

**BEFORE THE NATIONAL GREEN TRIBUNAL, NEW
DELHI**

ORIGINAL APPLICATION NO. 176 OF 2022

IN THE MATTER OF:
AMAN CHOWDHARY

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

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FILED BY:

NEW DELHI

DATED: 07.02.2023.

(PRADEEP MISRA & DALEEP DHYANI)

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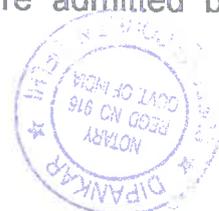
UNION OF INDIA & ORS.

...RESPONDENTS

SHORT AFFIDAVIT ON BEHALF OF U.P. POLLUTION
CONTROL BOARD IN COMPLIANCE OF THE ORDER DATED
29.09.2022

I, Anil Kumar Sharma, S/o. Shri Shyamal Das Sharma, aged about 58 years, Environmental Engineer, Regional Office, U.P. Pollution Control Board, Kanpur Nagar, U.P. at present at New Delhi do hereby solemnly affirm and declare as under:-

1. That I in the above noted capacity am well conversant with the facts and record of the present case, hence am competent to swear this affidavit.
2. That I have read the original application and the documents enclosed therewith and have understood the same fully. At the outset I deny each and every averment of fact made in the application save and except those which are admitted by me specifically hereinafter.



3. That the above noted matter was listed before the Hon'ble Tribunal on 29.09.2022 when this Hon'ble Court directed to specify: (i) whether copy of Environment Clearance/Mining Lease Agreement was sent to UPPCB, if yes when and if no, whether any reference was made for obtaining the same? (ii) Whether UPPCB conducted any inspection regarding mining in the mining site in question to ascertain compliance of environment clearance conditions/obtaining of CTO before initiation of the present proceedings, if yes, what action was taken on the basis thereof and if no, what are the reasons for the same? And in how many cases copies of Environmental Clearance/Mining Lease Agreement was not sent to UPPCB during the last 5 years and in how many cases mining was commenced without obtaining CTO from UPPCB. The relevant part of the said order is reproduced herein below for ready reference:

"10. We find that the report of District Mines Officer, Kanpur Nagar referred to in the reply of the Director, Directorate of Geology and Mining, Government of Uttar Pradesh that "the approach road is within the lease boundary. That approach road is three hundred meters away from the active channel of the river." It is contradictory to the report of the Joint Committee that "During inspection approach road was found at the mining lease site in the main stream area of River, which obstruct the flow of the River." Further, in its report the Joint Committee has mentioned that "Project proponent has not taken any significant measures



for environmental safeguard and also not made any efforts/initiatives for conducting activities under CSR." and that "Compliance of conditions of Environmental Clearance issued by SEIAA are not found" and recommended that "the lease holder may be directed to comply the conditions of Environmental Clearance and mining deed." but in its reply the Director, Directorate of Geology and Mining, Government of Uttar Pradesh has merely mentioned that "Mines Officer, Kanpur Nagar vide Letter dated 29.06.2022 has issued notice to the proponent in this regard" and what further action has been taken on said notice is not mentioned in the reply which was filed on 13.09.2022. We have noticed that "Mining lease deed was registered on 07.04.2018 for the period up to dt. 06.04.2023" and out of five years lease period more than four years period has already expired without requisite compliance with environmental compliance conditions and without obtaining CTO from UPPCB. No doubt, UPPCB has imposed environmental compensation amounting to Rs.4,29,37,500/- on respondent No.6 the Project Proponent for not obtaining consent to operate from UPPCB under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 before commencement of mining but the same has been imposed after initiation of the present proceedings and such imposition appears to be without issuing any notice and giving opportunity of being heard to respondent No.6 the Project Proponent.



