

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

Original Application No.422 of 2023

Abhishek Shukla S/O Sri Keshav Prasad Shukla, R/O Village Jarar,
PS-Girwan, Tahsil Naraini, District-Banda, Mob. No.-9532378463

..... Applicant

Versus

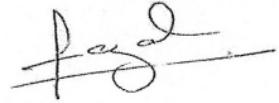
State of UP & Others

..... Respondents

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Dated : 7 December, 2023



(SYED MOHD. FAZAL)
Advocate
(Enrollment No.U.P.03881/08)
Office cum residence C-207
GTB Nagar, Kareli,
Allahabad/Prayagraj UP 211016,
Mobile no.9889010500
Email: fazal_smf@yahoo.com



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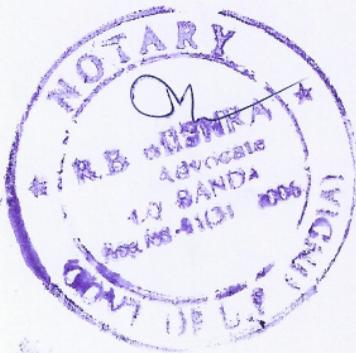
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..... Respondents

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO.11

I, Lavlesh Singh Son of Shri Lochan Singh, Resident of village Kalukuwa, Baberu Road, Tehsil and District Banda (UP), the deponent do hereby solemnly affirm and State on oath as under :-

1. That the deponent is the permanent resident of village Kalupuwa, Baberu Road, Tehsil and District Banda (UP) and Carrying on the business of minerals in the name and style of Proprietorship firm **Shivarpan Trading Company** and having a leased area of mining 2 hectare capacity 20000 cubic meter per year at Gata no.2450 Khand no.6 village Jarar, Tehsil Naraini, District Banda (UP).
2. That by way of letter petition dated 12.03.2023 the complainant has complained about illegal mining blasting and crushing in violation of environmental norms in villages Jarar, Chhaneha Purwa, Raghwa Purwa, Girwan. Patraha Tehsil Naraini, District Banda.
3. That the complainant vide complaint dated 12-03-2023 has also submitted that six mining leases have been allotted in two hills in the area situate of village Jarar and five crushers have been established in Village Jarar and Chhaneha Purwa and mining is being done by resorting to illegal blasting which has resulted in damage to the houses of villagers, the applicant further alleged that the crushers are being operated day and night and the crushers do not have any boundary wall. There is no sprinkling of water during operation thereof. The crushers are causing dust and noise pollution due to which the residents are suffering from "Asthma" and other diseases. Illegal blasting has also affected old temples located on the hills. Illegal mining and blasting are also adversely affecting the wildlife in the area. The roads to the above said



villages have been damaged by the over loaded vehicles used for transportation of excavated minor minerals.

4. That on the letter petition of the complainant dated 12.03.2023 this Hon'ble Tribunal vide order dated 01.08.2023 constituted a joint committee comprising of representative of Director, Geology & Mining U.P. Pollution Control Board, Lucknow. District Magistrate, Banda to verify the factual position and take appropriate remedial action and factual and action taken report may be submitted within one month by email before this Hon'ble Tribunal.
5. That in pursuant to the order dated 01.08.2023 the above Joint Committee conducted a fact finding survey from 17.08.2023 to 18.08.2023 and vide report dated 08.09.2023 submitted a Joint Report with the following findings and recommendations, the findings and recommendations are being reproduced below:-

"21.1) The mining department can be asked to restrict the mining activities in those mines wherein the required minimum distance criteria are not meeting. If mining is allowed on allotted near vicinity of habitant, habitant will be relocated to other specific place with consultation of nearby villagers/ civil society.

21.2) The mining department can be asked to restrict the mining activities in part of hill where temple is located. If mining is permitted at this place, the temple and habitant will be relocated to other specific place with consultation of nearby villagers/ civil society/priest of temple.

21.3) The mining department can be asked to restrict the mining activities through blasting in those mines who have not taken permission by DGMS for use blasting and mechanical instrument/machine.

21.4) The mining department can be asked to restrict the provision made for construction the main village road by DMF fund.

