

IN THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
APPEAL NO. 2 OF 2022

IN THE MATTER OF:

SURAJ SINGH KARKI

...PETITIONER

VERSUS

STATE LEVEL ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY, UTTARAKHAND
& ORS.

...RESPONDENTS

REPLY FILED ON BEHALF OF THE RESPONDENT NO. 4



VISHESH KANODIA

COUNSEL FOR THE RESPONDENT NO. 4

IN THE HON'BLE NATIONAL GREEN TRIBUNAL
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S.No.	Date	Particulars	Annexure	P.No.
1		Reply filed by the Respondent No. 4 with Affidavit		
2	02.01.2020	Invoice for use of mining machinery from Suraj Singh Karki	R1	
3		Vakalatnama		



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The address for service for Respondent No. 4 is that of their counsel Mr Vishesh Kanodia, Advocate, office address: Law Office of Dr Subramanian Swamy, AB-14 Pandara Road, New Delhi—11003, and email address visheshkanodia@gmail.com

1. In reply to Para 1, Appellant is not a public-spirited person, and rather has a grossly personal motive for filing the present Appeal. The Appellant was earlier attempting to obtain a soap stone mine for the same village and lease that now has been obtained by this Respondent. Since the Appellant could not secure that lease and the same has now been granted to the Respondent No. 4, the Appellant has instituted the present Appeal in the form of a revenge litigation. Further it is not true that many villagers are opposed to the mining, since all the villagers have accepted the compensation ordered

and the Respondent No. 4 managed to get approval from the requisite number of villagers as required.

2. That Para 2 is a formal paragraph, and the contents thereof are not disputed. (Only see if R.3 is responsible for conducting public consultations)
3. In reply to Para 3, it is stated that the EC granted to the Respondent No., 4 is not in conflict with the Precautionary Principle, or the Principles of Sustainable Development. It is also false that there would be any effect on the habitat of the leopard, which is a Schedule I wildlife species under the Wildlife (Protection) Act, 1972, since there are neither any reserve forests, nor are there any leopards, within the 10km radius of the mining lease area. It is also stated that the seismic zones are of no consequence to the present mining lease, since the lease is for the mining of sandstone. Sandstone mines are open-face mines, and use no form of explosives in their process. Therefore, the seismic activity of the area is irrelevant to sandstone mining. It is false that the grant of report suffers from non-application of mind, ignorance of relevant facts, or in violation of various orders of this tribunal, or that of the Supreme Court. It is stated that the Ec has been granted in compliance with all relevant and applicable laws and having regard to all relevant facts. Therefore, the EC is valid and absolute.
4. In reply to para 4, the appellant is put to strict proof of the averments therein. Further it is absolutely false that mining leases and ECs are being granted by Respondent No. 2 and 1, mechanically. It is sufficiently shown from the record that all the relevant factors are considered by the Official Respondents and procedures followed—as laid down in law.
5. The contents of Para 5 are denied. It is stated that sandstone mines, that are granted permissions, as in the instant case, cause no threat of either earthquakes or of landslides therefore, it is stated that the current regulations and precautions undertaken, sufficiently satisfy the Precautionary Principle. It is also pertinent to note that the Appellant

herein, is a provider of JCB digging machines for the purposes of carrying out mining. The only way the Appellant makes a living is through these mines. Therefore, if this Hon'ble Tribunal were to issue further directions on mandatory immediate lifting of rubble, waste, etc., the party to be benefited most would be this Appellant, since his machines would have to be engaged on more days, earning him hefty sums of money. Thus, it is ex-facie clear that the present Appeal is motivated by oblique motives, inspired by profit-seeking and vengeance. (CHECK THIS PARA ONCE).

6. In reply to Para 6, it is stated that the allegations contained therein are absolutely false, baseless, and misleading. It is stated that the majority of the villagers had agreed to give their land for the purpose of mining, as is clear from the public consultation reports, and the allegations of the Appellant are thus belied by the documents on record. the Respondent No. 4 obtained the consent of the majority of villagers as required in order to obtain his mining lease. It is also pertinent to state that the method or legality of the mining lease are beyond the jurisdiction of this Hon'ble Tribunal, as this Tribunal is only concerned with the environmental issues arising therefrom.
7. In reply to Para 6 (the second Para 6, misnumbered), the contents thereof are not disputed. These are matters of record.
8. In reply to Para 7 it is stated that the Divisional Forest Officer has written statements concerning the distance between the forest and the mining area without any basis or any material regarding the same. The Divisional Forest Officer, who has authored the letter dated 13th July 2016, at Annexure A7, has not even attached a map to show that there is any reserved forest area in the vicinity of the mining lease land. Thus, the same cannot be relied upon to form the basis of determining whether there are any reserved forests in the vicinity of the mining lease area. It is pertinent to note that the letter of the Divisional Forest Officer, Bageshwar, was with

