

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

**ORIGINAL APPLICATION NO. 1222/2024
(I.A. NOS. 492/2024 & 493/2024)**

GAURAV SHARMA

...APPLICANT

VERSUS

MOEF&CC & ORS.

...RESPONDENT(S)

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THROUGH



Date:20.02.2025

Place: New Delhi

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**REPLY ON BEHALF OF THE MEMBER SECRETARY, SEIAA, UTTAR
PRADESH ALONGWITH THE SUPPORTING AFFIDAVIT.**

MOST RESPECTFULLY SHOWETH:

That the answering Respondents deny each and every statement, contention, submission, allegation, and/or averment made by the Applicant in the Rejoinder, which is contrary to or inconsistent with the present reply or the records of the case. It is categorically stated that all such statements, submissions, or averments made by the Applicant that are inconsistent with what is submitted in this reply are denied in totality, except those which are specifically and expressly admitted hereinafter. Furthermore, it is submitted that any omission to deny any of the averments made by the Applicant should not be construed as an admission on the part of the answering Respondent, and no adverse inference should be drawn from such omissions.

PRELIMINARY OBJECTIONS/SUBMISSIONS

1. That it is respectfully submitted on behalf of Respondent No. 3 (the State Level Environment Impact Assessment Authority, U.P.) and Respondent No. 4 (the State Expert Appraisal Committee, U.P.) that both these bodies have been constituted and function strictly in accordance with the Environmental Impact Assessment (EIA) Notification, 2006 (as amended), issued by the Ministry of Environment, Forest, and Climate Change (MoEFCC), Government of India. They operate under the provisions of the said Notification and adhere to all rules, guidelines, and procedures laid down by the MoEFCC.

2. That it is pertinent to bring on record that the Ministry of Environment and Forest, Government of India, had issued a Notification dated 14/09/2006 (as amended), commonly referred to as the EIA Notification, 2006. In terms of the said Notification, it has been made mandatory to obtain Prior Environmental Clearance before the establishment of any project or activity, or the expansion or modernization of any existing project or activity, which is listed in the Schedule to the EIA Notification, 2006. Environmental Clearance shall be required for:
 - a) All new projects or activities listed in the Schedule to this Notification.

 - b) Expansion and modernization of existing projects or activities crossing the threshold limits specified for the concerned sector, that is, projects or activities which cross the thresholds given in the Schedule after expansion or modernization.

- c) Any change in product mix in an existing manufacturing unit included in the Schedule beyond the specified range.
 - d) The overarching objective of this process is to impose restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities, based on their potential environmental impacts.
3. That in pursuance thereof, the EIA Notification, 2006 (as amended), categorizes projects into 'A' and 'B.' Projects falling under Category 'A' require Prior Environmental Clearance from the Central Government in the Ministry of Environment and Forests, whereas projects falling under Category 'B' come within the jurisdiction of the State Environment Impact Assessment Authority (SEIAA). The SEIAA's decision is based on the recommendations of the State Expert Appraisal Committee (SEAC). Therefore, before any construction work or preparation of land (except for securing the land) commences on a project or activity, the proponent is required to obtain such Prior Environmental Clearance.
4. That, in the State of Uttar Pradesh, the Ministry of Environment, Forest & Climate Change (MoEF&CC), Government of India, vide Notification bearing no. S.O. 3338(E) dated 16.10.2017, constituted the State Level Environment Impact Assessment Authority (SEIAA), U.P., and the State Expert Appraisal Committee (SEAC), U.P. The said statutory bodies were subsequently reconstituted through Notification bearing no. S.O. 2276(E) dated 11/06/2021.

Both SEIAA and SEAC, U.P., are carrying out their statutory functions under the overall supervision and guidance of the MoEFCC.

5. That the Directorate of Environment, Government of Uttar Pradesh, has been declared to function as the Secretariat to SEIAA and SEAC, U.P. by the State Government. Consequently, all administrative and secretarial assistance required for processing the Environmental Clearance proposals is facilitated by the Directorate of Environment. This ensures smooth coordination between the project proponents, SEAC, and SEIAA.
6. That whenever any project proposals for Prior Environmental Clearance are received by SEIAA, U.P., they are dealt with strictly as per the procedure laid down in the EIA Notification, 2006 (as amended). This includes, inter alia, screening, scoping, public consultation (wherever applicable), and appraisal. The SEAC reviews each proposal, conducts detailed deliberations, and forwards its recommendations to SEIAA. Thereafter, SEIAA takes the final decision on granting or rejecting Environmental Clearance, strictly in accordance with law.
7. That SEIAA, U.P., and SEAC, U.P., being statutory bodies, function solely under the provisions of the EIA Notification, 2006 (as amended), and the directions and guidelines issued by the MoEF&CC. They have no role in formulating or amending policies but only implement the same in letter and spirit, ensuring that all environmental norms are observed.

REPLY ON MERITS

8. That, with respect to clause 3 of Appendix-IX of the EIA Notification dated 28.03.2020, it is respectfully submitted that this clause provides an exemption from the requirement of Environmental Clearance for “removal of sand deposits on agricultural fields after flood by farmers.” The SEIAA, U.P., and SEAC, U.P., by virtue of their statutory mandate, adhere to all the provisions of the EIA Notification and its appendices, including Appendix-IX, unless any of these provisions are specifically set aside or read down by a competent court. The Notification dated 28.03.2020, issued by the MoEF&CC, is filed herewith and marked as **ANNEXURE-1**.

9. That it is also a matter of record that SEIAA, U.P., was constituted under the Environmental Impact Assessment (EIA) Notification, 2006, and functions strictly on the basis of processes established by the MoEFCC. In an Office Memorandum bearing F. No. 3-70/2020-IA.III [141127] dated 28th March, 2024, pertaining to compliance of the Judgment dated 21/03/2024 of the Hon’ble Supreme Court in Civil Appeal Nos. 1628-1629 of 2021 (Noble M. Paikada vs. Union of India), it was clarified, inter alia, that:

“The Ministry vide Notification S.O. 1224 (E) dated 28/03/2020 amended Appendix-IX to the EIA Notification, 2006 which inter-alia provided exemption from prior Environmental Clearance for the following:

‘6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages,

river and canals for the purpose of their maintenance, upkeep and disaster management.”

In compliance with the above, SEIAA, U.P. took cognizance of the said Notification and the subsequent directions of the Hon’ble Supreme Court.

