

**BEFORE THE NATIONAL GREEN TRIBUNAL,
(PRINCIPAL BENCH) NEW DELHI**
Original Application No. 176/2022

IN THE MATTER OF:

Aman Chaudhary

....Appellant

Versus

Union of India &Ors.

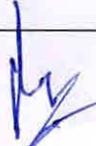
....Respondents

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Place: New Delhi
Date: January, 2023

Filed by:


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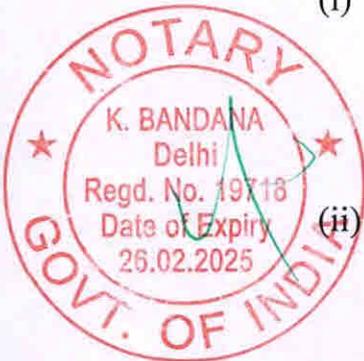
**AFFIDAVIT OF COMPLIANCE FILED BY THE MINING
DEPARTMENT**

I, Kunwar Bahadur Singh, aged about 49 years, S/o Sh. Pranpati Singh, presently posted as Mines Officer, Collectorate, Kanpur Nagar, U.P., presently at New Delhi, do hereby solemnly affirm and state as under:

1. That the deponent is presently posted as Mines Officer, and as such is competent to sign and swear in the instant affidavit on behalf of the respondent/ Mining Department.
2. That this Hon'ble Tribunal in above mentioned case vide its order dated 29.09.2022 had directed to furnish information on following four points which are reproduced below:-

(i) Whether copy of environmental clearance /mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent?

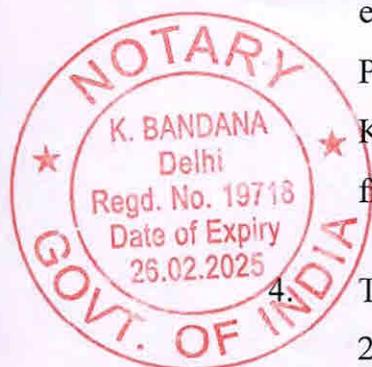
(ii) Whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by



designated third party/departmental agency regarding compliance with environmental clearance and consent to operate conditions and environmental norms by the project proponent, if yes produce copies of the same if not the reasons for the same?

- (iii) Whether the project proponent was entitled to and could commence mining before of CTO by UPPCB if not why the project proponent was allowed to commence such mining without CTO from UPPCB and
- (iv) Whether any notice for non-compliance with environmental clearance /consent to operate /environmental norms was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof?

3. That in compliance of above direction of this Hon'ble Tribunal, it is submitted that in Chapter - 4 of U.P. Minor Mineral (Concession) Rules 2021 (previously Rule 1963) the lease deed of normal sand mining area, plot no.2m rakba 10.50 hectare of village Katri Sunada, Tehsil Billaur situated at the bank of Ganga River of the district was executed in favour of lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh r/o 113 MIG-2, Mahabali Puram, Kalyanpur, Kanpur Nagar on 7.4.2018 for the period of 05 years from 7.4.2018 to 6.4.2023.



4. That on the basis of report from Mines Officer, Kanpur Nagar, dated 28.12.2022; letter no.1243/S-218/22 of Regional Officer U.P.

Pollution Control Board, Kanpur Nagar, dated 5.12.2022; Letter no.NGT/509/81-7-2022 of the Secretary Environment Forest and Climate Change, Section-7, Govt. of U.P. Lucknow dated 05.01.2023 and letter no.1523/M-NGT-Kanpur Nagar/2022 of the Director Geology and Mining Directorate U.P. Khanij Bhawan, Lucknow dated 16.1.2023 the information on above points are as follows:-

5. Point no. (i) - Whether copy of environmental clearance /mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent?

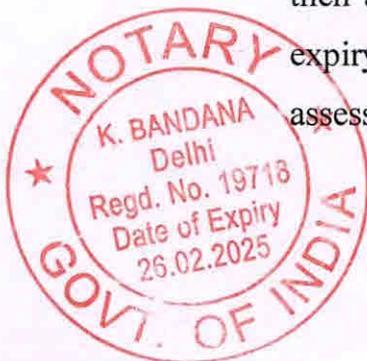
With reference to above point, it is submitted that the copy of environmental clearance certificate issued in favour of project proponent /lease holder was sent to Member Secretary, U.P. Pollution Control Board, Environment Bhawan, Vibhuti Khand, Lucknow from State Environment Impact Assessment Authority (SEIAA). It is an established Practice of SEIAA to send the copy of environmental clearance certificate to member secretary U.P. Pollution Control Board. (Copy of said environmental clearance certificate is Attached for perusal)

6. Point no.(ii) - Whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by designated third party/departmental agency regarding compliance with environmental clearance and consent to operate conditions and environmental norms by the project proponent, if yes produce copies of the same if not the reasons for the same?