respect to the mining lease area of 11.352 ha, whereas the mining lease, and EC was granted only for Area of 10.841 ha. Therefore, the lease area is well out of the 10km range of the Reserved Forest. It is submitted that the Appellant is attempting to wilfully mislead this Hon'ble Tribunal and play fraud on this Tribunal in order to exact personal revenge.

9. In reply to Para 8 and 9, it is stated that. This Respondent was granted EC for the mine as "B-1 Category" in terms of the Notification SO 3977 (E), dated 14th August 2018, issued by the MoEF. The Cluster of mines approach was directed to be adopted by the Hon'ble Supreme Court in the case of *Deepak Kumar v State of Haryana, (2012) 4 SCC 629* ; for the benefit of smaller mine lessees with fewer resources in order to ascertain the effect of the cluster of the mine on the environment instead of assessing that of each and every mining lease's. As already stated above, there is no reserve forest in the buffer zone of this Respondent's mine. It is also submitted that lack of a cluster report does not vitiate the EC already obtained by this Respondent, since the EC has been obtained in B1 category which provides for stringent safeguards for the protection of the Environment.
10. In reply to para 10, it is stated that these are matters of record, and thus are not disputed.
11. In reply to contents of Para 11 it is stated that the contents therein are false and baseless. The Appellant is thus put to strict proof of the same. It is submitted that there were some villagers who raised their objections at the public consultations, but it is pertinent to note that all these villagers were either related to, or close associates of the Appellant. Furthermore, all the allegations made during the public consultation are false and baseless. The Respondent No. 4 never made any false assertions, and no villagers have rescinded their "no-objections", no such recessions are even produced by the Appellant. As regards Mrs Anandi Kandpal, pointed out by the

Appellant, these allegations are not admitted by this Respondent, and the Respondent is put to strict proof of his allegations. It is submitted that there is no impropriety or fraud in obtaining the EC. It is pertinent to note that the entire body of allegations of the Appellant and the supposed objecting villagers is belied by the fact that the Respondent No. 4 obtained the requisite number of no-objections as per law, to get the Letter of Intent.

12.In response to para 12, it is submitted that all the so called “concerns” which are in the nature of false and baseless allegations, and are repeated from Para 11 of the Appeal, were seen and thoroughly considered by the SEAC and other Official Respondents, but none of these allegations warranted any consultation, since they were all baseless and the Respondent No. 4 had already obtained the requisite number of “no-objections” from the public. Further, it is stated that it is false that the Pungar River flows in the buffer zone since no maps or available data have been provided by the Appellant to show the same. There is also no information regarding the reserve forest being the vicinity of the mining lease area, as is already shown by this Respondent.

13.In reply to Para 13, it is stated that the SEAC granted the EC after due consideration of all material and thorough application of mind, by following the law:

- a.** In reply to Point a, there was no requirement for the SEIAA to consider the effect of the mining project on the ecology and hydrology of the Pungar river since the river does not flow in either the lease area or in the buffer zone. Moreover, the Appellants have not filed any documents at all to show that the Pungar river is anywhere near the mining lease area or the buffer zone.
- b.** In reply to Point b, it is submitted that there is no suppression of facts, since there is no reserved forest within the vicinity of the mining lease area. The letter of the Divisional Forest Officer,

Bageshwar, was with respect to the mining lease area of 11.352 ha, whereas the mining lease, and EC was granted only for Area of 10.841 ha. Therefore, the lease area is well out of the 10km range of the Reserved Forest. It is submitted that the Appellant is attempting to wilfully mislead this Hon'ble Tribunal and play fraud on this Tribunal in order to exact personal revenge.

