meteorological Data, Topographical features and Environmental & Ecological targets. The frequency of the monitoring should be undertaken in consultation with the State Pollution Control Boards. However, during visit, no monitoring reports were provided by these PPs.
11. During visit, Committee have found that no Geo-Coordinate Pillars were located at their site locations.
12. Primary survey of flora and fauna study has not been carried out by the project proponents as per EC terms and conditions.
13. The District Survey Report (DSR) has been prepared by the District Mining Department of Jalaun as per the MoEF&CC Sustainable Sand Mining Management Guidelines 2016.
14. **The project proponents have not conducted detailed replenishment study duly authenticated by a QCI-NABET accredited consultant and the District Mines Officer as per EC guidelines.**
15. During visit, committee observed that the Project proponents have not developed green cover / tree plantation in the area equivalent to 20% of the total leased area either on riverbank or along the roadside.
16. During visit, the Project proponents (PPs) has not provided the site pit photographs with the date, time and point co-ordinate of the lease areas.
17. The Project Proponents have not carried out Hydro-geological study by a reputed organization/institute within 6 months and establish that Mining in the said area will not adversely affect the ground water regime.
18. During visit the committee observed fugitive emission at the stock yards and on the haul roads.
19. The Committee visited a stock yard which has made up of heaps of the sand in unscientific manner no fencing around the same. No arrangement made for dust suppression in the stock yard.
20. During visit committee observed that mineral transportation vehicles from the Stock yard of the sand carry the sand/Morrum through uncovered vehicles.
21. The state agency surveillance team gathered information on the experience of each of the State in illegal mining. Information such as number of approved sand/morrum reaches, operational sand/morrum reaches; location and

area of the reaches, etc. were collected for all the States. The reaches were shortlisted from where illegal mining activities have been reported and detailed analysis was done to understand the impact of illegal mining in the respective reach.

**5. Monitoring Mechanism by Adopted by UP State Mining Department**

22. During visit, committee visited the strategic location where the Mining Department of U.P state has installed at CCTV camera at Jolhupur Maur (Near Kalpi) for surveillance of the Mineral transportation vehicles at District Jalaun area and noted that it is connected to Central server at Lucknow. The committee observed this CCTV camera has been installed only one-way side of road in two-way road.

**6. Recommendations:**

After detailed deliberation, the Committee has come out with the following Recommendations:

In view of the observed non-compliances of the EC conditions as granted by UP SEIAA and operation of the mining without valid Consent to Operate (CTO) from UPPCB, suitable action may be taken by the concerned Department against the defaulters and recover compensations.

1. The individual proponents should ensure compliance of EC general conditions and specific conditions granted by SEIAA to effectively ensure implementation of environmental plan.
2. **The District Mining Department should not permitted for the mining operation till provision of motorable road from mining sites to main Road further tree saplings to be planted on both sides of the road at the cost of the Project proponent on share basis.**
3. **The District Mining Department shall conduct study of replenishment pre and Post monsoon and accordingly permit the mined out material of the proponents.**
4. **The Local administration/District Mining Department shall ensure no mining is carried out during the night time.**
5. The District Mining Department should ensure regular water sprinkling for dust suppression on the approach road at the cost of the Project proponents on share basis.
6. The transport route from mining site to the stock yard and to main road shall be improved and water sprinkling shall be carried out to control the dust generated from the plying of vehicles.
7. The District Mining Department shall ensure light weight excavator/JCBs are deployed to remove mineral from river bed up to maximum depth of 03-meter layer from general level of the bed.
8. Periodic Monitoring (at least four times in a year - pre-monsoon, Monsoon, Post monsoon and winter) once in each

*season shall be carried out by reputed institutions and the data thus collected may be sent regularly to SEIAA. If at any stage, it is observed that the groundwater table is getting depleted due to the mining activity; necessary corrective measures shall be carried out, which includes immediate stooping of mining operations.*

9. *To prevent air pollution due to the dust during sand quarrying operations and safeguard the persons in the sand quarry and depot site, constant water sprinkling on the pathways and dust prone areas may be done. The sand/Morrum loaded vehicles are to be covered with a tarpaulin before moving out of the quarries/depots.*
10. *The district Mining Department should verify annually the ground /surface level (in meter above MSt.) in and around of the mined area.*
11. *Mining shall be done in layers of 1-meter depth to avoid ponding effect and after first layer is excavated, the process will be repeated for the next layers.*
12. *The Mining Department shall ensure surveillance on both side of Road through CCTV camera at Jolhupur Maur (Near Kalpi) and its connectivity to central server.*
13. *The Mining Department shall also install CCTV cameras at both the sand reaches as well on the check posts. The installation of CCTV cameras shall ensure that all the active reaches are monitored. This installation in the way is useful in tracking the vehicles carrying sand from a reach which has been notified.*
14. *The CC Cameras shall be installed at check post on the sand transport route and connected to the servers of District/Taluka Sand Monitoring Committees for monitoring.*
15. *The Mine-Tag (M-Tag) shall be made mandatory for each vehicle registered for transportation of the minerals.*
16. *The District Mining Department shall regularly inspect the mines sites and the encroachment and shall also ensure that depth of mining are monitored similarly.*
17. *The concerned State Government shall have a strict vigilance on sand reaches and transportation in their jurisdiction.*
18. *Task force is constituted by the collectors with line departments for periodic inspection to comply with EC conditions and mine plan.*
19. *Border check posts shall be established with multi-disciplinary departmental Task Force, to prevent transportation of sand to other States.*
20. *The State should ensure that online permits issued for transportation of sand are printed on a secure paper and the permit should have QR code/ bar code along with a hologram.*
21. *The state level/District authority shall use advanced technology and new gadgets like Total Stations, Global Positioning System (GPS) instruments etc. Before the commencement of mining operations, the depth of sand/morrum quarrying needs to be measured accurately.*
22. *Audit on the quantity permitted, quantity mined out shall be conducted every year by the concerned department.*

23. *Primary survey of flora and fauna shall be carried out and data shall be submitted to the concerned RO, SPCB and SEIAA within six months.*
- 24. *Replenishment study should be done across the States in all districts every year as per the method prescribed in the Sustainable Sand Mining Guidelines 2016 of MoEF&CC.***
25. *Corporate Environmental Responsibility (CER) plan should be prepared and executed by the project proponent and the details of the various heads of Expenditure to be submitted as per the guidelines provided in the recent CER notification number 22-65/2017-IA.III dated 01/05/2018.*
26. *Sand/morrum quarrying lease area shall be demarcated on the ground with pucca stone or concrete pillars to show the present natural bed level and the depth of mining allowed.*
27. *The local administration should ensure so that the mining operations are not executed.*
28. *The maximum depth of mining in the river-bed shall not exceed three meters measured from the un-mined bed level at any point of time with proper bench formation.*
29. *The buffer zone shall be demarcated clearly before the start of mining activity.”*

4. Reply has been filed by one of the PPs, Respondent No.9, M/s ASVP Construction. Other PPs have chosen not to file any reply.

#### **Finding and directions**

5. We have heard learned Counsel for the parties and given consideration to the matter.

6. It is not disputed that there is no replenishment study. Cluster procedure has not been followed as per procedure laid down by the MoEF&CC in Notification dated 15.01.2016. In two cases the PPs do not have requisite CTO while in the remaining illegal extraction of ground water has been observed. Since requirement of DSR and replenishment studies are laid down by the MoEF&CC under the EMGSM, 2020 in the light of judgment of the Hon'ble Supreme Court in *Deepak Kumar vs.*

*State of Haryana & Ors.*<sup>1</sup> read with orders of this Tribunal dated 14.10.2020 in OA No. 40/2020/EZ with OA No. 57/2020/EZ, *Pawan Kumar vs. State of Bihar & Ors.* and earlier orders, reiterated by the Hon'ble Supreme Court vide recent judgment dated 10.11.2021 in *Civil Appeal No. 3661-3662 of 2020, State of Bihar & Ors. vs. Pawan Kumar & Ors.*, we are of opinion that ECs/other permissions granted by SEIAA need to be revisited. This view has been taken by this Tribunal repeatedly, including in recent order dated 01.07.2022 in *O.A. No.319/2022, Dileep Singh vs. State of Uttar Pradesh & Ors.*

7. Respondent No. 9 has submitted that it has legitimate source of water and is not extracting groundwater but the documents annexed shows supply of water for 'drinking purposes' and not for mining. Further, it is stated that borewell which was installed is not used by the PP which is not substantiated.

8. In view of the above, mining by all the private respondents is held to be illegal. SEIAA, UP may revisit the ECs within two months. State PCB may also revisit consents, wherever granted and take action where illegal mining is taking place, following due process of law. Action taken may include recovery of compensation for illegal mining. District Magistrate, Jalaun may also proceed in the matter as per law.

A copy of this order be forwarded to the SEIAA, UP, State PCB and District Magistrate, Jalaun by e-mail for compliance.

The application is disposed of.

Adarsh Kumar Goel, CP

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<sup>1</sup> (2012) 4 SCC 629

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

July 04, 2022  
O.A. No. 212/2021  
(Earlier Appeal No.16/2021)  
A

Item No. 6

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONE BENCH, BHOPAL**  
(Through Video Conferencing)

**Original Application No. 38/2022 (CZ)**  
**(I.A. No. 37/2022)**  
**(I.A. No. 40/2022)**

Ajit Kumar

Applicant(s)

Versus

State of Madhya Pradesh & Ors.

Respondent(s)

**Date of Completion of Hearing and Reserving of Order : 29.09.2022**

**Date of Uploading of Order on the Website : 17.10.2022**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s): Ms. Sadapurna Mukherjee, Adv.

For Respondent(s): Mr. M.C. Chaturvedi, Sr. Adv.  
Mr. Sachin K. Verma, Adv.  
Mr. Mayank Pandey, Adv.  
Mr. Ashish Kumar Pandey, Adv.

**ORDER**

1. The issue of non-compliance of sustainable Sand Mining Guidelines 2020 has been again raised in this application with the situation of anomalies in the State of Madhya Pradesh relating to districts of Devas, Harda, Sihor and Raisen where Madhya Pradesh SEIAA has granted the prior EC to the project proponents for a period starting from 2016 till date, which stands expired as on 31.03.2021/31.03.2022 by virtue of MoEF O.M. dated 24.12.2013 and Sustainable Sand Mining Guidelines, 2020 which mandates that 'EC will be valid for the lease period subjected to ceiling of five years only.
2. Effectively MP SEIAA has granted all the environment clearances for the lease period which was expiring on 31.03.2021. Subsequently in 2019, MP state government has auctioned the sand quarries in the state and awarded the contracts district wise to the successful contractors starting from March, 2020. Based on the contracts the successful contractors have got

the existing valid EC's on their name as per the EIA notification. However, these private contractors did not apply nor got a fresh EC's for the sand mines instead they have kept on operating the mines on the transferred EC's which stand expired on 31.03.2021 and thereafter extended till 31.03.2022. Even MPSMC who is the nodal agency to verify all the statutory approvals did not make any attempt to warn or curb this blatant violation of the EC norms. Instead, they are issuing additional quantity every month beyond approved tender quantity in complete violation of the judgment of the NGT Special Bench where authorities, were directed to rectify the quantities in EC with that of the tender documents in the matter of Prabhat Mohan Pandey Vs MPSEIAA dated 22.02.2022).

3. There has been complete failure of the Respondents to strictly follow the mandatory procedure to allow sand mining in Madhya Pradesh in absence of a valid Environmental Clearance which is a prerequisite for granting any mining lease(s) under the provisions of the Environmental Impact Assessment dated 14.09.2006, EIA Notification dated 15.01.2016, Sustainable Sand Mining Guidelines, 2016 and 2020 issued by the Ministry of Environment Forest and Climate Change, the Enforcement Guidelines of 2020, and the MP Sand Mining Policy, 2019. (***Regulatory Guidelines***) Furthermore, the continuation of sand mining in the absence of environmental clearances obtained by the lessees contravenes the various decisions passed by the Hon'ble Supreme Court in its **Judgment dated the 27th February 2012 in I.A. No.12- 13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc. and various directions of this Hon'ble Tribunal in order dated 13th January, 2015 in the case of Himmat Singh Shekhawat v. State of Rajasthan and Ors., 2015 ALL (I) NGT Reporter (1) (Delhi) 44, National Green Tribunal Bar Association Vs Ministry of Environment and Forest & Ors. in Original Application No. 364 Of 2015 and Order dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal**

- & Ors** and MoEF&CC guidelines for Sustainable Sand Mining Management Guidelines 2016 for scientific and sustainable sand mining in the Country.
4. The extension of environmental clearances is granted under the Central law by the MoEF or SEIAA. In the present case, the same has been done suo moto by the State thereby violating the regulatory procedure. The State is vested with no power to change the system with regard to the grant of environmental clearance under law. The consideration and grant of environmental clearance is statutorily regulated by the MOEF Notification of 2006 and 2020 which extended the clearance only till 31.03.2022. The State Government is not competent to alter or completely give a go-by to the said statutory procedure and methodology to allow transfer of EC's which have expired without seeking permission for renewal from MoEF. Regulatory Norms which makes it a sine qua non that a EC which is not valid cannot be transferred, have been blatantly violated.
  5. Once the **5 years period expires** as it did in March 2021/2022 in the present case no mining can take place without seeking prior MOEF or SEIAA approval which has not been done in the above 4 districts. Moreover the MOEF Notification dated 25.07.2018 also mandates that DSR which is a pre-condition for EC has to be updated once every 5 years and replenishment studies have to be prepared in order to ensure that the environment is not endangered. Unless the EC is updated every 5 years and the EC conditions are updated by the nodal agency the same will be adversely affecting the livelihoods of these smallscale farmers and destroying the ecology. Further, the mining activity also increases the risk of flooding of these villages. **Thus, the SSMG 2020 mandated that replenishment studies be prepared every 5 years and EC be valid only upto 5 years.**
  6. In addition to the above, some of the ECs were erroneously granted in B2 category whereas in light of the fact that cluster formations are in less than 500 meters distance as evident from the google maps data (provided in

Parvesh Portal data) which should have been granted in the B1 category that too by SEIAA not by DEIAA, has violated the following Regulatory norms:

- Point 6 of Appendix-XI of the EIA notification 2016 says that “A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area which shall be applicable to the mine leases or quarry licenses granted on and after 9<sup>th</sup> September,2013.”
- Applicability of Public hearing for all the projects exceeding 5 hectares including cluster scenario.
- Through the Office Memorandum 11011/175/2018-IA-II (M) dated 12-12-2018, Ministry of Environment, Forest & Climate Changes (MoEF & CC) has directed that “Providing for EIA, EMP and therefore, public consultation for all areas from 5 to 25 Ha falling under category B-1 at par with Category B-1 by SEAC/SEIAA as well as for cluster situation wherever it is not provided”. Through this OM, MoEF & CC has clearly defined that the any minor mineral lease or cluster of leases exceeding 5 hectares must be go for public consultation.
- Further it necessary to highlight that MoEF&CC has directed through EIA Notification 2006, to form clusters if the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area for the leases granted post 09.09.2013.

7. It is further submitted that the Tribunal in the Prabhat Mohan Pandey case directed that EC should be accorded only to the limit of auctioned and sustainably permissible quantity and accordingly directed MPSEIAA to rectify the ECs granted in all districts in M.P. as per limits as specified in

the tender document. In-spote of all, there are easy violations by the respondent No.2 to 5 which has been enumerated as follows :-

Sl No	Mine Name	District	Violation
1	DAIYAT MURJHAL	Dewas	EC Expired; Cluster/B1 Category Violation
2	Kundgaon1 Murzhal	Dewas	EC Expired; Tender Quantity Violation
3	NEMAWAR 5	Dewas	EC Expired; Tender Quantity Violation
4	Kundgaon 3 Murzhal	Dewas	EC Expired; Tender Quantity Violation
5	Gajanpur 4 Bajwara	Dewas	EC Expired; Tender Quantity Violation
6	PIPLANERIYA	Dewas	EC Expired; Cluster/B1 Category Violation; Tender Quantity Violation
7	Kundgaon 2 Murzhal	Dewas	EC Expired; Tender Quantity Violation
8	PEERPADALIYA	Dewas	EC Expired
9	NEMAWAR 4	Dewas	EC Expired; Tender Quantity Violation
10	Gajanpur 5 Bajwara	Dewas	EC Expired; Tender Quantity Violation
11	BIJALGAON 1	Dewas	EC Expired
12	CHICHLI 2	Dewas	EC Expired
13	Malpone beswan	Harda	EC Expired; Tender Quantity Violation
14	Chhipaner	Harda	EC Expired; Tender Quantity Violation
15	Golmaal B mangrul	Harda	EC Expired; Tender Quantity Violation
16	Uchan Nayapura	Harda	EC Expired; Tender Quantity Violation
17	Handiya	Harda	EC Expired; Tender Quantity Violation
18	lachhora	Harda	EC Expired; Cluster/B1 Category Violation; Tender Quantity Violation
19	Golmaal A Mangrul	Harda	EC Expired; Tender Quantity Violation
20	Segone	Harda	EC Expired; Tender Quantity Violation
21	Manohorapura	Harda	EC Expired; Cluster/B1 Category Violation; Tender Quantity Violation
22	Boras	Raisen	EC Expired; Cluster/B1 Category Violation; Tender Quantity Violation
23	Sivani	Raisen	EC Expired; Cluster/B1 Category Violation; Tender Quantity Violation
24	Aliganj	Raisen	EC Expired; Cluster/B1 Category Violation; Tender Quantity Violation
25	Sojani	Raisen	EC Expired; Cluster/B1 Category Violation
26	Goramachhurai	Raisen	EC Expired; Cluster/B1 Category Violation
27	Goramachhurai-1	Raisen	EC Expired; Cluster/B1 Category Violation
28	Kotparmahant	Raisen	Cluster/B1 Category Violation
29	Kotparmahant A	Raisen	Cluster/B1 Category Violation; Tender Quantity Violation
30	Ketodhan A	Raisen	Cluster/B1 Category Violation; Tender Quantity Violation
31	Ketodhan B	Raisen	Cluster/B1 Category Violation; Tender Quantity Violation
32	Muwar	Raisen	Cluster/B1 Category Violation
33	Bhouti 1	Raisen	Cluster/B1 Category Violation

34	Nayakheda 2	Raisen	Cluster/B1 Category Violation
35	Boras 1	Raisen	Cluster/B1 Category Violation
36	Sardar nagar	Sehore	EC Expired
37	Somalwada	Sehore	EC Expired

8. Next, questions as raised in this application are that mining operations by the private respondents in the district of Harda, Datia, Devas, Raisen and Sihor in the absence of valid environmental clearance is direct and serious contravention of mandatory procedure stipulated under the MoEF&CC notification dated 14.09.2016 and the Sustainable Mining Management Guidelines 2016 & 2020 and further that in light of the judgment of Deepak Kumar case and Sudarshan Das vs. State of Bengal and environmental clearance is an essential condition precedent which is not only fundamental but a must and prior to granting mining lease, the respondents were not competent to allow mining operation and transfer of EC in the absence of valid environmental clearance obtained or post expiry of the EC is in contravention of the guidelines. It is further alleged that there are violations of category from B1 to B2 and violation of the direction issued in Prabhat Mohan Pandey case.
9. EIA notification dated 14.09.2006 was issued by the respondent no. 2 MoEF&CC under Section 3 of Environment (Protection) Act, 1986 with an endeavour to inter-alia provide a substantive legal framework and comprehensive procedural mechanism for evaluation, assessment and monitoring of the Environmental impact on land, air and water due to various projects undertaken by persons in all sectors throughout the territory of India. The EIA Notification dated 14.09.2006 regulated certain activities including mining of minor minerals, as laid down in the schedule therein and provided that a prior environmental clearance is mandatory for such regulated and specific projects across all sectors and made it mandatory for lessees to have environmental clearances before starting mining activity.