In compliance of above direction of this Hon'ble Tribunal it is submitted that neither the lease holder /project proponent has not filed any periodical returns nor in compliance of conditions of environment clearance and conditions of C.T.O. the project proponent has got done any audit /periodical inspection from third party /departmental agency. It is mentioned in letter no.NGT-509/81-7-2022 dated 5.1.2023 of the Secretary, Environment Forest and Climate Change Section-7, U.P. Lucknow that the relevant part of the order dated 26.2.2021 passed by this Hon'ble Tribunal in O.A. no.360/2015 National Green Tribunal Bar Association Vs. Virendra Singh (State of Gujarat &Ors.) in connected O.A. Union of India &Ors. is as follows:-

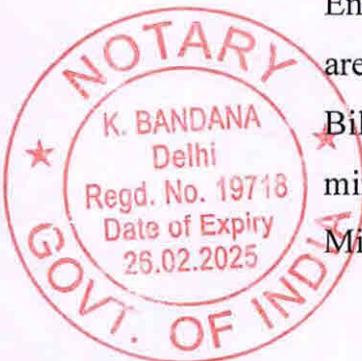
“....28. We further direct that periodic inspection be conducted by a five members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC 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 within 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 environmental 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 mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of U.P. quoted earlier may be duly taken into account...”

In Environment clearance Certificate issued in favour of project proponent it is mentioned that the responsibility to get the compliance of environment clearance and operating conditions and environmental conditions was on the part of Regional Officer U.P. Pollution Control Board, Kanpur Nagar and Mines Officer, Kanpur Nagar, which has not been got done by them and nor in compliance of these conditions deponent has been informed about the mandatory requirement for inquiry.

It is pertinent to mention here that site has been inspected from time to time for getting the compliance of conditions of lease deed and above regulation 2021 by the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh for the normal sand mining area village KatariSunadha Plot no.2m rakba 10.50 hectare of Tehsil Billaur . Due to not installing CCTV Camera of 360 degree in mining area, due to violation of Rule 59(3) notice no.1434/30 Sub Mineral /2019 was issued on 8.5.2019 and penalty of Rs.25,000.00



has been imposed. On 7.12.2020 the Revenue Department and Sub Divisional Magistrate Billaur inspected the site, in which it was found that in distance of about 700 mtr from approved mining area in west side the plain impact of sand, height of which was equal to water level, the same was got removed and first information report has been got registered in concerned police station against the unknown persons. By letter no.446/ST-Misc./20 dated 12.12.2020 of Sub Divisional Magistrate, Billaur it has been informed that the above lease holder has done mining and transportation of normal sand illegally of about 54219 cubic mtr from plot no.01m rakba 5.4219 hectare outside the approved mining area. With reference to above illegal mining-

(a) notice was issued by office letter no.385/30 sub mineral /2020 dated 22.12.2020 and direction was given to place its case within 15 days.

(b) The team of Directorate of Geology and Mining, Khanij Bhawan, Lucknow did surprise inspection of above lease area on 11.1.2021. By inspection report no.1911/M Enforcement Kanpur Nagar/2020 dated 12.1.2021 the inquiry team was constituted for getting done correct demarcation of coordinate of boundary pillar of mining area and for detailed survey of the mined quantity.

(c) on the basis of joint committee report dated 13.01.2021 which was forwarded by Director Geology & Mining by latter no 1921/M-Enforcement kanpur nagar dated 14.01.2021 it was instructed to take action.

(d) In pursuance of above enclosed report, notice by office letter no.443/30-Sub Mineral/2021 dated 3.2.2021 was issued to the



lease holder M/s Vashnavi Enterprises Proprietor Nagendra Singh and he was directed to deposit total amount of Rs.2,39,06,360.00 in Govt. Treasury within 15 days due to illegal mining and transportation of normal sand of about 54219 cubic mtr. from plot no.01m, rakba 5.4219 hectare beyond the approved mining area and due to catch holding two overload trucks of normal sand during inspection dated 11.1.2021 and if, the amount is not deposited, mining work will be banned.