10. That, thereafter, the Ministry vide Notification S.O. 3840 (E) dated 30/08/2023 amended the aforesaid provisions of items 6 and 7 of Appendix-IX to the EIA Notification, 2006, as follows:

“6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. shall be subject to the compliance of standard operating procedures and environmental safeguards issued in this regard from time to time.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management shall be subject to the compliance of environmental safeguards issued in this regard from time to time.”

SEIAA, U.P. and SEAC, U.P. accordingly noted these amendments and have been ensuring compliance with the mandated standard operating procedures and environmental safeguards, wherever relevant.

11. That, subsequently, the Hon’ble Supreme Court vide its judgment dated 21/03/2024 in Civil Appeal Nos. 1628-1629 of 2021 titled *Noble M. Paikada vs. Union of India* has struck down item 6 of the substituted Appendix-IX forming

part of Notification S.O. 1224 (E) dated 28/03/2020 and S.O. 3840 (E) dated 30/08/2023. Consequently, the exemption relating to “extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines, etc.” stands invalidated. However, the impugned clause 3 (pertaining to removal of sand deposits on agricultural fields after flood) was not the subject matter of the said judgment, and therefore, SEIAA, U.P., continues to abide by the existing legal position in that regard. A copy of the S.O. dated 28-03-2024 is highlighted and annexed here as ANNEXURE-2.

12. That it is also necessary to bring on record the Office Memorandum vide F. No. IA3-3/45/2021-IA.II [E-165219], dated 09.08.2024, issued by the Ministry of Environment, Forest and Climate Change (Impact Assessment Division), Government of India, in light of the Judgment dated 07.03.2024 of the Hon’ble High Court of Patna in C.W.J.C. No. 11181 of 2021, *Abhay Kumar vs. Union of India & Ors.*, where it has been recorded as under:

“The Ministry issued a Notification dated 15.01.2016 which was subsequently amended vide notification dated 28.03.2020. The amended notification inter-alia under clause 13 of Appendix IX provides an exemption from the requirement of obtaining Environmental Clearance to such category of cases that are specifically declared by the State Government under legislation or rules as non-mining activity.

2. The Hon'ble High Court of Patna, vide its judgment dated 07.03.2024, in C.W.J.C No. 11181 of 2021 in the matter titled Abhay Kumar vs. Union of

India & Ors., has set aside clause 13 of Appendix IX in the Environmental Impact Assessment Notification, 2006.

3. The copy of the order which is self-explanatory is enclosed herewith for compliance.

4. This is issued with the approval of the Competent Authority.”

A copy of the O.M. dated 09.08.2024 is highlighted and annexed here as **ANNEXURE-3**.

13. That, as regards the mechanism of granting leases or regulating mining activity in the District, it is respectfully submitted that auction and/or mining leases, including short-term permits or long-term permits, are granted by the District Administration and/or the Department of Geology and Mining, Government of Uttar Pradesh. In all cases where such leases or permits were granted after the enforcement of the EIA Notification, 2006 (i.e., 14/09/2006), Prior Environmental Clearance is a prerequisite if the mining area or the quantity proposed crosses the threshold specified in the EIA Notification. Further, the District Administration and the Department of Geology and Mining, U.P., also regulate the actual mining work on the field, check compliance, prepare District Survey Reports, ensure replenishment studies, and take actions against illegal mining or any violations.

14. That SEIAA, U.P., and SEAC, U.P., as the authorities entrusted with the grant or refusal of Environmental Clearance, emphasize that such clearance must be obtained before the commencement of any project/activity requiring it, including mining. Therefore, in cases of mining, the proponents are mandated to submit their proposals before SEIAA, U.P., along with the requisite documents, including a proper EIA report (where required), after which the proposals undergo appraisal by SEAC, U.P., and a final decision is taken by SEIAA, U.P. strictly within the confines of the law.

15. That it is once again respectfully reiterated that SEIAA, U.P., and SEAC, U.P., being fully aware of and bound by the judgments of various courts—including the Hon’ble Supreme Court and the Hon’ble High Courts—have been scrupulously complying with all directions issued therein. In light of the aforementioned judgments and the EIA Notification, 2006 (as amended), any proposed activities under the purview of the Notification are subjected to thorough scrutiny. This ensures that environmental safeguards are duly observed, and no permits for mining or related activities are granted in contravention of the extant legal framework or the guidelines prescribed by the MoEF&CC.

16. That it is also brought to the kind notice of this Hon’ble Tribunal that a similar matter is stated to be pending adjudication in Original Application No. 585/2023 titled *Arif Kidwai vs. Ministry of Environment Forest and Climate Change & Ors.* and Original Application No. 412/2023 titled *Pradeep Kumar Shukla Son of Shri Nand Kishor Shukla vs. Ministry of Environment Forest and Climate Change & Ors.* before this Hon’ble Tribunal. The issues in the said matters also

relate to the requirement of Environmental Clearance and the interpretation of certain clauses of the EIA Notification, 2006 (as amended).

17. That, in conclusion, these Respondents (SEIAA, U.P. and SEAC, U.P.) humbly state that they have consistently acted in compliance with the EIA Notification, 2006 (as amended), as well as the subsequent amendments, office memoranda, and court orders. Every proposal is independently appraised on merits, with adequate attention to the environmental implications and the applicable procedure laid down by law.

THROUGH



Date: 20.02.2025

Place: New Delhi

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IN THE MATTER OF:

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...RESPONDENTS

AFFIDAVIT

I, ANURAG YADAV, aged about 48 years s/o Sh. P.N SINGH is presently posted as DEPUTY DIRECTOR, REGIONAL OFFICE, NOIDA, DIRECTORATE OF ENVIRONMENTAL, U.P. **Presently at New Delhi**

1. That I am posted as stated above and well conversant with the facts of the present case and as such competent to swear this affidavit on behalf of **Member Secretary, SEIAA** before this Tribunal.
2. That the accompanying Compliance reply has been drafted by our counsel upon my instructions.
3. That the contents of the accompanying Compliance reply are true and correct, and the knowledge has been derived from official records and nothing material has been concealed therefrom.



D/6004/22
I identified the deponent who
has signed in my presence
Adv. Shivam



[Signature]
DEPONENT

VERIFICATION

Verified on solemn affirmation at New Delhi on this **24 FEB 2025** day of 2025,
that the contents of the foregoing affidavit are true and correct to the best of my
knowledge and no part of it is false and nothing material has been concealed
therefrom.