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Detailed guidelines have been laid down in Sustainable Sand Mining Management Guidelines 2016 and Enforcement & Monitoring Guidelines for Sand Mining 2020 issued by MoEF & CC and specific directions have also been issued by this Tribunal in OA No. 360/2015 National Green Tribunal Bar Association Vs. Virender Singh for operationalization of monitoring/ supervisory/ review mechanism and periodical audits/inspections/ returns/reports for ensuring compliance with environmental clearance and consent to operate conditions and environmental norms, which prima facie, appear to have been flouted by the Director, Directorate of Geology and Mining, Government of Uttar Pradesh and UPPCB in the present case. However, before making any further observations in the matter we consider it appropriate to give them opportunity to file detailed replies and to direct them to give their account of measures taken by them for compliance with the guidelines issued by MoEF & CC and directions given by this Tribunal. In its reply the Director, Directorate of Geology and Mining, Government of Uttar Pradesh shall specifically mention as to (i) whether copy of environmental clearance/ mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent? (ii) whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by designated third party/departmental agency regarding compliance with environmental clearance and consent to operate conditions and environmental norms by the project proponent, if yes produce copies of the same if not the reasons for the same? (iii) whether the project



proponent was entitled to and could commence mining before grant of CTO by UPPCB if not why the project proponent was allowed to commence such mining without CTO from UPPCB and (iv) whether any notice for non compliance with environmental clearance/consent to operate/environmental norms was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof. In its reply the UPPCB shall specifically mention as to (i) whether copy of environmental clearance/ mining lease agreement was sent to UPPCB, if yes when and if no, whether any reference was made for obtaining the same? (ii) whether UPPCB conducted any inspection regarding mining in the mining site in question to ascertain compliance of environmental clearance conditions/obtaining of CTO before initiation of the present proceedings, if yes what action was taken on the basis thereof and if no, what are the reasons for the same? and in how many cases copies of environmental clearance/ mining lease agreement was not sent to UPPCB during the last five years and in how many cases mining was commenced without obtaining CTO from UPPCB. Reply/response by the Director, Directorate of Geology and Mining, Government of Uttar Pradesh be filed by within two months by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.”



4. That in compliance of the said order the present affidavit is being filed.

5. That so far as the answer to Clause (i) aforesaid is concerned, the answering Respondent was not given a copy of the Environment Clearance/Mining Lease Agreement and regarding Clause (ii) it is submitted that the answering Respondent has not carried out any inspection regarding mining as no information was furnished to the answering Respondent about the Environmental Clearance granted in favour of the Project Proponent either by the Mining Department or by Project Proponent. It is further submitted that the Project Proponent did not apply for Consent to Operate before commencement of mining activities to the answering Respondent. As the replying Respondent was not aware about grant of mining lease or mining operations, hence no inspection was done. As a matter of fact it is submitted that the replying Respondent is not informed about the grant of ECs in favour of any of the Project Proponent either by the authority or the Project Proponent unless the Project Proponent submits an application for Consent to Operate.

6. That the replying Respondent came to know about the mining when this Hon'ble Tribunal has directed constitution of Committee and report was submitted. Accordingly, answering Respondent has imposed Environmental Compensation amounting to Rs. 4,29,37,500/- vide office order dated 02.09.2022 for carrying out the mining activates for 1145 days without obtaining Consent to Operate under the Water (Prevention and Control of Pollution)



Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The aforesaid levy of penalty by the answering Respondent was assailed by the Project Proponent by filing Writ Petition No. 6812 of 2022 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow and Hon'ble High Court vide order dated 30.09.2022 set aside the imposition of Environmental Compensation due to not affording an opportunity of hearing to the Project Proponent prior to imposition of Environmental Compensation. Thereafter, in compliance of the order of Hon'ble High Court answering Respondent has issued show cause notice dated 02.12.2022 thereby calling upon the Project Proponent for imposition of compensation of Rs. 4,29,37,500/- towards illegal extraction of sand as no Consent to Operate was obtained from the answering Respondent which was received by the Project Proponent on 21.12.2022. Further, the Project Proponent has not applied or obtained consent to operate under the Environmental Laws from the answering Respondent. However, mining operations are not being carried out at present. True copy of order dated 30.09.2022 passed by Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in WRIT - C No. - 6812 of 2022 is being enclosed herewith and marked as **Annexure-1.**

7. That in response to the aforesaid show cause notice the answering Respondent has received a reply dated 03.01.2023. After reviewing the reply and recommendation of Regional Officer, Kanpur Nagar, environmental compensation of Rs. 4,29,37,500/- has been imposed against the unit on 30.01.2023.





Copy of the letter dated 30.01.2023 is being enclosed herewith and marked as Annexure-2.

The above information is being furnished to this Hon'ble Tribunal for its kind consideration and the answering Respondent further crave leave of this Hon'ble Tribunal to file detailed affidavit, if so required.