21.5) UPPCB can be asked to take necessary action against the stone crusher who have not operated the dust suppression system during the operation of stone crusher.

21.6) The Project proponent can be asked to maintain the village road near these mining sites.

21.7) The Project proponent can be asked for blasting will be done in allowed time duration with one-inch holes and proper safety arrangement after obtaining the valid permission of the DGMS and Department of Mines.

21.8) The Project proponent of mining lease and stone crusher can be asked to strictly comply with the conditions prescribed in the Environmental Clearance/ consent/ mining lease allotment letter and submit the status to the concerned authorities regularly."



6. That it is relevant to submit herein that as per the judgment and order passed by the Hon'ble Apex Court in Special Leave Petition (Civil) No.19628 – 19629 of 2009 Deepak Kumar Vs. State of Haryana and others, the Hon'ble Supreme Court has directed for getting environmental clearance in cases of mining of minor mineral also.
7. That the answering respondent after the grant of letter of intent has applied for grant of environmental clearance by the State Level Impact Assessment Authority (SEIAA), which was granted on 05.06.2023 after compliance of the mandatory provision for public hearing in which neither the complainant nor anybody has complained regarding the allegations as leveled under the letter petition filed by the complainant dated 12.03.2023.
8. That it is also worthwhile to mention herein that the answering respondent has also been provided with a approved mining plan as per the mandatory legal requirement and after which only, the mining lease deed dated 14.07.2023 has been executed (wrongly mentioned as 17.04.2023) in the fact finding report submitted by the joint committee dated 08.09.2023).
9. That it is worthwhile to mention herein that as per the fact finding report dated 08.09.2023 submitted by Joint committee in compliance of direction issued by this Hon'ble Court Hon'ble Tribunal vide order dated 01.08.2023 no human habitation as well as any religious place is situated near the leased area of the answering respondent.
10. That it is worthwhile to mention herein that as per the fact finding report dated 08.09.2023 submitted by Joint committee in compliance of direction issued by this Hon'ble Court Hon'ble Tribunal vide order dated 01.08.2023 no stone pieces were found in agricultural field and human habitant and no wildlife was found near the leased area of the answering respondent.
11. That the answering respondent is also having a no objection certificate from the U.P. State Pollution Board (UPPCB).
12. That the answering respondent is also having a Director General of Mines and Safety permission dated 30.11.2023, it is also



worthwhile to mention here that the applicant is not using blasting with deep hole blasting of 4 inch holes and further no heavy earth moving machinery (HEMM) is being used for mining operations till date inasmuch as the mining operation of the answering respondent is yet to start. A true copy of the DGMS Permission dated 30.11.2023 is being filed herewith and marked as **Annexure No.1** to this affidavit.

13. That it is relevant to submit herein that the mining operation of the answering respondent are yet to start and no mining operations have been conducted till date by the answering respondent.
14. That the answering respondent will be excavating the mineral in accordance with the terms and condition of the E.C and consolidated consent under Section-25 of the water (Prevention & Control of Pollution) Act 1974 and Section-21 of the Air (Prevention & central of Pollution) Act 1981.
15. That the answering respondent has been granted the mining lease deed dated 14.07.2023 for a period of 10 years under Chapter IV of the U.P. Miner Mineral Concession Rules, 1963 as amended by the 43rd Amendment Rules 2017 for a period of 10 years and the rules of 1963 has been superseded by the Uttar Pradesh Minor Mineral Concession Rules, 2021. The answering respondent is complying all the legal mandatory requirements under the present applicable the Uttar Pradesh Minor Mineral Concession Rules, 2021.
16. That the committee interacted with the applicant & villagers and also visited the point of concerns raised in the application. It was observed by the committee during the site visit, details are given as below :-



"7.1) The main habitation of village-Jarar is situated 135 meters away from the nearest allotted lease mining on hill of village-Jarar, but some houses are made near the allotted lease M/s Safdar Ali S/o Late Shri Farzand Ali, Gata No.-2450, Khand No.-03, at Village-Jarar. Temple is situated 235 meters away from the allotted lease mining on other part of hill of village-Jarar.

