

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**  
**PRINCIPLE BENCH AT NEW DELHI**  
**ORIGINAL APPLICATION NO 690 OF 2023**

**IN THE MATTER OF:**

RAJA MUZAFFAR BHAT

...APPLICANT

VERSES

UNION TERRITORY OF JAMMU AND KASHMIR & ORS.

...RESPONDENTS

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**Through**



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Place:- New Delhi  
Dated:- 10.04.2024

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**RESPONSE BY APPLICANT TO REPORT FILED BY JAMMU AND  
KASHMIR ENVIRONMENT IMPACT ASSESMENT AUTHORITY AND  
DISTRICT MAGISTRATE, PULWAMA**

**MOST RESPECTFULLY SHOWETH:**

1. That the above-titled Application has been filed under Section 14 and Section 15 of the National Green Tribunal Act, 2010 raising the issue of illegal mining activity by Respondent No. 6 (Umesh Kumar Sharma) in violation of conditions in the Environmental Clearance dated 04.03.2022 granted by Jammu & Kashmir Environment Impact Assessment Authority (JKEIAA) under the EIA Notification, 2006. The Environmental Clearance has been granted to Respondent No. 6 for undertaking the mining of boulders, gravel, sand and other minor minerals (Riverbed material) in the Ramshoo River flowing through the Pulwama district of Jammu & Kashmir.
2. That vide Order dated 28.11.2023, this Hon'ble Tribunal had directed Jammu & Kashmir Environment Impact Assessment Authority (JKEIAA) and District Magistrate to file Reports. In compliance thereof, JKEIAA and District Magistrate, Pulwama filed their respective Reports.

**PRELIMINARY SUBMISSIONS ON BEHALF OF THE APPLICANT**

3. That the Applicant has the following preliminary submissions:

**A. No observations in the Reports with respect to other violations as pointed out in the Original Application**

4. That the Applicant, in the Original Application had submitted that Respondent No. 6 has undertaking mining activities in violation of the conditions of the Environmental Clearance dated 04.03.2022 and has continued to do mining activities without undertaking prior replenishment studies.
5. That the Applicant had stated that the mining activities were being undertaken in violation of the following conditions of the Environmental Clearance:
  - a. Specific Condition No. 22 which prohibits any mining to be undertaken outside the prescribed area specified in the EC and by mining outside the prescribed area the respondent No. 6 is in violation;
  - b. Specific Condition No. 53 which allows only for mining activity to be undertaken manually or with semi-mechanized methods and by using heavy machinery the respondent No. 6 is in violation;
  - c. Specific Condition No. 56 prohibit mining in the active water channel area and measures have to be taken to protect the water quality and aquatic life and by mining in active water channels the respondent No. 6 is in violation;
  - d. Specific Condition No. 65 prohibit change in water course of the river and prohibit mining activity from being carried out in the active water channel area and by carrying out mining in active channel area the Respondent No. 6 is in violation.
6. That however, the Reports by JKEIAA and District Magistrate have not provided any observations on violation of conditions other than usage of heavy machinery (Specific Condition No. 53 of the Environmental Clearance) and has also failed to give its observation on replenishment studies.

7. That both the Reports merely focus on violation of only Specific Condition No. 53 pertaining to usage of heavy machinery and do not comment on other conditions of the Environmental Clearance or lack of replenishment studies.

**B. Closure notice has been issued to Respondent No. 6 for stoppage of mining activities at the mining site by Jammu & Kashmir Pollution Control Committee**

8. That Jammu & Kashmir Pollution Control Committee, which is Respondent No. 3 in the present matter has not filed any reply. However, noting the illegal mining activities of Respondent No. 6, Jammu & Kashmir Pollution Control Committee (Respondent No. 3) issued a Closure Notice dated 01.02.2024 to Respondent No. 6 wherein directions were also issued to the District Magistrate, Pulwama to ensure that the mining operations are closed immediately.

Copy of Closure Notice dated 01.02.2024 issued to Respondent No. 6 is annexed herewith as **ANNEXURE A-1**.

9. That, therefore, no mining activities can be undertaken at the mining site.

**C. Mining activities are still undergoing at the mining site**

10. That even though a closure notice has been issued by Jammu & Kashmir Pollution Control Committee for immediate stoppage of all mining activities at the site, illegal mining activities are still being undertaken. This is clear from the photographs dated 05.04.2024 wherein heavy machinery such as JCBs can be seen undertaking mining activity within the active water channel of Romshi Nallah.