*“Appendix-XI of the EIA notification 2016 says that “A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area which shall be applicable to the*

*mine leases or quarry licenses granted on and after 9<sup>th</sup> September, 2013.*”Further it necessary to highlight that MoEF&CC has directed through EIA Notification 2006, to form clusters if the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area for the leases granted post 9<sup>th</sup> Sep’2013. As per this direction all the working mines in MP are falling in the cluster scenario with more than 5 Ha. Under this scenario as per the Hon’ble NGT direction, public consultation is mandatory for any mine or cluster exceeding 5 Ha.

*Clause 9 of EIA Notification 2006, The “Validity of Environmental Clearance” is meant the period from which a prior environmental clearance is granted by the regulatory authority. As per the para 11 sub clause (i) of EIA Notification 2006, a prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written “no objection” by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period.*

*Further as per para 11 sub clause (iii) of EIA notification 2006 says that, The successful bidder of the mining leases, expiring under the provisions of subsections (5) and (6) of section 8A of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made thereunder, shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee for a period of two years, from the date of commencement of new lease and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier.”*

10. The Hon’ble Supreme Court in its Judgment dated the 27.02.2012 in I.A. No.12- 13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in

the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc. made prior environment clearance mandatory for mining of minor minerals irrespective of the area of mining lease. On 24.12.2013, the MoEF issued an OM which mandates that “EC will be valid for the lease period subjected to a ceiling of 5 years”. Thereafter, in 2016 the MOEF issued the Sustainable Sand Mining Management Guidelines, 2016 (hereinafter referred to as SMMG, 2016), interalia, with an endeavor to ensure that sand and gravel mining is done in an environmentally sustainable and socially responsible manner, and to further ensure the conservation of river equilibrium and its natural environment by protection and restoration of the ecological system. The same was again updated in 2020 and the same made it a sine qua non that EC is valid only for a period of 5 years, after which the same has to be renewed only with prior permission of the nodal agencies.

One of the key and nodal objectives enumerated in the SMMG, 2016 was having an environmental clearance prior to grant of mining lease.

11. The Respondent, MOEF in supplement and addition to the Sustainable Sand Mining Management Guidelines, 2016 issued the Sustainable Sand Mining Management Guidelines, 2020. Clause 4.2 states that “the State Government shall issue letter of intent as per procedure laid down in their Minor Mineral Concession Rules with due consideration of final district Survey report” and further in Clause 8.1. stated that “All district to prepare a comprehensive mining plan as per the provisions of District Survey Report. These Reports shall be put on the website of District Administration. No mining shall be allowed in the area which has not been identified in the comprehensive mining plan of the District.”
12. Through the Office Memorandum 11011/175/2018-IA-II (M) dated 12-12-2018, Ministry of Environment, Forest & Climate Changes (MoEF & CC) has directed that “Providing for EIA, EMP and therefore, public consultation for all areas from 5 to 25 Ha falling member category B-1 at pare with Catogory B-1 by SEAC/SEIAA as well as for cluster situation wherever it is not provided”.

Through this OM, MoEF & CC has clearly defined that the any minor mineral lease or cluster of leases exceeding 5 hectares must be go for public consultation.

13. The matter was taken up by this Tribunal on 23.05.2022 and 31.05.2022 and notices were issued to the respondents with direction to submit the reply.

14. The reply on behalf of respondent nos. 1, 4 and 5 are on record it is submitted on behalf of the respondent that :-

*“3. The respondent no. 1 & 4 department of Mineral Resources through District Collector of District Raisen has recently auctioned the sand mining blocks and the successful bidder has submitted the proposals of ECs transfer to MPSEIAA, the mining blocks which have completed the validity period of 5 years the proposal for transfer is duly rejected by MPSEIAA even in district Raisen 08 such proposals for EC transfer are rejected due to completion of*

S. No.	Name of Mines	Khasra No.	Area (In Ha.)	Tehsil	Sand Group No.	Company Name	Fresh E.C.	Transferred E.C.	Rejection due to completion of 5 yrs period
1.	Motalsir	551	4.000	Bareli	Group-1	Euphoria Mines & Minerals	-	Transferred	-
2.	Ghatpiparia-4	299	3.000	Udaipura			-	Transferred	-
3.	Ketudhan-B	510	2.428				-	Transferred	-
4.	Ketudhan-C	510	2.428				-	Transferred	-
5.	Mohadkalan	229	3.500				-	Transferred	-
6.	Ketudhan-D	510	2.248				-	Transferred	-
7.	Sultanganj	385	5.000				-	Transferred	-
8.	Kotparmahant-A	51	10.000	Bareli			-	Transferred	-
9.	Bhouti-1	104	2.000	Badi	Group-2	Pushpa Enterprises	-	Transferred	-
10.	Tijalpur	123	0.400	Raisen			-	Transferred	-
11.	Berkhedi Ghat	72	0.770	-			Transferred	-	
12.	Barla	30	0.330	-			Transferred	-	
13.	Nayakheda-2	245	0.710	Deori			-	Transferred	-
14.	Boras	735	4.000	Udaipura	Group-1	Euphoria Mines & Minerals	-	-	Rejected

*the validity period of 5 years and 01 proposal for EC transfer is rejected due to environmental sensitivity therefore, out of 22 proposal for EC transfers only 13 ECs are transferred at present in Raisen District. The environmental clearance and details of*

Sand Mining Block of District Raisen are given in tabular form in Annexure RR-1/1 is as follows :-

4. Similarly, the Respondents No, 1& 4 Resources through District Collector of District Chhatarpur has recently auctioned the sand mining blocks and the successful bidder has submitted the proposals of ECs transfer to MPSIEAA the proposal of EC transfer in one mining block in District Chhatarpur of Village Parei Tehsil Gaurihar is rejected by MPSEIAA due to completion of the validity period of 5 years and for District Ohhatarpur out of 26 EC transfer proposal 25 EC are transferred by MPSEIAA, The Environmental Clearance details of Sand Mine & IOCJE Of District Chhatarpur are given in tabular form which is marked and filed herewith as ANNEXURE RR-1/2

<b>District - Chhatarpur</b>				
<b>S. No.</b>	<b>Name of Mine</b>	<b>Date of E.C. Validity</b>	<b>Fresh E.C/ Transferred E.C.</b>	<b>Rejected Due to Completion of 5 years period</b>
<b>Group-1</b>				
1.	Village Barual Tehsil Gaurihar	05.06.2023	E.C. Transferred	-
2.	Village Revna Tehsil Gaurihar	01.05.2023	E.C. Transferred	-
3.	Village Rampurghat Tehsil Gaurihar	05.06.2023	E.C. Transferred	-
4.	Village Rampur Tehsil Gaurihar	30.06.2023	E.C. Transferred	-
5.	Village Baarbandh Tehsil Gaurihar	05.04.2023	E.C. Transferred	-
6.	Village Parei Tehsil Gaurihar	10.04.2022	-	Rejected due to completion of 5 year of period
7.	Village Kandela Tehsil Gaurihar	30.06.2023	E.C. Transferred	-
8.	Village Fhattepur Tehsil Gaurihar	30.06.2023	E.C. Transferred	-
9.	Village Goyra Tehsil Gaurihar	30.06.2023	E.C. Transferred	-
10.	Village Padwaar Tehsil Gaurihar	01.06.2023	E.C. Transferred	-
11.	Village Mawaighat Tehsil Gaurihar	03.05.2023	E.C. Transferred	-
12.	Village Mahyaba Tehsil Gaurihar	30.06.2023	E.C. Transferred	-
13.	Village Ajeetpur Tehsil Gaurihar	30.06.2023	E.C. Transferred	-
<b>Group-2</b>				
1.	Village Bagmau Tehsil Lavkush Nagar	06.04.2023	E.C. Transferred	-
2.	Village Sura Tehsil Rajnagar	06.04.2023	E.C. Transferred	-

3.	Village Digauni Tehsil Rajnagar	01.05.2023	E.C. Transferred	-
4.	Village Tila Tehsil Nowgong	01.05.2023	E.C. Transferred	-
5.	Village Alipur Tehsil Nowgong	06.04.2023	E.C. Transferred	-
6.	Village Lasgarya Tehsil Chandla	03.05.2023	E.C. Transferred	-
7.	Village Banjari Tehsil Chandla	03.05.2023	E.C. Transferred	-
8.	Village Harrai Tehsil Chandla	23.05.2023	E.C. Transferred	-
9.	Village Baghari Tehsil Chandla	23.05.2023	E.C. Transferred	-
10.	Village Surajpur Tehsil Chandla	30.06.2023	E.C. Transferred	-
11.	Village Hinauta Tehsil Chandla	30.06.2023	E.C. Transferred	-
12.	Village Kurela Tehsil Rajnagar	30.06.2023	E.C. Transferred	-
13.	Village Morra Kurela Tehsil	30.06.2023	E.C. Transferred	-

5. In District Datia total 24 sand mining blocks EC transfer proposal were accepted, out of these 24 transfer proposals of District Datia in 4 sand mining blocks 5 years validity period is completed, the answering respondent No.3 is reviewing and examining the issue and will take appropriate action in this regard. The environmental clearance and details of Sand Mining Block of District Datia are given in tabular form in Annexure RR-1/3 is as follows :-

एन.जी.टी. प्रकरण क्र. ओ.ए.38/2022 की जानकारी						
S.No.	The. Village/Mine Name, Khasra No.			Date of EC Validity	Fresh EC/	Rejected due to completion of 5 years
1	2			3	4	5
1.	भाण्डेर	सालोन-ए	1	01.06.2023	EC Transferred	--
2.	भाण्डेर	सरसाई	3603,263,3635	19.12.2022	EC Transferred	--
3.	भाण्डेर	बड़ौनकलां-डी	551	19.02.2022	-	Rejected due to completion of 5 years
4.	भाण्डेर	कंजोली	1	09.05.2023	EC Transferred	--
5.	भाण्डेर	रुहेरा	765,2222	09.05.2023	EC Transferred	--
6.	भाण्डेर	मड़ीखेडा	1	04.03.2023	EC Transferred	--
7.	भाण्डेर	मरसैनीखुर्द	1	3006.2023	EC Transferred	--
8.	भाण्डेर	बसईमलक	292,295,296	27.02.2023	EC Transferred	--
9.	भाण्डेर	डोगरपुर	232	30.06.2023	EC Transferred	--
10.	भाण्डेर	अजीतपुरा	1	15.04.2023	EC	--

					Transferred	
11.	भाण्डेर	अजीतपुरा	514	17.06.2023	EC Transferred	--
12.	भाण्डेर	कुतोली	1/1	30.06.2023	EC Transferred	--
13.	भाण्डेर	बैरछ	1048	19.12.2022	EC Transferred	--
14.	भाण्डेर	बिछरेटा	454/1, 413/1 मिन 1/2	20.01.2023	EC Transferred	--
15.	भाण्डेर	बिछोंदना	1282	20.06.2023	EC Transferred	--
16.	भाण्डेर	अस्टोट	587ए 646ए 654	04.03.2022	-	Rejected due to completion of 5 years
17.	भाण्डेर	मुस्तरा	503, 596	17.03.2023	EC Transferred	--
18.	भाण्डेर	सलेतरा	814	27.02.2023	EC Transferred	--
19.	भाण्डेर	खिरियाझांसी	1	19.12.2022	EC Transferred	--
20.	भाण्डेर	धमना	935	27.02.2023	EC Transferred	--
21.	भाण्डेर	जरा	117	19.02.2023	EC Transferred	--
22.	भाण्डेर	कंजोली	138	30.09.2023	EC Transferred	--
23.	भाण्डेर	भीकमपुरा-बी	278	19.02.2022	-	Rejected due to completion of 5 years

दतिया जिले की रेत खदानों की सूची निमें कलस्टर होने से ई.सी. प्राप्त नहीं हो सकी।

प्रपत्र - 2					
क्र.	जिला	तहसील	ग्राम	खसरा क्रमांक	रकवा (है०)
1.	दतिया	दतिया	बड़ौनकलां-ई	551	24.094
2.	दतिया	दतिया	भीकमपुरा-ए	278	15.000
3.	दतिया	दतिया	बसईमलक	1	4.980
4.	दतिया	दतिया	बड़ौनकलां-ए	173,174	23.000
5.	दतिया	दतिया	मड़ीखेड़ा	122	21.100
6.	दतिया	दतिया	बुढेरा	31	4.940
7.	दतिया	दतिया	खमरौली-ए	825	15.800

6. As far as Districts Dewas & Harda are concerned in both the Districts old agreements for mining are still subsisting, In Dewas District and Harda District all such ECs have already completed the validity period of 5 years and further period of extension granted by MoEr due to Covid-19 crisis therefore, the answering respondents are also reviewing and examining the issue and will take appropriate action in this regard. The environmental clearance and details of Sand Mining Block of District Dewas & Harda are given in tabular form in Annexure RR-1/4 is as follows :-

<b>DEWAS SAND MINES LIST</b>				
<b>SR NO.</b>	<b>NAME OF MINES</b>	<b>DATE OF EC VALIDITY</b>	<b>FRESH/TRANSFER</b>	<b>REJECTED DUE TO COMPLETION OF 5 YEARS PERIOD</b>
1.	Village Peerpadlya, Tehsile Sonkacch	19.10.2020	Transfer	No
2.	Village Chichli, Tehsile Khategaon	05.03.2020	Transfer	No
3.	Village Nemavar-II, Tehsile Khategaon	16.10.2020	Transfer	No
4.	Village Bhanjakhedi-I, Tehsile Khategaon	14.08.2018	Transfer	No
5.	Village Nemavar-V, Tehsile Khategaon	12.03.2020	Transfer	No
6.	Village Kundgaon-I, Tehsile Khategaon	12.03.2020	Transfer	No
7.	Village Daiyat, Tehsile Khategaon	19.10.2020	Transfer	No
8.	Village Kundgaon-III, Tehsile Khategaon	12.03.2020	Transfer	No
9.	Village Kundgaon-II, Tehsile Khategaon	12.03.2020	Transfer	No
10.	Village Bhanjakhedi-II, Tehsile Khategaon	14.08.2018	Transfer	No
11.	Village Pipalneriya, Tehsile Khategaon	06.11.2016	Transfer	No
12.	Village Gajanpur-V, Tehsile Khategaon	05.03.2020	Transfer	No
13.	Village Bijalgaon, Tehsile Khategaon	05.03.2020	Transfer	No
14.	Village Gajanpur-IV, Tehsile Khategaon	12.03.2020	Transfer	No
15.	Village Kundgaon-IV, Tehsile Khategaon	12.03.2020	Transfer	No
16.	Village Bhanjakhedi Mirzapur 2, Tehsile Khategaon	NA	Inactive-Not Transferred	No
17.	Village Rablas (Rijhi), Tehsile Khategaon	NA	Inactive-Not Transferred	No
18.	Village Melepipaliya, Tehsile Khategaon	NA	Inactive-Not Transferred	No
19.	Village Karondmafi, Tehsile Khategaon	NA	Inactive-Not Transferred	No
20.	Village Bijalgaon 2, Tehsile Khategaon	NA	Inactive-Not Transferred	No
21.	Village Chichli, Tehsile Khategaon	NA	Inactive-Not Transferred	No
22.	Village Surjana Peerpadaliya, Tehsile Khategaon	NA	Inactive-Not Transferred	No
23.	Village Patadiyataj, Tehsile Sonkacch	NA	Inactive-Not Transferred	No
24.	Village Kalukhedi (Inabad), Tehsile	NA	Inactive-Not Transferred	No

	<i>Sonkacch</i>			
25.	<i>Village Jaleria (Inabad), Tehsile Sonkacch</i>	<i>NA</i>	<i>Inactive-Not Transferred</i>	<i>No</i>
26.	<i>Village Jivajigarh, Tehsile Tongkhurd</i>	<i>NA</i>	<i>Inactive-Not Transferred</i>	<i>No</i>
27.	<i>Village Chaubaridhara-A, Tehsile Sonkacch</i>	<i>NA</i>	<i>Inactive-Not Transferred</i>	<i>No</i>
28.	<i>Village Chaubaridhara-B, Tehsile Sonkacch</i>	<i>NA</i>	<i>Inactive-Not Transferred</i>	<i>No</i>