7.2) The main habitation of village-Girwan is situated 175 meters away from the allotted lease Bundelkhand Rocks, Gata No.-1876, (Khand No.09, Village-girwan), 36 meters away from the allotted lease (Sangram Singh, Gata No.1876, Khand No. 01, Vill-Girwan), 139 meters away from the allotted lease (Bajrang Road Lines, Gata No.-1876, Khand No,-03, Village-Girwan) and 90 meters

away from the allotted lease (Bajrang Road Lines, Gata No.-1876, Khand No.-04, Village-girwan) on hill of village-Girwan but some houses are made near the allotted lease M/s Sangram Singh, Gata No.-1876, Khand Mo.-01, Vill. Girwan, Bajrang Road Lines, Gata No.-1876, Khand No.-03, Village-Girwan. Temple is situated 70 meters away from the allotted lease (Bundelkhand Rocksa, Gata No.-1876, Khand No.-09, Village-Girwan).

Temple is situated 53 meters away from the allotted lease mining (M/s Sangram Singh, Gata No.-1876, Khand No.-01, Village-Girwan) on other part of hill of village-Girwan. It is reported by Mine Officer, Banda that mining lease of M/s Sangram Singh, Gata No.-1876, Khand No.-01, Vill-Girwan, Gata is allotted on same hill part where temple is made but mining is not in operation.

7.3) Gaushala is situated 100 meters away from the allotted lease mining area on hill of village-Girwan.

7.4) The main habitation of village-Badokhar Khurd (Pataraha) is situated 75 meters away from the nearest allotted lease mining on hill of village-Badokhar Khurd (Pataraha), Temple is situated 100 meters away from allotted lease mining Kuwar Vinod Raja, Gata No.-332, Khand No.-01, Vill. Badokhar Khurd on hill of village Badokhar Khurd.

7.5) It was informed by the villagers to committee member during the visit that blasting work in lease area is done in any time with 4 inches holes by lessee and stone pieces are falling on his home and effected the animal and human being. But it was informed by lease holders that blasting is done in allowed time duration between 2.0 PM to 3.0 PM with one-inch holes and proper safety.

7.6) Crack in home could not been shown by applicant to committee members.

7.7) During the committee visit, stone pieces were not found in agriculture field and habitant area. The possibility of vibrations due the blasting at nearby houses of villagers and falling the stone pieces in nearby agriculture field and habitant area during blasting cannot be ruled out.

7.8) During the committee visit, village Road was not found in good condition due to movement of heavy vehicles.

7.9) Wild animal was not appeared on hill/lease area during committee visit.

7.10) The Agricultural lands are surrounded by most of these mining lease areas and the mining activities in such close vicinity can affect the crop yield in these areas. Similarly, the boulder stones can be thrown into the crop during the blasting operations for mining.

7.11) 05 stone crushers were identified in village-Jarar (Chhaneha Purwa, Raghwapurwa), out of 5 stone crushers 4 stone crushers were found in operation and one stone crusher was found under construction."

17. That it is also relevant to submit herein that a fact finding report has also been submitted by the Director General of Mines and Safety (DGMS) in compliance of the order dated 03.10.2023 passed by



this Hon'ble Tribunal, wherein the following provisions have been enumerated for conducting blasting in mines under the MMR, 1961:-

Provisions requiring permissions of DGMS for conducting blasting in mines:

Permissions for conducting blasting in mines are required to be obtained from DGMS under the MMR 1961 in the following special circumstances:

- (i) *Permission for conducting deep hole blasting (blasting with holes more than 3 m in depth), as required under Regulation 106(2)(b) of the MMR 1961;*
- (ii) *Permission for using explosives in non-cartridge form or for using more than one type of explosives (other than fuse or detonator) in the same hole (for example use of ANFO, SMS, SME along with cast booster), as required under Regulation 155(1) and 162(5) of the MMR 1961; and*
- (iii) *Permission for blasting within danger zone of 300 m from any permanent building or structure of permanent nature, not belonging to the owner of the mine, by using more than 2 kg of aggregate maximum explosive charge in all holes fired at one time or more than 2 kg of maximum explosive charge in each hole where blasting is done with delay detonators or other means and that there is a delay of at least half a second between successive shots fired, as required under Regulation 164(1B) of the MMR 1961;*

For blasting in mine under circumstances other than the above, no permission is required to be obtained from DGMS under the MMR 1961 and the blasting may be carried out in the mine by observing the precautions as prescribed under the provisions of Regulations 153-170 and other provisions of the MMR 1961.

