

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. No. 1040 of 2024

IN THE MATTER OF:

SURENDRA AND ORS

... APPLICANTS

VS

STATE OF UTTAR PRADESH & ORS ... RESPONDENTS

REPLY ON BEHALF OF THE RESPONDENT NO. 5

ADVOCATE FOR THE RESPONDENT NO. 5

MAYANK PANDEY

INDEX

Sr.No	Particulars	Page Nos.
1.	REPLY ON BEHALF OF THE RESPONDENT NO. 5 ALONGWITH AFFIDAVIT	1-8
2.	<u>ANNEXURE R-5/1</u> Copy of the report submitted by the committee constituted by the Hon'ble Supreme Court in C.A. 4046/2023	9-14
3.	Vakalatnama	15

BEFORE THE NATIONAL GREEN TRIBUNAL**PRINCIPAL BENCH, NEW DELHI****O.A. No. 1040 of 2024****IN THE MATTER OF:**

SURENDRA AND ORS

...APPLICANTS

VS

STATE OF UTTAR PRADESH & ORS

...RESPONDENTS**REPLY ON BEHALF OF THE RESPONDENT NO. 5**

1. The present reply is being filed on behalf of M/s New India Minerals, Respondent No. 5, to the present Original Application No. 1040 of 2024 (hereinafter referred to "OA") filed by the Applicant.
2. The present OA has been registered by this Hon'ble Tribunal on the basis of Applicants' letter petition dated 09.01.2024 complaining about illegal sand mining in Kaimur Wildlife Sanctuary Area.
3. It is submitted that the copy of the Original Application No. 1040 of 2024 was never served on the answering respondent herein. After the Hon'ble tribunal grants the permission to get the OA, the answering respondent reserves the right to reply to each and every allegation set out in the letter addressed to the Hon'ble tribunal.

4. The applicants herein have not approached the Hon'ble Tribunal with clean hands. The letter which was sent by the applicants are based on some motivated facts and surmises in order to protect the illegal sand mining happening at the behest of the locals. They are in turn facilitating the local sand mafia and the anti social elements in doing illegal sand mining.
5. It is humbly submitted that the Hon'ble Supreme Court of India is already seized of the matter in relation to the similar allegations of illegal sand mining at the answering respondent mining area which is Civil Appeal No. 4046 of 2023. which impugns the order dated 19.5.2023 of this Hon'ble Tribunal. *Vide* order dated 19.5.2023 this Hon'ble Tribunal, dealing with similar allegations of illegal mining around Kaimur Wildlife Sanctuary, had directed to re-visit all mining leases granted for mining activities in Son river bed for carrying out mining activities in District Sonbhadra. It was further directed that in the meantime no further mining in Son river bed in District Sonbhadra shall be allowed. District Magistrate, Sonbhadra. This order of the Hon'ble Tribunal was challenged before the Hon'ble Supreme Court which through it's order dated 26.5.2023 stayed the operations of the aforementioned directions of this Hon'ble Tribunals qua the Respondents herein.
6. In this regard it is pertinent to point out here the relevant observation of the Hon'ble Supreme Court in its order dated 05.07.2023 which are as follows:

“Issue notice, and tag with Civil Appeal no. 4005/2023 titled “Chander Shekhar Chaurasia vs. Union of India & Ors.”.

Notice will be served by all modes, including dasti.

Till the next date of hearing, there will be a stay of the operation of the impugned judgment, insofar as directions contained in sub-paragraphs (ii), (iii), (iv) and (vi) of paragraph 262 of the impugned judgment are concerned qua the appellant. There will also be a stay on the direction to deposit the penalty amount in terms of paragraph 262(i) of the impugned judgment, subject to the appellant depositing an amount of Rs.1.50 crores before the Uttar Pradesh Pollution Control Board. The deposit would be converted into an interest bearing Fixed Deposit Receipt (FDR) for a period of one year on auto-renewal clause. The deposit would abide by further orders of this Court.

Insofar as the direction for revisit approvals vide paragraph 262(v) of the impugned judgment is concerned, there would be a stay thereof. However, the authorities will ensure compliance of the conditions and file a status report in this Court before the next date of hearing, stating whether compliances are being made.”