ATTESTED
[Signature]
**NOTARY PUBLIC
(INDIA)**

[Signature]
DEPONENT

24 FEB 2025



भारत का राजपत्र The Gazette of India

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NEW DELHI, SATURDAY, MARCH 28, 2020/CHAITRA 8, 1942

पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 28 मार्च, 2020

का.आ. 1224(अ).—खनिज विधि (संशोधन) अधिनियम 2020 (2020 का 2), खान और खनिज (विकास और विनियमन) अधिनियम, 1957 (1957 का 67) (जिसे इसमें इसके पश्चात् एमएमडीआर अधिनियम कहा गया है) द्वारा 10 जनवरी, 2020 से प्रभावी संशोधन किया गया है और अन्य बातों के साथ कानूनी निर्वाधन के अंतरण के लिए उपबंधों से संबंधित नई धारा 8ख का अंतःस्थापन किया गया है;

और, एमएमडीआर अधिनियम की धारा 8ख की उप-धारा (2) यह उपबंध करता है कि इस अधिनियम में या तत्समय प्रवृत्त किसी अन्य विधि में अंतर्विष्ट किसी बात के होते हुए भी, धारा 8क की उप-धारा (5) और उप-धारा (6) के उपबंधों के अधीन अवसान होने वाले खनन पट्टे का सफल बोली लगाने वाला और उस अधिनियम के अधीन या तद्विन बनाए गए नियमों के अधीन उपबंधित प्रक्रिया के अनुसार नीलामी के माध्यम से अर्जित सभी विधिमान्य अधिकार, अनुमोदन, निकासी, अनुज्ञप्ति और इसी प्रकार दो वर्ष की अवधि के लिए पूर्ववर्ती पट्टेदार पर निहित होना समझा जाएगा;

और, एमएमडीआर अधिनियम की धारा 8ख की उप-धारा (3) यह उपबंध करता है कि तत्समय प्रवृत्त अन्य विधि में अंतर्विष्ट किसी बात के होते हुए भी, यह उस भूमि पर जिसमें नया पट्टा के प्रारंभ से दो वर्ष की अवधि के लिए पूर्ववर्ती पट्टेदार द्वारा खनन संक्रियाएं कार्यान्वित किए जा रहे थे, निरंतर खनन संक्रियाओं को नए पट्टेदार के लिए विधिपूर्ण किया जाएगा;

और, एमएमडीआर अधिनियम को पूर्वोक्त संशोधन के प्रयोजन के लिए केंद्रीय सरकार, भारत सरकार के तत्कालीन पर्यावरण और वन मंत्रालय की अधिसूचना सं. का. आ. 1533 (अ), तारीख 14 सितंबर, 2006 (जिसे इसमें इसके पश्चात् ईआईए अधिसूचना, 2006 कहा गया है) के सुसंगत उपबंधों को सम्मिलित करने के लिए आवश्यक समझती है।

और, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय में सड़कों के लिए साधारण पृथ्वी का उपयोग करने के लिए पूर्व पर्यावरणीय अनापत्ति की अपेक्षा के अधित्याग के लिए अभ्यावेदनों की प्राप्ति पर; और पारंपरिक समुदाय द्वारा अंतर ज्वारीय क्षेत्र के भीतर चूने के गोले (मृत भू-पटल), पवित्र स्थानों, आदि के मैनुअल निकासी;

अतः, अब, केन्द्रीय सरकार, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (4) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप-धारा (1) और उप-धारा (2) के खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, लोकहित में, उक्त नियमों के नियम 5 के उप-नियम (3) के खंड (क) के अधीन सूचना की अपेक्षा से अभिमुक्ति के पश्चात् और अधिसूचना सं. का. आ. 4307 (अ), तारीख 29 नवंबर, 2019 को अधिकांत करते हुए, ईआईए अधिसूचना, 2006 में निम्नलिखित संशोधन करती है, अर्थात् :-

उक्त अधिसूचना में, -

(i) पैरा 11 में, उप-पैरा (2) के पश्चात् निम्नलिखित उप-पैरा अंतःस्थापित किया जाएगा, अर्थात् :-

“(3) खान और खनिज (विकास और विनियमन) अधिनियम, 1957 (1957 का 67) की धारा 8क की उप-धारा (5) और उप-धारा (6) के उपबंधों के अधीन अवसान होने वाले खनन पट्टे का सफल बोली लगाने वाला और उस अधिनियम के अधीन और तद्विना बनाए गए नियमों के अधीन उपबंधित प्रक्रिया के अनुसार नीलामी के माध्यम से चयनित नया पट्टा के प्रारंभ की तारीख से दो वर्ष की अवधि के लिए पूर्ववर्ती पट्टेदार पर निहित पूर्व पर्यावरणीय अनापत्ति विधिमान्य अर्जित किया गया समझा जाएगा और यह नया पट्टा प्रारंभ की तारीख से दो वर्ष की अवधि के लिए या उसमें उल्लिखित निबंधनों शर्तों के अनुसार नया पर्यावरणीय अनापत्ति, नया निकासी अभिप्राप्त होने तक, इसमें से जो भी पूर्वतर हो, उक्त पट्टा क्षेत्र पर पूर्ववर्ती पट्टेदार का स्वीकृत पर्यावरणीय अनापत्ति के निबंधनों और शर्तों के अनुसार निरंतर खनन संक्रिया नया पट्टेदार के लिए विधिपूर्ण होंगी;

परन्तु, सफल बोली लगाने वाला नया पट्टा मंजूर करने की तारीख से दो वर्ष की अवधि के भीतर विनियामक प्राधिकरण से पूर्व पर्यावरणीय अनापत्ति के लिए आवेदन करेगा और अभिप्राप्त करेगा।”;

(ii) अनुसूची के मद 1 (क) के सामने, स्तंभ (5) के खंड (2) के टिप्पण के पश्चात् निम्नलिखित खंड अंतःस्थापित किया जाएगा, अर्थात् :-

“(3) उक्त पट्टा के अवसान के पश्चात् पूर्ववर्ती पट्टेदार द्वारा खनन और खनिज (विकास और विनियमन) अधिनियम, 1957 (1957 का 67) के उपबंधों के अधीन खनन पट्टे के अवसान होने तक भीतर पड़ी पहले से ही खनिज वाह्य सामग्री का निष्क्रमण या निष्कासन और परिवहन उस अधिनियम के अधीन और तद्विना बनाए गए नियमों के अधीन उपबंधित प्रक्रिया के अनुसार नीलामी के माध्यम से चयनित सफल बोली लगाने की इस प्रकार अनुज्ञात खनन हैसियत के भाग के रूप में नहीं होगा।”