DEPONENT

VERIFICATION:

I, the abovenamed deponent do hereby verify that the contents of above affidavit are true to my knowledge derived from official record. No part of the same is false and nothing has been concealed therefrom.

VERIFIED ON THIS THE 01st DAY OF FEBRUARY, 2023 AT NEW DELHI.

DEPONENT

ATTESTE

DIPANKAR DAS
ADVOCATE
STAFFY PUBLIC
REGD. NO. 913
GOVT. OF INDIA
CHAMBER
SUPREME COURT OF INDIA

02.02.23
01.02.23



DEPONENT

Case :- WRIT - C No. - 6812 of 2022

Petitioner :- M/S Vaishnavi Enterprises Through Proprietor Nagendra Singh And Anr.

Respondent :- State Of Uttar Pradesh Through Secretary Department Of Geology And Mines And Others

Counsel for Petitioner :- Pushpila Bisht, Ruchir

Counsel for Respondent :- C.S.C., Ashok Kumar Verma

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

Heard Ms. Pushpila Bisht learned counsel for the petitioner and Sri Ashok Kumar Verma learned counsel who has put in appearance on behalf of the opposite party nos. 3 and 4.

The petitioner has assailed the penalty order passed by the U.P. Pollution Control Board against the petitioner who carries on mining business under a lease granted to him.

Learned counsel for the petitioner has primarily argued that the impugned order of penalty imposing a heavy financial liability has proceeded without issuance of a prior notice to the petitioner. On this limited aspect, the instructions were called for and it is undisputed that no notice whatsoever was issued to the petitioner prior to passing of the impugned order on 2.9.2022.

Learned counsel appearing for the U.P. Pollution Control Board has informed that the proceedings against the petitioner are also pending before the NGT at the instance of some complainant wherein notices on the complaint filed have already been issued to the petitioner.

The petitioner in reply to such a statement has informed that he has already put in appearance before the NGT and the matter is fixed on 9.1.2023. It is not the case before us that the impugned order has come to be passed on the basis of a prior opportunity granted by the NGT, therefore, the legality of the impugned order hinges on the ground of opportunity which was denied.

Once learned counsel for the U.P. Pollution Control Board on the basis of instructions concedes that no notice was issued to the petitioner prior to the passing of impugned order, we would not approve of the action taken against the petitioner for imposition of such a heavy penalty. Rule of opportunity is fundamental to all the proceedings having civil consequences.

The impugned order thus deserves to be set aside on the ground of denial of opportunity alone with the liberty open to the U.P. Pollution Control Board to proceed against the petitioner afresh with the issuance of notice, if so chosen.

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Accordingly, the impugned order is set aside and the writ petition is **allowed**. The opposite parties are left at liberty to proceed against the petitioner by issuing a notice to which the petitioner shall submit a reply not later than a period of two weeks from the date of receipt of notice.

The petitioner undertakes to co-operate with the proceedings and shall not evade appearance or submission of reply in the proceedings drawn, if any.

With the aforesaid observations, the writ petition is accordingly disposed of.

Order Date :- 30.9.2022

kanhaiya


TRUE COPY



Annexure - 2
201 प्रदेश प्रदूषण नियंत्रण बोर्ड 11
UTTAR PRADESH POLLUTION CONTROL BOARD

संदर्भ सं०
Ref. No

H 87882/c-2/NGT SA-176/2022

दिनांक

Date 30-1-2023

सेवा में,

मै० वैष्णवी इन्टरप्राइजेज
प्रो० श्री नागेन्द्र सिंह
निवासी 113 एम०आई०जी०-2, महाबलीपुरम, कल्यानपुर,
कानपुर नगर।

पंजीकृत

विषय- ग्राम-कटरी सुनौदा, तहसील-बिल्हौर, जनपद-कानपुर नगर के गाटा सं०-2मि० रकबा 10.5 हे० में बिना पूर्व सहमति (जल/वायु) प्राप्त किये खनन कार्य किये जाने के दृष्टिगत साधारण बालू खनन पट्टा धारक मै० वैष्णवी इन्टरप्राइजेज प्रो० श्री नागेन्द्र सिंह निवासी 113 एम०आई०जी०-2, महाबलीपुरम, कल्यानपुर, कानपुर नगर (बालू खनन परियोजना) पर पर्यावरणीय क्षतिपूर्ति अधिरोपित किये जाने के सम्बन्ध में।