Copy of photographs dated 05.04.2024 is annexed herewith as **ANNEXURE A-2**.

11. That no action has been taken by the authorities for stoppage of mining activities, even though the closure notice dated 01.02.2024 was marked to J&K EIAA, District Magistrate, Director, Geology and Mining Department.

**D. Finding has been given by J&K EIAA that mining activities are being undertaken with heavy machinery, in violation of the Specific Condition No. 53 of the Environmental Clearance**

12. That the Report dated 27.01.2024 submitted by J&K EIAA has given a finding that usage of backhoe loaders is being done, which is a violation of the spirit of Specific Condition NO. 53 of Environmental Clearance. The Report, at Para 8 reads as follows:

*"8. That, since **Backhoe loaders as indicated in the above cited report are essentially excavators with a loading unit, therefore, there is every apprehension that the same may be misused leading to violation of spirit of the Specific Condition No. 53 of the Environmental Clearance aimed to safeguard the ecological and hydrological regime of the nallah beds.**"*

13. That the Report further states that letters dated 20.01.2024 were sent to the Department of Geology and Mining and the J&K PCC to take action against the project proponent.

**RESPONSE BY APPLICANT TO REPORT BY JKEIAA**

**A. Finding by JKEIAA that machinery is being used to undertake mining in violation of Specific Condition No. 53 of the Environmental Clearance**

14. That the Report by JKEIAA dated 27.01.2024 states the action that was taken by it in response to the representation dated 12.04.2023 sent by the Applicant.

15. That the Report has given the finding that usage of backhoe loaders is being done, which is a violation of the spirit of Specific Condition No. 53 of Environmental Clearance:

*"8. That, since **Backhoe loaders as indicated in the above cited report are essentially excavators with a loading unit, therefore, there is every apprehension that the same may be misused leading to violation of spirit of the Specific Condition No. 53 of the Environmental Clearance aimed to safeguard the ecological and hydrological regime of the nallah beds.**"*

16. That the Report further states that letters dated 20.01.2024 were sent to the Department of Geology and Mining and the J&K PCC to take action against the project proponent.
17. That accordingly, the J&K PCC conducted a site visit, in pursuance of which a closure notice was issued by J&K PCC dated 01.02.2024. However, mining activities are still being undertaken in violation of the conditions of Environmental Clearance, which is clear from the photographs annexed with this response.

### **RESPONSE TO REPORT BY DISTRICT MAGISTRATE**

#### **A. Report of District Magistrate is contrary to the Report submitted by JKEIAA, the authority that granted Environmental Clearance to the project proponent**

18. That in compliance with the Order of the Hon'ble Tribunal dated 28.11.2023 wherein directions were given with respect to filing of Reports by JKEIAA and District Magistrate, Pulwama, JKEIAA submitted a Report dated 27.01.2024. This Report clearly mentions that backhoe loaders are being used in the mining activities, which is in violation of Condition No. 53 of the Environmental Clearance.
19. That the District Magistrate, in its Report has also stated the fact that backhoe loaders are being used for the purposes of mining, however, goes on to conclude that all mining activities of Respondent No. 6 are in accordance with the conditions of the Environmental Clearance. The Report reads as follows:

*"Regarding the complaint about the use of JCB's in undertaking riverbed mining in leased out minor mineral blocks i.e C- Lassipora SIDCO Bridge D/Stream Nallah Rambhara and B-Rahmboo Bridge D/ Stream Nallah Romushi it is submitted that the lease holders have been strictly directed not to use the heavy machinery.*

...

*However, it is submitted that block holders are working from 6:00 A.M to 7:00 P.M **as per specific conditions***

***mentioned in the Environmental Clearance and as per point No. 53 of specific conditions, mining is being done supported by semi- mechanized methods. The loader is used for loading purposes only."***

20. That the observations in the Report are contrary to the Report submitted by JKEIAA, which is the authority under law for grant of Environmental Clearance to the project proponent.

21. That however, no steps have been taken by the District Magistrate, Pulwama to ensure that the mining operations are closed down. This is clear since mining operations are continuing in full swing at the project site.