- c. In reply to Point c, It is submitted that the conditional approval by SEAC is not against the precautionary principle, as this Respondent had already provided all the relevant documentation and only then the same was conditionally approved.
- d. In Reply to Point d and f, it is stated that these grounds are completely misconceived. The Cluster of mines approach was directed to be adopted by the Hon'ble Supreme Court in the case of *Deepak Kumar v State of Haryana, (2012) 4 SCC 629* ; for the benefit of smaller mine lessees with fewer resources in order to ascertain the effect of the cluster of the mine on the environment instead of assessing that of each and every mining lease's. As already stated above, there is no reserve forest in the buffer zone of this Respondent's mine. It is also submitted that lack of a cluster report does not vitiate the EC already obtained by this Respondent, since the EC has been obtained in B1 category which provides for stringent safeguards for the protection of the Environment.
- e. In reply to Point e, it is stated that Sandstone mines are open face mines and use no form of explosives in their process. Therefore, the seismic activity of the area is irrelevant to sandstone mining. Further, there is no legal requirement to consider the same. It is also stated that as per the requirements of the competent authority, the slopes of the mining area are maintained at certain standards to mitigate the effect of natural disasters.

It is submitted that SEAC has not turned a blind eye to any material facts or circumstances and has made a careful and reasonable assessment before the grant of EC, by following the law to the letter, as laid down by this Hon'ble Tribunal and the Hon'ble Supreme Court.

14. In reply to Para 14, it is submitted that no clarification was required to be given to the Appellant since all the objections raised by him during the public hearing were fuelled by his vendetta against the Respondent No. 4. It is submitted that this Respondent had acquired more of the minimum number of signatures as approval for his mining lease, as required by law, and the Appellant has only been attempting to cause hurdles in this Respondent's business. Other objections raised by the Appellant in the sub-points are only a repetition of the objections already answered by this Respondent and have been adequately dealt with in the preceding paragraphs.
15. In reply to Para 15, It is submitted that the EIA by SEIAA/SEAC is not bad in law, illegal, or non-est, and has made a careful and reasonable assessment before the grant of EC, by following the law to the letter, as laid down by this Hon'ble Tribunal and the Hon'ble Supreme Court.
16. In reply to **Para 20 and Ground A**, and the Grounds stated therein, the Respondent submits that from the very material placed on record by the Appellant himself, it is clear that the SEIAA has carefully considered and discussed the Ecological Impact of the mine of the Respondent No. 4, before granting the impugned Environmental Clearance. From the Report dated 11th July 2022, filed by the committee appointed by this Hon'ble Tribunal, it is amply clear that the SEIAA has considered all the relevant aspects while granting EC to this Respondent. As regards the EIA and EMP of each of the mining leases in the cluster: as per the Appellant's own material SEIAA has considered all the relevant aspects concerning the

mine of the Respondent No. 4 and has granted approval to the comprehensive EIA and EMP submitted by this Respondent.

17.In reply to Ground B, it is submitted that none of the objections concerning the lease being granted in a high seismic zone were raised by the Appellant at the stage of the public hearing conducted for the project. Moreover, as per the Report of the Appointed Authority, there is no law or regulation directing authorities to conduct examination of mines in earthquake prone areas. Therefore, all the legal criteria required to be complied with has already been complied with in the grant of the EC with due application of mind.

18.In reply to Ground C, it is submitted that the authorities have granted the EC to the Respondent No. 4, having due regard to all the pre-requisite criteria and thorough examination of the documents and plans submitted by this Respondent. All the criteria required to be complied with by the Respondents has duly been complied with at the time of grant of EC and therefore, there is no violation of the Precautionary Principle. It is also pertinent to note that a great number of safety measures are taken by the Project Proponents and the concerned authorities to protect all concerned parties from any natural disasters that may occur. It is also pertinent to note that the Appellant's fears and apprehensions are groundless and the Appellant has not provided any material to base such apprehensions on.

19.In reply to Ground D, it is submitted that there is no law, rule, or provision that mandates that the SEIAA to consider the effects of landslides. In any case, in consideration of landslides, or other natural disasters that may befall, this Respondent has already taken the slopes of the hill as per legal requirements. The face of the slope is taken to be 70 degrees, and the ultimate slope is taken to be 45 degrees (page 74 of the Appeal filed by the Appellant). Thus, all the compliances required to be completed have already been completed by this Respondent.