(iii) परिशिष्ट – IX के लिए, निम्नलिखित परिशिष्ट प्रतिस्थापित किया जाएगा, अर्थात् :-

“परिशिष्ट – 9

कतिपय मामलों के पर्यावरणीय अनापत्ति की अपेक्षा से छूट

निम्नलिखित मामलों को पूर्व पर्यावरणीय अनापत्ति की अपेक्षा नहीं होगी, अर्थात् :-

1. मैनुअल खनन द्वारा साधारण मिट्टी या बालू की कुम्हारों द्वारा मिट्टी के घड़े, लैम्प, खिलौने, आदि बनाने के लिए उनकी प्रथाओं के अनुसार निकासी।
2. मैनुअल खनन द्वारा मिट्टी की टाइलें बनाने द्वारा जो मिट्टी की टाइलें बनाते हैं, के लिए साधारण मिट्टी या बालू की निकासी।
3. किसानों द्वारा बाढ़ के पश्चात् कृषि भूमि से बालू के जमाव को हटाना।

4. ग्राम पंचायत में अवस्थित स्रोतों से बालू और साधारण मिट्टी को वैयक्तिक उपयोग या ग्राम में समुदाय कार्य के लिए प्रथा के अनुसार खनन।
5. सामुदायिक कार्य जैसे ग्रामीण तालाबों या टैंकों से गाद हटाना, महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार और गारंटी स्कीमों, अन्य सरकारी स्कीमों, प्रायोजित तथा सामुदायिक प्रयासों द्वारा ग्रामीण सड़कों, तालाबों या बांधों का संनिर्माण।
6. सड़क, पाइपलाइन, आदि जैसे रेखीय परियोजनाओं के लिए साधारण मिट्टी की निकासी, निष्कासन या प्रयोग करना।
7. बांधों, तालाबों, मेड़ों, बैराजों, नदी और नहरों की उनके अनुरक्षित तथा आपदा प्रबंधन के प्रयोजन के लिए तलमार्जन और गाद निकालना।
8. गुजरात में गुजरात सरकार की तारीख 14 फरवरी, 1990 की अधिसूचना सं. जीयू / 90 (16)/ एमसीआर-2189 (68) / 5 – सीएचएच द्वारा बंजारा और ओड द्वारा बालू के पारंपरिक उपजीविका कार्य।
9. पारंपरिक समुदाय द्वारा अंतर ज्वारीय क्षेत्र के भीतर चूने के गोलों (मृत भू-पटल), पवित्र स्थानों, आदि के मैनुअल निकासी।
10. सिंचाई या पेयजल के लिए कुओं की खुदाई।
11. यथास्थिति, ऐसे भवनों की नींव के लिए खुदाई जिनके लिए पूर्व पर्यावरणीय अनापत्ति अपेक्षित नहीं है।
12. जिला कलेक्टर या जिला मजिस्ट्रेट या किसी अन्य सक्षम प्राधिकारी के आदेश पर किसी नहर, नाला, ड्रेन, जल निकाय, आदि में होने वाली दरार को भरने के लिए साधारण मिट्टी या बालू का उत्खनन ताकि किसी आपदा या बाढ़ जैसी स्थिति से निपटा जा सके।
13. ऐसे क्रियाकलाप, जिन्हें राज्य सरकार द्वारा विधान या नियमों के अधीन गैर खननकारी क्रियाकलाप के रूप में घोषित किया गया है।”

[फा. सं. जेड-11013 / 47 / 2018-आई. ए. II (एम)]

गीता मेनन, संयुक्त सचिव

टिप्पण : मूल अधिसूचना भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii) में सं. का. आ. 1533 (अ), तारीख 14 सितंबर 2006 द्वारा प्रकाशित की गई थी और निम्नलिखित सं. द्वारा पश्चात्कर्ती संशोधन किया गया :-

1. का. आ. 1949 (अ), तारीख 13 नवंबर, 2006;
2. का. आ. 1737 (अ), तारीख 11 अक्टूबर, 2007;
3. का. आ. 3067 (अ), तारीख 1 दिसंबर, 2009;
4. का. आ. 695 (अ), तारीख 4 अप्रैल, 2011;
5. का. आ. 156 (अ), तारीख 25 जनवरी, 2012;
6. का. आ. 2896 (अ), तारीख 13 दिसंबर, 2012;
7. का. आ. 674 (अ), तारीख 13 मार्च, 2013;
8. का. आ. 2204 (अ), तारीख 19 जुलाई, 2013;
9. का. आ. 2555 (अ), तारीख 21 अगस्त, 2013;
10. का. आ. 2559 (अ), तारीख 22 अगस्त, 2013;
11. का. आ. 2731 (अ), तारीख 9 सितंबर, 2013;

12. का. आ. 562 (अ), तारीख 26 फरवरी, 2014;
13. का. आ. 637 (अ), तारीख 28 फरवरी, 2014;
14. का. आ. 1599 (अ), तारीख 25 जून, 2014;
15. का. आ. 2601 (अ), तारीख 7 अक्टूबर, 2014;
16. का. आ. 2600 (अ), तारीख 9 अक्टूबर, 2014;
17. का. आ. 3252 (अ), तारीख 22 दिसंबर, 2014;
18. का. आ. 382 (अ), तारीख 3 फरवरी, 2015;
19. का. आ. 811 (अ), तारीख 23 मार्च, 2015;
20. का. आ. 996 (अ), तारीख 10 अप्रैल, 2015;
21. का. आ. 1142 (अ), तारीख 17 अप्रैल, 2015;
22. का. आ. 1141 (अ), तारीख 29 अप्रैल, 2015;
23. का. आ. 1834 (अ), तारीख 6 जुलाई, 2015;
24. का. आ. 2571 (अ), तारीख 31 अगस्त, 2015;
25. का. आ. 2572 (अ), तारीख 14 सितंबर, 2015;
26. का. आ. 141 (अ), तारीख 15 जनवरी, 2016;
27. का. आ. 648 (अ), तारीख 3 मार्च, 2016;
28. का. आ. 2269 (अ), तारीख 1 जुलाई, 2016;
29. का. आ. 2944 (अ), तारीख 14 सितंबर, 2016;
30. का. आ. 3518 (अ), तारीख 23 नवंबर, 2016;
31. का. आ. 3999 (अ), तारीख 9 दिसंबर, 2016;
32. का. आ. 4241 (अ), तारीख 30 दिसंबर, 2016;
33. का. आ. 3611 (अ), तारीख 25 जुलाई, 2018;
34. का. आ. 3977 (अ), तारीख 14 अगस्त, 2018;
35. का. आ. 5733 (अ), तारीख 14 नवंबर, 2018;
36. का. आ. 5736 (अ), तारीख 15 नवंबर, 2018;
37. का. आ. 5845 (अ), तारीख 26 नवंबर, 2018;
38. का. आ. 345 (अ), तारीख 17 जनवरी, 2019;
39. का. आ. 1960 (अ), तारीख 13 जून, 2019;
40. का. आ. 236 (अ), तारीख 16 जनवरी, 2020;
41. का. आ. 751 (अ), तारीख 17 फरवरी, 2020; और
42. का. आ. 1223 (अ), तारीख 27 मार्च, 2020।

