

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

OA NO. 306 OF 2022

HARBANS SINGH

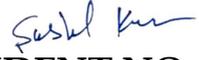
VS

STATE OF HARYANA

**REPLY ON BEHALF OF RESPONDENT NO. 9 i.e M/S SAHARANPUR  
MINES MANAGEMENT SERVICES PRIVATE LIMITED TO THE  
ADDITIONAL AFFIDAVIT DATED 10.01.2023 FILED BY THE  
APPLICANT**

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**RESPONDENT NO. 9**

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03/02/2023

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**OA NO. 306 OF 2022**

Harbans Singh

v.

State of Haryana & Others

Reply on behalf of Respondent No. 9 i.e. M/s  
Saharanpur Mines Management Services Private  
Limited to the Additional Affidavit dated 10.01.2023  
filed by the applicant.

**RESPECTFULLY SHOWETH:-**

1. That answering respondent is submitting the present reply through its director and authorised signatory namely Sh. Sushil Kumar. In this regard, a copy of the Board Resolution dated 01.09.2021 is already placed on record as Annexure R-9/1.

It is submitted that the answering respondent as well as the other respondents had filed their respective replies and the applicant had reasonable time to file rejoinder/replication. However, the applicant did not file any such replication /rejoinder and waived off his right to do the same by his own act and conduct. At the very outset, the answering respondent submits its strong objection to the additional affidavit dated 10.01.2023 filed by the applicant as the same is merely an afterthought to delay the proceedings. Furthermore, the same is against the established principles of procedure relating to submission of pleadings. In the present case, after the completion of pleadings, the matter was taken up for arguments on 04.01.2023 and arguments were heard at length. This Hon'ble tribunal was pleased to adjourn the matter for 16.01.2023 for further consideration. Hence, there was absolutely no occasion for the applicant to have filed the additional affidavit and the same has caused prejudice to the answering respondent.

The bare perusal of the additional affidavit shall reveal that the applicant had tried to justify the filing of the additional affidavit by stating that the same has been submitted for the purpose of clarification vis-a-vis the issues raised during the course of arguments on 04.01.2023. However, the same is falsified by the fact that this Hon'ble Tribunal did not order the applicant to submit any such clarification. In this regard, the Zimni Order dated 04.01.2023 passed in the present matter is reproduced herein below for ready reference:

1. *The applicant has filed present application under Section 14 read with Section 18 of the National Green Tribunal Act, 2010 inter alia seeking issuance of directions to State of Haryana to stop any mining activity at fertile agricultural lands in villages Jaidhar and Mandewala in District Yamuna Nagar, Haryana, quash CTO dated 23.10.2021 and CTE dated 25.10.2021 issued by Haryana State Pollution Control Board (HSPCB) with respect to mining sites at villages Mandewala and Jaidhar respectively and environmental clearance dated 20.08.2018 issued by Haryana State Environment Impact Assessment Authority (HSEIAA) with respect to mining activity at village Jaidhar in favour of respondent no.9.*
2. *Vide order dated 06.05.2022, notices were ordered to be issued to the respondents.*
3. *Replies have been filed by respondents no. 1 and 2, 4, 5 and 6 separately vide email dated 30.11.2022, respondent no. 7-SEIAA, Haryana vide email dated 09.11.2022, respondent no. 8 vide email dated 26.12.2022 and respondent no. 9 vide email dated 18.08.2022.*
4. *Vide order dated 01.12.2022, personal appearance of the officer not below the rank of Chief Engineer duly authorized by the Chairman, Central Water Commission was ordered. In compliance thereof Mr. G.K. Aggarwal, Chief Engineer, Central Water Commission has appeared before this Tribunal physically and on interaction with him, he has submitted that Central Water Commission is merely looking after the rivers and the question of ground water level is being looked after by Central Ground Water Authority.*
5. *Part arguments heard.*
6. *List for further arguments on 16.01.2023.*

2. That the contents of Paragraph No. 2 are admitted being a matter of record. However, it is submitted that the EMGSM, 2020 are not applicable in the present case on account of the fact that the auctions were conducted in 2015 and the LOI were issued in favour of the answering respondent on 19.06.2015.