20. In reply to Ground E, It is submitted that this Hon'ble Tribunal had only directed the States to come up with comprehensive Environment Management Plans for mining clusters, however, there was no caveat in the said Order that no Environmental Clearance can be granted without first preparing an EMP for the entire cluster. Furthermore, the SEIAA had required public consultation and preparation of EIA in terms of the Orders of this Hon'ble Tribunal in the cases of *Shri Sudershan Das v State of West Bengal and Shri Satendra Pandey v MoEFF&CC and Anr.* Therefore, the SEIAA was mindful of these orders and had complied with them. The Terms of Reference of the SEIAA are attached to the Appeal as Annexure A11.
21. In reply to Ground F and L, there was no requirement for the SEIAA to consider the effect of the mining project on the ecology and hydrology of the Pungar river since the river does not flow in either the lease area or in the buffer zone. Moreover, the Appellants have not filed any documents at all to show that the Pungar river is anywhere near the mining lease area or the buffer zone.
22. In reply to Ground G, K, and N, it is submitted that there is no suppression of facts, since there is no reserved forest within the vicinity of the mining lease area. The letter of the Divisional Forest Officer, Bageshwar, was with respect to the mining lease area of 11.352 ha, whereas the mining lease, and EC was granted only for Area of 10.841 ha. Therefore, the lease area is well out of the 10km range of the Reserved Forest. It is submitted that the Appellant is attempting to wilfully mislead this Hon'ble Tribunal and play fraud on this Tribunal in order to exact personal revenge.
23. In reply to Ground H, It is submitted that the conditional approval by SEAC is not against the precautionary principle, as this Respondent had already provided all the relevant documentation and only then the same was conditionally approved.

24. In Reply to Ground I, J, and T, it is stated that these grounds are completely misconceived. The Cluster of mines approach was directed to be adopted by the Hon'ble Supreme Court in the case of *Deepak Kumar v State of Haryana*, (2012) 4 SCC 629 ; for the benefit of smaller mine lessees with fewer resources in order to ascertain the effect of the cluster of the mine on the environment instead of assessing that of each and every mining lease's. As already stated above, there is no reserve forest in the buffer zone of this Respondent's mine. It is also submitted that lack of a cluster report does not vitiate the EC already obtained by this Respondent, since the EC has been obtained in B1 category which provides for stringent safeguards for the protection of the Environment.

25. In reply to Ground M, it is stated that there was no need for the Respondent Authorities to consider the effect of mining on the habitat of any Schedule I species, since as already stated, there are no leopards or any other Schedule I species animals in the vicinity of the mining lease area. Further, as already stated above, there are no reserved forests withing 10 kms of the mining area either.

26. In reply to Ground O and S, it is submitted that no clarification was required to be given to the Appellant since all the objections raised by him during the public hearing were fuelled by his vendetta against the Respondent No. 4. It is submitted that this Respondent had acquired more of the minimum number of signatures as approval for his mining lease, as required by law, and the Appellant has only been attempting to cause hurdles in this Respondent's business. Point-by-point reply to the concerns is as follows:

- a. In reply to point i, it is stated that there was no cultivation being undertaken at the proposed lease area of the mine, and this Respondent secured the no-objection letters of most of the landowners and persons residing in the village. It is also stated that

the main source of income of the residents of the village is not from agriculture but from mining related activity. In fact, this Appellant himself earns his livelihood from mining activity, by leasing out machinery for mining.

- b.** In reply to point ii, it is stated that mining activity is stopped during the months of monsoon, as per directives of the local authorities. Moreover, slopes of mines are maintained at levels mentioned in the EC in order to safeguard against any natural disasters. Even otherwise, there is no requirement under any law to consider such aspects while granting EC, or during the public hearing process.
- c.** In reply to point iii, it is stated that the issues relating to no-objection certificates by the Appellant are false and baseless and raised with malafides, due to personal vendetta against this Respondent, and the Appellant has shown no evidence of the same.
- d.** In reply to point iv, it is submitted that the Appellant is put to strict proof of the allegations in this point. It is submitted that this Respondent did not make any false assertions to the villagers. It is stated that the fact of rescinding of some no-objection certificates is not admitted by this Respondent, and the Respondent has the assent and consent of the requisite number of villagers as required to obtain the EC.

27. In Reply to Ground P, it is submitted that the Respondent did not affix improper or fraudulent No-Objection certificates. The case and person pointed out by the Appellant in this regard cannot be admitted by this Respondent, and the Respondent is put to strict proof of his allegations. It is submitted that there is no impropriety or fraud in obtaining the EC.