<b>Mining Department Harda</b>					
<b>S.N.</b>	<b>Name of Mine Gram/Tehsil</b>	<b>Freshes/Transferred EC</b>	<b>Rejected due to completion of 5 Years</b>	<b>Cluster</b>	<b>Issue Date</b>
1.	<i>Malpon-andiya</i>	<i>Transferred</i>	-	-	<i>2971/04.08.2016</i>
2.	<i>Chipaner Timami</i>	<i>Transferred</i>	-	-	<i>6999/31.10.2015</i>
3.	<i>Golamal-A-Handiya</i>	<i>Transferred</i>	-	-	<i>1855/06.06.2016</i>
4.	<i>Uchan-Handiya</i>	<i>Transferred</i>	-	-	<i>5420/02.03.2017</i>
5.	<i>Handiya-Handiya</i>	<i>Transferred</i>	-	-	<i>7007/31.10.2015</i>
6.	<i>Lachora-Timami</i>	<i>Transferred</i>	-	-	<i>5072/23.01.2017</i>
7.	<i>Golamal-B-Handiya</i>	<i>Transferred</i>	-	-	<i>93/03.05.2016</i>
8.	<i>Segaon-Handiya</i>	<i>Transferred</i>	-	-	<i>2213/27.06.2016</i>
9.	<i>Manoharpura-Handiya</i>	<i>Transferred</i>	-	-	<i>1967/14.06.2016</i>

7. In District Sehore, 16 fresh ECs are issued by MPSDIAA and there are 12 cluster proposals which are pending for examination before SEAC situated at Sehore District, as far as the validity of 04 transferred ECs are concerned the answering respondent No.3 is reviewing and examining the issue jointly with the Mineral Resources Department and will take appropriate action in this regard. The environmental clearance and details of Sand Mining Block of District Sehore are given in tabular form in Annexure RR-1/6 is as follows :-

<b>SEHORE</b>				
<b>S. No.</b>	<b>Name of Mine</b>	<b>Date of E.C. Validity</b>	<b>Fresh E.C./ Transferred E.C.</b>	<b>Rejected Due to Completion of 5 years period</b>
1.	Village Badgaow 3 Tehsil Nasrullaganj	01.02.2024	<b>Transfer E.C.</b>	-
2.	Village Badgaow 1 Tehsil Budni	09.03.2023	<b>Transfer E.C.</b>	-
3.	Village Somalwadha Tehsil Budni	01.07.2022	<b>Transfer E.C.</b>	-
4.	Village Sardarnagar Tehsil Budni	14.01.2022	<b>Transfer E.C.</b>	-
5.	Village Jahajpura 3 Tehsil Rehti	18.01.2025	<b>Transfer E.C.</b>	-
6.	Village Mahukala Tehsil Budni	22.02.2021	<b>Transfer E.C.</b>	-
7.	Village Janwasa-1 Tehsil Budni	24.02.2026	<b>Fresh E.C.</b>	-
8.	Village Janwasa-2 Tehsil Budni	18.02.2026	<b>Fresh E.C.</b>	-
9.	Village Joshipur Tehsil Budni	05.04.2026	<b>Fresh E.C.</b>	-
10.	Village Shahganj Tehsil Budni	18.02.2026	<b>Fresh E.C.</b>	-
11.	Village Ambajadeed-1 Tehsil Nasrullaganj	18.02.2026	<b>Fresh E.C.</b>	-
12.	Village Ambajadeed-2 Tehsil Nasrullaganj	14.03.2026	<b>Fresh E.C.</b>	-
13.	Village Ambajadeed-3 Tehsil Nasrullaganj	18.02.2026	<b>Fresh E.C.</b>	-
14.	Village Badhgaow -1 Tehsil Nasrullaganj	18.02.2026	<b>Fresh E.C.</b>	-
15.	Village Badhgaow -2 Tehsil Nasrullaganj	18.02.2026	<b>Fresh E.C.</b>	-
16.	Village Dimawar Tehsil Nasrullaganj	18.02.2026	<b>Fresh E.C.</b>	-
17.	Village Babri-1 Tehsil Rehti	18.02.2026	<b>Fresh E.C.</b>	-
18.	Village Babri-2 Tehsil Rehti	18.02.2026	<b>Fresh E.C.</b>	-
19.	Village Jahajpura-1 Tehsil Rehti	18.02.2026	<b>Fresh E.C.</b>	-
20.	Village Jahajpura-2 Tehsil Rehti	18.02.2026	<b>Fresh E.C.</b>	-

15. Respondent no. 3 MPSEIAA has submitted the reply as follows :-

“3. The Mining block having an EC which has completed the validity period of 5 years the proposal for transfer is duly rejected by MPSEIAA even in District Raisen 08 such proposal for EC transfer are rejected due to completion of the validity period of 5 years and 01

proposal for EC transfer is rejected due to environmental sensitivity therefore, out of 22 proposal for EC transferes only 13 ECs are transferred at present in Raisen District.

4. Similarly, one mining block in District Chhatarpur of Village Parei Tehsil Gaurihar is rejected by MPSEIAA due to completion of the validity period of 5 years and for District Chhatarpur out of 26 EC transfer proposal 25 EC are transferred by MPSEIAA.

5. In District Datia total 24 sand mining blocks EC transfer proposal were accepted, out of these 24 transfer proposal of District Datia in 4 sand mining blocks 5 years validity period is completed, the answering respondent No.3 is reviewing and examining the issue and will take appropriate action in this regard.

6. As far as Districts Dewas & Harda are concerned in these Districts old agreements for mining are still subsisting. In Dewas District and Harda District all such ECs have already completed the validity period of 5 years and further period of extension granted by MoEF due to Covid-19 crisis therefore, the answering respondent No.3 is reviewing and examining the issue jointly with the Mineral Resources Department and will take appropriate action in this regard.

7. In District Sehore, 16 fresh ECs are issued by MPSEIAA, and there are 12 cluster mining proposal situated at Sehore District which are pending for examination before SEAC, as far as the validity of 04 transferred ECs are concerned the answering respondent No.3 is reviewing and examination the issue jointly with the Mineral Resources Department and will take appropriate action in this regard.

8. The MPSEIAA respondent no. 3 in its 717<sup>th</sup> meeting dated 08/04/2022 has taken a policy decision in furtherance to the direction issued by Hon'ble Tribunal and has issued directions to all the District collectors of Madhya Pradesh that the quantity of mineable mineral shall be permitted according to the tender documents, approval mining plan, DSR, EC and the earlier production capacity mentioned in the EC whichever is lowest, therefore, the apprehension of applicant without any cogent documentary evidence is misconceived, the applicant has filed the present application on the basis of the assumptions and presumptions which have no evidentiary value in the eyes of law therefore, the application deserves to be dismissed on the threshold.”

16. Copy of the order issued from the competent authority with regard to the approval of the DSR relating to the district Raisen dated 23.05.2022 has been

annexed with the reply. Report prepared by the competent authority with regard to the DSR is also on record.

17. Respondent no. 8 has filed a reply with the facts that no mining operation has taken place in district Raisen since about April 2021 as the mining contract of the earlier contractors was cancelled by the State and that mining contract was awarded after following the required procedure which is as follows :-

<b>Sl No.</b>	<b>Dates</b>	<b>Particulars</b>
1	07.10.2021	<i>As per the prevailing guidelines, the Agreement Consultant started working in respect of preparation of New DSR report.</i>
2	26.11.2021	<i>Collector, Raisen published a e-tender notice calling of bids for sand mining in respect to the areas situated at 9 villages, Tehsil- Bareli and 6 villages, Tehsil- Udaipura, District-Raisen, M.P.</i>
3	05.01.2022	<i>The Technical bid for the aforesaid tender was opened.</i>
4	10.01.2022	<i>The Financial bid for the aforesaid tender was opened and the highest successful bidder was accepted. Copy of Tender Summary Report is annexed herewith and marked as Annexure R-8/2.</i>
5	21.01.2022	<i>Collector, Raisen issued the Letter of Intent to the successful bidder in the tendering process. Copy of the Letter Of Intent issued by the Collector, Raisen is annexed herewith and marked as Annexure R-8/3.</i>
6	February, 2022	<i>The proposed DSR report was made available in the public domain for 30 days by the Collector, Raisen as per the guidelines framed by this Tribunal and Hon'ble Supreme Court of India. A sub-committee was formed to resolve the objections to the proposed DSR report.</i>
7	24.02.2022	<i>A meeting was held by SEAC wherein various directions were passed. Pursuant to this, the Final DSR was presented before the SEIAA (M.P.) by the Collector, Raisen for its final approval in terms of the meeting convened by SEAC.</i>
8	30.03.2022	<i>Mineral Assessment Report was prepared in accordance to the directions given by this Tribunal.</i>
9	<u>23.05.2022</u>	<i>SEIAA (M.P.) approved the DSR report for sand mining in the Raisen District in accordance with the guidelines and parameters set out by this Tribunal and Hon'ble Supreme Court of India.</i>

18. It is further submitted that respondent no. 8 has not carried out any mining operation in the absence of valid EC or in the absence of approval from any competent authority.
19. Reply of the respondent no. 9 is with the facts that the DSR of District Raisen was prepared in accordance with the procedure and has been approved by the competent authority vide order dated 23.05.2022 and after that Collector Raisen approved to carry out the mining activities by the successful bidders and mining ETP porter was started. Further argument of the respondent nos. 8 & 9 are that by way of IA the applicant cannot enlarge the scope of the original application and any relief which is inconsistent with the relief sought in the original application is not maintainable.
20. The Ministry of Environment, Forest and Climate Change and issued monitoring guidelines for sand mining in January, 2020. The relevant paras are quoted below:-

- a) *“Parts of the river reach that experience deposition or aggradation shall be identified. The Leaseholder/ Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.*
- b) *The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.*
- c) *Sand and gravel may be extracted across the entire active channel during the dry season.*
- d) *Abandoned stream channels on the terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. The stream should not be diverted to form the inactive channel.*
- e) *Layers of sand and gravel which could be removed from the river bed shall depend on the width of the river and replenishment rate of the river.*

- f) *Sand and gravel shall not be allowed to be extracted where erosion may occur, such as at the concave bank.*
- g) *Segments of the braided river system should be used preferably falling within the lateral migration area of the river regime that enhances the feasibility of sediment replenishment.*
- h) *Sand and gravel shall not be extracted up to a distance of 1 kilometre (1 km) from major bridges and highways on both sides, or five times (5x) of the span (x) of a bridge/public civil structure (including water intake points) on up-stream side and ten times (10x) the span of such bridge on down-stream side, subjected to a minimum of 250 meters on the upstream side and 500 meters on the downstream side.*
- i) *The sediment sampling should include the bed material and bed material load before, during and after the extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross-section. Using the historical or gauged flow rating curve, determine the suitable period of high flow that can replenish the extracted volume. Calculate the extraction volume based on the sediment rating curve and high flow period after determining the allowable mining depth.*
- j) *Sand and gravel could be extracted from the downstream of the sand bar at river bends. Retaining the upstream one to two-thirds of the bar and riparian vegetation is accepted as a method to promote channel stability.*
- k) *The flood discharge capacity of the river could be maintained in areas where there is a significant flood hazard to existing structures or infrastructure. Sand and gravel mining may be allowed to maintain the natural flow capacity based on surveyed cross-section history. Alternatively, off-channel or floodplain extraction is recommended to allow rivers to replenish the quantity taken out during mining.*

- l) *The Piedmont Zone (Bhabhar area) particularly in the Himalayan foothills, where riverbed material is mined, this sandy-gravelly track constitutes excellent conduits and holds the greater potential for groundwater recharge. Mining in such areas should be preferred in locations selected away from the channel bank stretches.*
- m) *Mining depth should be restricted to 3 meters and distance from the bank should be  $\frac{1}{4}$ th or river width and should not be less than 7.5 meters.*
- n) *The borrow area should preferably be located on the riverside of the proposed embankment because they get silted in the course of time. For low embankment, less than 6 m in height, borrow area should not be selected within 25 m from the toe/heel of the embankment. In the case of the higher embankment, the distance should not be less than 50 m. In order to obviate the development of flow parallels to the embankment, crossbars of width eight times the depth of borrow pits spaced 50 to 60 meter center-to-center should be left in the borrow pits.*
- o) *Demarcation of mining area with pillars and georeferencing should be done prior to the start of mining.*
- p) *A buffer distance /un-mined block of 50 meters after every block of 1000 meters over which mining is undertaken or at such distance as may be the directed/prescribed by the regulatory authority shall be maintained.*
- q) *A buffer distance /unmined block of 50 meters after every block of 1000 meters over which mining is undertaken or at such distance as may be the directed/prescribed by the regulatory authority shall be maintained.*
- r) *River bed sand mining shall be restricted within the central  $\frac{3}{4}$ th width of the river/rivulet or 7.5 meters (inward) from river banks but up to 10% of the width of the river, as the case may be and decided by regulatory authority while granting environmental*

*clearance in consultation with irrigation department. Regulating authority while regulating the zone of river bed mining shall ensure that the objective to minimize the effects of riverbank erosion and consequential channel migration are achieved to the extent possible. In general, the area for removal of minerals shall not exceed 60% of the mine lease area, and any deviation or relaxation in this regard shall be adequately supported by the scientific report.*

*s) Mining Plan for the mining leases (non-government) on agricultural fields/Patta land shall only be approved if there is a possibility of replenishment of the mineral or when there is no riverbed mining possibility within 5 KM of the Patta land/Khatedari land. For government projects mining could be allowed on Patta land/Khatedari land but the mining should only be done by the Government agency and material should not be used for sale in the open market.”*

#### **4.1.1 Preparation of District Survey Report.**

*“Sustainable Sand Mining Guidelines, 2016” issued by MoEF&CC requires preparation of District Survey Report (DSR), which is an important initial step before grant of mining lease/LoI. The guidelines emphasize detailed procedure to be followed for the purpose of identification of areas of aggradation/ deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited. Calculation of annual rate of replenishment, allowing time for replenishment after mining, identification of ways of scientific and systematic mining; identifying measures for protection of environment and ecology and determining measures for protection of bank erosion, benchmark (BM) with respect to mean Sea Level (MSL) should be made essential in mining channel reaches (MCR) below which no mining shall be allowed.*

*The NGT in its Judgment dated 08.12.2017 in the matter of Anjani Kumar vs State of Uttar Pradesh & Ors. inter-alia mentioned the following regarding sand mining in the Uttar Pradesh:*

*“It states that the main object of preparation of District Survey Report is to ensure identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining area. Thus, the environmental protection requires a strictly regulated mining in terms of area, quantity as well as most importantly replenishment thereof.”*

*“The data collection and declared for preparation of DSR shall take precedence over other data and would form the foundation for providing mining lease in terms of Appendix- x to the Notification dated 15th January 2016 must be prepared by the statutory authority stated therein i.e. DEIAA prior to awarding of permits for carrying on mining activity in any part of the State of UP.”*

*The Hon’ble High Court of Jharkhand at Ranchi in its orders dated the 11th April, 2018 and 19th June, 2018 in W.P. (PIL) No. 1806 of 2015, in the matter of Court on its Own Motion Versus the State of Jharkhand & Others with W.P. (PIL) No. 290 of 2013, in the matter of Hemant Kumar Shilkarwar Versus the State of Jharkhand & Others, has inter-alia directed the preparation of District Survey Report for minor minerals other than Sand and Bajri or delegation of the powers for preparation of format of District Survey Report of minor minerals other than sand and Bajri to the State Government and/or District Environment Impact Assessment Authority and District Expert Appraisal Committee. To comply*

*with the direction of Hon'ble High Court the Ministry has issued S.O. 3611(E) dated 25.07.2018, wherein, the procedure of preparation of DSR is mentioned. But it is felt that still there is other information that needs to be reported in DSR to make it a comprehensive DSR.*

*Therefore, preparation of District Survey Report is a very important step and sustainable sand mining in any part of the country will depends on the quality of District Survey Report.*

*Considering the importance of district survey report, the Ministry of Environment Forest and climate change, after consultation with experts dealing with mining-related matters, formulated the following guidelines for the preparation of comprehensive District Survey Report for sand mining:*

- a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (LoI) by Mining department or department dealing the mining activity in respective states.*
- b) The first step is to develop the inventory of the River Bed Material and Other sand sources in the District. In order to make the inventory of River Bed Material, a detailed survey of the district needs to be carried out, to identify the source of River Bed Material and alternative source of sand (M- Sand). The source will include rivers, de-siltation of reservoir/dams, Patta lands/ Khatedari Land, M-sand etc.*

*The revenue department of Kerala already conducted river mapping and sand auditing of around 20 rivers of Kerala which is a good example wherein the profile of rivers was created at regular intervals and aggradation/deposition was identified along with water level. In the same study, benchmarks were also created at a*

*prominent location at regular interval for future surveying. Such study helps the mining departments to identify the source of sand.*

*Thus, it is proposed that for preparation of district survey report, the auditing of rivers needs to be carried out. There is already a provision under MMDR Act 2015 for National Mineral Exploration Trust (MET) wherein a 2% of royalty amount to be deposited in the trust. This fund is used for mineral exploration in the country. The Sand Auditing is also a sort of identification of mineral and State Government may request Central Govt. for proving funds for river auditing. The Central Govt. (Ministry of Mines) may also explore the possibilities for providing the funds for river auditing. The other option is that State Govt. may conduct such studies by its own fund and the same may be recovered from the leaseholders to whom the mining lease will be allocated.*

- c) District Survey Report is to be prepared in such a way that it not only identifies the mineral-bearing area but also define the mining and no mining zones considering various environmental and social factors.*
- d) Identification of the source of Sand & M-Sand. The sources may be from Rivers, Lakes, Ponds, Dams, De-silting locations, Patta land/Khtedari lands. The details in case of Rivers such as [name, length of river, type (Perennial or Non-Perennial ), Villages, Tehsil, District], in case of Lakes, Ponds, Dams, De-silting locations [Name, owned/maintained by (State Govt./PSU), area, Villages, Tehsil, District] in case of Patta land/Khtedari lands [ Owner Name, Sy No, Area, Agricultural/Non-Agricultural, Villages, Tehsil, District], in case of M-Sand Plant [Owner Name, Sy No, Area, Quantity/Annum, Villages, Tehsil, District], needs to be recorded as per format given in Annexure-I.*
- e) Defining the sources of Sand/M-Sand in the district*