महोदय,

कृपया अवगत हों कि ग्राम-कटरी सुनौदा, तहसील-बिल्हौर, जनपद-कानपुर नगर के गाटा सं०-2मि० रकबा 10.5 हे० में साधारण बालू खनन पट्टा धारक मै० वैष्णवी इन्टरप्राइजेज प्रो० श्री नागेन्द्र सिंह, निवासी 113 एम०आई०जी०-2, महाबलीपुरम, कल्यानपुर, कानपुर नगर को State Level Environment Impact Assessment Authority, Uttar Pradesh के पत्रांक 174/Parya/SEAC/4026/2017, दिनांक 12.02.2018 द्वारा 05 वर्ष की अवधि के लिये 2,10,000 घनमीटर/वर्ष बालू खनन हेतु पर्यावरणीय स्वीकृति जारी की गयी है। अपर जिलाधिकारी (वि०/रा०), कानपुर नगर के पत्रांक 225/तीस-उपखनिज/2018, दिनांक 11 अप्रैल, 2018 द्वारा खनन हेतु, अवधि दिनांक 07.04.2018 से 06.04.2023 तक के लिये स्वीकृत प्रदान की गयी थी। जिलाधिकारी, कानपुर नगर के पत्रांक 443/तीस-उपखनिज/2021, दिनांक 03.02.2021 द्वारा उक्त खनन कार्य को प्रतिबन्धित कर दिया गया था, जिसे पुनः पत्रांक 1067/तीस-उपखनिज/2021, दिनांक 13.12.2021 द्वारा साधारण बालू खनन/परिवहन करने की अनुमति को पुनर्स्थापित (Restore) किया गया।

उक्त बालू खनन परियोजना के विरुद्ध मा० राष्ट्रीय हरित अधिकरण में ओ०ए० सं० 176/2022 अमन चौधरी बनाम यूनियन ऑफ इण्डिया व अन्य में वाद योजित है, जिसमें पारित आदेश दिनांक 07.03.2022 के अनुपालन में गठित समिति द्वारा दिनांक 02.04.2022 को संयुक्त निरीक्षण किया गया था। कार्यालय अभिलेखों के अनुसार उक्त खनन परियोजना स्वामी द्वारा जल एवं वायु अधिनियमों के अन्तर्गत खनन कार्य प्रारम्भ किये जाने से पूर्व/खनन किये जाने हेतु बोर्ड से संचलनार्थ सहमति (CTO) प्राप्त नहीं की गयी है, जोकि जल/वायु अधिनियमों का स्पष्ट उल्लंघन है।

मा० राष्ट्रीय हरित अधिकरण में ओ०ए० सं० 176/2022 अमन चौधरी बनाम यूनियन ऑफ इण्डिया व अन्य में पारित आदेश दिनांक 07.03.2022 के अनुपालन में गठित समिति की संयुक्त निरीक्षण दिनांक 02.04.2022 की आख्या एवं अभिलेखों के अनुसार परियोजना स्वामी द्वारा बालू खनन का कार्य दिनांक 07.04.2018 से दिनांक 03.02.2021 तक कुल 1034 दिवस तथा दिनांक 13.12.2021 से 02.04.2022 तक 111 दिवस अर्थात् कुल 1145 दिवसों में पूर्व सहमति (जल/वायु) प्राप्त किये बिना किया गया। उक्त के दृष्टिगत बोर्ड मुख्यालय के पत्रांक एच 85021/सी-2/एनजीटी ओ०ए० नं०-176/22 दिनांक 02.12.2022 द्वारा वैष्णवी इन्टरप्राइजेज प्रो० श्री नागेन्द्र सिंह निवासी 113 एम०आई०जी०-2, महाबलीपुरम, कल्यानपुर, कानपुर नगर के विरुद्ध कुल 1145 दिवस हेतु धनराशि रू० 4,29,37,500.00 (रू० चार करोड़ उन्तीस लाख सैंतीस हजार पाँच सौ रूपये मात्र) की पर्यावरणीय क्षतिपूर्ति अधिरोपित किये जाने हेतु कारण बताओ नोटिस जारी किया गया। उक्त कारण बताओ नोटिस का प्रतिउत्तर खनन इकाई द्वारा दिनांक 03.01.2023 को बोर्ड में प्रस्तुत किया गया, जिसमें खनन की अवधि 816 दिवस सूचित की गयी है परन्तु उक्त के सत्यापन हेतु कोई प्रमाणिक अभिलेख प्रस्तुत नहीं किया गया है। उक्त बालू खनन की अवधि 1145 दिवस की गणना खनन विभाग द्वारा जारी की गयी अनुज्ञा प्रपत्र में निहित अवधि के अनुसार किया गया है। अतः इकाई द्वारा प्रस्तुत प्रत्यावेदन में निहित तथ्य बलहीन हैं।