It is further submitted that the EMGSM, 2020 have been formulated more than 5 years after the issuance of auction notice and the LOI in favour of the applicant. Hence, the same cannot be made applicable in the present case since there is no provision of law authorising retrospective application of the guidelines. Even the tone and tenor of the EMGSM, 2020 shall reveal that the guidelines are prospective in nature.

3. That the contents of Paragraph No. 3 in so far the same refers to the judgment of the Hon'ble Supreme Court is concerned is a matter of record. However, it is submitted that the issues raised in the said judgment does not have any bearing on the issues raised in the Original Application by the applicant. The bare perusal of the interim order dated 06.05.2022 issued by this Hon'ble Tribunal in the present case shall reveal that the issues raised by the applicant in the Original Application only pertained/related to the alleged non-compliance/violation etc. of the various legal provisions, conditions and the EMGSM, 2020 guidelines. The same is also apparent from the Synopsis submitted by the applicant along with the Original Application. Hence, the applicant cannot raise the issue of illegal mining in the additional affidavit as the same is beyond the purview of the pleadings raised by the applicant in the Original Application. Furthermore, while making the averments in the paragraph under reply, the applicant has contradicted his stand in Paragraph No. 1 of the additional affidavit because no issue regarding any sort of illegal mining was raised during the course of hearing on 04.01.2023. Hence, no such clarification is justified or required. It is further submitted that the judgment quoted by the applicant does not have any relevance to the issues raised in the present matter and is clearly distinguishable on facts.

It shall not be out of place to mention that the answering respondent is facing proxy litigation vis-a-vis the mining contracts granted in favour of the answering respondent since the year 2015-2016. The same has been detailed

and described in preliminary submissions made by the answering respondent in its reply/written statement. No mining has been conducted on the mining blocks since 2015-2016; and when the mining operations finally commenced in February, 2022 after long drawn litigation, the present OA was filed and mining operations were again stayed. Hence, the question of illegal mining does not arise at all in the present case. The judgment of the Hon'ble Supreme Court has been appended with the sole intention to create confusion and delay the matter.

4. That the contents of Paragraph No. 4 vis-a-vis the reference to the judgment of this Hon'ble Tribunal is a matter of record. However, it is submitted that the judgment is not applicable in the present case as the same is clearly distinguishable on facts. It is further denied that there is any issue of illegal mining involved in the present case. In this regard, the contents of preceding paragraph are re-iterated.

It is further submitted that as per the knowledge of the answering respondent, appeals were filed before the Hon'ble Supreme Court against the order passed by this Hon'ble Tribunal in the said matter and the Hon'ble Supreme Court was pleased to set-aside the imposition of the fine by allowing the appeals. However, neither the said judgment passed by this Hon'ble Court nor the judgments passed by the Hon'ble Supreme Court in appeals have any bearing on the present case. The judgment of this Hon'ble Tribunal has been appended with the sole intention to create confusion and delay the matter.

5. That the contents of Paragraph No. 5 in so far as the same refers to Sand Mining Guidelines, 2020 are a matter of record. The rest of the contents of the Paragraph are denied being false and on account of want of knowledge. The applicant has made general and omnibus averments in the paragraph under reply just to create confusion and delay the matter. It is submitted that the EMGSM, 2020 cannot be made applicable in the present case as the auction and LOI were granted in 2015-2016 and the Guidelines cannot be applied retrospectively. In this regard, the contents of paragraph No. 2 of the present reply are re-iterated.

6. That the contents of Paragraph No. 6 in so far as the same refers to the judgment of Hon'ble Supreme Court vide Annexure 3 are a matter of record. However, the said judgment of the Hon'ble Supreme Court has no application in the present case and the same has been quoted out of the context and with an ulterior intention to create confusion. The said judgment is clearly distinguishable on facts.