*is the next step for identification of the potential area of deposition/aggradation wherein mining lease could be granted. Detailed survey needs to be carried out for quantification of minerals. The purpose of mining in the river bed is for channelization of rivers so as to avoid the possibility of flooding and to maintain the flow of the rivers. For this, the entire river stretch needs to be surveyed and original ground level (OGL) to be recorded and area of aggradation/deposition needs to be ascertained by comparing the level difference between the outside riverbed OGL and water level. Once the area of aggradation/deposition are identified, then the quantity of River Bed Material available needs to be calculated. The next step is channelization of the river bed and for this central  $\frac{3}{4}$ th part of the river, width needs to be identified on a map. Out of the  $\frac{3}{4}$ th part area, where there is a deposition/aggradation of the material needs to be identified. The remaining  $\frac{1}{4}$ th area needs to be kept as no mining zone for the protection of banks. The specific gravity of the material also needs to be ascertained by analyzing the sample from a NABL accredited lab. Thus, the quantity of material available in metric ton needs to be calculated for mining and no mining zone.*

*Note: As physical survey with conventional method is time- consuming, use of unmanned aerial vehicle (UAV) may be explored to carry out the survey and finalizing the original ground level and for developing a 3D model of the area.*

- f) The permanent boundary pillars need to be erected after identification of an area of aggradation and deposition outside the bank of the river at a safe location for future surveying. The distance between boundary pillars on each side of the bank shall not be more than 100 meters.*
- g) Identifying the mining and no mining zone shall follow with defining the area of sensitivity by ascertaining the distance of the mining area from*

*the protected area, forest, bridges, important structures, habitation etc. and based on the sensitivity the area needs to be defined in sensitive and non-sensitive area.*

- h) Demand and supply of the Riverbed Material through market survey needs to be carried out. In addition to this future demand for the next 5 years also needs to be considered.*
  - i) It is suggested that as far as possible the sensitive areas should be avoided for mining, unless local safety condition arises. Such deviation shall be temporary & shall not be a permanent feature.*
- j) The final area selected for the mining should be then divided into mining lease as per the requirement of State Government. It is suggested the mining lease area should be so selected as to cover the entire deposition area. Dividing a large area of deposition/aggradation into smaller mining leases should be avoided as it leads to loss of mineral and indirectly promote illegal mining.*
- k) Cluster situation shall be examined. A cluster is formed when one mining lease of homogenous mineral is within 500 meters of the other mining lease. In order to reduce the cluster formation mining lease size should be defined in such a way that distance between any two clusters preferably should not be less than 2.5 Km. Mining lease should be defined in such a way that the total area of the mining leases in a cluster should not be more than 10 Ha.*
- l) The number of a contiguous cluster needs to be ascertained. Contiguous cluster is formed when one cluster is at a distance of 2.5 Km from the other cluster.*
- m) The mining outside the riverbed on Patta land/Khatedari land be granted when there is possibility of replenishment of material. In case, there is no replenishment then mining lease shall*

*only be granted when there is no riverbed mining possibility within 5 KM of the Patta land/Khatedari land. For government projects, mining could be allowed on Patta land/Khatedari land but the mining should only be done by the Government agency and material should not be used for sale in the open market. Cluster situation as mentioned in para k above is also applicable for the mining in Patta land/Khatedari land.*

- n) The State Government should define the transportation route from the mining lease considering the maximum production from the mines as at this stage the size of mining leases, their location, the quantity of mineral that can be mined safely etc. is available with the State Government. It is suggested that the transportation route should be selected in such a way that the movement of trucks/tippers/tractors from the villages having habitation should be avoided. The transportation route so selected should be verified by the State Government for its carrying capacity.*
- o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc, shall be avoided. For this, a sub-divisional committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as Annexure-II. The Sub-Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure-III.*
- p) **Public consultation**-The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general*

*public on the list of mining lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the sub-divisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/Khatedari land, desiltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure V. The details regarding cluster and contiguous cluster needs to be provided in Annexure-VI.*

## **5.0 REPLENISHMENT STUDY**

*The need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due to excessive sand extraction. Mining within or near riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on in-stream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore, to minimize the adverse impact arising out of sand mining in a given river stretch, it is imperative to have a study of replenishment of material during the defined period.*

### **5.1 Generic Structure of Replenishment Study**

*Initially replenishment study requires four surveys. The first survey needs to be carried out in the month of April for recording the level of mining lease before the monsoon. The second survey is at the time of closing of mines for monsoon season. This survey will provide the quantity of the material*

*excavated before the offset of monsoon. The third survey needs to be carried out after the monsoon to know the quantum of material deposited/replenished in the mining lease. The fourth survey at the end of March to know the quantity of material excavated during the financial year. For the subsequent years, there will be a requirement of only three surveys. The results of year-wise surveys help the state government to establish the replenishment rate of the river. Based on the replenishment rate future auction may be planned.*

*The replenishment period may vary on nature of the channel and season of deposition arising due to variation in the flow. Such period and season may vary on the geographical and precipitation characteristic of the region and requires to be defined by the local agencies preferable with the help of the Central Water Commission and Indian Meteorological Department. The excavation will, therefore, be limited to estimated replenishment estimated with consideration of other regulatory provisions.*

## **5.2 Methodology for Replenishment Study**

*The replenishment estimation is based on a theoretical empirical formula with the estimation of bedload transport comprising of analytical models to calculate the replenishment estimation. The iso-pluvial maps of IMD can be used for estimation of rainfall. Catchment yield is computed using different standard empirical formulas relevant to the geographical and channel attributes. eg. Strange's Monsoon runoff curves for runoff coefficient). Peak flood discharge for the study area can be calculated by using Dickens, Jarvis and Rational formula at 25, 50 and 100 years return period. The estimation of bed load transport using Ackers and White Equation or similar can be made. A simulation model is used with basic data generated from the field in the pre-study and post-study period (preferably pre-monsoon and post- monsoon) to estimate the volume of replenished material. The particle size distribution and bulk density of the deposited material are required to be assessed from a NABL recognized laboratory. Considering the bulk density and the volume, the estimation of replenishment in weight will be calculated after considering safeguards and*

*stability of the slopes and riverine regime. Some of the common methods used for field data acquisition for replenishment study*

### **5.2.1 Physical survey of the field by the conventional method**

- i. The conventional survey technical using DGPS and other survey tools are used to define the topography, contours and offsets of the lease area. The survey should clearly depict the important attributes of the stretch of the river and its nearby important civil and other feature of importance. Such information will provide the eligible spatial area for mining. The contour and the elevation benchmarks will provide the baseline data for assessing the pre and post-study period scenario.*
- ii. Physical benchmarks are to be fixed at appropriate intervals (preferable 1 in 30 m) and the Reduced Level (RL) shall be validated from a nearby standard RL. These RL should be engraved on a steel plate (Bench Plate) and shall be fixed and placed at locations which are free from any damages and are available in pre and post-study period. The bench plates shall be available for use during the mining period as reference for all mining activity. Reference pillar may also be used in place of Bench Plates with visible and readable demarcation on the ground as common reference points to control the topographic survey and mining activity.*
- iii. Baseline data on elevation status for a grid of 10 m x 10 m is preferred to have accuracy in the assessment. It is expected that two consecutive cross-sections in longitudinal and lateral direction should not be more than 10-meter distance apart, however, the regulatory authority may fix these intervals depending on the geographical and site-specific conditions, only and after providing the scientific reason for such deviation.*
- iv. The changes observed in the elevation in pre and post scenario at each node should be depicted in graphical forms with an appropriate scale to estimate the area of deposition and erosion. These graphical presentations*

*should depict the active channel regime and the flow bed elevation with other important features required to be considered for estimation of the mining area. The area of deposition and erosion shall be calculated for each cross-section after giving due regard to the stability and safety of active channel banks, and other features of importance. The elevation level shall be in reference to the nearest bench-plates established for the purpose.*

- v. The levels (MSL & RL) of the corner point of each grid should be identifiable and safety barriers (Non-Mining) demarcated as restricted in consensus with Mineral Concession Rules of respective State, and the provision mentioned in this Sustainable Sand Mining Management Guidelines.*
- vi. A clear identification is required to be highlighted between grids under mineable and grids under the non-mineable area. These baseline data (pre and post) be subjected to stimulation with the help of data mine software to derive at the replenishment area and corresponding volume and estimated weight.*
- vii. The database should be structured in a tabulated form clearly depicting the nomenclature of the section lines, latitude and longitude of the starting point, chain-age and respective levels of all the points taken on that section line.*
- viii. Net area shall be derived after the summation of the area of deposition minus area of erosion for each cross-section. The volume will be estimated by multiplying the distance between two cross-sections with the average of net area of these two consecutive cross-sections.*
- ix. One sample per 900 square meters (30 m x 30 m) shall be preferred sample density for assessment of bulk density for estimation of deposition rate. Care should be taken that the sample for assessment of bulk density is taken from the deposition zone and not from erosion. However, depending on the site condition, river morphology and geographical condition, sample density may be adjusted. Reason for such deviation shall be*

*appropriately highlighted in the report with supporting scientific data.*

#### **5.2.4 Replenishment study shall have the details of**

- *List of instruments*
- *List of software*
- *Establishment of Benchmark by putting No. of pillar points and various Ground Control Points (GCP) at the site.*
- *Ground Control Points (GCP) Collection: - Various GCPs were observed by using DGPS for Permanent Benchmarks and for control points.*
- *The summary of the elevation data from each section's profile based on the post-monsoon the survey should have mentioned in the table form.*
- *The detail of post-monsoon survey data in the tabular form shall be*
- *The detailed comparison of both pre-monsoon and post- monsoon elevation data shall be attached*
- *Cross-sectional depiction of deposition and erosion for each section in pre and post-deposition season shall be given supported by relevant field study data and plan.*

21. The adverse effect of sand mining without a proper mine plan was indicated by the Hon'ble Supreme Court in *Deepak Kumar and others v. State of Haryana and others* [(2012) 4 SCC 629]

*“9. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious*

*impacts on both instream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.*

*25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.*

*Conditions imposed by the Environment Authority*

*25. The environmental clearance issued for mining of sand contained the following mandatory conditions:-*

- i. The Licensee must use minimum number of poclains and it should not be more than two in the project site.*
- ii. The District Administration should assess the site for Environmental impact at the end of first year to permit the continuation of the operation.*
- iii. The Annual replenishment report certified by the authorised agency must be submitted to the prescribed authority. In case, the replenishment is low, the mining activity/production levels shall accordingly be decreased/stopped.*
- iv. There shall be no quarrying of sand in any river bed*

*or adjoining area or any other area which is located within 500 m radial distances from the location of any bridge, water supply system, infiltration well or pumping installation.*

- v. The ultimate working depth shall be 1 m from the present natural river bed level and the thickness of the sand available shall be more than 3 m in the proposed quarry site.*
- vi. The sand quarrying shall not be carried out below the ground water table under any circumstances. In case, the ground water table occurs within the permitted depth at 1 meter, quarrying operation shall be stopped immediately. The sand mining should not disturb in any way the turbidity, velocity and flow pattern of the river water.*
- vii. The mining activity shall be monitored by the Taluk level Force once in a month by conducting physical verification.*
- viii. After closure of the mining, the licensee shall immediately remove all the sheds put up in the quarry and all the equipments used for operation of sand quarry. The roads/pathways shall be levelled to let the river resume its normal course without any artificial obstruction to the extent possible.*
- ix. The mined out pits to be backfilled where warranted and area should be suitably landscaped to prevent environmental degradation.*

*32. The natural resources are valuable assets of the State. It is the primary duty of the State to conserve the natural resources for our future generation. The citizens must be in a position to enjoy the resources without causing damage to the environment and the ecology. There must be an institutional framework and enforcement mechanism to prevent illegal and excess quarrying.*

*33. The mining should be undertaken by the State without any adverse impact on the environment. The State alone is responsible for this sorry state of affairs. There is no proper mechanism to check the illegal quarrying and the excess sand mining. The authorities who are given the mandate to operate the sand quarry are not at all concerned with the environment and ecology. They are conducting mining activities in collusion with the mining mafia and looting the natural wealth.*

34. *The River sand is an essential raw material for construction activity. The cost of construction nowadays depends upon very much on the cost of sand. The State for supply of sand to the people at affordable rate ought to have quarried the River sand judiciously and in compliance with the environmental norms and without causing destruction of Rivers. There is no dispute that depletion of sand in the stream bed would result in deepening of rivers and it would have a cascading effect on the environment. Therefore, a balance has to be struck taking into account the need to preserve the ecology and the need for quarrying River Sand for the economic development of the State.*

22. The Hon'ble Supreme Court in *M.C. Mehta vs. Kamal Nath* [1997 (1) Supreme Court Cases 388] made it clear that if there is a law made by the State legislature, the Courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review:

*“35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the Courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the constitution.”*

43. *The quarrying operations, even in those quarries where there are shoals of sand, must be undertaken only by abiding the norms and conditions of the environmental clearance. The*

*quarry site shall be closed immediately after removing the available shoals of sand. The area and the depth of the quarry shall be in accordance with the permission granted by the environmental authorities. Such quarrying operations would be subject to the result of the Special Leave Petition pending before the Hon'ble Supreme Court in SLP No. 2831 of 2018.*

*45. The Government must undertake a scientific study with the help of experts to identify the mineral deposits and its exact location. The State must excavate the minerals only from the places identified by the experts and by following the conditions imposed by the environmental authorities. Interlinking roads inside the river must be removed to check the illegal mining and transportation of minerals. The levelling of roads inside the river shall be done on a phased manner and giving priority. The sand mining shall not be undertaken in respect of locations where illegal sand mining has already been carried out.*

*46. The State must ensure that the sand quarries would adhere to the norms regarding extent and depth. The boundary of the quarry shall be demarcated by following the procedure set-out under Clause 2 (ii) of the conditions imposed by the environmental authority.*

*50. The Court Commissioners have observed that clearance from the State Environment Impact Assessment Authority (SEIAA) has been routinely obtained for river sand mining without divulging the material factors like existence of Bridge, Water supply system etc. The SEIAA without conducting field inspection and cross checking the details permitted quarrying. There is no mechanism now to ascertain as to whether the conditions imposed by the SEIAA have been complied with by the licensee. This issue must be addressed by the Government and SEIAA. Before granting permission*

*for the sites, where sand is available, the SEIAA must visit the place indicated in the application for sand mining. The boundaries of the site must be shown in the mine plan and excavation must be within the boundaries. The Project Director must fix the pucca permanent pillar boundaries for excavation. The Project Director must ensure that stones are erected at 50 metre intervals along the boundaries with the marking of Shoal height, River Bed Height and depth to be excavated. The State must streamline the entire process right from site selection to operation of quarry and supply of sand in an ecologically friendly and environmentally sustainable manner. The entire quarry sites must have CCTV. There must be IP cameras set up in all the poclains for monitoring the overloading. The State must include environmental experts from reputed Central/State Institutions preferably from Indian Institute of Technology to be part of the District Task Force. It must be the responsibility of the concerned District Collector to oversee, monitor and streamline the functioning of the sand quarrying. The Taluk and District level task force must be sensitized. The officials of the Public Works Department and others involved in the process must be given training periodically in relation to environmental and legal aspects of sand quarrying. The Government must fix liability on officials, who are violating the conditions of the clearance or permitting excess quarrying. The jurisdictional Revenue, Police, Geology and Transport department officials must be taken to task in case of illegal quarrying or transportation of sand without permission. The State Appellate Forum constituted by the order in G.O.Ms.No.27 Industries Department dated 17 February 2015 must be a vibrant body. The Government must set up a centralised control room to monitor sand quarrying operations, one at Chennai and the other at Trichy as undertaken in the affidavit. The Centralised Monitoring through CCTVs must be taken up through live streaming from the control room. There must be a Customer Care Centre to receive complaints and take action on such complaints. The*

*action taken report must be sent to the complainant and it must be available on line.”*

23. We have two things, sovereignty of the State and the doctrine of public trust. We have to make a balance between the two though the State has every authority to utilize the land but Public Trust Doctrine says that the property of the public should be utilized for the public purposes and not for the private purposes. The water bodies, lake, air and land all these are the public properties and should be made available to all for maintaining the health and environment. This Doctrine of public trust and precautionary measures was discussed in public interest litigation no. 87/2006; Bombay Environmental Action Group Vs. State of Maharashtra 2018 SCC online Bombay 2680.2019(1) Bombay CRI and it was held as follows:-

*“Apex Court observed thus:*

*“2. The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society’s respect for plants, trees, earth, sky, air, water and every form of life. The main motto of social life is to live in harmony with nature. It was regarded as a sacred duty of everyone to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life.”*

*“ The ancient Roman Empire developed a legal theory known as the “doctrine of the public trust”. It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and*

*unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few.”*

*In the case of M.C. Mehta v. Kamal Nath, in paragraph 34 and 35, the Apex Court held thus:*

*“34. Our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.*

*35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The*

*aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.”*

*In the case of Fomento Resorts & Hotels Limited v. Minguel Martins 4, In paragraphs 53 to 55 and 65, the Apex Court held thus:*

*55. The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.*

*54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, “The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention” (1970), indicates that the public*

*trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.*

55. *The public trust doctrine is a tool for exerting long- established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including down slope lands, waters and resources.*

65. *We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.” (emphasis added) 54. Public at large has a right to enjoy and have a benefit of our forests including mangroves forest. The*

*pristine glory of such forests must be protected by the State. The mangroves protect our environment. Therefore, apart from the provisions of various statutes, the doctrine of public trust which is very much applicable in India makes it obligatory duty of the State to protect and preserve mangroves.*

### **PRECAUTIONARY PRINCIPLE**

55. *In the case of M.C. Mehta (Badhkal and Surajkund Lakes matter) v. Union of India, the Apex Court held thus:*

*“10. In M.C. Mehta v. Union of India [(1987) 4 SCC 463] this Court held as under:*

*“The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effects on the public. Life, public health and ecology have priority over unemployment and loss of revenue problem.”*

*The “Precautionary Principle” has been accepted as a part of the law of the land. Articles 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The “Precautionary Principle” makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the*

*construction activity in the close vicinity of the lakes.”*

24. Learned counsel for the respondent has argued that the application with the prayer of multiple reliefs is not maintainable and further submitted that only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A petition is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the Appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which jurisdiction is resorted to. The Court/Tribunal can of course, enforce the performance of a statutory duty by a public body, using its jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the jurisdiction of the courts/Tribunals. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In-fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the Appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (*Vide: State of Orissa v. Madan Gopal Rungta MANU/SC/0012/1951 MANU/SC/0012/1951: AIR 1952 SC 12; Saghir Ahmad and Anr. v. State of U.P. MANU/SC/0110/1954 MANU SC/0110/ 1954: AIR 1954 SC 728; Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal and Ors. MANU/SC/0063/1962 MANU/SC/0063/1962: AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh MANU/SC/0690/1996 MANU /SC/0690/1996: AIR 1996 SC*

2736; and *Tamilnadu Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Ors.* MANU/SC/8375/2008 MANU/SC /8375/2008 : (2009) 2 SCC 784). A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (*Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York* MANU/SC/0017/1974 MANU / SC/0017 /1974 : AIR 1974 SC 1719; and *State of Rajasthan and Ors. v. Union of India and Ors.* MANU/SC/ 0370/ 1977 MANU/SC/0370/1977: AIR 1977 SC 1361). In *Desh Bandhu Gupta & Co. & Ors Vs. Delhi Stock Exchange Association Ltd.*, AIR 1979 SC 1049, the Apex Court observed that the principle of *contemporenea expositio*, i.e. interpreting a document by reference to the exposition it has received from Competent Authority can be invoked though the same will not always be decisive of the question of construction. The administrative construction, i.e. the contemporaneous construction placed by administrative or executive officers responsible for execution of the Act/Rules etc. generally should be clearly wrong before it is over-turned. Such a construction commonly referred to as practical construction although not controlling, is nevertheless entitled to considerable weight and is highly persuasive. However, it may be disregarded for cogent reasons. In a clear case of error the Court should, without hesitation refuse to follow such construction for the reason that “wrong practice does not make the law.” (*Vide Municipal Corporation for City of Pune & Anr. Vs. Bharat Forge Co. Ltd. & Ors.*, AIR 1996 SC

2856). In *D. Stephen Joseph Vs. Union of India & Ors.*, (1997) 4 SCC 753, the Hon'ble Supreme Court has held that "past practice should not be upset provided such practice conforms to the rules" but must be ignored if it is found to be de hors the rules. However, in *Laxminarayan R. Bhattad & Ors. Vs. State of Maharashtra & Anr.*, AIR 2003 SC 3502, the Apex Court held that "the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a party unless the same finds favour with the Court of law dealing with the matter".