7. It is most pertinent to note that no mining is done by the Respondents herein as it is not permitted since 19.5.2023 in compliance of this Hon’ble Tribunal’s order.

8. **Brief facts of the Mining Lease**

a. The mining department has granted a mining lease of 16.194 Hectares total area for Morrum mining from the River Sone at Arazi No. 824 Kha (Khand -03), Village- Agori Khas, Tehsil- Obra, District- Sonbhadra to the answering respondent.

b. The above-mentioned mining lease has been granted by District Magistrate, Sonbhadra (Mining Department) for the duration of 13.12.2021 to 12.12.2026. The PP hereinafter referred to as the answering respondent was granted Consolidated Consent to Operate (CTO) under the Water (PCP) Act,1974 and the Air (PCP) Act, 1981 on 29.12.2023, which is valid from 01.01.2023 to 31.12.2024.

9. **Brief background to OA 1040/ 2024**

a. Surender, Balmati, Ramsubhag, Hiralal and Bacha Yadav (petitioners) have sent a letter petition dated 09.01.2024 on the pretext illegal sand mining in Kaimur Wildlife Sanctuary area.

b. Petitioners have alleged various activities at the mining area but have not supplied with any proofs to the answering respondents herein and have stated that the authorities have not taken any action.

c. This Hon'ble tribunal took cognisance of the letter and registered the same as OA 1040/2024 and ordered the authorities to constitute a joint committee and inspect the mining area and submit a report on the same.

Thus, vide order dated 07.11.2024, comprising the following members viz District Magistrate, Mirzapur, Central Pollution Control Board, Uttar Pradesh State Pollution Control Board and Principal Chief Conservator of Forest, Uttar Pradesh at Lucknow.

d. The joint committee undertook its inspection on 03.12.2024 and thereafter submitted its report listing out certain recommendations and observations.

e. The answering respondent is duty bound to answer to each and every allegation set out in the Joint committee report.

Reply to OA on merits

10. It is humbly submitted that the Joint Committee Report does not contain any allegation against the Answering Respondent as such this OA is liable to be rejected on the basis of the same. Further, the Joint Committee Report categorically records that the illegal mining is done outside the mining lease area of the leaseholders by the local resident/sand mafia on the government land (Clause 7(iv)).

11. The present issue is already *subjudice* before the Hon'ble Supreme Court in C.A. 4046/2023. Further, the committee constituted by the Hon'ble Supreme Court of India has also found that the illegal mining is done outside

the mining lease area of the leaseholders by the local resident/sand mafia on the government land.

Copy of the report submitted by the committee constituted by the Hon'ble Supreme Court in C.A. 4046/2023 is annexed herewith and marked as Annexure R5/1.

12. It is also pertinent to note that the Petitioner has done the required plantation drive as required under the law during the period of mining in the year 2022. The Petitioner is not mining since 19.5.2023.

13. In view of the above submissions, the present OA deserves to be disposed off.

Filed by:

MAYANK PANDEY



COUNSEL FOR RESPONDENT NO. 5

New Delhi

Drawn on:08.02.2025

Filed on:09.02.2025

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
O.A. No. 1040 of 2024**

IN THE MATTER OF:

SURENDER AND ORS

...

APPLICANTS

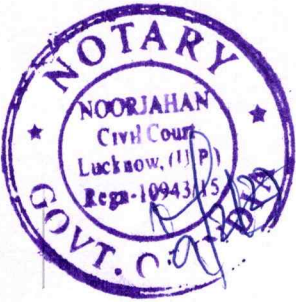
VS

STATE OF UTTAR PRADESH & ORS... RESPONDENTS

AFFIDAVIT ON BEHALF OF RESPONDENT NO. 5

I, Surendra Tiwari, Aged about 62, Resident of 190, Govindpur ,
Ganeshpur, Akbarpur, Ambedkar Nagar , Uttar Pradesh - 224122,
do hereby solemnly affirm and state as under:

1. That I am Respondent No. 5 and as such am conversant with the facts and circumstances of the present case and competent to depose to and affirm the present affidavit.
2. That I have read and understood the contents of the accompanying Reply, which has been drafted under my instructions. I state and affirm that the contents of the accompanying Reply in so far as they relate to facts are true and correct to my knowledge which is based on the information derived from the record of the case maintained by the Respondent No. 5 and the legal submissions herein are based on legal advice received by me and believed to be correct.
3. I say that the Annexures are true copies/photocopies of their respective originals.