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 28th March, 2020

S.O. 1224(E).—WHEREAS, *vide* the Mineral Laws (Amendment) Act, 2020 (2 of 2020), the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (hereinafter referred to as MMDR Act) has been amended with effect from the 10th day of January, 2020 and, *inter alia*, new section 8B relating to the provisions for transfer of statutory clearances has been inserted;

AND WHEREAS, sub-section (2) of section 8B of the MMDR Act provides that notwithstanding anything contained in this Act or any other law for the time being in force, the successful bidder of mining leases expiring under the provisions of sub-sections (5) and (6) of section 8A and selected through auction as per the procedure provided under this Act and the rules made thereunder, shall be deemed to have acquired all valid rights, approvals, clearances, licences and the like vested with the previous lessee for a period of two years;

AND WHEREAS, sub-section (3) of section 8B of the MMDR Act provides that notwithstanding anything contained in any other law for the time being in force, 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 two years from the date of commencement of the new lease;

AND WHEREAS, in pursuance of the aforesaid amendment to the MMDR Act, the Central Government deems it necessary to align the relevant provisions of the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1533 (E), dated the 14th September, 2006 (hereinafter referred to as the EIA Notification, 2006);

AND WHEREAS, the Ministry of Environment, Forest and Climate Change is in the receipt of representations for waiver of requirement of prior environmental clearance for borrowing of ordinary earth for roads; and manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of 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 number S.O. 4307(E), dated the 29th November, 2019, hereby makes the following further amendments in the EIA Notification, 2006, namely:-

In the said notification,-

(i) in paragraph 11, after sub-paragraph (2), the following sub-paragraph shall be inserted, namely:-

“(3) The successful bidder of the mining leases, expiring under the provisions of sub-sections (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:

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.”;

(ii) in the Schedule, against the item 1(a), in the column (5), after clause (2) of the Note, the following clause shall be inserted, namely:-

“(3) The evacuation or removal and transportation of already mined out material lying within the mining leases expiring under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), by the previous lessee, after the expiry of the said lease, shall not form the part of the mining capacity so permitted to the successful bidder, selected through auction as per the procedure provided under that Act and the rules made thereunder.”;

(iii) for Appendix-IX, the following Appendix shall be substituted, namely:-

“APPENDIX-IX

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

1. Extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.
2. Extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles.
3. Removal of sand deposits on agricultural field after flood by farmers.
4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.
5. Community works, like, de-silting of village ponds or tanks, construction of village roads, ponds or bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes and community efforts.
6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.
7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.
8. Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.
9. Manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community.
10. Digging of wells for irrigation or drinking water purpose.
11. Digging of foundation for buildings, not requiring prior environmental clearance, as the case may be.
12. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.
13. Activities declared by the State Government under legislations or rules as non-mining activity.”

[F. No. Z-11013/47/2018-IA.II (M)]

GEETA MENON, Jt. Secy.

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) *vide* number S.O. 1533 (E), dated the 14th September, 2006 and subsequently amended *vide* the following numbers:-

1. S.O. 1949 (E), dated the 13th November, 2006;
2. S.O. 1737 (E), dated the 11th October, 2007;
3. S.O. 3067 (E), dated the 1st December, 2009;
4. S.O. 695 (E), dated the 4th April, 2011;
5. S.O. 156 (E), dated the 25th January, 2012;
6. S.O. 2896 (E), dated the 13th December, 2012;
7. S.O. 674 (E), dated the 13th March, 2013;
8. S.O. 2204 (E), dated the 19th July, 2013;
9. S.O. 2555 (E), dated the 21st August, 2013;
10. S.O. 2559 (E), dated the 22nd August, 2013;
11. S.O. 2731 (E), dated the 9th September, 2013;
12. S.O. 562 (E), dated the 26th February, 2014;
13. S.O. 637 (E), dated the 28th February, 2014;

14. S.O. 1599 (E), dated the 25th June, 2014;
15. S.O. 2601 (E), dated the 7th October, 2014;
16. S.O. 2600 (E), dated the 9th October, 2014;
17. S.O. 3252 (E), dated the 22nd December, 2014;
18. S.O. 382 (E), dated the 3rd February, 2015;
19. S.O. 811 (E), dated the 23rd March, 2015;
20. S.O. 996 (E), dated the 10th April, 2015;
21. S.O. 1142 (E), dated the 17th April, 2015;
22. S.O. 1141 (E), dated the 29th April, 2015;
23. S.O. 1834 (E), dated the 6th July, 2015;
24. S.O. 2571 (E), dated the 31st August, 2015;
25. S.O. 2572 (E), dated the 14th September, 2015;
26. S.O. 141 (E), dated the 15th January, 2016;
27. S.O. 648 (E), dated the 3rd March, 2016;
28. S.O. 2269(E), dated the 1st July, 2016;
29. S.O. 2944(E), dated the 14th September, 2016;
30. S.O. 3518 (E), dated 23rd November 2016;
31. S.O. 3999 (E), dated the 9th December, 2016;
32. S.O. 4241(E), dated the 30th December, 2016;
33. S.O. 3611(E), dated the 25th July, 2018;
34. S.O. 3977 (E), dated the 14th August, 2018;
35. S.O. 5733 (E), dated the 14th November, 2018;
36. S.O. 5736 (E), dated the 15th November, 2018;
37. S.O. 5845(E), dated the 26th November, 2018;
38. S.O. 345(E), dated the 17th January, 2019;
39. S.O. 1960(E), dated the 13th June, 2019;
40. S.O. 236(E), dated the 16th January, 2020;
41. S.O. 751(E), dated the 17th February, 2020; and
42. S.O. 1223(E), dated the 27th March, 2020.