It is further submitted that an overall reading of the said judgment by the Hon'ble Supreme Court fortifies the stand of the answering respondent that the EMGSM, 2020 cannot be applied retrospectively.

7. That the contents of Paragraph No. 7 are denied being false. It is submitted that the judgment of the Hon'ble Supreme Court is not applicable in the present case and the same is clearly distinguishable on facts.

- 8 to 10. That the contents of Paragraph No. 8 to 10 are denied being false. It is submitted that there is no violation of any of the guidelines enshrined in EMGSM, 2020 since the same are not applicable in the present case for the reasons stated in the reply/written statement as well as the the reasons stated herein above. It is further submitted that the contentions raised by the applicant in Paragraph No. 8 to 10 are contrary to the pleadings raised by the applicant in the Original Application. The relevant paragraphs of the Original Application are reproduced herein below for ready reference:

*The mining sites are admittedly located in fertile agricultural areas and there is no possibility of annual replenishment of sand. Mining operations will entail removal of the fertile top layer, which will render the lands unfit for agricultural purposes and cause irreversible environmental harm. Large tracts of land in villages located near River Yamuna have been rendered unfit for agriculture due to large scale illegal mining by the local mafia. No study has been conducted to measure rate of replenishment at the mining sites.*

*Further, the site at Village Mandewala is 1.5 kms away from River Yamuna and the 2020 Guidelines specifically prohibit any mining within 5 kms of a river bed.*

*{Extrtacted from Synopsis}*

*12. That in 2020 the Union Government issued the Sand Mining Guidelines, which prohibit mining activity within 5 kms of a river bed and on an area where no replenishment is possible. Admittedly both the mining sites at Villages Jaidhar and Mandewala are located on fertile agricultural lands away from the river bed where no replenishment is possible. A true copy of the extract of the 2020 Sand Mining Guidelines is annexed herewith as Annexure 11.*

*{Extracted from OA}*

The comparative analysis of the paragraphs reproduced herein above with the contents of paragraph No. 8 to 10 of additional affidavit shall reveal that the applicant has clearly tried to improve his case after his contentions were not found tenable during the course of the arguments on 04.01.2023. Furthermore, the applicant has miserably failed to understand the true import of the said condition.

It is submitted that the entire process relating to the grant of the mining contracts in the present case was conducted in consonance with the Haryana Minor Minerals Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012. Admittedly, there is no violation of the Haryana State Mining Rules in the present case.

It is further submitted that the EMGSM, 2020 have been formulated more than 5 years after the issuance of auction notice and the LOI in favour of the applicant. Hence, the same cannot be made applicable in the present case since there is no provision of law authorising retrospective application of the guidelines. Furthermore, the extraction of minerals from the agricultural fields in the State of Haryana is very well recognised in the Sustainable Sand Mining Management Guidelines, 2016.

1 to 5. That the contents of Paragraph No. 1 to 5 (wrongly numbered) are denied being false and merely an afterthought by the applicant to improve his version after the contentions of the applicant were not found to be tenable during the course of arguments on 04.01.2023. Furthermore, the averments made in the paragraph under reply cannot be taken into consideration on account of the fact

that no direction or order was issued by this Hon'ble Tribunal seeking any sort of clarification. The same is liable to be discarded due to non-applicability of the EMGSM, 20202 as well as on account of act and conduct of applicant coupled with the settled principles relating to submission of pleadings.

It is submitted that neither at the time of issuance of auction notice nor at the time of issuance of LOI, any such guidelines were formulated. The entire process relating to the grant of mining contracts was conducted in consonance with the Haryana Minor Minerals Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012; and admittedly, there is no violation of the State Mining Rules, 2012.