सुरेंद्र तिवारी

DEPONENT

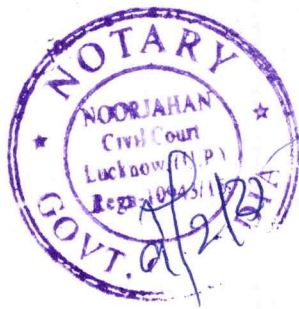
VERIFICATION

I, Surendra Tiwari, Aged about 62, Resident of 190, Govindpur , Ganeshpur, Akbarpur, Ambedkar Nagar , Uttar Pradesh - 224122, do hereby verify that the facts stated in the above Affidavit are true to the best of my knowledge on the basis of the information derived from the record of the case and the legal advice received by me and believed to be correct.

Verified at Lucknow this 09 day of January, 2025.

सुरेन्द्र तिवारी

DEPONENT



I know & identify the deponent / Executive who has signed / Ext. No. T.T. No. _____

Sworn and Verified before me.

9/1/25
NOORJAHAN
Advocate & Notary
Civil Court, Lucknow
Registration No. 10945/1997

ANNEXURE R-5/1

**IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)****CIVIL APPEAL NO. 4046 OF 2023****IN THE MATTER OF:****M/S NEW INDIA MINERALS BRAHMPURI COLONYAPPELLANT****VERSUS****UNION OF INDIA & ORS.****..... RESPONDENTS****INDEX**

SL. NO.	PARTICULARS	PAGES
1.	Status Report.	1 – 5

New Delhi:

Dated: 05.09.2023

COUNSEL FOR THE RESPONDENT NO. 6 :: PRADEEP MISRA

Report of committee constituted by Hon'ble Supreme Court of India
in the matter of Civil Appeal No. 4046/2023 New India Minerals
Brahmpuri Colony Vs. Union of India and Ors.

Hon'ble Supreme Court of India in the matter of Civil Appeal No. 4046/2023 New India Minerals Brahmpuri Colony Vs. Union of India & Ors. Vide order dated- 05/07/2023 directed the following:-

".....In so far as the direction for revisit approvals vide Paragraph 262 (V) of the impugned judgement is considered, there would be a stay there of. However, the authorities will ensure compliance of the conditions and file a status report in this court, before the next date of hearing, stating whether compliances are being made. Re-list on 21.08.2023....."

In the above matter, Hon'ble Supreme Court of India Vide order dated- 21.08.2023 directed the following:-

".....We grant time to the respondent-Uttar Pradesh Pollution Control Board to file Status Report till 11th September, 2023 in Civil Appeal Nos. 4045/2023 and 4046/2023.

List on 25th September, 2023"

Accordingly, the following members have been nominated by the concerned departments for the said committee-

1. Sri O.P. Srivastava, Member SEAC-1, SEIAA, Lucknow.
2. Sri Sahadev Kumar Mishra, ADM (F/R), Sonebhadra.
3. Shri Kapil Kumar, Sub Divisional Forest Officer, Obra, Sonebhadra
4. Shri Arvind kumar, Wildlife Warden, Kaimoor Wildlife Sanctuary, Churk, Sonebhadra.
5. Shri Ramesh Kumar Singh, Regional Officer, U. P. Pollution Control Board, Sonebhadra.

As per direction given by the Honorable Supreme Court of India, the judgement passed by the Honorable National Green Tribunal at Para 262(V) in O.A. No. 818/2022 dated 19.05.2023 states that:-

"...ECs, CTOs and NOCs granted to respondents 14 and 15 for carrying out mining activities in Son river bed shall be revisited by SEIAA UP, U.P.P.C.B. and other competent authorities in light of discussions made above and in the light of the fact that leased area is surrounded by Reserve Forest, ESZ and sanctuaries and appropriate decisions could be taken as to whether in such circumstances, mining activities should be allowed to be continued there in or not and till such a decision is taken, no further mining shall be allowed by respondents 14 and 15...."