In response to the above legal mandate, the answering respondent will not be using any of the blasting techniques as mentioned in the sub-para i, ii & iii without there being any prior permission by the Director General of Mines and Safety (DGMS) and further answering respondent will only be using 1 inch hole blasting in terms of the DGMS permission dated 30.11.2023 as and when the mining operation of the answering respondent starts and further the answering respondent will also be using manual hand broking technique for mining operations.

18. That it is also worthwhile to mention here that the answering respondent will neither be using heavy earth moving machines (HEMM) without deep hole blasting nor using heavy earth moving machines with deep hole blasting without prior permission of Director General of Mines and Safety (DGMS).



- 19. That the answering respondent further undertakes that the answering respondent will only use heavy earth moving machines (HEMM) as and when the permission of the same is applied and granted by Director General of Mines and Safety (DGMS).
- 20. That it is further relevant to submit herein that the U.P. Pollution Control Board has also submitted in response in compliance of the order dated 30.10.2023 to which the answering respondent submits that the answering respondent has been issued CTO issued by UPPCB and is always adhered to following the rules and regulations as required by UPPCB.
- 21. That the answering respondent is ready to undertake any suggestion or remedial steps as and when suggested by this Hon'ble Tribunal or the Director General of Mines and Safety or the U.P. Pollution Control Board or the respondents State authority.

VERIFICATION:

I, the above named deponent do verify that the content of my above affidavit are true to the best of knowledge and belief and there is nothing concealed therefrom.

Verified at Banda on this 7 day of December 2023.



9071/2
**SWORN
 BEFORE ME**
 R. B. MISHRA
 NOTARY BANDA
 7/12/23

[Signature]
 7/12/2023
 Deponent

[Signature]
 I know
 who has signed before me
 C. E. ...

VAKALATNAMA

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..... Applicant

Versus

State of UP & Others

..... Respondents

KNOW ALL to whom these present shall come that I, Lavlesh Singh Son of Shri Lochan Singh, Resident of village Kalupuwa, Baberu Road, Tehsil and District Banda (UP), the above named respondents, do hereby appoint (herein after called the advocate to be out Advocate in the above noted case authorise him:-

Syed Mohd. Fazal, Advocate (U.P.03881/08), Office cum residence C-207 GTB Nagar, Kareli, Allahabad/Prayagraj UP 211016, Mobile no.9889010500

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court, including High Court subject to payment of fees separately for each Court by us. To sign, file, and present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petitions or affidavits or other documents, as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents of admit and/or deny the documents of opposite party.

To withdraws or compromise the said case or submit to arbitration any differences or disputes that jay arise touching or in any manner relating to the said case. To take execution proceedings. The deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things, which may be necessary to be done for the progress and in the course of the prosecution of the said case. To appoint and instruct any other Legal Practitioner, authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think it to do so and to sign the Power of Attorney on our behalf.



And we the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as our own acts, as if done by us to all intents and purposes.

And we undertake that we or our duly authorized agent would appear in the Court on all hearings and will inform the Advocate for appearance when the case is called.

And we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate, which he shall receive and retain himself. And we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. We hereby agree that once the fee is paid, we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition of three years or part thereof.

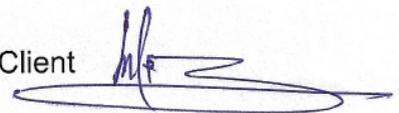
IN WITNESS WHEREOF We do hereunto set our hand to these presents the contents of which have been understood by us on this5..... day of December, 2023.

Accepted subject to the terms of fees.