28. In reply to Ground Q, it is submitted that this Respondent did not suppress any material or facts from the Respondent authorities, and has disclosed in full, all relevant information:

- a. In reply to point i, it is stated that the assertions of the Appellant are false, since there are no water bodies or the river Pungar within the buffer zone of the mining lease area.
- b. In Reply to Point ii, it is already stated that no reserve forest exists within 10km area of the mining site as described in this Reply.
- c. In reply to point iii, these issues and false and baseless contentions have already been dealt with at length in the preceding paragraph.

29. In reply to Ground R, it is submitted that SEAC has not turned a blind eye to any material facts or circumstances and has made a careful and reasonable assessment before the grant of EC, by following the law to the letter.

30. In Reply to Ground U, it is stated that all the legal requirements were followed by this Respondent and the official Respondents. It is submitted that the EC is granted following the very spirit of Environmental Law and Protection.

It is therefore prayed that the present Appeal be dismissed for the reasons stated above, with exemplary costs, and this Hon'ble Tribunal pass such other Order or Orders as this Hon'ble Tribunal deems fit in the interest of justice and Equity.

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...PETITIONER

VERSUS

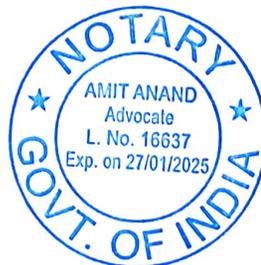
STATE LEVEL ENVIRONMENT
IMPACT ASSESSMENT
AUTHORITY, UTTARAKHAND &
ORS.

...RESPONDENTS

AFFIDAVIT

I, Manish Nand Kishore Agarwal, aged about 50 Years, S/o Shri Nand Kishore Chaturbuj Agarwal, R/o 17, 04th Floor, Maharishi Apartment, Shahibagh, behind Civil Hospital, Ahmedabad, Gujarat, do hereby solemnly affirm and declare as follows:

1. I am the Respondent No. 4 herein in the Appeal. I am conversant with the facts and circumstances of the present case. I am competent to swear the present Affidavit in support of the present Reply to the Appeal.
2. I say that I have drafted and gone through the contents of the present Reply, the contents of all the paragraphs 1 – 30 of the Reply, are true and correct. Nothing material has been concealed from this Affidavit.

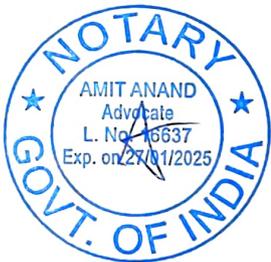


3. The Annexures are true and true typed copies of their respective originals.

mk
DEPONENT

Verification:

Verified at New Delhi on this 26th day of August, 2022 that the contents of the paragraphs, hereinabove, are true to my personal knowledge, information and belief, no part of this Affidavit is false and nothing material is concealed therefrom.



ATTESTED

A

**NOTARY PUBLIC
DELHI (INDIA)**

27 AUG 2022

mk
DEPONENT

NOTARY REGISTER
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ORS.

...RESPONDENTS

VAKALATNAMA

KNOW ALL to whom these presents shall come that I, Manish Nand Kishore Agarwal, the Respondent No. 4 in the captioned matter, do hereby appoint

VISHESH KANODIA D/5643/2021;

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hereinafter called advocates to be my/our lawful Counsel/ Attorneys in the Advocates above case, to Act, appear, plead and represent me/us in the said Court to make sign and/or file any pleading, Application, written statement, replication, memo of appeal, cross objection, petitions for special leave to appeal, writs executions, review, revision withdrawal, compromise, or other replies, affidavits or verifications, for proper prosecution of the case, to conduct and prosecute the above case, to deposit and receive costs to enter satisfaction and/or to file and compromise on my/our behalf, to make any statement on my/our behalf to file and receive back any documents, papers or books filed as exhibits, or otherwise, to make and appear for any application, to apply for execution of decree, to issue any process, to draw out money from court, to witness and if necessary, to appeal from the order of any Court to any Higher Court and/or Tribunal and there to appear, pled and act for me/ us whether as Appellant/s or Respondents as the case may be, and to do all and every and any other acts, deeds matters and things whatsoever in or about the promises as fully and effectually to all intents and purposes as I/We could do if personally present. I/we hereby ratify and confirm all and whatsoever the said, Advocates shall lawfully. I do or cause to be done in or about the promises by virtue hereof.

In witness whereof I/We hereunto set my/our hand/s this 26th day of August 2022 accepted subject to terms of fees.

ACCEPTED, IDENTIFIED AND CERTIFIED

ADVOCATES


CLIENTS