In compliance of the direction given Hon'ble Supreme Court of India, the constituted committee members visited the lease area of respondent no. 15 M/s New India Minerals Brahmpuri Colony on 04.09.2023. The facts found in the visit have been summarized as follows:-

1. M/s New India Minerals Brahmpuri Colony operating Sand/Morrum Mining sites at Arazi number-824 Kha (Khand-03), Village-Aghori Khas, Tehsil-Obra, District-Sonbhadra on the right bank of River Son. The total lease area is 16.194 hectare in the bed of River Son.
2. The lease holder M/s New India Minerals Brahmpuri Colony have obtained EC from the SEIAA U.P., the competent authority vide letter no. EC 21B001UP196497 dated 01.12.2021, extended by minutes of the 500th meeting of the SEIAA held on 12.10.2021, for Sand/Morrum Mining in the leased area of 16.194 ha.
3. The lease holder M/s New India Minerals Brahmpuri Colony have obtained Consent to operate from the U. P. Pollution Control Board vide letter no. 143269/U PPCB/Sonbhadra(U PPCBRO)/CTO/water/Sonbhadra/2021 dated-08.12.2021, which is valid from dated-08.12.2021 to dated-31.12.2022 and No.

143269/UPPCB/Sonbhadra(UPPCBRO)/CTO/air/Sonbhadra/2021 dt-08.12.2021, which is valid from dated-08.12.2021 to dated-31.12.2022 for 2,59,104 cubic meter/year mining of Sand/Morrum. After that, The proponent have obtained renewal CTO from the State Pollution Control Board vide letter no.-170202/UPPCB/Sonebhadra(UPPCBRO)/CTO/both/SONBHADRA/2022 dated 13.01.2023, which is valid from dated-01.01.2023 to dated-31.12.2024.

4. At the time of inspection, the mining activity was found closed as per orders of the Hon'ble N.G.T. in O.A. No. 818/2022, due to non-mining period from 1st July of each year to 30th September of the year as mentioned in the EC issued to the lease holder M/s New India Minerals Brahmपुरi Colony. Mining shall be resumed from 1st October.
5. The Committee as constituted by Hon'ble N.G.T. had observed that the lease holder is doing significant mining outside the lease area (towards mainstream of river) where mining has been conducted by the lease holders but the committee members were unable to visit the questioned illegal mining site due to creation of heavy trench. However, this committee has observed that the site in question was covered with deep water of the river due to rainy season and hence this committee could not verify illegal ditches outside the sanctioned lease area. This committee noted that it is on record that illegal mining was being carried out by unauthorized persons outside the lease area and within the government land. In this connection, consultations were held with the local residents and visitors who informed that the mining outside the lease area of M/s New India Minerals Brahmपुरi Colony was being carried out by the local land owners who frequently came in trucks/tractors/trolleys and carried out the excavations. Thus, the lease holder M/s New India Minerals Brahmपुरi Colony are not responsible for illegal mining in the area.

6. The committee has also observed that the lease holder M/s New India Minerals Brahmpuri Colony has planted trees on the banks of the Son River as well as on vehicular movement path on which Sand/Morrum is being transported. It has been observed that boundary pillars have been properly erected on each corner of the lease area.
7. It has been observed that the lease holder M/s New India Minerals Brahmpuri Colony have setup weigh-bridge and office near the lease area. This area has been hired by the lease holder M/s New India Minerals because of difficulties in providing for the same in the river bed (lease area). Water supply for domestic purposes not exceeding 660 liters per day is managed through water tankers. A motor able approach road has been provided for movement of heavy vehicles.
8. The previous constituted committee has observed that mining was being done by the lease holder M/s New India Minerals Brahmpuri Colony in the mainstream of the river, but this Committee has not found any such activity in the mainstream of the river which is as per issued EC general conditions no. 13.
9. The Committee did not find any evidence of the use of heavy machinery or any heavy machinery present at the site for mining activities.
10. The Committee observed that the depth of the ditches present in the sanctioned mining lease area is as per norms mentioned in the EC issued to the lease holder by SEIAA UP.
11. It was observed that lease holder M/s New India Minerals Brahmpuri Colony have constructed toilets as per condition imposed in the ECs issued by SEIAA as well as CTOs issued by U.P. Pollution Control Board and are complying with the conditions.