**B. No action taken by the District Magistrate, Pulwama, even though the closure notice dated 01.02.2024 has specific directions to it to stop mining activities**

22. That the Closure Notice issued by the J&KPCC dated 01.02.2024 contains specific directions to the District Magistrate, Pulwama to ensure that the mining activities are closed immediately. It reads:

*"Deputy Commissioner/ District Magistrate, Pulwama is directed to get the mining activity under the name and style of M/s Umesh Kumar Sharma at Block No. 36/ B Rahmoo Bridge, Downstream Nallah, Ramshoo- District Pulwama closed immediately."*

23. That however, no action has been taken by the District Magistrate, Pulwama which is clear from the photographs annexed by the Applicant.

24. That the impact of usage of heavy machinery has been noted by this Hon'ble Tribunal in multiple cases wherein it has been observed that (***Jai Singh Subhash Chand Versus Union Of India, Original Application No. 304 of 2015, Order dated 18.02.2016***):

***"86. Operation of heavy equipment like trucks, JCBs and excavators in the channel bed can directly destroy spawning habitat, rearing habitat, the juvenile fish themselves, and macro- invertebrates; can produce increased turbidity and suspended sediment downstream; and has the potential to cause toxic chemical spills.***

90. ...Sand, bajri and boulders are important ingredients of ecology in themselves. It affects the factors of determination of feasibility of mining in relation to site and depth for which such mining should be permitted. Physical impacts of excessive mining include reduction of water quality and destabilization of stream and banks. It depletes water level, floodplain pit mining transforms riparian wood land or agricultural land into open pits which typically intersects the water table at-least seasonally. It can even alter hydraulic continuity during high flows. River bed degradation is one of the most commonly known adverse impacts. **Use of heavy equipment and totally mechanised mining on the river bed can produce, increased turbidity and suspended sediments downstream and has the potential to cause toxic chemical spills. These are not merely the indicators but are the adverse impacts which find due support from scientific studies over a long period.**"

25. That the Hon'ble Supreme Court in the case of **Bajri Lease LOI holders Welfare Society vs. State of Rajasthan and others (2021 SCC OnLine SC 1043)** had noted that the environmental compensation cannot be restricted to the value of mined materials but should also include cost of restoration as well as cost of ecological services. Vide Order dated 11.11.2024, the Hon'ble Supreme Court had noted:

"16. The CEC has recommended imposition of exemplary penalty of Rs.10 lakh per vehicle and Rs.5 lakh per cubic metre of sand seized, which would be in addition to what has already been ordered / collected by the State agencies as compensation. **Compensation / penalty to be paid by those indulging in illegal sand mining cannot be restricted to the value of illegally-mined minerals. The cost of restoration of environment as well as the cost of ecological services should be part of the compensation. The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable**

*Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.*

*17. The scale of compensation by those who are involved in illegal mining has been dealt with by the NGT in National Green Tribunal Bar Association v. Virender Singh (supra). In its order dated 26.02.2021, the NGT considered and approved the Report submitted by the Central Pollution Control Board dated 30.01.2020, in pursuance of its earlier orders, on scale of compensation to be recovered for violation of norms for mining on "Polluter Pays" principle."*

(Emphasis supplied)

26. That the issue of illegal mining activities in rivers of Jammu & Kashmir by usage of heavy machinery is becoming a serious issue and this Hon'ble Tribunal has passed orders in this respect. In Original Application No. 351 of 2023, this Hon'ble Tribunal had taken note of a similar issue of illegal mining and vide Judgment dated 15.03.2024 had directed imposition of environmental compensation on the project proponents and had also directed closure of mining activities by the Respondents.

27. That this Hon'ble Tribunal may be pleased to pass appropriate orders with respect to closing down of mining activities and imposition of environmental compensation in the present matter.

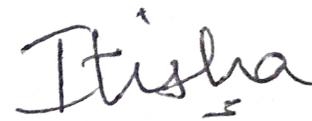
**Through**



**RITWICK DUTTA**



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Dated:- 10.04.2024



Winter office November-April  
Parivesh Bhawan, Forest Complex  
Gladni, Transport Nagar,  
Narwal, Jammu  
Tel/Fax: 0191-24769225

Government of Jammu and Kashmir  
J&K POLLUTION CONTROL COMMITTEE  
Jammu



Summer Office: May-October  
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Rajbagh Srinagar  
Ph/Fax 0194-2311165

email: membersecretaryjkpcb@gmail.com

Order No. : 227 JK PCC of 2024  
Dated : 01/02/2024

Whereas, Consent for Mining Activity was issued to M/s Umesh Kumar Sharma at Block No.36/B Rahmoo Bridge, Downstream Nallah Ramshoo-District Pulwama, with some terms and conditions as warranted under Section 25/26 and Section 21 of the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act, 1981 respectively.