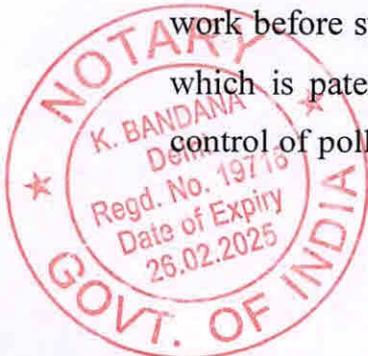
Against above notice the lease holder filed Revision No.48(R)/SM/2021 to the Government which was dismissed by the revisional Authority by deciding the same on 9.8.2021. Thereafter, the lease holder filed Writ Petition No.18966/2021 M/s Vashnavi Enterprises through proprietor Nagendra Singh Vs. State of U.P. &Ors. in Hon'ble High Court of Allahabad Lucknow Bench. In compliance of order dated 22.9.2021 of Hon'ble High Court of Allahabad Lucknow Bench after completing all formalities vide office order no.1067/30-sub mineral/2021 dated 13.12.2021 permission was given to lease holder for mining and transportation of normal sand. Again in pursuance of joint inspection report dated 5.12.2021 by office notice no.1058/30-sub mineral/2021 dated 9.12.2021 fine of Rs.72,500.00 was imposed on lease holder due to constructing passage /road without permission and was directed to deposit the same within three day. In inspection dated 31.5.2022 of Distt. Magistrate due to non-installation of PTZ Camera on lease site and in pursuance of report dated 21.6.2022 of inspection team constituted in compliance of questioner dated 10.6.2022 of Distt. Magistrate, notice by office letter no.1532/30-sub mineral /2022 -23



dated 10.8.2022 was issued to the lease holder for depositing total amount of Rs.11,55,837.00 and in pursuance of letter no.1243/S-218/22 dated 5.12.2022 of Regional Officer U.P. Pollution Control Board Kanpur Nagar due to not getting permission (CTO) of operating by project proponent/lease holder, the operation of mining lease was again banned by office letter no.1690/30-sub mineral/2022 dated 13.12.2022. Thus, proceeding according to rule has been constantly done against lease holder due to violating the provisions of Rules 2021 and conditions of lease deed.

7. Point no.(iii) -Whether the project proponent was entitled to and could commence mining before of CTO by UPPCB if not why the project proponent was allowed to commence such mining without CTO from UPPCB?

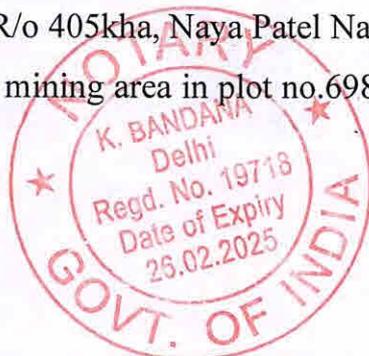
With reference to above point, it is submitted that the Regional officer U.P. Pollution Control Board, Kanpur Nagar by letter no.1243/S-218/22 dated 5.12.2022 has informed that the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh, r/o 113, MIG -2, Mahabali Puram, Kalyanpur, Kanpur Nagar without previous consent (water /air) has done mining work on plot no.2m, rakba 10.50 hectare of village KatariSunodha of Tehsil Billaour and for imposing environment compensation show cause notice by letter no.H-85021/C-2/NGT-OA-176/22 dated 2.12.2022 has been issued. According to office records the above mining project owner has not got permission certificate (water /air) from State Board for mining work before starting mining work in compliance of water and acts which is patent violation or provisions of water (prevention and control of pollution) Act, 1974 as amended and air (prevention and



control of pollution) Act, 1981 as amended, in the light of which it would be appropriate to impose restrictions according to rules against the above mining project /lease holder.

For violation of above, the Regional Officer U.P. Pollution Control Board Kanpur Nagar has evaluated loss of environment of amounting to Rs.4,29,37,500.00 for total 1145 days against the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh. In continuation of above the Chief Environment Officer Circle -2 U.P. Pollution Control Board Lucknow had imposed compensation of amounting to Rs.4,29,37,500.00 for 1145 days, against which the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh had filed Civil Writ No.6812 /22 in the Hon'ble High Court of Lucknow. In compliance of order dated 30.9.2022 passed by Hon'ble High Court of Lucknow, show cause notice dated 2.12.2022 has been issued to the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh by the Chief Environment Officer Circle-2 U.P. Pollution Control Board, Lucknow.