12. The Committee observed that there is no conservation area for crocodiles and alligators in the Kaimur Wildlife Sanctuary area Mirzapur/Sonebhadra. The Sone Ghadiyal sanctuary is almost 25 Kms away, upstream of the lease area in the district of Sidhi at Madhya Pradesh. Sone Ghariyal region is far away from the questioned mining site. The mine lease area is not situated within the eco-sensitive zones of either the Kaimur Wildlife Sanctuary area Mirzapur/Sonebhadra or the Sone Ghariyal Sanctuary.

Conclusion-

The Committee concludes that the conditions of the Environmental Clearance, Consent to Operate and the No Objections Certificates granted to the lease holder M/s New India Minerals Brahmपुरi Colony (Respondent No. 15) for carrying out mining activities in Sone River bed are being satisfactorily complied with and Prima fascia, there is no observation found about of illegal mining outside the lease area in question done by said proponent during visit.

RAMESH Digitally signed
by RAMESH
KUMAR SINGH
Date: 2023.09.04
15:13:48 +05'30'

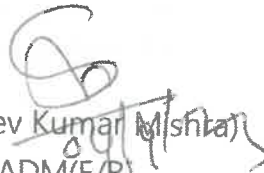
(R.K. Singh),
Regional Officer
U.P.P.C.B.,
Sonebhadra



(Arvind Kumar)
Wildlife Warden,
Kaimoor Wildlife Sanctuary,
Churk, Sonebhadra



(Kapil Kumar)
Sub Divisional Forest Officer,
Obra,
Sonebhadra



(Sahadev Kumar Mishra)
ADM(F/R)
Sonebhadra



(O. P. Srivastava)
Member SEAC-1,
S.E.I.A.A.
Lucknow



TRUE COPY

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
O.A. No. 1040 of 2024**

IN THE MATTER OF:

SURENDER AND ORS

...

APPLICANTS

VS

STATE OF UTTAR PRADESH & ORS...RESPONDENTS

KNOW ALL the whom these presents shall come that
Surendra Tiwari (Respondent No. 5), do hereby
appoint Mayank Pandey hereinafter called the advocate to be our advocate in the
above-noted case and authorize him:

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 courts. To sign, file
and present pleadings, appeals, cross-objections, or petitions, of execution, review,
revision, restoration, withdrawal compromise, or other petitions reply objections 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.

To withdraw, or compromise the said case, or submit to arbitration any differences
or disputes that may arise touching or in any manner relating to the said cause. To
take our execution proceedings. To deposit, draw and receive money 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 cause. To
appoint and instruct any other legal practitioner authorizing him to exercise the
powers and authorities hereby conferred upon the advocate whenever they may think
fit to do so.

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 me/us to all
intents and purposes. And we, the undersigned do hereby agree not to hold the
advocate or his substitute responsible for the result of the said cause in consequence
of their absence from the court when the said cause is called up for hearing, for any
negligence of the said advocate or his substitute. And we, the undersigned do hereby
agree that we agree to pay the costs, charges and expenses including your fees which
may be raised by you from time to time and in the event of the whole or any part of
the fee agreed by me/us to be paid to the advocate remaining unpaid, he shall be
entitled to withdraw from the prosecution of the said cause until the same is paid up,
if any costs are allowed for an adjournment, the advocate would be entitled to the
same,

**In Witness whereof, we do here up to set our hand to these presents the contents
which have been understood by me/us this day of**

सुरेन्द्र तिवारी

Respondent No. 5

I Identify the Client(s) signature.

(SURENDRA TIWARI)

Mayank Pandey

Mayank Pandey

Advocate for the Respondent

A-329, 2nd Floor, Defence

Colony, New Delhi-110024

Email: advocatemayank@outlook.com

Tel: 9971830872