Whereas, Mining Activity is categorized as Orange Category activity on the basis of pollution potential, for the purpose of seeking the consent from the JK PCC.

Whereas, complaint against non compliance of Environmental Clearance conditions by the project proponent has been received.

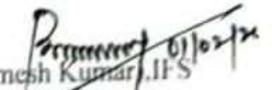
Whereas, fresh inspection was carried out by the Divisional Officer, Pollution Control Committee Pulwama, reveal that the project proponent is violating the conditions of Environmental Clearance viz condition No. 53 by using heavy machinery with photographic evidence and Regional Director, Pollution Control Committee Kashmir vide letter No JKPCC/ROK/TO/2023/25-26 dt.25-01-2024 confirmed the report of Divisional Officer, PCC Pulwama and accordingly recommended for closure of mining activity.

Whereas, the Mining Activity in question cannot be allowed to run with above status and to the detriment of human health and environment.

Now, therefore, in exercise of powers vested in the J & K Pollution Control Committee under Section 31 (A) of the Air (Prevention and Control of Pollution) Act, 1981 and Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974, immediate closure of Mining Activity under the name and style of M/s Umesh Kumar Sharma at Block No.36/B Rahmoo Bridge, Downstream Nallah Ramshoo-District Pulwama is ordered and in this behalf, the following direction are hereby issued:-

- i). Deputy Commissioner/ District Magistrate, Pulwama is directed to get the Mining activity under the name and style of M/s Umesh Kumar Sharma at Block No.36/B Rahmoo Bridge, Downstream Nallah Ramshoo-District Pulwama closed immediately.
- ii). Project proponent, M/s Umesh Kumar Sharma at Block No.36/B Rahmoo Bridge, Downstream Nallah Ramshoo-District Pulwama, is directed to cease the operation of the Mining activity forthwith.

As approved by the Competent Authority.

  
(K Ramesh Kumar), IFS  
Member Secretary  
JK PCC Jammu

No:-JK PCC/LSK/024/1253-1264  
Dated:- 01/02/2024.

Copy to the:-

- i). Member Secretary, J&K Environment Impact Assessment Authority (EIAA) Transport Nagar, Gladni Jammu for information and necessary action.
- ii). Deputy Commissioner/ District Magistrate Pulwama for information and necessary action.
- iii). Director Geology & Mining Department, Kashmir for information and necessary action
- iv). Regional Director, PCC, Kashmir for information and follow up action within fortnight and has reference to his letter No. JKPCC/ROK/TO/2023/25-26 dt. 25-01-2024.
- v). Divisional Officer, PCC Pulwama for information, with the direction to follow up and get the closure order implemented through District Administration in letter sand sprit.
- vi). In-Charge web site Pollution Control Committee Jammu for uploading the closure order.
- vii). Prop, M/s Umesh Kumar Sharma at Block No.36/B Rahmoo Bridge, Downstream Nallah Ramshoo-District Pulwama for compliance.

t.c.



**Photograph dated 05.04.2024 showing mining activity using heavy machinery by Respondent No. 6**



t.c.

*@hantwast7*



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**Copy of Response on behalf of the Applicant in OA No. 690 of 2023 Raja Muzaffar Bhat Vs. Union Territory of Jammu & Kashmir & Ors.**

1 message

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**DC Law Chambers** <dclaw160@gmail.com>

Wed, Apr 10, 2024 at 3:08 PM

To: cs-jandk@nic.in, jkseiaa@gmail.com, membersecy.pcb@jk.gov.in, dgmjak@gmail.com, dcpul-jk@nic.in

Dear All,

Please find attached- Copy of Response on behalf of the Applicant in OA No. 690 of 2023 Raja Muzaffar Bhat Vs. Union Territory of Jammu &amp; Kashmir &amp; Ors.

Thanks &amp; Regards

Counsel for the Applicant

**Response on behalf of the Applicant.pdf**

1209K