6. That the contents of Paragraph No. 6 (wrongly numbered) vis-a-vis the judgment of Hon'ble Supreme Court vide Annexure 10 is a matter of record. However, the contents of the Paragraph No. 6 are denied as the judgment of the Hon'ble Supreme Court is not applicable in the present case and is clearly distinguishable on facts.

The perusal of the judgment rendered by the Hon'ble Supreme Court shall reveal that the issue raised therein was related to sand mining in the State of Rajasthan. In the said case, the Hon'ble Supreme Court was guided by the CEC report wherein recommendation for termination of khatedari mining leases within 5 kilometres from the river banks was made on account of the fact that the quality of sand extracted from such areas is not fit for construction purposes being mixture of sand, silt & clay coupled with the fact that the khatedars have been extracting sand beyond permissible limits and beyond the authorised mining lease area and without obtaining EC. Apart from the recommendations of CEC, the Hon'ble Supreme Court also took note of violation of its interim orders. Hence, the facts of the said are completely different and the same does not have any bearing on the present case.

Moreover, the perusal of the judgment shall also reveal that the Hon'ble Supreme Court had accepted the recommendation of CEC to grant EC to all the valid LOI holders granted LOI between 2014-2016.

7. That the contents of Paragraph No. 7 are denied being false. In this regard, the contents of Paragraph No. 4 vis-a-vis the issue of illegal mining are re-iterated. It is vehemently denied that there is any illegal mining being conducted by the

answering respondent. Furthermore, from the attending facts of the present case, as stated by the answering respondent, it is apparent that there was no possibility of illegal mining. The applicant has merely raised general and omnibus allegations of illegal mining without any supporting document.

8 to 12. That in paragraph No. 8 to 12 (wrongly numbered), the applicant has raised the issue relating to the water table at Village Jaidhar where the Jaidhar Mining Block is located. It is submitted that the contents of the paragraph No. 8, 9 and 10 along with the accompanying documents except the report vide Annexure 13 are denied being false and merely an afterthought on the part of the applicant to improve his case.

It is submitted that as per the report vide Annexure 13, the Figure 2 (at page 190) represents the depth to water level map at District Yamunanagar. A comparison of the location of the location of Jaidhar Mining Block (through Google Earth) with Figure 2 shows that the Jaidhar Mining Block falls within the area where the minimum depth to water level is 10 meters. In this regard, the Google Earth map and the Figure 2 (extracted from the report vide Annexure 13) are attached herewith as **Annexure R-9/11**.

It shall be imperative to state that the stand of the answering respondent is further fortified by the averments made in the reply submitted by respondent No. 1 & 2 wherein it is categorically mentioned that the groundwater table is at a depth of 10-20 meters. Respondent No. 1 & 2 had also placed reliance of the said report. It is further submitted that **latest data regarding the groundwater table at Jaidhar is provided by respondent No. 5. i.e. Hydrologist, Ground Water Cell, Ambala. As per the reply submitted by respondent No. 5, the water level for June, 2022 at Village Jaidhar, District Yamunanagar is 10.50 meters.** Furthermore, it has been specifically stated by respondent No. 5 that the data provided by way its office letter dated 27.07.2016 (Annexure A-6) was only tentative and there are no groundwater observation wells at those villages including Village Jaidhar.

It is further submitted that the issue of the groundwater table at Village Jaidhar was duly addressed at the time of Public Consultation dated 19.04.2016 vide Annexure A-4. As per the Public Consultant dated 19.04.2016, the concerned Environment Consultant had submitted that as per the report of CGWB, 2012

(Yamunanagar), the depth of ground water at Tehsil Chhachhrauli (which includes Village Jaidhar) is more than 10 meters.

It is, therefore, most respectfully prayed that the contentions/avements raised by the applicant in the additional affidavit as well as the accompanying documents may kindly be rejected. It is further prayed that the Original Application filed by the applicant is liable to be dismissed being devoid of any merits.



RESPONDENT NO. 9

DATED: 03/02/2023

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