*"Therefore, "contemporanea exposito" by the State instrumentality is very useful and relevant for providing guidance to interpretation of expression used in the Rules. The administrative construction placed by the executive officers, responsible for execution of rules should be accepted and does not warrant over-turning unless found not in conformity of the Rules."*

*"When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. (Vide The Ramjas Foundation & Ors. Vs. Union of India & Ors., AIR 1993 SC 852; K.P. Srinivas Vs. R.M. Premchand & Ors., (1994) 6 SCC 620). Thus, who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimeto Et Injuria Fieri Locupletiolem", means that it is a law of nature that one should not be enriched by the loss or injury to another."*

25. It is relevant to quote certain provisions of the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rule, 2019 which are as follows:-

“3. Restrictions.—

*The following restrictions shall be applied with regard to mineral sand,-*

*(1) No vehicle shall cause to be transported the mineral sand from the sanctioned quarry or storage place without prescribed transit pass.*

*(2) No vehicle shall cause to be transported without substantial entry in Transit Pass (as quantity of mineral, date/time of transport, time to be taken to reach to destination place, etc.).*

*(3) No person, except the valid contractor, shall be permitted to store mineral sand for commercial purpose or for use in commercial construction, quantity more than the quantity specified in these rules.*

*(4) The vehicles engaged in sand transportation without GPS or establishing of machine of equivalent technique as prescribed, shall be prohibited after the date of notification by the State Government.*

*(5) Extraction and removal of sand from the following area shall be prohibited as provided in sustainable sand mining guidelines, 2016 issued by Government of India,-*

*(a) within 200 meters from any bridge;*

*(b) within 200 meter upstream and downstream areas of any water supply scheme or water resources scheme;*

*(c) within 100 meter from edge of national highway and Railway line;*

*(d) within 50 meter from any canal, reservoir or building;*

*(e) within 50 meter from edge of state highway and 10 meters from edge of other village road;*

*(f) within fixed distance from any areas which has been built to control the flood;*

*(g) within 200 meter distance from the place of*

*cultural, religious, historical, and archaeological importance or within the distance as provided in the Act/Rule;*

*(h) such areas which have been declared prohibited by Collector due to environmental or other reasons: Provided that, on receipt of representation, permission to grant for mining within the limit of prohibited area may be considered, after getting NOC/Consent from the concerned administrative department.*

*(6) There shall be complete ban on mining, loading and storage of sand by machines from the sanctioned quarries in river Narmada. Sand mining, loading and storage from quarries having area up to 5.00 hectare situated on other rivers shall be done by the committee of local labourers and quarries having area more than 5.000 hectare, local labourers shall be given priority for sand mining, loading and storage. The use of machines for sand mining in other rivers may be given depending upon the requirement and approval in mining plan and environmental clearance.*

#### *5. (1) Demarcation of sand quarries*

*The Collector, shall identify new sand bearing areas in rivers or on other places of the State. D.G.P.S. survey shall be carried out and its location on revenue map alongwith Latitude and Longitudes shall be marked:*

*Provided that the sand quarries demarcated and declared prior to the commencement of these rules, may be amended by following the same procedure as required.*

#### *(2) Declaration of sand quarries*

*The sand quarry identified as per sub-rule (1) above shall be declared by the Collector, after making such inquiry as he deems fit, on receipt of information/application/proposal. Prior to declaring sand quarry, opinion from the concerned Gram Panchayat/Urban Body shall be obtained and for this*

*purpose a formal order shall be issued:*

*Provided, if no opinion/advise of the concerned Gram Panchayat/Urban Body is received within a period of 15 days, the Collector, by presuming that there is no objection, shall declare new sand quarries in non-scheduled areas only:*

*Provided further that, if any objection is received from concerned Gram Panchayat/Urban Body within stipulated period, the Collector by disposing off the objections on merit shall take appropriate decision regarding declaration of quarry: Provided further that, prior to declaration of sand quarry consent/no objection of Gram Sabha shall be mandatory in scheduled areas: Provided also that, the declaration of such sand bearing areas shall not be necessary separately which are operational or have been auctioned earlier.*

*(3) Making of group of the sand quarry.-*

*(a) The Collector shall make the group of sand quarries and send proposal to the Director along with details of area, boundary, revenue map, Khasra-Panchsala, Latitude-Longitude for each quarry included in group.*

*(b) The group shall be constituted on the basis of geographical location and revenue boundary (Tehsil, District) as far as possible.*

*(c) While making the group, total area of sand quarries included in the group and approximate available quantity of sand shall be taken into consideration.*

*(d) The proposal of constituted group sent by the Collector shall be finalised by Director.*

**12. Statutory Permissions.—**

*The statutory permissions/formalities for each sand quarry of the group may be obtained/completed, as per rule. All the statutory permissions (e.g. Mining Plan, Environmental Clearance, Water and Air Consent etc.) required for the operation of the sand quarry shall*

be obtained by the successful tenderer. The successful tenderer may start mining operation only after obtaining the statutory permissions as per rule 14. Excavation without statutory permission or excavation in excess quantity than permitted quantity in statutory permission, in such condition 100% cost of the excavated mineral and amount of compensation towards environmental damage shall be recoverable from the contractor. The statutory permission are as follows:-

(1) Mining Plan-

(a) The successful tenderer shall submit mining plan for approval to the Collector within a period of one month from the date of issuance of letter of intent. The Mining Plan shall be prepared by the Recognised Qualified Person (R.Q.P.), authorised by the Director.

(b) The mining plan shall consist of the location (latitude- longitude) of the mines, quantity of mineable sand available in the sand quarry and other issues, as provided for in Madhya Pradesh Minor Mineral Rules 1996.

(c) The Collector shall approve the mining plan on the basis of recommendations of the technically qualified officer (Post Graduate Degree Holder in Geology/Applied Geology) of the department posted in the district and in case if in any district technically qualified officer is not posted, in such case concerned Regional head or Director shall approve the mining plans.

(d) The mining plan shall be prepared only on the basis of actual quantity available/estimated and all the Mining operations shall be carried-out in accordance with the approved mining plan.

(2) Environmental Clearance- The successful tenderer after getting approved mining plan, within a maximum period of 15 days, shall submit application before the competent authority to obtain Environmental Clearance in accordance with notification issued by Ministry of Environment,

*Forest and Climate Changes.*

(3) *Water and Air Consent-* The successful tenderer after getting environmental clearance within a maximum period of 7 days, shall submit application before the competent authority for obtaining the consent under the Water (Prevention of pollution and control) Act, 1974 and the Air (Prevention of Pollution and Control) Act 1981.

(4) *Permissible Quantity-*The mining shall be permitted up to mineable quantity fixed in mining plan, environmental clearance, water and air consent (whichever is less).

(5) *The annual contract amount shall not be reduced in any case if there is reduction in mineable quantity in approved mining plan, environmental clearance, water and air Consent.*

(6) *All the above statutory permissions shall be obtained within a time limit. The corporation shall supervise for the permissions being taken for each group by the group contractor. In case of any delay, carelessness or lack of interest proceedings for cancellation of letter of intent may be initiated.*

14. *Commencement of the Mining Operations.—*

(1) *The successful tenderer, after execution of agreement and registration but prior to commencement of the mining operation, shall inform to the Collector about such intention. After Commencement of the mining operation the objection regarding available quantity of mineral in quarry, approach road and other related issues shall not be acceptable.*

(2) *On the condition of depositing the contract amount of the group on the prescribed date as mentioned in the agreement, the mining operation of the quarry may be started as and when the statutory permission is received. It shall not be compulsory to obtain statutory permission for all the quarries of the group simultaneously.*

26. Provisions for transition period.—

(1) After commencement of these rules, there may be delay in complete execution of these rules, and due to nonoperation of sand quarries, deficiency in supply of sand may result, hence these provisions are being made. Some of the sand quarries which were auctioned previously and are in operation, the period of those quarries is up to March 2022. Besides this, some quarries which have been handed over/allotted to Gram Panchayat under provision of Madhya Pradesh Sand Rules 2018 are also in operation at present, the contractors of the group shall start immediately proceedings of transfer of permissions under environmental rules of such quarries.

(2) Other sand quarries transferred to panchayat in which operations have been started after the completion of formalities, all such quarries may remain date of start of operation be operated by Panchayat/Urban Bodies till 31st March 2020 or by the new group contractor from after execution of agreement, whichever is earlier.

(3) From the date of commencement of these rules, the contractors of the auction quarries, may surrender the quarries. Surrender of such sand quarries shall be accepted, giving exemption in condition of agreement and security amount shall be refunded as per eligibility.

(4) Such quarries which have been surrendered or the period has been expired, shall be deemed to be included in the group which have been identified at the time of inviting tender. The contractor of the group shall complete all the statutory formalities for operation of such included quarries. In respect of this new quarry included additionally in the group, the amount of royalty as calculated per cubic meter shall be paid on the basis of the highest tender amount received for that group. The period of new quarry included shall be up to the period of expiry of contract.

(5) If during the period of operation of contract, any

*proposal for new quarry is received to the Collector, the Collector after such enquiry, as deems fit may include quarry in the nearest suitable group. The period of new quarry shall be the period of expiry of contract. The contractor of the group for despatch of sand from such new quarry shall deposit the amount on the basis of the highest tender amount received at the rate of per cubic meter for that group. Maximum of 25% of total permitted quantity for the group contract shall be allowed to be added in case of new quarry.*

*(6) The group or" quarries of the group remained vacant temporarily under the provisions of this rule or due to other reasons may, in public interest, be operated by the department or by the corporation for ensuring availability of sand."*

26. Learned counsel for the applicant has submitted that after expiry of the period the environmental clearances, mining permission was given in violation of settled rules and ECs were awarded in the districts which have either expired with effect from 31.03.2022 or siege to be effective being in violation of category disturb the details of excessive sand mining as granted in the EC for the four districts of Harada, Chattarpur, Datiya and Devas reflecting the discrepancies between the quantities specified in the tender documents has been filed as annexure A/7 which is for the SEIAA/competent authority to examine and to rectify in accordance with the direction given in Prabhat Mohan Case.

27. Reliance has been placed on *Deepak Kumar vs. State of Haryana I.A. No. 11-13/2011 in SLP (C) No. 729-731/2011 & Ors.* where Hon'ble the Supreme Court of India vide order dated 27.02.2012, held as follows :-

*"9. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a river bed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an*

*answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 kilometre, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan. Possibly this may be the reason that in the affidavit filed by the MoEF on 23.11.2011 along with the annexure-2 report, the following stand has been taken:*

*“The Ministry is of the opinion that where the mining area is homogenous, physically proximate and on identifiable piece of land of 5 ha or more, it should not be broken into smaller sizes to circumvent the EIA Notification, 2006 as the EIA Notification, 2006 is not applicable to the mining projects having lease area of less than 5 ha. The Report of Committee on Minor Minerals, under the Chairmanship of the Secretary (E&F) with representatives of various state Governments as members including the State of Haryana and Rajasthan recommended a minimum lease size of 5 ha for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Only in cases of isolated discontinued mineral deposits in less than 5 ha, such mining leases may be considered keeping in view the mineral conservation.”*

*Situations referred to earlier prevail not only in the State of Haryana but also in the neighbouring and other States of the country as well and those issues had come up for serious deliberations before the Government of India, on various occasions.*

*10. Government of India was receiving various reports regarding the adverse impacts on riverbeds and groundwater due to quarrying/mining of minerals. The Mines and Minerals (Development & Regulation) Act 1957 empowers the State Governments to make rules in respect of minor minerals. It was noticed that proposals for mining of major minerals typically undergo environment impact assessment and environmental clearance procedure, but due attention has not been given to environmental aspects of mining of minor minerals. Environmental Impact Assessment Notification of 1994 did not apply to the mining of minor minerals, noticing that minor minerals were brought under the ambit of the Environmental Impact Assessment Notification of 2006 and as per the said notification*

*mining of minerals with a lease area of 5 hectares and above require prior environmental clearance. MoEF's attention was drawn to several instances across the country regarding damage to lakes, riverbeds and groundwater leading to drying up of water beds and causing water scarcity on account of quarry/mining leases and mineral concessions granted under the Mineral Concession Rules framed by the State Governments under Section 15 of the Mines and Minerals (Development and Regulation) Act 1957. MoEF noticed that less attention was given on environmental aspects of mining of minor minerals since the area was small, but it was noticed that the collective impact in a particular area over a period of time might be significant. Taking note of those aspects, MoEF constituted a Core Group under the Chairmanship of the Secretary (E&F) to look into the environmental aspects associated with mining of minor minerals, vide its order dated 24.03.2009. The terms of reference to the Group were as under:*

- i. To consider the environmental aspects of mining of minor minerals (quarrying as well as river beds mining) for their integration into the mining process.*
- ii. Specific safeguard measures required to minimize the likely adverse impacts of mining on environment with specific reference to impact on water bodies as well as groundwater so as to ensure sustainable mining.*
- iii. To evolve model guidelines so as to address mining as well as environmental concerns in a balanced manner for their adoption and implementation by all the mineral producing States.*

*The Group held its first meeting on 7.7.2009 and discussed the impact that may be caused by quarrying/mining of minor minerals on riverbeds and ground waters. It was noticed that individual mines of minor minerals being small in size may have insignificant impact, however, their collective impacts, taking into consideration various mines on a regional scale, is significantly adverse. It was, therefore, felt necessary to consider various aspects since appropriate guidelines have to be issued on the basis of the report of the Committee. The issues which were brought up for consideration were; (i) the need to re-look the definition of minor mineral, (ii) minimum size of lease for adopting eco friendly scientific mining practices, (iii) period of lease, (iv) cluster of mine approach for addressing and*

*implementing EMP in case of small mines, (v) depth of mining to minimize adverse impact on hydrological regime, (vi) requirement of mine plan for minor minerals, similar to major minerals, and (vii) reclamation of mined out area, post mine land use, progressive mine closure plan etc.”*

28. Hon'ble the Supreme Court of India has further quoted the recommendations of the MoEF as follows :-

#### **“4.0 ISSUES AND RECOMMENDATIONS**

##### **Definition of Minor Mineral:**

*The term minor mineral is defined in clause (e) of Section 3 of MMDR Act, 1957 as “minor mineral means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other material which the Central Government may, by Notification in the Gazette of India declare to be a minor mineral”. The term ‘ordinary sand’ used in clause (e) of Section 3 of the MMDR Act, 1957 has been further clarified in rule 70 of the MCR, 1960 as “sand shall not be treated as minor mineral when used for any of the following purposes namely: (i) purposes of refractory and manufacture of ceramic, (ii) metallurgical purposes, (iii) optical purposes, (iv) purposes of stowing in coal mines, (v) for manufacture of silvicrete cement, (vi) manufacture of sodium silicate and (vii) manufacture of pottery and glass.*

*Additionally, the Central Government has declared the following minerals as minor minerals: (i) boulder, (ii) shingle, (iii) chalcedony pebbles used for ball mill purposes only, (iv) limeshell, kankar and limestone used in kilns for manufacture of lime used as building material, (v) murrum, (vi) brick-earth, (vii) fuller’s earth, (viii) bentonite, (ix) road metal, (x) reh-matti, (xi) slate and shale when used for building material, (xii) marble, (xiii) stone used for making household utensils, (xiv) quartzite and sandstone when used for purposes of building or for making road metal and household utensils, (xv) saltpeter and (xvi) ordinary earth (used for filling or levelling purposes in construction or embankments, roads, railways building).*

*It may thus be observed that minerals have been classified into major and minor minerals based on their end use rather than level of production, level of mechanization, export and import etc. There do exist some minor mineral mines of silica sand and limestone where the scale of mechanization and level of production is much higher than those of industrial mineral mines. Further, in terms of the economic cost and revenue, it has been estimated that the total value of minor minerals constitutes about 10% of the total value of mineral production whereas the value of non metallic minerals comprises only 3%. It is, therefore, evident that the operation of mines of minor minerals need to be subject to some regulatory parameters as that of mines of major minerals.*

*Further, unlike India there does not exist any such system based on end usage in other countries for classifying minerals into major and minor categories. Thus, there is a need to re-look at the definition of “minor” minerals per se.*

***It is, therefore, recommended that Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.***

***Size of the Mine Lease:***

*Area for grant of mine lease varies from State to State. Maximum area which can be held under one or more mine lease is 2590 ha or 25.90 sq.miles in Jammu & Kashmir. Rajasthan prescribed a minimum limit of 1 ha for a lease. Maximum area prescribed for permit is 50x50 m. In most of the States area of permit is not specified in the rules. It has recently been observed by Punjab and Haryana High Court in its order dated 15.5.2009 that State Government are apparently granting short term permits by*

dividing the mining area into small zones in effect avoids environmental norms.