314 ANNEXURE-2

F. No. 3-70/2020-IA.III [141127]
Government of India
Ministry of Environment, Forest and Climate Change
(IA Division)

Indira Paryavaran Bhawan
Jor Bagh Road, Aliganj,
New Delhi - 110003

Dated: 28th March, 2024

OFFICE MEMORANDUM

Subject: Compliance of the Judgement dated 21/03/2024 of Hon'ble Supreme Court in Civil Appeal Nos 1628-1629 of 2021, Noble M. Paikada Vs Union of India - reg.

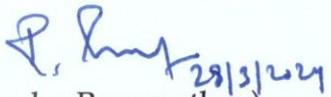
The Ministry vide Notification S.O. 1224 (E) dated 28/03/2020 amended Appendix-IX to the EIA Notification, 2006 which *inter-alia* provided exemption from prior Environmental Clearance for the following:

- “6. *Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.*
7. *Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.”*

2. Thereafter, Ministry vide Notification S.O. 3840 (E) dated 30/08/2023 amended the aforesaid provisions of item 6 & 7 of Appendix-IX to the EIA Notification, 2006 as given below:

- “6. *Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. shall be subject to the compliance of standard operating procedures and environmental safeguards issued in this regard from time to time.*
7. *Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management shall be subject to the compliance of environmental safeguards issued in this regard from time to time.”*

3. The Hon'ble Supreme Court vide its judgment dated 21/03/2024 in Civil Appeal Nos 1628-1629 of 2021 titled Noble M. Paikada Vs Union of India has struck down item 6 of the substituted Appendix-IX forming part of the Notification S.O. 1224 (E) dated 28/03/2020 and S.O. 3840 (E) dated 30/08/2023.
4. The copy of the judgement which is self-explanatory is enclosed herewith for compliance.
5. This is issued with the approval of the Competent Authority.


(Sundar Ramanathan)
Scientist 'E'

Encl: as above.

To

1. Chairman, Central Pollution Control Board (CPCB)
2. Chairman and Member Secretaries of SEIAA/ SEACs
3. Chairpersons/Member Secretaries of all SPCBs/UTPCCs
4. All the Officers of I.A. Division

Copy for information to:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS (EF&CC)
3. PPS to Secretary (EF&CC)
4. PPS to DGF&SS (EF&CC)
5. PPS to AS(TK)/Sr.PPS to JS (SKB)
6. Website, MoEF&CC/Guard file
7. Ministry of Mines
8. Ministry of Petroleum and Natural Gas
9. Ministry of Road Transport and Highways

ANNEXURE-3

316

F. No. IA3-3/45/2021-IA.III [E-165219]

Government of India

Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan
Aliganj, Jorbagh Road
New Delhi-110 003
Dated 9th August, 2024

OFFICE MEMORANDUM

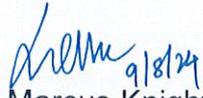
Sub: Circulation of the Judgement dated 07.03.2024 of Hon'ble High Court of Patna in C.W.J.C No. 11181 of 2021 in the matter titled Abhay Kumar vs. Union of India & Ors. – reg.

The Ministry, issued a Notification dated 15.01.2016 which was subsequently amended vide notification dated 28.03.2020. The amended notification inter-alia under clause 13 of Appendix IX provides an exemption from the requirement of obtaining Environmental Clearance to such category of cases that are specifically declared by the State Government under legislation or rules as non-mining activity.

2. The Hon'ble High Court of Patna, vide its judgment dated 07.03.2024, in C.W.J.C No. 11181 of 2021 in the matter titled Abhay Kumar vs. Union of India & Ors., has set aside clause 13 of Appendix IX in the Environmental Impact Assessment Notification, 2006.

3. The copy of the order which is self-explanatory is enclosed herewith for compliance.

4. This is issued with the approval of the Competent Authority.


(Dr. J. D. Marcus Knight)
Scientist E

Encl: As above.

To

1. The Chief Secretaries of all the States / UTs
2. Chairperson/ Member Secretaries of all Expert Appraisal Committees
3. Chairperson/Member Secretaries of all SEIAAs/SEACs
4. Chairpersons/Member Secretaries of all SPCBs/ UTPCCs
5. All Officers of IA Division

Copy for information to

1. PS to Hon'ble MEF&CC
2. PS to Hon'ble MoS, EF&CC
3. PPS to Secretary, EF&CC
4. PPS to SS (TK)/JS (SKB)
5. Website, MoEF&CC /Guard file

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11181 of 2021

Abhay Kumar, Son of Shri Om Prakash, Resident of Road No. 1F, Opposite Energy Park, Near Om Anand Vihar Apartment, Board Colony, Patel Nagar, District-Patna, Bihar-800023.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Environment, Forest and Climate Change, New Delhi.
2. Joint Secretary, Ministry of Environment, Forest and Climate Change, New Delhi.
3. Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
4. Under Secretary, Department of Mines and Geology, Government of Bihar, Patna.
5. Member Secretary, Bihar State Pollution Control Board, Bihar, Patna.
6. Chairman, State Environment Impact Assessment Authority, Bihar, Patna.
7. General Secretary, Bihar Bricks Manufacturing Association, Shubham-Rohit Market, Rukanpura, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate Mr. Raushan Advocate Mr. Pushkar Bhardwaj, Advocate Mr. Atul Prakash, Advocate
For the UOI	:	Mr. Dr. K. N. Singh, ASG Mr. Kumar Priya Ranjan, CGC Mr. Sandeep Kumar, Advocate Mr. Vibhuti Kumar, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7 Mr. Ajit Kumar, AC to GA-7
For SEIAA	:	Mr. Kumar Ravish, Advocate Ms. Siddhi Aashna, Advocate
For Mines Department	:	Mr. Naresh Dixit, Spl. P.P. Mr. Sumit Shekhar Pandey, Advocate Ms. Kalpana, Advocate
For Pollution Board	:	Mr. Abhimanyu Singh, Advocate
For the Resp. No. 7	:	Mr. Manoj Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)



Date: 07-03-2024

The petitioner in the above case, which is filed as a public interest litigation, is aggrieved with the notification brought out at Annexure-2, by which quarrying for the purpose of brick-kiln was deemed to be a non-mining activity for the purpose of environmental clearance and also required that such clearance would be imperative only if the depth of quarry is not more than one and a half meters from the adjoining ground level.