It is further submitted that keeping in mind the order dated 29.9.2022 of this Hon'ble Tribunal and also due to not getting permission (water /air) certificate (CTO) from State Board by the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh for mining /before starting mining work in normal sand mining area of plot no.2m rakba 10.50 hectare of village KatariSunodha of Tehsil Billaur and by M/s Moti Construction Company Proprietor, Moti Bai R/o 405kha, Naya Patel Nagar, Urai Distt. Jalaun in the normal sand mining area in plot no.698ka, 699, 721 rakba 21.58 hectare of



village Katari Ludhwa Kheda of Tehsil Sadar, the operation of lease has been banned.

According to guidelines received by the letter no.1523/M-NGT-Kanpur Nagar /2022 dated 16.1.2023 of the Director Geology and Mining Directorate U.P. about requirement of consent (water/air) certificate (CTO) from State Board for mining in mining of sand river bed, the U.P. Pollution Control Board has informed that by mining of sand /moram in river bed any fugitive emission does not arise and any permanent structure is not constructed rather temporary toilet is constructed hence, the possibility of being water and air pollution is negligible.

The Ministry of Forest Environment and climate change under water (prevention and control of pollution) Act, 1974 and air (prevention and control of pollution) Act, 1981 different type of industries are categorized for the requirement of consent /permission under which the mining process has been placed in red zone due to specific reason which has not been evaluated on the basis of mining of sand /moram in the river bed.

Hence, there is requirement to keep mining of sand /moram in river bed to be separated from other mining work. Keeping in mind these facts intimated by Uttar Pradesh Pollution Control Board there should not be requirement of CTO permission for operation before mining of sand /moram.

8. Point no. (iv) – Whether any notice for non-compliance with environmental clearance /consent to operate /environmental norms



was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof ?

With reference to above, it is submitted that for environment clearance/consent to operate and for non-compliance of environmental norms:-

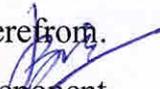
(a) Notice was issued to the project proponent by office letter no.1464/30-sub mineral/2022 dated 29.6.2022. (b) Thereafter, in continuation of letter no.1243/S-218/22 dated 5.12.2022 of U.P. Pollution Control Board, Kanpur Nagar the operation of lease was banned to the project proponent /lease holder in absence of consent to operate(C.T.O.) and show cause notice has been issued to lease holder for imposing environment compensation of Rs.4,29,37,500.00 by letter no.H-85021/C-2/NGT-OA-176/2022 dated 2.12.2022 of Chief Environment Officer, Circle-2, U.P. Pollution Control Board Lucknow enclosed with above letter.

From amongst the lease holders of normal sand operating within the district due to not getting consent (water/air) certificate (CTO) from State Board by M/s Vaishnavi Enterprises Proprietor Nagendra Singh for mining over plot no.2m rakba 10.50 hectare normal sand mining area of village Katari Tehsil Billaur and by M/s Moti Construction Company proprietor Moti Bai r/o 405kha Naya Patel Nagar, Urai Distt. Jalaun mining over plot no.698ka, 699, 721 rakba 21.58 hectare normal sand mining area of village katari Ludhwa Kheda of Tehsil Sadar, the operation of lease has been banned.



In future in compliance of order of this Hon'ble Tribunal the lease deed would be operated only after receiving consent (water/air) certificate (CTO) from U.P. Pollution Control Board Lucknow in normal sand mining areas of the district by the above lease holder.

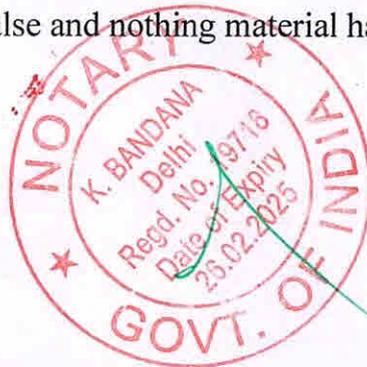
9. That the facts stated in the above affidavit are true and correct as per my personal knowledge and belief based on official record. No part of same is false and nothing material has been concealed therefrom.


Deponent

VERIFICATION:-

Verified at New Delhi on this the 30th day of January, 2023 that the contents of above affidavit are based on the information derived from the official record and as such true and correct as per my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

IDENTIFIED



30 JAN 2023


Deponent

ATTESTED


NOTARY PUBLIC, DELHI
GOVT. OF INDIA