There is, thus a need to bring uniformity in the extent of area to be granted for mine lease so as to ensure that eco friendly scientific mining practices can be adopted. **It is recommended that the minimum size of mine lease should be 5 ha. Further, preparation of comprehensive mine plan for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged. This may suitably be incorporated in the Mineral Concession Rules, 1960 by Ministry of Mines.**

#### **Period of Mine Lease:**

The period of lease varies from State to State depending on type of concessions, minerals and its end use. The minimum lease period is one year and maximum 30 years. Minerals like granite where huge investments are required, a period of 20 years is generally given with the provisions of renewal. Permits are generally granted for short periods which vary from one month to a maximum one year. In States like Haryana, minor mineral leases are auctioned for a particular time period. Mining is considered to be capital intensive industry and considerable time is lost for developing the mine before it attains the status of fully developed mine. If the tenure of the mine lease is short, it would encourage the lessee to concentrate more on rapid exploitation of mineral without really undertaking adequate measures for reclamation and rehabilitation of mined out area, posing thereby a serious threat to the environment and health of the workers and public at large.

There is thus, a need to bring uniformity in the period of lease. **It is recommended that a minimum period of mine lease should be 5 years, so that eco friendly scientific and sustainable mining practices are adopted. However, under exceptional circumstances arising due to judicial interventions, short term mining leases / contracts could be granted to the State Agencies to meet the situation arising there from.**

**Cluster of Mine Approach for Small Sized Mines:**

Considering the nature of occurrence of minor mineral, economic condition of the lessee and the likely difficulties to be faced by Regulatory Authorities in monitoring the environmental impacts and implementation of necessary mitigation measures, **it may be desirable to adopt cluster approach in case of smaller mine leases being operated presently. Further, these clusters need be provided with processing/crusher zones for forward integration and minimizing excessive pressure on road infrastructure. The respective State Governments / Mine Owners Associations may facilitate implementation of Environment Management Plans in such cluster of mines.**

**Requirement of Mine Plan for Minor Minerals:**

At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco friendly mining plans are prepared, which are approved by the State Mining Department. The eco friendly mining plans so prepared, though conceptually welcome, are observed to be deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.

**It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the Rules governing the mining of minor minerals by the respective State Governments. These should specifically include the provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use.**

**Creation of Separate Corpus for Reclamation / Rehabilitation of Mines of Minor Minerals:**

*Mining of minor minerals, in our country, is by and large unorganized sector and is practiced in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. **There is thus, a need to create a separate corpus, which may be utilized for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism for creation of such corpus on the 'polluter pays' principle. An organizational structure may also need to be created for undertaking and monitoring these activities.***

#### **Depth of Mining:**

*Mining of minerals, whether major or minor have a direct bearing on the hydrological regime of the area. Besides, affecting the availability of water as a resource, it also affects the quality of water through direct run off going into the surface water bodies and infiltration / leaching into groundwater. Further, groundwater withdrawal, dewatering of water from mine pit and diversion of surface water may cause surface and sub surface hydrologic systems to dry up. An ideal situation would require that quarrying should be restricted to unsaturated zone only above the phreatic water table and should not intersect the groundwater table at any point of time. However, from the point of view of mineral conservation, it may not be desirable to impose blanket ban on mining operation below groundwater table.*

***It is, therefore, recommended that detailed hydro-geological report should be prepared in respect of any mining operation for minor minerals to be undertaken below groundwater table. Based on the findings of the study so undertaken and the comments / recommendations of Central Ground Water Authority / State Ground Water Board, a decision regarding restriction on depth of mining for***

**any area should be taken on case to case basis.**

**Uniform Minor Mineral Concession Rules:**

*The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is recommended that Model Mineral Concession rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime.*

**River Bed Mining:**

*Environment damage being caused by unregulated river bed mining of sand, bazari and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the river bed mining.*

**(a) In the case of mining leases for riverbed sand mining, specific river stretches should be identified and mining permits/lease should be granted stretch wise, so that the requisite safeguard measures are duly implemented and are effectively monitored by the respective Regulatory Authorities.**

**(b) The depth of mining may be restricted to 3m/water level, whichever is less.**

**(c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safetyzone should be worked out on case to case basis, taking into account the structural parameters, locational aspects, flow rate etc. and no mining should be carried out in the safety zone so worked out.**

### 5.0 Conclusion:

*Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals.*

5. *However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments "location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked Rules/Notifications governing such zones and the judicial pronouncements, if any, need be duly noted.*
6. *The Union Ministry of Mines along with Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States." (emphasis supplied)*

29. Learned counsel for the applicant has further argued that the DSR was finally approved and finalized by the competent authority on 23.05.2022 in Raisen and tender notice before the finalization of the DSR was in contravention of the rules and regulations and guidelines issued by the MoEF&CC and against the provision of EP Act and deserves to be rejected and action taken by the district authorities for the permission of mining activities on the basis of any action before the finalization of DSR is not valid.

30. Procedure of DSR finds place in *appeal no. 25/2021 Prabhat Mohan Pandey v MPSEIAA & Ors.* decided on 22.02.2022 by this Tribunal which is as follows:-

### **“Procedure for DSR/EC**

13. *Vide order dated 14.10.2020 in O.A. No. 40/2020, Pawan Kumar v. State of Bihar & Ors., the issue of preparation of District Survey Report (DSR) by Experts was considered. Vide Notification dated 25.07.2018 issued by the MoEF&CC, under Section 3(2)(v) of the EP Act, 1986 amending EIA Notification dated 14.09.2006, procedure for preparation of DSR for sand mining/riverbed mining was laid down. The DSR is crucial as it contains Environment Management plan, including the replenishment study and other safeguards and is the basis to consider the environment impact of mining based on which decision to grant the Environmental Clearance is taken. The Tribunal held that for such crucial exercise, the Experts should be out of those accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India (NABT/QCCI) in terms of O.M. of MoEF&CC dated 16.03.2010. Verification by the District Magistrate and evaluation by the SEAC was also necessary. Accordingly, following directions were issued in relation to a matter arising from the State of Bihar:- “(ii) As the DEIAA is not functioning as a consequence of the decision of the Tribunal in Satendra Pandey (supra), the DSR shall be prepared through a consultant(s) accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India in terms of O.M. of MoEF&CC dated 16.03.2010.*

*(iii) The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the parameters prescribed in the SSMMG2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regard to the fact that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements. (iv) While preparing the DSR, the MoEF&CC Accredited Agency/Consultant shall scrupulously follow the procedure and the parameters laid down under the SSMMG-2016 and EMGSM2020 read in sync with each other.”*

14. Considering the above, vide order dated 04.11.2020 in O.A. No. 726 of 2018, *Rupesh Pethe v. State of M.P. & Ors.*, the Tribunal directed that the above direction ought to be followed pan India, as follows:-

“5. The above direction may be followed by the State of MP also for the sake of uniformity. Further information required to be furnished is about the extent of illegal mining, extent of action taken, including the compensation recovered, vehicles seized and other coercive measures and impact of such action. The State of M.P. may compile relevant directions on the subject including the binding order of any Courts or Tribunal. This exercise may be undertaken jointly by the Secretary Geology and Mining, Member Secretary State PCB and Member Secretary SEIAA. In light of above, the State may further revise its policy and exercise. Let further compliance status be furnished before the next date by e-mail at [judicialngt@gov.in](mailto:judicialngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

6. We are of the view that the above directions need to be followed by all other States where the issue of mining is relevant.

7. A copy of this order be forwarded to the Chief Secretaries of all the States and UTs by e-mail for compliance.”

15. Mining within the State is required to be regulated not only by the Mining Department but also by the State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and by the MoEF& CC under the Environment (Protection) Act, 1986. The Environmental Laws override other laws and any provision contrary in the Mines Act, 1952 will not stay in the way of enforcing environment norms. The Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM-2020) seeks to provide effective enforcement and monitoring from the stage of identification of source to its dispatch and in use which requires environment of all stakeholders, Central Government, State Government, Lease Holders, Mine Owners, Distributors, Dealers, Transporters and Consumers. The guidelines issued from the

*MoEF&CC makes EC mandatory irrespective of the area of mining lease, followed by monitoring in terms of the Environment Management Plan, using IT and IT enabled services.*

16. *Dealing the similar matter in O.A. No. 173/2018(EZ) Sudarsan Das Vs State of West Bengal & Ors. Tribunal observed as follows :-*

*“18. We may note the salient features of the EMGSM-2020, which are supplemental to existing SSMG-2016 and seek to provide effective enforcement and monitoring from the stage of identification of source to its dispatch and end use which requires involvement of all stakeholders viz. Central Government, State Government, Leaseholders/Mine Owners, Distributors, Dealers, Transporters and Consumers (bulk & retail). EMGSM refer to the judgment of the Hon’ble Supreme Court in Deepak Kumar Vs. State of Haryana & Ors. (2012) 4 SCC 629 making EC mandatory irrespective of the area of mining lease, followed by monitoring in terms of the Environment Management Plan, using IT and IT enabled services. Monitoring has to be with reference to quantity of mined material, transportation with a view to promote environmental protection, limit negative physiological, hydrogeological and social impacts underpinning sustainable economic growth. Observations in the order of this Tribunal dated 04.09.2018 in O.A. 173/2018 in Sudarsan Das vs. State of West Bengal & Ors. has also been referred to as follows:*

*“There can be no two views that an effective institutional monitoring mechanism is required not only at the stage when Environmental Clearance is granted but also at subsequent stages”.*

*“The guidelines focus on the preparation of District Survey Report and the Management Plan” ...*

*We are of the view that all the safeguards which are suggested in sustainable sand mining guidelines as well as notification dated 15.01.2016 ought to be scrupulously followed.” ...*

*It is a known fact that in spite of the above-suggested guidelines being in existence, on the ground level, illegal mining is still going on. The existing mechanism has not been successful and effective in remedying the situation.”*

...

*Since there is an utter failure in the current monitoring mechanism followed by the State Boards, SEIAAs and DEIAAs, it is required to be revised for effective monitoring of sand and gravel mining and a dedicated monitoring mechanism be set up.”*

*Further reference has been made to the directions in the order dated 05.04.2019 requiring the 17 States, which were party before the Tribunal viz. West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh, to follow the revised Guidelines and to review their respective monitoring mechanism. It is then stated that with the object of regulating the mining, the sources of sand and steps required are mentioned which provide for District Survey Report (DSR), Mining Plan, replenishment study, consideration of environment impact while granting EC, laying down conditions for EC, monitoring of transportation to the end user to ensure that only legally mined material is transported. There is need to balance between deposition and extraction of sand as per replenishment study, maintaining surveillance, using Unmanned Artificial Vehicles (UAVs)/Drone for reserves estimation, quantity estimation, land use monitoring. Details about all these aspects have been mentioned in the said Guidelines. With regard to post EC monitoring, there is a provision for environment audit, monitoring of sale and purchase by developing online portal and laying down the levels of monitoring i.e. Level 1- Reach/ Stockyard level monitoring, Level 2 - Transportation monitoring, Level 3 - End consumer monitoring/ bulk consumer, Level 4 - Indirect monitoring.*

Reference has then been made to the High-Powered Committee incorporating safeguards to be adopted by the project proponents. There is also provision for assessment of compensation for the ecological damage by the State/ PCB/ any other Authority. Inter District and Inter State boundaries are separately dealt with. The uniform monitoring mechanism stipulates:

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**The following action may be taken to achieve this deterrence against illegal business:**

1. The action should be taken under all legal options available simultaneously. Thus, after identifying the case of illegal excavation, storage and/or transport of minor minerals (including sand), fine should be levied as per the land revenue laws/code(s) of the state. In addition, FIR should be lodged in the police station under relevant sections of law including sec 379 IPC. In addition, action under the Motor Vehicle Act, 1989 and relevant rules should initiate to cancel/suspend the driving license of the driver and permit of the vehicle. Further, action should be initiated under provisions in the Income Tax Act, 1961 for unaccounted income and under the Central Goods and Services Act, 2017 for nonpayment of GST. (Earlier this was done under the state act pertaining to Value Added Tax/Sales Tax). Habitual offenders should also be taken up under local state laws for externment and/or preventive action. It is clarified that as per law, it is possible to take all actions under various laws simultaneously for one offence. What is prohibited in law is an action under the same law for the same act more than once.
  
2. The action should be taken against all persons responsible. Often, there is a tendency to penalize only the drivers of the vehicles. The mafia of illegal mining and transport is much bigger and drivers are only one part of the system. It is necessary to identify all those involved in the offence. It is usually not possible to

*reach the place of excavation without creating a motorable pathway up to the same through land which may be private land. Such role of such landowners needs to be looked into for each offence and proceeded against simultaneously. Further, the role of vehicle owners needs to be probed. Role of the person who allowed his land to be used for illegal excavation and storage should also be examined. Lastly, the person who purchases such sand should also be probed. The legal proceedings stated above needs to be initiated against all of these together. An attempt should be made to fix the financial responsibility in joint and several ways so that recovery is easier.*

3. *There may be discretion available in law about the extent of the penalty to be levied. If such discretion is very wide, then it is advisable that guidelines may be laid down to reduce such discretion in law for levying penalties. For example, in Maharashtra, Land Revenue Code, fine of any amount of penalty up to thrice the value of the sand can be levied. Solapur district administration had instructed Tahsildars and SDMs not to use discretion and levy the fine of three times the value. Availability of discretion makes junior level functionaries susceptible to pressures and it may also lead to corrupt practices.*
4. *It is emphasized that actions, as stated above, are most important to ensure that the IT-based system works. If these exemplary actions are not taken against everyone, it shall create a strong disincentive to those involved in legal excavation and transportation. For IT-based (or any other) legal system to work, it is necessary to ensure that illegal system stops working altogether.”*

31. Hon’ble the Supreme Court of India in State of Bihar and Ors vs. Pawan Kumar and Ors etc (Civil Appeal No. 3661-3662 of 2020) decided on **10<sup>th</sup> November, 2021** considered the essentiality and prerequisite of DSR and held as follows:

“7. It cannot be in dispute that though the developmental activities are not stalled, the environmental issues are also required to be addressed. A balanced approach of sustainable development ensuring environmental safeguards, needs to be resorted to. At the same time, it also cannot be ignored that when legal mining is banned, it gives rise to mushroom growth of illegal mining, resulting into clashes between sand mafias, criminalization and at times, loss of human lives. It also cannot be disputed that sand is required for construction of public infrastructural projects as well as public and private construction activities. A total ban on legal mining, apart from giving rise to illegal mining, also causes huge loss to the public exchequer.

8. Taking into consideration these aspects of the matter, we propose to issue certain interim directions.

9. The Tribunal, in the case of Satendra Pandey (supra), has found that the notification dated 15th January 2016, which provided Environmental Clearance to be given by the District Environment Impact Assessment Authority (hereinafter referred to as the “DEIAA”) was not in consonance with the judgment of this Court in the case of Deepak Kumar v. State of Haryana and Others<sup>2</sup>. The Tribunal therefore in Satendra Pandey (supra), had directed Ministry of Environment, Forest and Climate Change (hereinafter referred to as “MoEF and CC) to take steps to revise the procedure laid down in the notification dated 15th January 2016. It is to be noted that MoEF and CC, in accordance with the directions of the Tribunal, had issued Enforcement and Monitoring Guidelines for Sand Mining (hereinafter to referred to as “the 2020 guidelines”) in the month of January 2020. Chapter 4 of the 2020 guidelines deals with identification of possible sand mining sources and preparation of DSR. It will be relevant to refer to Clause 4.1.1 (a), (o) and (p) of the 2020 guidelines:

**“4.1 Identification of possible sand mining sources and preparation of District Survey Report (DSR)**

**4.1.1 Preparation of District Survey Report.**

District Survey Report for sand mining shall be prepared before the auction/e-auction/ grant of the mining lease/Letter of Intent (Loi) by Mining department or department dealing the mining activity in respective states.

o) Potential site for mining having its impact on the forest,

protected area, habitation, bridges etc, shall be avoided. For this, a sub divisional committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as Annexure II. The Sub Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure III. The details of the transportation need to be provided as in Annexure IV.

p) **Public consultation-** The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining' lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the sub divisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/Khatedari land, desiltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure-V. The details regarding cluster and contiguous cluster needs to be provided in Annexure-VI. The details of the transportation need to be provided in Annexure- VII.”

10. It could thus be seen that in accordance with the 2020 guidelines, the DSR is required to be prepared before the auction/e-auction/ grant of mining lease by Mining Department or Department dealing with mining activity in the respective States. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a sub divisional committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The sub divisional committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexure appended to the said policy.

11. It is further to be noted that Appendix-X of the notification

dated 15th January 2016, issued by MoEF and CC also provides for composition of the sub divisional committee:

*“A Sub Divisional Committee comprising of Sub Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.”*

12. It is to be noted that with the advent of modern technology, various technological gadgets like Drones and satellite imaging etc. can be used for identification of the potential sites and preparation of the DSR and also to check misuse and unauthorized mining.

13. We further find that when the 2020 guidelines as well as the notification issued by MoEF and CC of 2016 itself provide for constitution of sub divisional committees comprising of the officers of the State Government from various Departments for identification of the potential sites for mining, there would be no necessity of the DSRs being prepared through private consultants as directed by the Tribunal in the impugned order. The sub divisional committee consists of various officers from Revenue Department, Irrigation Department, State Pollution Control Board, Forest Department and Geology Mining Department of the State Government. They are better equipped to visit the sites and prepare the draft DSR for the concerned district. Apart from that, preparation of DSR through private consultants would also unnecessarily burden the public exchequer. We are therefore of the view that the direction in that regard issued by the Tribunal requires to be modified. We are further of the considered view that until the DSRs are finalized and granted approval by SEAC and SEIAA, it is appropriate that certain necessary arrangements are permitted so that the State can continue with legal mining activities. This apart from preventing illegal mining activities, would also ensure that the public exchequer is not deprived of its share in legalized mining.