2. Shri Abhinav Shrivastava, learned counsel for the petitioner, specifically pointed out Annexure-1 notification issued by the Ministry of Environment, Forest and Climate Change (For brevity 'MoEF&CC') dated 28.03.2020, wherein by Appendix-IX, a number of activities were held to be not requiring prior environmental clearance. Sl. No. 13 of the Appendix provided for activities which could be declared by the State Government under legislation or rules as a non-mining activity.

3. It is argued that primarily, it is beyond the power conferred on the executive government at the Centre and in any event, it results in excessive delegation. Further, it is argued that even if Sl. No. 13 is found to be in order, then,



necessarily the activities which are so declared by the State Government, can only be such activities as are covered by or similar to those described in Sl. Nos. 1 to 12. Sl. Nos. 1 to 12 are all activities which ensure preservation of a traditional occupation or a craft or skill and along with such preservation, sustenance of the livelihood of the marginalized groups in society who will be unable to procure an environmental clearance. There are absolutely no guidelines insofar as bringing in activities by the State as provided in Sl. No. 13. Specific reliance is made to Annexure-P/4 which has spoken of preservation of top soil, which is to maintain the fertility of the soil, which objective would be defeated and frustrated, if rampant brick-kilns are brought into operation.

4. Shri Abhimanyu Singh, learned Standing Counsel for the Bihar State Pollution Control Board, points out that despite absolving the brick-kilns from getting environmental clearance, they have to get a consent to establish and then a consent to operate from the Pollution Control Board, which is as per the Air (Prevention and Control of Pollution) Act, 1981.

5. The learned Government Advocate specifically points to the notification issued by the MoEF&CC,



prior to Annexure-4, wherein Sl. No. 13 had required an approval from the Central Government before the State declares any activity to be one not requiring prior environmental clearance. The said rigor has been removed in Annexure-4 notification, which clearly indicates the mind of the Central Government. The intention is only to promote such activity by the State, which are considered to be imperative and expedient in development, while at the same time ensuring no environmental depredation is occasioned, as in a mining activity.

6. By Section 4 of the Mines and Mineral (Development and Regulation) Act, 1957 (For brevity 'MMDR Act), any person undertaking reconnaissance, prospecting or mining operation in any area shall do so only with a reconnaissance permit, a prospecting license or a mining lease granted under the Act and the Rules made there under. Section 15 of the MMDR Act confers power on the State Government to make Rules with respect to the grant of quarry leases/mining leases and other mineral concessions. It is also pertinent that Section 14 of the MMDR Act as it earlier stood excluded Sections 4 to 13 from application to minor minerals and the same was amended with effect from 1986 by excluding only



Sections 5 to 13. Hence Section 4 would be applicable even for minor minerals.

7. The Mines Act, 1952 and the MMDR Act are complementary enactments and one does not exclude the other. Any activity carried on involving underground excavation, including an open cast working, is brought under the Mines Act, as a 'mine' and there is no separate definition of 'mine' under the MMDR Act. *Bhagwan Dass v. State of Uttar Pradesh & Others; (1976) 3 SCC 784, Sri Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co. and Others; (1979) 3 SCC 106* are authorities for the proposition that despite no activities being carried on underground even an open cast working is defined under the Mines Act.

8. *Bhagwan Dass* (supra) held that the Act of 1957 and the Rules of 1963 (UP State rules) "shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of 'winning' any mineral. 'Winning' does not imply a hazardous or perilous activity. The word simply means 'extracting a mineral' and is used to generally indicate any activity by which a mineral is secured. 'Extracting' in turn, means drawing out or obtaining. A tooth is 'extracted', as much as is fruit juice and as much as a



mineral. Only, that the effort varies from tooth to tooth from fruit or fruit and from mineral to mineral" (sic paragraph 13).

9. *Tarkeshwar Sio Thakur Jiu* held so: "It is true that in the definition of 'mine the term 'excavation' in the ordinary sense, means 'hole' 'hollow' or 'cavity' made by digging out. But the word 'any' prefixed to 'excavation' in the context of the phrase 'for the purpose of searching for or obtaining mineral' gives it a much more extensive connotation, so that every 'excavation' be it in the shape of an open cast cavity or a subterranean tunneling, will fall within the definition of mine. Similarly, it is not a requirement of the definition of 'mining operation' that the activity for winning the mineral must necessarily be an underground activity. The essence of 'mining operations is that it must be an activity for winning a mineral, whether on the surface or beneath the surface of earth.' (sic paragraph 16).

10. In *(1987) 3 SCC 208; Joint Director of Mines Safety v. M/s. Tandur and Nayandgi Stone Quarries (P) Ltd.* held that the legislation as manifested by the scheme of the Mines Act, is primarily to ensure the safety of the workmen. The preamble of the Mines Act professes its intention to consolidate the law relating to the regulation of labour and



safety in mines while that of the MMDR Act provides for the development and regulation of mines and minerals under the control of the Union.

11. Section 4 of the MMDR Act, as we found, provides that no person shall undertake any reconnaissance, prospecting or mining operations except under and in accordance with the terms and conditions of the reconnaissance permit, a prospecting license or a mining lease. The State Government has been conferred with the power to make rules in respect of minor minerals under Section 15 of the Act. Section 15 does not grant any power to the State Government to exempt any activity which involves minor mineral quarrying; from the requirement of a permit, license or lease.

12. The power of the respective legislatures, was considered by the Hon'ble Supreme Court in *(2012) 11 SCC 1; Monnet Ispat & Energy Ltd. v. Union of India*. Entry 54 of List I and Entry 23 of List II was looked into, to find that the States power to regulate mines and mineral development is taken away to the extent of regulations made by the Union Parliament. It was held so in Paragraph 130:

The same philosophy is reflected in our Constitution. 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. To find out what is left within the competence of the State Legislature on the declaration having been made in Section 2 of the 1957 Act, one does not have to look outside the provisions of the 1957 Act but as observed in *Baijnath Kadio*, "have to work it out from the terms of that Act". In order that the declaration made by Parliament should be effective, the making of rules or enforcement of rules so made is not decisive.

13. Hence, the power of the State is taken away to the extent provided in the MMDR Act, as declared in Section



2 of the said Act. Section 4 is a prohibition from undertaking any reconnaissance, prospecting or mining without a permit, license or lease. Section 14 as it originally stood exempted minor minerals from Sections 4 to 13; which stood amended with effect from 10.02.1987 (Act 37 of 1986); making inapplicable only Sections 5 to 13, to minor minerals. In the teeth of Section 4, the State framing rules under Section 15 of the MMDR Act cannot altogether exempt a mining activity from being carried out without permit, license or lease.