इस सम्बंध में क्षेत्रीय अधिकारी, कानपुर नगर के पत्र दिनांक 27.01.2023 द्वारा खनन इकाई को बोर्ड मुख्यालय के पत्र दिनांक 02.12.2022 द्वारा पर्यावरणीय क्षतिपूर्ति अधिरोपित किये जाने हेतु जारी कारण बताओ नोटिस की पुष्टि की गयी है।

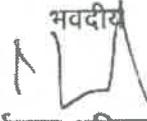
.....2/-

टी.सी. - 12 वी, विभूति खण्ड, गोमती नगर,
लखनऊ - 226 010
दूरभाष : 0522-2720828, 2720831
फैक्स : 0522-2720764, 2720676
ई-मेल : info@uppcb.com

T.C.-12 V, Vibhuti Khand, Gomti Nagar,
Lucknow - 226 010
Phone : 0522-2720828, 2720831
Fax : 0522-2720764, 2720676
E-mail : info@uppcb.com

उपरोक्तानुसार क्षेत्रीय अधिकारी, कानपुर नगर के पत्र दिनांक 27.01.2023 द्वारा प्रेषित आख्या एवं संस्तुति के दृष्टिगत सक्षम स्तर से अनुमोदनोपरान्त मै० वैष्णवी इन्टरप्राइजेज प्रो० श्री नागेन्द्र सिंह निवासी .113 एम०आई०जी०-2, महाबलीपुरम, कल्यानपुर, कानपुर नगर पर रू० 4,29,37,500.00 (रू० चार करोड़ उन्तीस लाख सैंतीस हजार पाँच सौ रूपये मात्र) की पर्यावरणीय क्षतिपूर्ति अधिरोपित किया जाता है तथा निर्देशित किया जाता है कि पर्यावरणीय क्षतिपूर्ति की धनराशि को उ०प्र० प्रदूषण नियंत्रण बोर्ड के, यूनियन बैंक ऑफ इण्डिया, विभव खण्ड, गोमती नगर, लखनऊ स्थित बैंक के खाता संख्या-701502010002104 आई०एफ०एस० कोड-UBIN0570150 में 30 दिन के अन्दर जमा कर, जमा की गयी धनराशि का साक्ष्य क्षेत्रीय कार्यालय एवं बोर्ड मुख्यालय में प्रस्तुत करना सुनिश्चित करें। अन्यथा की स्थिति में पर्यावरणीय क्षतिपूर्ति की वसूली हेतु भू-राजस्व की भांति वसूली की कार्यवाही की जायेगी, जिसका सम्पूर्ण उत्तरदायित्व संस्था एवं उसके उत्तरदायी अधिकारियों का होगा।

सक्षम अधिकारी की अनुमति से निर्गत।

भवदीय


मुख्य पर्यावरण अधिकारी (वृत्त-2)

प्रतिलिपि :-

1. जिलाधिकारी, कानपुर नगर को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।
2. क्षेत्रीय अधिकारी उ०प्र० प्रदूषण नियंत्रण बोर्ड, कानपुर नगर को इस निर्देश के साथ कि उद्योग से पर्यावरणीय क्षतिपूर्ति धनराशि निर्धारित समय सीमा में प्राप्त न होने की स्थिति में भू-राजस्व की भांति वसूली हेतु कार्यवाही सुनिश्चित करायी जाये।

मुख्य पर्यावरण अधिकारी (वृत्त-2)


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OA No. 176 of 2022 Aman Choudhary Vs Union of India

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From: Pradeep Misra (pradeepmisra@yahoo.com)

To: amanchoudhary@outlook.in; pallavipratap@hotmail.com; mvermadv@gmail.com

Date: Tuesday, February 7, 2023 at 07:48 PM GMT+5:30

Sir,

Please find attached the Short Affidavit on behalf of the U P pollution Control Board in the matter of OA No. 176 of 2022 Aman Choudhary Vs Union of India

With Regards,

(PRADEEP MISR



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