14. We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14th October 2020, with the following directions:-

**(i) The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the**

**sub divisional committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or mining officer. The same shall be prepared by undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon;**

**(ii) Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed;**

(iii) Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.”

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### **Issue No. 9, 10**

12. The applicability of the law laid down by the Hon'ble Supreme Court of India in State of Bihar Vs Pawan Kumar.

We have gone through the orders and directions passed by the Hon'ble Supreme Court of India vide order dated 10th November, 2021 in Civil Appeal No. 3661-3662 of 2020 in State of Bihar Vs Pawan Kumar & Ors, where in the case of Bihar, certain directions were issued and substituted with reference to preparation of DSR. We deem it appropriate that the guidelines and directions issued by the Hon'ble Supreme Court of India vide order referred above are fully applicable in the present matter and State authorities are directed to act in accordance with direction issued by the Apex Court till the finalization of the DSR. In view of the above reference and in light of the directions issued in Goa

*Foundation case and the guidelines issued by the MoEF & CC in 2016, 2018 and 2020 referred above, the respondents, the State Authorities and the Mining Department are bound to prepare a District Survey Report.”*

32. Direction in Prabhat Mohan Pandey (Supra) are as follows :-

**34. Considering the facts narrated above, the conclusions and directions are as follows:-**

- I. *We direct the State to follow the guidelines issued in Sustainable Sand Mining Guidelines 2016 (SSMG-2016) as well as Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM-2020) and also enforce the mechanism for the preparation of DSR, Environment Management Plan, Replenishment Studies, Mine Closure Plan, grant of EC, assessment and recovery of compensation, seizure and release of vehicles involved in illegal mining and other safeguards against violation, grievance redressal, accountability of the designated officers and periodical review at higher level of the State.*
- II. *A mechanism should be developed for periodic inspection by a five-members Committee, headed and coordinated by the SEIAA and comprising CPCB, State PCB and two expert members of SEAC dealing with the subject as directed by this Tribunal in O.A. No. 360/2015.*
- III. *The Authority constituted/nominated under Section 3(3) of the Environment (Protection) Act, 1986 as envisaged by Hon'ble the Supreme Court in Goa Foundation Vs. Union of India & Ors. and in the matter of T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SSC 61 may take further action. The monitoring must be ensured through the Chief Secretary by holding a meeting and issue the necessary guidelines and actions in accordance with the order passed by this Tribunal in O.A. No. 360/2015.*
- IV. *31 appeals relating to 19 districts (Para-18) and the cases as contained in the letter dtd.07.01.2022 (Para-16) issued from the Madhya Pradesh State Mining Corporation Limited whose mining lease have been cancelled or surrendered became infructuous.*
- V. *The matter relating to 08 cases given in Table-1 (F) &*

*discrepancies and variations as shown in Para 4 and 5, where there is a mismatch of khasra number, area, period or quantity of lease shall be reconsidered by the SEIAA and to take necessary action according to law.*

- VI. *E-auction/auction/tender should be done in accordance with Sustainable Sand Mining Guidelines 2016 as well as Enforcement and Monitoring Guidelines for Sand Mining 2020 and only where details of approved DSR and Annual Replenishment Study are available.*
- VII. *EC should be accorded only to the limit of auctioned and sustainably permissible quantity.*
- VIII. *In cases where ECs are transferred, present status of mining areas should be ascertained through ARS and DSR. ECs which have been transferred without the assessments of present environmental status, damages must be revisited by MPSEIAA before any mining is taken up on the basis of transferred ECs.*
- IX. *The orders and directions passed by Hon'ble Supreme Court of India vide order dated 10<sup>th</sup> November, 2021 in Civil Appeal No. 3661-3662 of 2020 in State of Bihar Vs Pawan Kumar must be complied with and to be effected in the State of Madhya Pradesh also.*
- X. *The conclusions as drawn in **Para-N** referred above must be complied with by the MPSEIAA and SEAC while dealing with the mining leases.*

33. In Pawan Kumar Vs. State of Bihar Hon'ble the the Supreme Court of India in Civil Appeal No. 3611/2020 vide order data 10.11.2021 held that in accordance with the 2020 Guidelines, the DSR is required to be prepared before the auction/e-auction/ grant of Mining lease by Mining Department or department dealing with mining activity in the respective States. It was further held that any process of successful bidder prior to the preparation or finalization of DSR cannot claim a vested right to do in mining activities. Cluster formation and public consultation before the DSR to be held to be valid following is required a necessary condition.

*“Chapter 4 of the 2020 guidelines deals with identification of possible sand mining sources and preparation of DSR. It will*

be relevant to refer to Clause 4.1.1 (a), (o) and (p) of the 2020 guidelines: -

*“4.1 Identification of possible sand mining sources and preparation of District Survey Report (DSR) 4.1.1 Preparation of District Survey Report.*

***a) District Survey Report for sand mining shall be prepared before the auction/eauction/grant of the mining lease/Letter of Intent (Loi) by Mining department or department dealing the mining activity in respective states.***

*o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc, shall be avoided. For this, a sub-divisional committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as Annexure II. The Sub-divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure-III. The details of the transportation need to be provided as in Annexure IV.*

*p) Public consultation-The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining' lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the subdivisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/ Khatedari land, desiltation location (ponds/lakes/dams), MSand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure-V. The details regarding cluster and contiguous cluster needs to be provided in Annexure-VI. The details of the transportation need to be provided in Annexure-VII”*

34. During the course of hearing the Learned Counsel for the State Mr. Sachin K Verma has apprised the Tribunal that the district Raisen has obtained fresh EC in pursuant to the fresh DSR and further intimated that all those ECs which has expired has been cancelled and the process of initiating the mining activities are being regulated in accordance with the provision of Sand Mining Guidelines 2020 and DSR being prepared. The cluster situation transportation route are still to be complied with by the State Authorities District Raisen and as per guidelines DSR for sand mining is required to be prepared before the auction/E-auction/ grant of the mining lease later of intent by Mining Department or department dealing with the mining activities and in light of the facts that the DSR in the district of Raisen was finalized only on 23.05.2022, prior proceeding with regard to the E-auction is not said to be according to the parameter laid down in the Sand Mining Guideline 2020 and Pawan Kumar case. While dealing with the O.A. No. 40/2020(EZ) Pawan Kumar vs. State of Bihar, Principal bench of this Tribunal has cancelled the tenders of Baka district in the following terms.

***“79.. The facts and circumstances set out above clearly indicate that firstly the permissible area for mining has grossly exceeded even going by the DSR 2019 filed by the State. Secondly, the mineable mineral has not been quantified in the NIT leaving it in the realm of speculation. We have already rejected the explanation of the State on the increase of the mineable area earlier and, therefore, need not delay ourselves on this except to observe that the stand of the Respondents has been inconsistent, contradictory and lacking in clarity.***

*92. Thus, it would by implication mean that the Interim DSR was subject to the DSR being finalized after completion of the entire process. Instead, we find mineable areas having been added and Sand Blocks are created without following the due process with an objective of revenue maximization*

*102. In the result, we allow the applications and hold that: (a) DSR 2018 cannot be considered as a final DSR and is only an Interim report. (b) The DSR 2019 incorporating the 14 Sand Ghats also*

*cannot be considered as a final DSR and is hereby quashed.6 88 (c) All actions taken pursuant to DSR 2018 and DSR 2019 referred to in (a) and (b) above are hereby held to be void and a nullity.”*

35. The Hon’ble Supreme Court in the judgment of State of Bihar Vs. Pawan Kumar and in the judgment of at paragraph 10 and in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others has held that prior to any auction process it is mandatory to have a valid DSR. **Thus, the e-auction dated 26.11.2021 could not have been valid on the basis of an old DSR prepared 6 years ago on 2016.** Moreover, the old DSR of March 2016 has expired in March 2021 and ceases to be valid in light of the following:

- a. *“As per the Notification S.O.3611 (E). dated 25<sup>th</sup> Jul’18, under Appendix – X, Section I last para says that “The District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects. **The Report shall be updated once every five years”***
- b. *The Sustainable Sand Mining Guidelines, 2016 & Enforcement Monitoring Guidelines for Sand Mining, 2020 issued by the Ministry of Environment Forest and Climate Change which stipulate periodic replenishment studies and regular updation of DSR.*
- c. *National Green Tribunal Bar Association And Ors v. Virender Singh And Ors dated 26.02.2021 the Hon’ble Tribunal held that DSR has to be updated periodically*

*“DSRs need to be prepared very carefully. They should be based on Physical surveys and replenishment studies. Since sand deposition is a dynamic issue, they need to be regularly updated. While awarding lease deeds, important environmental parameters like deposition and replenishment of sand, areas of erosion, distance from infrastructural structures need be considered.*

*4. In the absence of replenishment studies and physical inspection before award, many times sites are awarded where there is no sand. The lease holder per force indulges in mining*

*adjoining areas, some of which may be environmentally not very suitable. Before award of LOI, physical inspection should be mandatory.*

*5. Areas where only few leases are operative and the rest are not settled/surrendered need to be carefully analyzed. There could be a chance of cartel formation and mining of sand illegally from other vacant mining plots under the garb of the operative lease. (In district Prayagraj, there is only one operative lease out of 51 leases).*

*6. Storage Godowns should be at least 5 kms away from the river bank. Otherwise, illegal mining can be carried on under the garb of storage by the leaseholder himself.*

*7. Geo-fencing of sites, their physical demarcation, allotment of geo-coordinates to all the pillars and their constant physical inspection and electronic surveillance is a must to ensure that the mining activity is as per the approved mining plan and no illegal mining, detrimental to environment, is going on.*

*8. There has to be a mechanism to ensure that the actual mining activity conforms to the approved Mining Plan and the approved Environment Management Plan (EMP). Besides the statutory system of Departmental inspections, there has to be a system of annual mandatory Environmental Audit by experts. Environment Department can empanel some experts/expert institutions with standard TORs and Remuneration terms which could be utilized by the Mines Department on a regular basis. This way the District Administrations can access good technical experts with standard conditions in a transparent way without bothering about tedious time-consuming tender formalities.”*

*Thus the tender dated 26.11.2021 could not have been valid on the basis of the DSR 2016.*

36. It has further been clarified by the Learned counsel for the State that all those mines whose period of validity has been completed, have been rejected and cancelled and other matters are being reviewed and being under examination by the appropriate authority for taking necessary actions.

37. Learned Counsel for the State Sh. Sachin K. Verma has argued that in Pawan Kumar's case Hon'ble the Supreme Court has reiterated that the tender

documents must be issued after a valid DSR has been prepared and in the matter of State of Bihar it has been stated that since the DSR has been finalized in pursuant to our order dated 10.11.2021, there should be no impediment for the State of Bihar to proceed further for inviting tenders or auction of Sand blocks in accordance with the DSR which has already been approved. It was held that :-

XX.....XX.....XX.....XX

***“The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the parameters prescribed in the SSMMG2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regarding to the fact that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements”***

38. The contention of the Learned Counsel for the State that State Authorities of District Raisen are proceeding with the tender dated 26.11.2021 in accordance with the provisions contained in State of Bihar vs. Pawan Kumar case order passed in Civil Appeal No. 3661 of 2020 wherein it has been stated that after finalizing the fresh DSR there will be no impediment on the State to issue fresh tenders. These words are wrongly interpreted by the State (District Raisen). Finalisation of DSR means it has been duly prepared and approved by the Competent authority and simply preparation does not mean that the DSR has been finalized before approval and finalization of the DSR Action taken on the basis of the tender dated 26.11.2021 is in contravention of the provisions of Guidelines 2020 and the order of the Hon’ble Supreme Court. The process of tender and DSR has already been discussed in appeal no. 25/2021 and connected matters and the authorities were directed to comply in letter and

spirit. It doesn't intend to frustrate the proceedings on the ground of preparation of DSR. The preparation of DSR and finalization of DSR and lastly, approval by the competent authority are three different stages and it will come into effect only after approval by the competent authority under EP Act. It is admitted fact that in the district Raisen the DSR was finally approved by the competent authority on 23.05.2022 and in view of the directions issued in the State of Bihar vs Pawan Kumar Case the tender holder prior to the date 23.05.2022 cannot claim any vested right and any action on the basis of any tender or NIT before the approval of the DSR i.e. 23.05.2022 is illegal, irregular and in contravention of the Sand Mining Guidelines 2020. The perusal of the chart submitted by the applicant and the State counsel reveals that in the Districts of Devas, Harda, Sihor, Raisen, MPSEIAA has granted the prior EC to the project proponents in case of sand mining for the lease period during 2016 till date which stand expired as on 31.03.2022. MPSEIAA has granted the EC for the lease period which was expiring on 31.03.2021 and thereafter extended till 31.03.2022 (due to COVID relaxation notification by the MoEF&CC), but the contractors did not apply not got a fresh EC for the sand mines on which they are continuing mining activities on transferred EC which stand expired on 31.03.2021 and thereafter extended till 31.03.2022. The matter of transfer of EC without taking the environmental consideration and the matter of NIT was discussed in the case of Prabhat Mohan Pandey vs. MPSEIAA & Anr. in appeal no. 25/2021 (Supra).

#### **Notice Inviting Tender (NIT)**

39. The rules provide for a conservative estimation of the permissible quantity and in no way discounts the importance of NIT or accord primacy to mining plan. NIT is primary document and it is the constitutional requirement to give level playing field to all the bidders as held in Manohar Lal Sharma vs principal secretary (SC) 2014 all SCR 3470 as follow:-

49. ....The constitutional philosophy about law making in relation to mines and minerals and List I Entry 36 (Federal Legislative List) and List II Entry 23 (Provincial

Legislative List) in Schedule VII of the Government of India Act, 1935 which correspond to List I Entry 54 (Union List) and List II Entry 23 (State List) in our Constitution has been noticed by this Court in **Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1**. Speaking through one of us (R.M. Lodha, J., as he then was) in **Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1**, this Court has noted the statement of the learned Solicitor General in the House of Commons made in the course of debate in respect of the above entries in the Government of India Bill that the rationale of including only the "regulation of mines" and "development of minerals" and that, too, only to the extent it was considered expedient in the public interest by a federal law was to ensure that the provinces were not completely cut out from the law relating to mines and minerals and if there was inaction at the Centre, then the provinces could make their own laws. Thus, power in relation to the mines and minerals was accorded to both, the Centre and the States. The Court in **Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1** said:

"130. .... The management of the mineral resources has been left with both the Central Government and the State Governments in terms of List I Entry 54 and List II Entry 23. In the scheme of our Constitution, the State Legislatures enjoy the power to enact legislation on the topics of "mines and minerals development". The only fetter imposed on the State Legislatures under Entry 23 is by the latter part of the said entry which says, "subject to the provisions of List I with respect to regulation and development under the control of the Union". In other words, the State Legislature loses its jurisdiction to the extent to which the Union Government had taken over control, the regulation of mines and development of minerals as manifested by legislation incorporating the declaration and no more. If Parliament by its law has declared that regulation of mines and development of minerals should in the public interest

be under the control of the Union, which it did by making declaration in Section 2 of the 1957 Act, to the extent of such legislation incorporating the declaration, the power of the State Legislature is excluded. The requisite declaration has the effect of taking out regulation of mines and development of minerals from List II Entry 23 to that extent. It needs no elaboration that to the extent to which the Central Government had taken under "its control" "the regulation of mines and development of minerals" under the 1957 Act, the States had lost their legislative competence. By the presence of the expression "to the extent hereinafter provided" in Section 2, the Union has assumed control to the extent provided in the 1957 Act. The 1957 Act prescribes the extent of control and specifies it. We must bear in mind that as the declaration made in Section 2 trenches upon the State legislative power, it has to be construed strictly. Any legislation by the State after such declaration, trespassing the field occupied in the declaration cannot constitutionally stand "....."

83. Two recent decisions viz., (1) **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** and (2) **Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1** directly deal with the question of auction as mode for the disposal or allocation of natural resources. But before we consider these two decisions, reference to some of the decisions of this Court, which had an occasion to deal with disposal of natural resources, may be of some help in appreciating this aspect in correct perspective.

84. P.N. Bhagwati, J. in **Kasturi Lal Lakshmi Reddy & Ors. v. State of J&K & Anr., (1980) 4 SCC 1** had said that where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging setting up of industries within the State, the State

*was not bound to advertise and tell the people that it wanted a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. It was also observed that if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose.*

85. In **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295** this Court had observed that ordinary rule for disposal of State-owned or public-owned property, was by way of public auction or by inviting tenders but there could be situations where departure from the said rule may be necessitated but then the reasons for the departure must be rational and should not be suggestive of discrimination and that nothing should be done which gives an appearance of bias, jobbery or nepotism.

86. The statement of law in **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295** was echoed again in **Haji T.M. Hassan Rawther v. Kerala Financial Corporation, (1988) 1 SCC 166**, wherein this Court reiterated that the public property owned by the State or by an instrumentality of State should be generally sold by public auction or by inviting tenders. It was emphasised that this rule has been insisted upon not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities and to obviate the factors like bias, favoritism or nepotism. Clarifying that this is not an invariable rule, the Court reiterated that departure from the rule of auction could be made but then it must be justified.

87. The above principle is again stated by this Court in **M.P. Oil Extraction & Anr. v. State of M.P. & Ors., (1997) 7 SCC 592**, in which this

Court said that distribution of largesse by inviting open tenders or by public auction is desirable but it cannot be held that in no case distribution of such largesse by negotiation is permissible.

88. In **Netai Bag & Ors. v. State of West Bengal & Ors., (2000) 8 SCC 262** this Court said that when any State land is intended to be transferred or the State largesse is decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people as that would be a sure method of guaranteeing compliance with mandate of Article 14 of the Constitution but non-floating of tenders or not holding public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner.