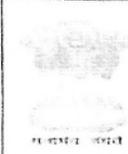
Advocate



1- Client



Annexure No.1

30/11/23, 12:15 PM	Email
 <p>भारत सरकार Govt of India श्रम एवं रोजगार मंत्रालय Ministry of Labour & Employment खान सुरक्षा महानिदेशालय Directorate-General of Mines Safety</p> 	
NO: 30251238[NZ Varanasi Region Perm 2023 260661	Varanasi, Date: 30/11/2023

प्रेषक:

खान सुरक्षा निदेशक

वाराणसी क्षेत्र, वाराणसी।

सेवा में,

श्री नितेन्द्र राठौर, खान फोरमैन,

जरर ग्रेनाइट (खण्डा, गिट्टी, बोल्डर) खदान

(गाटा सं० 2450, खण्ड सं०-06, क्षे०-2.00 हे०),

(मालिक - मे० शिर्वापन ट्रेडिंग कम्पनी,

प्रो० श्री लवलेश सिंह पत्र श्री लोचन सिंह,

ग्राम- जरर, तहसील- नरैनी,

जनपद- बांदा (उत्तर प्रदेश)।

श्रम पहचान सं० (LIN) :- 2824811009

विषय: धात्विक खान विनियम, 1961 के विनियम 34(6) के अन्तर्गत खान प्रबन्धक के रूप में कार्य करने का प्राधिकरण।

महोदय,

कृपया उपरोक्त विषय पर आपके ऑनलाइन आवेदन आई० डी०: 260661, दिनांक 20.11.2023 को संदर्भित करें।

आपके आवेदन पत्र में दी गई जानकारी के आधार पर विषयवस्तु का अवलोकन करते हुये उस पर विचार किया गया है। मैं, धात्विक खान विनियम, 1961 के विनियम 34(6) के उपबंधों के अधीन मुख्य खान निरीक्षक (जो खान सुरक्षा महानिदेशक के रूप में भी पदनामित हैं) के प्रदत्त शक्तियों का प्रयोग करते हुये और खान अधिनियम, 1952 की धारा 6(1) के अधीन मुख्य खान निरीक्षक (जो खान सुरक्षा महानिदेशक के रूप में पदनामित हैं) द्वारा प्रदत्त प्राधिकरण के आधार पर श्री नितेन्द्र राठौर, खान फोरमैन सक्षमता प्रमाण-पत्र धारक को मालिक - मे० शिर्वापन ट्रेडिंग कम्पनी, प्रो० श्री लवलेश सिंह पत्र श्री लोचन सिंह, की जरर ग्रेनाइट (खण्डा, गिट्टी, बोल्डर) खदान (गाटा सं० 2450, खण्ड सं०-06, क्षे०-2.00 हे०), में दिनांक 29.11.2024 तक की अवधि के लिये निम्नलिखित शर्तों पर खान प्रबन्धक के रूप में कार्य करने के लिये प्राधिकृत करता हूँ:-

1. No underground working shall be made.
2. Employment of work persons in the mine shall not exceed 75 in all.
3. Work in the mines shall be done during day light hours only.
4. No deep hole blasting shall be carried out in the mine.
5. No Heavy Earth Moving Machinery shall be used in mine without obtaining permission from this Directorate.

2:16 PM

Email

6. Work in the mines shall be supervised by you & the same shall remain suspended during your absence from the mine on account of leave or otherwise.
7. A Mining Mate shall exercise personal supervision of operations connected with mining.
8. No blasting shall be carried out in the mine except by a blaster duly appointed by the owner for the purpose as required by the provisions of Regulation 160 of the Metalliferous Mines Regulations, 1961.
9. This authorization shall be deemed to have revoked, if any of the condition subject to which this authorization has been granted, is violated or not complied with.
10. The above authorization may be amended or withdrawn at any time if considered necessary in the interest of safety.
11. This authorization is being issued without prejudice to any other provisions of the law which may be or may become applicable at any time.
12. Your special attention is drawn towards precautions as stipulated under Regulation 164(1), (1A) & (1B) of the Metalliferous Mines Regulation, 1961 for strict compliance.
13. This authorization shall be deemed to have revoked, if at any time your Mine Foreman Certificate No. FRE/5322, dated 20.03.2023 is found invalid / false.

Your Faithfully

SHYAM SUNDAR PRASAD (DIRECTOR - VARANASI REGION)
THIS IS A SYSTEM GENERATED DOCUMENT, DOES NOT REQUIRE ANY SIGNATURE.