14. The State has under Section-15 of the MMDR Act brought out the Bihar Minor Mineral Concession Rules, 1972 and the Bihar Bricks Supplies and Price Control Act, 1984 along with other rules which regulate the policy of mining within the State; which cannot and do not provide for an exemption from the rigours of the MMDR Act. The subject notifications brought in by the Union Government and the State are not under the MMDR Act and we dealt with the said enactment only to emphasize that the MMDR Act read with the Mines Act require a permit even in the case of brick-kilns, where there is extraction of clay.

15. Now, we look at the notification brought out by the Central Government at Annexure-1, which specifically



affirms the Mineral Laws (Amendment) Act, 2020, amending the MMDR Act and introducing *inter alia* a new Section 8B in the MMDR Act. Sub-section (1) of Section-8B provides that notwithstanding anything contained in the Act or any other law for the time being in force, a successful bidder of mining leases, expiring under the provisions of Sub-sections (5) and (6) of Section-8A of the MMDR Act and selected through auction, shall be deemed to have acquired all valid rights, approvals, clearances, licences and the like, vested with the previous lessee for a period of two years. Sub-section (2) again a *non obstante* clause, provides that it shall be lawful for the new lessee to continue mining operations on the land for a period of two years as done by the previous lessee.

16. It is to further the object of the aforesaid amendment to the MMDR Act, that the Central Government brought out the notification dated 28.03.2020. to align the relevant provisions of the earlier notification; S.O. 1533 (E) dated 14.09.2006, with the provisions of the MMDR Act with the Environmental Impact Assessment (EIA) Notification, 2006. The notification also refers to the representations received by the MoEF&CC for waiver of prior environmental clearance for burrowing ordinary earth for roads, manual extraction of lime



shells, shrines etc., within inter tidal zones by the traditional community. Prior environment clearance is a measure brought in to preserve the environment.

17. The notification was brought out exercising the powers conferred by Section 3 (i) (ii) and (v) read with Rule-5 (iv) of the Environmental (Protection) Rules 1986, after dispensing with the requirement of notice under Rule-5(3)(a). Here, we have to immediately refer to the provisions of the Environmental (Protection) Act 1986 and the rules framed thereunder. Section-3(1) confers the Central Government with the power to take all measures, deemed necessary or expedient, to protect and improve the quality of the environment, aimed at preventing, controlling and abating environmental pollution. Clause-(5) of sub-section (2) also specifies prescription of areas in which any industry, operation or process or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.

18. We have to specifically emphasize that the provisions of the Environment Act is to bring in measures to prevent, control and abate environmental pollution. Rule-5 of the Environment (Protection) Rules, 1986, has the nominal heading of *'Prohibition and restriction on the location of*



industries and the carrying on processes and operations in different areas' (sic) and Sub-rule (4) of rule 5 speaks of dispensing with the requirement of notice, if it appears to the Central Government to be in public interest. The notification while providing for specific environmental clearance in furtherance of the object to Environment Protection Act also provides for certain exemptions, which was the specific concern of the Central Government, while bringing out the notification dated 28.03.2020. Indubitably the power to restrict industries, brings with it the power to exempt the restrictive measures for certain activities; which should be either on the ground of such exempted industries not leading to depredation of environment or there existing any expedient circumstance akin to protection of traditional industries, protecting the masses from natural calamities or in furtherance of developmental activities.

19. We have to again emphasize that the exemption sought by the representations was insofar as extracting ordinary earth for roads, manual extraction within inter tidal zone by the traditional community and so on. Clauses-1, 2, 8 and 9 are to protect the traditional communities like the potters, earthen tile makers, Banjaras & Oads in Gujarat and traditional communities within inter tidal zones. Clauses-3,



4, 5, 7 and 12 are provisions to protect farm lands from natural calamities like floods, customary extractions for community work, community works, dredging and desilting of water bodies and plugging any breach in the natural or man-made water bodies; which could lead to a disaster. Clause-6 refers to burrowing of ordinary earth for linear projects such as roads, pipelines etc. Clause-10 refers to irrigation or drinking water purpose and Clause-11 refers to digging of foundation for buildings, not requiring prior environmental clearance. Clause-13 is the objectionable clause which speaks of activities declared by the State Government under legislation or rules as non-mining activity.

20. We have to specifically notice at this juncture that earlier such notifications or legislations required the concurrence of the MoEF&CC, Government of India which has been taken away, providing *carta blanche* insofar as the State being conferred with the power of exempting mining activities. This would inherently be a further delegation of the power conferred by the Parliament on the Central Government by the Union Legislation. We have already noticed the rule making power of the Central Government, which is aimed at preserving and protecting the environment for which appropriate measures



could be taken. While taking such appropriate measures, the Central Government, as we found, is quite competent to reckon the activities (i) carried out traditionally, (ii) for development; confined to roads, pipelines etc.; which are public utility services, (iii) protection of the masses from natural calamities, and (iv) provision of basic necessities of life, like drinking water and irrigation. Brick manufacturing does not come under any of the exempted categories as specified from the various exemptions granted under Appendix-IX or from the power sourced to the Environment Protection Act. The ‘other activity’, which is capable of being exempted, referred to in Clause-13 of Appendix-IX has to be akin to and take its colour and texture from the other activities mentioned under Appendix-IX as exempted activities, going by the principle of *ejusdem generis*.

21. It has also to be emphasized that the State has not been conferred with any such power of exemption by the statute; neither the MMDR Act nor the Environment Protection Act. In that circumstance the power delegated to the Union Government cannot further be delegated to the State Government on the principle of “*deligatus non protest delegare*”.

22. Hence, both on the principle of *ejusdem*



generis and more so on the principle of a delegate being prevented from further delegation, Annexure-2 notification of the State Government has to be interfered with. The amendment to Rule-38(3) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 has to be set aside. We do so. The EIA Notification of 2006 to the extent it delegates the power to exempt, to the State by Clause-13 of Appendix-IX also is bad and the same stands set aside. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

I agree.
Harish Kumar, J:

(Harish Kumar, J)

Sujit/Ranjan

AFR/NAFR	AFR
CAV DATE	20.02.2024
Uploading Date	07.03.2024
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