89. In **Villianur Iyarkkai Padukappu Maiyam Union of India & Ors., (2009) 7 SCC 561** the matter before this Court related to the selection of contractor for development of the port of Pondicherry without floating a tender or holding public auction. The Court said that where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging development of the port, the State was not bound to advertise and tell the people that it wanted development of the port in a particular manner and invite those interested to come up with proposals for the purpose.

90. There are numerous decisions of this Court dealing with the mode and manner of disposal of natural resources but we think it is not necessary to refer to all of them. Having indicated the view taken by this Court in some of the cases, now we may turn to **2G case, Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1**. In that case, the two-Judge Bench of this Court stated that a duly publicised auction conducted fairly and impartially was perhaps the best method for alienation of natural resources lest there was likelihood of

*misuse by unscrupulous people who were only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. Court laid emphasis that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.*

91. *The above view in (2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1 necessitated the reference by the President of India to this Court under Article 143(1) of the Constitution. The first two questions ? Question 1 and Question 2 ? referred to this Court for consideration and report read as under:*

Question-1	<i>Whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions?</i>
Question-1	<i>Whether a board proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to several judgments of the Supreme Court including those of the larger Benches?</i>

92. *The Constitution Bench which dealt with the above reference observed that the answer to the following three questions would provide comprehensive answer to the parent question, viz., Question 1:*

- (i) *Are some methods ultra vires and others intra vires the Constitution of India, especially Article 14?*
- (ii) *Can disposal through the method of auction be elevated to a constitutional principle?*
- (iii) *Is this Court entitled to direct the executive to adopt a certain method because it is the "best" method? If not, to what extent can the executive deviate from such "best" method?*

93. The Constitution Bench clarified that the statement of law in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction was confined to the specific case of spectrum and not for dispensation of all natural resources. The Constitution Bench said that findings of this Court in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** were limited to the case of spectrum and not beyond that and that it did not deal with the modes of allocation for natural resources other than spectrum.

94. The Constitution Bench while dealing with the aspect of disposal of natural resources other than auction, divided the consideration of this aspect under two heads, viz., "Legitimate deviations from auction" and "Potential of abuse". Under the head "Legitimate deviations from auction" the Court considered the earlier decisions of this Court in **Kasturi Lal Lakshmi Reddy & Ors. v. State of J&K & Anr., (1980) 4 SCC 1**, **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295**, **Haji T.M. Hassan Rawther v. Kerala Financial Corporation, (1988) 1 SCC 166**, **M.P. Oil Extraction & Anr. v. State of M.P. & Ors., [(1997) 7 SCC 592]**, **Netai Bag & Ors. v. State of West Bengal & Ors., (2000) 8 SCC 262** and **Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors., (2009) 7 SCC 561**, which we have briefly noted above, and it was held that there is no constitutional mandate in favour of auction under Article 14. In the main judgment (paras 129 to 131, pg. 92), the Constitution Bench stated as under:

"129. Hence, it is manifest that there is no constitutional mandate in favour of auction under Article 14. The Government has

*repeatedly deviated from the course of auction and this Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. Essentially whenever the object of policy is anything but revenue maximization, the Executive is seen to adopt methods other than auction.*

130. *A fortiori, besides legal logic, mandatory auction may be contrary to economic logic as well. Different resources may require different treatment. Very often, exploration and exploitation contracts are bundled together due to the requirement of heavy capital in the discovery of natural resources. A concern would risk undertaking such exploration and incur heavy costs only if it was assured utilisation of the resource discovered; a prudent business venture, would not like to incur the high costs involved in exploration activities and then compete for that resource in an open auction. The logic is similar to that applied in patents. Firms are given incentives to invest in research and development with the promise of exclusive access to the market for the sale of that invention. Such an approach is economically and legally sound and sometimes necessary to spur research and development. Similarly, bundling exploration and exploitation contracts may be necessary to spur growth in a specific industry.*

131. *Similar deviation from auction cannot be ruled out when the object of a State policy is to promote domestic development of an industry, like in Kasturi Lal's case, discussed above. However, these examples are purely illustrative in order to demonstrate that auction cannot be the sole criteria for alienation of all natural resources."*

95. *While dealing with the argument that even if the method of auction was not a mandate under Article 14, it must be the only permissible method due to the*

susceptibility of other methods to abuse, the Court under the head "Potential of abuse" held that a potential for abuse cannot be the basis for striking down the method as ultra vires the Constitution. The Court noted two decisions of this Court in **R.K. Garg v. Union of India & Ors., (1981) 4 SCC 675** and **D.K. Trivedi & Sons & Ors. v. State of Gujarat & Ors., 1986 Supp SCC 20** and held that neither auction nor any other method of disposal can be held ultra vires the Constitution merely because of a potential abuse. The Constitution Bench (para 135, pgs. 93-94) stated as under:

"135. Therefore, a potential for abuse cannot be the basis for striking down a method as ultra vires the Constitution. It is the actual abuse itself that must be brought before the Court for being tested on the anvil of constitutional provisions. In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an unconstitutional methodology either. These drawbacks include cartelization, "winners curse" (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licenses for exploitation of more resources than he can pragmatically execute), etc. However, all the same, auction cannot be called ultra vires for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximization is a priority. Therefore, neither auction, nor any other method of disposal can be held ultra vires the Constitution, merely because of a potential abuse."

96. In **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]** the Constitution Bench, in the main judgment,

*thus, concluded that auction despite being a more preferable method of alienation/allotment of natural resources cannot be held to be constitutional requirement or limitation for alienation of all natural resources and, therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate. The Court also opined that auction as a mode cannot be conferred the status of a constitutional principle. While holding so, the Court held that alienation of natural resources is a policy decision and the means adopted for the same are, thus, executive prerogatives. The Court summarised the legal position as under:*

*"146. To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-a-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution.*

*Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.*

*147. Finally, market price, in economics, is an index of the value that a market prescribes to a good. However, this valuation is a function of several dynamic variables: it is a science and not a law. Auction is just one of the several price discovery mechanisms. Since multiple variables are involved in such valuations, auction or any other form of competitive bidding, cannot constitute even an economic mandate, much less a constitutional mandate.*

*148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.*

*149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial*

*scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."*

97. *J.S. Khehar, J., while concurring with the main opinion has stated that auction is certainly not a constitutional mandate in the manner expressed, but it can be applied in some situations to maximise revenue returns, to satisfy legal and constitutional requirements. In his view, if the State arrives at a conclusion, in a given situation, that maximum revenue would be earned by auction of the particular natural resource, then that alone would be the process which it would have to adopt. In the penultimate para of his opinion, J.S. Khehar, J., observed," there can be no doubt about the conclusion recorded in the "main opinion" that auction which is just one of the several price recovery mechanisms, cannot be held to be the only constitutionally recognised method for alienation of natural resources. That should not be understood to mean, that it can never be a valid method for disposal of natural resources "*

98. *In **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]**, the Constitution Bench said that reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). In the main judgment, with reference to Article 39(b), the Court stated as follows:*

*"113. The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of*

*natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on "distribution" built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing "distribution" is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word "distribution". Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately sub-serve the "common good".*

xx.....xx.....xx

115. *It can thus, be seen from the aforequoted paragraphs that the term "distribute" undoubtedly, has wide amplitude and encompasses all manners and methods of distribution, which would include classes, industries, regions, private and public sections, etc. Having regard to the basic nature of Article 39(b), a narrower concept of equality under Article 14 than that discussed above, may frustrate the broader concept of distribution, as conceived in Article 39(b). There cannot, therefore, be a cavil that "common good" and "larger public interests" have to be regarded as constitutional reality deserving actualization.*

116. *The learned counsel for CPIL argued that revenue maximization during the sale or alienation of a natural resource for commercial exploitation is the only way of achieving public good since the revenue collected can be channelized to welfare policies and controlling the burgeoning deficit. According to the learned*

*counsel, since the best way to maximise revenue is through the route of auction, it becomes a constitutional principle even under Article 39(b). However, we are not persuaded to hold so. Auctions may be the best way of maximizing revenue but revenue maximisation may not always be the best way to subserve public good. "Common good" is the sole guiding factor under Article 39(b) for distribution of natural resources. It is the touchstone of testing whether any policy subserves the "common good" and if it does, irrespective of the means adopted, it is clearly in accordance with the principle enshrined in Article 39(b).*

*xx.....xx.....xx*

*119. The norm of "common good" has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional yardstick? it would depend on the economic and political philosophy of the Government. Revenue maximisation is not the only way in which the common good can be subserved. Where revenue maximisation is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method. Where revenue maximisation is not the object of a policy of distribution, the question of auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations.*

*120. Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximisation, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies? Article 14 does not predefine any economic policy as a constitutional mandate. Even the mandate of Article 39(b) imposes no restrictions on the means adopted to sub-serve the*

*public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."*

*99. In light of the above legal position, the argument that auction is a best way to select private parties as per Article 39(b) does not merit acceptance. The emphasis on the word "best" in Article 39(b) by the learned senior counsel for the intervener does not deserve further discussion in light of the legal position expounded by the Constitution Bench in **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]** with reference to Article 39(b). We are fortified in our view by a recent decision of this Court (3-Judge Bench) in **Goa Foundation v. Union of India and Others, (2014) 6 SCC 590** wherein following **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]**, it is stated, "...it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made there under and in consonance with the constitutional provisions?"*

40. As described in the EMGSM 2020, Mining Plan is an important document to assist the mine owner to operate the mine in a scientific manner. There is no practice for regular replenishment study to ascertain the rate of depositing, plan and section needs to be prepared based on the restrictions provided in letter of intent and provisions of Sustainable Sand Mining Management Guidelines 2016. Therefore, granting EC on the basis of Mining Plan is in violation of the Guidelines and against the principles of sustainable sand mining. Considering the importance of

district survey report, the Ministry of Environment Forest and climate change, after consultation with experts dealing with mining-related matters, formulated the guidelines for the preparation of comprehensive District Survey Report for sand mining. It accordingly, prescribed that District Survey Report for sand mining should be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (LoI) by Mining department or department dealing the mining activity in respective states. DSR is to be approved at the level of SEIAA with the help of SEAC. It is surprising that MPSEIAA is not taking DSR or Annual Replenishment Study (ARS) into consideration. Had DSR and ARS taken into consideration the discrepancy between the quantity of sand given in NIT and EC can be easily avoided and sand mining would be sustainable. In addition to that it would also eliminate the chances of misuse of EC for illegal mining.

41. Another category of cases includes those in which the mining areas (Khasra/survey numbers) are not given in NIT but EC are granted even for them. Obviously such EC can lead to illegal mining as well as loss of exchequer to the State. It would also disrupt the system of sustainable mining and escape all kinds of monitoring and supervision, as EC would be available but the mining department would not be looking after them. It is completely out of sync so far as the mining administration in States exists.

42. Direction nos. 6 & 7 in Prabhat Mohan Case was issued as follows :-

*vi. E-auction/auction/tender should be done in accordance with Sustainable Sand Mining Guidelines 2016 as well as Enforcement and Monitoring Guidelines for Sand Mining 2020 and only where details of approved DSR and Annual Replenishment Study are available. EC should be accorded only to the limit of auctioned and sustainably permissible quantity.*

*vii. In cases where ECs are transferred, present status of mining areas should be ascertained through ARS and DSR. ECs which have been transferred without the assessments of present environmental*

*status, damages must be revisited by MPSEIAA before any mining is taken up on the basis of transferred ECs.*

43. In the matter of 40/2020 (EZ) with OA No. 57/2020 (EZ) the principal Bench of this Tribunal directed the authorities concerned to prepare the DSR and then send it to SEAC and after appraisal of the report, it shall forward it to SEIAA for consideration and approval if it meets all scientific/technical requirements. This order was challenged before Hon'ble the Supreme Court of India and Hon'ble Supreme Court of India in State of Bihar Case in para no. 14 directed as follows:-

*“14. We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14th October 2020, with the following directions:*

- (i) The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the subdivisional committees consisting of the SubDivisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or mining officer. The same shall be prepared by undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon;*
- (ii) Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed;*
- (iii) Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all*

*environmental concerns are taken care of and no damage is caused to the environment.*

15. *List the matter after 20 weeks.”*

42. It makes it clear that finality of DSR will take place after approval of SEIAA and admittedly SEIAA approved the DSR of Raisen district on 23.05.2022 thus DSR came into existence on 23.05.2022.

43. Learned Counsel for the State and rest of the respondent had taken reliance of the order passed in OA No. 10/2020 to Rambabu Gaur vs State of MP & Ors. but the orders cannot be interpreted in violation of the Sand Mining Guidelines and the law laid down in Pawan Kumar's case .

44. Learned counsel for the State has further taken reliance of the order dated 12.01.2022 passed in W.P. No. 26824/2021 passed by the Hon'ble High Court of M.P., where the question of recovery of Revenue amounting to 67 crores was in question. The issue with regard to DSR, validity of the DSR and compliance of the Sand Mining Guidelines, 2020 was not in issue in that matter and that matter relates only to the recovery of the penal amount. Contention of the Learned counsel for respondent no. 8 & 9 are to the effect that DSR was finally approved by the competent authority SEIAA, MP on 23.05.2022 and the proceedings were in accordance with the Sand Mine Guidelines. The matter may be examined by the SEIAA in accordance with the relevant rules and since the DSR was finalized and approved by the SEIAA only on 23.05.2022 thus actions taken on the basis of DSR after approval of DSR shall be taken into account and any NIT or the action on the basis of NIT prior to the date cannot be held to be valid and shall be in contravention of Sand Mine Guidelines, 2020.

45. The main questions raised in this petition are as follows:-

i. **Question No. 1** : Requirement of DSR and its finality.

**Answer** : The Sustainable Sand Mining Management Guideline, 2016 & 2020 provides for the preparation of DSR and MoEF has

issued necessary directions. It is settled Law that District Survey Report for Sand Mining shall be prepared before the auction/e-auction/grant of mining lease by the Mining Department or department dealing with the mining activities in the respective States. DSR is to be approved at the level of SEIAA with the help of SEAC. The DSR becomes final on the date when it is approved by the SEIAA. With regard to the DSR relating to the district Raisen it was approved on 23.05.2022. Thus, the valid DSR/approved DSR came into existence on 23.05.2022 district Raisen, the question is replied accordingly.

- ii. **Question no. 2:** Sanctity of NIT in absence of DSR or DSR duly approved by SEIAA.

**Answer:** In view of the discussion made above and in view of Prabhat Mohan Pandey case (Supra) and the direction issued in the Pawan Kumar Case, the action of NIT in absence of valid DSR is in violation of Sand Mining Guidelines issued in 2016 & 2020, it becomes final only after the approval of the SEIAA. Any NIT before the date of approval of DSR by SEIAA is in contravention of the Rules, Guidelines and the directions issued by the Hon'ble Supreme Court. The question is replied accordingly.

- iii. **Question no. 3:** Continuance of mining operation, in absence of valid environment clearance or after expiry of the term.

**Answer:** Any mining activities on the basis of environmental clearance which was expired w.e.f. 31.03.2021 & 31.03.2022 ceased to be in accordance with law and the mining activities and EC granted in violation of category is also against the provisions of law and against the Sustainable Sand Mining Rules, 2020.

46. In the present case, Learned Counsel for the State/ SEIAA has submitted that the mining operation in which EC has expired, has been either cancelled or under consideration before the SEIAA. In light of above facts all those ECs whose terms has expired stand cancelled. The pending matters must be considered and decided according to law by the MPSEIAA within a time frame or say within 15 days and take a suitable decision and intimate accordingly.

47. In view of the above facts, the summary of the conclusions and directions are as follows :-

- i. The DSR in the district Raisen was finalized/approved by the MPSEIAA on 23.05.2022. Any action taken on the basis of NIT issued prior to 23.05.2022 including (26.11.2021) is irregular, void, having no effect and, in violation of guidelines and stands cancelled. The respondents may initiate exercise as fresh on the basis of approved DSR i.e. dated 23.05.2022 in the district of Raisen.
- ii. The environment clearance whose terms has expired either on 31.03.2021 & 31.03.2022 stands canceled and Madhya Pradesh State Environmental Impact Assessment Authority is directed to cancel the remaining matters, where the matter is under scrutinization before the authorities concerned and take appropriate decision within 15 days. Till the Final decision is taken by the appropriate authority/ MPSEIAA, no mining activities are permitted in the concerned districts under question where the EC has been expired on the basis of expired ECs.

iii. We direct the Madhya Pradesh State Mining Corporation and the MPSEIAA to rectify the EC in accordance with law and in light of the judgment and orders passed by this Tribunal in Prabhat Mohan Pandey vs. State of MP & Ors. (Supra).

iv. Issue of electronic traffic passes by the MPSMC portal from the mines whose EC has expired is illegal, irregular and in contravention of Sand Management Guidelines and the respondents are directed to take necessary actions to control the illegal mining in accordance with law.

48. The **Original Application No. 38/2022 with all I.As stands disposed of** in view of the above order. A copy of this order be forwarded to Madhya Pradesh State Environmental Impact Assessment Authority, Madhya Pradesh State Mining Corporation, Madhya Pradesh Pollution Control Board, Director, Geology & Mining, Madhya Pradesh, Collector, Raisen, Devas, Harda, Sehore for taking necessary actions in accordance with law.

**Sheo Kumar Singh, JM**

**Dr. Arun Kumar Verma, EM**

17<sup>th</sup> October, 2022  
OA No. 38/2022(CZ)  
PN

**Rejoinder on Behalf of Applicant to Respondent No.2 and No.3 in O.A. No.78/2022**

Akshar Bhatt <akshar@outlook.com>

Wed 7/19/2023 1:24 PM

To: Aniruddha Kulkarni <aniruddha1488@gmail.com>; Nitin Deshpande <nitindeshpande0311@gmail.com>

 1 attachments (4 MB)

Rejoinder on behalf of Original Applicant.pdf;

Dear Sir,  
To

1. Aniruddha Kulkarni

Advocate for Respondent No.1

2. Nitin Deshpande

Advocate for Respondent No.2 and No.3

Kindly find attached the Rejoinder on behalf of the Applicant to common reply filed by Respondent No.2 and No.3 in O.A. No.78/2022.

Regards,  
Akshar Bhatt  
Advocate for the Applicant