

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
APPEAL NO. 263 & 264 OF 2018**

IN THE MATTER OF:

AMIT UPADHAYA

...APPELLANT

VERSUS

SEIAA, UP & ORS

...RESPONDENTS

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

APPEAL NO. 263 & 264 OF 2018

IN THE MATTER OF:

Amit Upadhaya

...Appellant

versus

SEIAA, UP & ORS

...Respondents

WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT

I. INTRODUCTORY FACTS

The Appellant has filed the present Appeals challenging the Environmental Clearances (ECs) granted to 36 mines/ project proponent, wherein 12 ECs were challenged in Appeal No. 263/2018 and 24 ECs were challenged in Appeal No. 264 of 2018 primarily on the following grounds:

- a) All the 36 ECs were appraised on the basis of Regional Environmental Impact Assessment reports (REIAs) prepared by private consultants which is impermissible as per law, as the concept of REIA is peculiar to and limited to the State of Rajasthan only in terms of the MOEF Notification dt. 1.07.2016. Further the REIA is conceptually a macro level EIA prepared only by the state and not by a private body.
- b) The 36 ECs should have been appraised either as a cluster, in which case a cluster EIA was required, or on an individual basis, wherein, an individual EIA would have been required. None of the 36 ECs were appraised as a cluster nor on an individual basis, which are the only two methods available as per law.
- c) The State Authorities have fallaciously mixed three different concepts of REIA, Cluster EIA and independent EIA, without completely following even one of them in their entirety. The Appraisal was done on a REIA which was expressly struck down by the SEAC/ SEIAA themselves in their joint meeting dt. 14.11.2018 wherein it was held that "*no REIA will be entertained. There will be only individual or cluster EIA*" and directed the project proponents to follow the procedure under the EIA notification *de novo*.
The SEAC/ SEIAA have thereafter contradicted themselves by appraising individual EIAs submitted on 15.11.2018 and 16.11.2018 which were mere extracts of the REIA and admittedly whose appraisal and public hearings were based on the REIA.
- d) The Public Hearings of all 36 ECs were on the basis of the REIA which is unsustainable and illegal.

This Hon'ble Tribunal vide its Order dated 17.12.2018 was prima facie of the view that grant of such 36 ECs were inconsistent with law and directed that the same may not be proceeded with. This Hon'ble Tribunal further directed the MoEF to examine the matter and furnish a detailed report.

Vide its Order dated 11.03.2019 this Hon'ble Tribunal on the application filed by the Appellant that certain mining leases (16 mining leases) have been executed in violation of the Order passed by this Tribunal directed the District Magistrates of Jalaun, Hamirpur and Banda to furnish an Action Taken Report.

SUBMISSIONS ON MERITS

A. REIA IS NOT A LEGALLY ACCEPTED PROCEDURE FOR APPRAISAL

- (i) The EIA Notification, 2006 (@ Pg. 985-1021) as originally issued did not envisage the concept of a Regional Environmental Impact Assessment Report (REIA) and only provided for individual EIAs for all projects including mining.
- (ii) MOEF Notification dated 15.01.2016 (@ Pg. 1023-1034) for the first time introduced the concept of a 'Cluster EIA' (@ Pg. 1030) whereby a common EIA was to be undertaken for an area wherein the distance between the peripheries of one lease is less than 500 meters from the other.
This Cluster EIA was required to be prepared, cumulatively capturing the carrying capacity, including transportation, replenishment, recharge mechanism, geo-hydrological study, for the entire cluster area as a whole.
The MOEF Notification, 15.01.2016 stipulated for one public hearing for the entire cluster, and this Cluster EIA could then be used by individual project proponents to get individual environment clearances.
- (iii) Due to the practical difficulty in implementing the cluster process in the State of Rajasthan, the MOEF issued another Notification dated 1.07.2016 (@ Pg. 1038-1039) wherein the concept of a REIA was introduced for the first time being limited only to the State of Rajasthan. Notably, the REIA was a macro document that was to be prepared by the Mines and Geology Department of the State Government (Rajasthan) and not by a private agency/ consultant.
- (iv) The SEAC & SEIAA, UP in their Joint Meeting held on 14.11.2018 (@ Pg. 1049-1051) categorically and unequivocally accepted that there is no provision for a REIA and held that "no REIA will be entertained. There will be only individual or cluster EIA" and directed the project proponents to follow the procedure under the EIA notification *de novo*.
It is submitted that the SEAC & SEIAA thereafter contradicted themselves by appraising individual EIAs submitted in the next two dates i.e. on 15.11.2018 and 16.11.2018 which were mere extracts of the REIA whose appraisal and public hearings were based on the REIA, and not *de novo* as directed by the SEAC & SEIAA themselves.
- (v) Even otherwise, without prejudice to the submission that an REIA is an impermissible mode of impact assesment, it is submitted that the REIA relied on in the present case is incomprehensive, inaccurate, unscientific and lacks due diligent assessment.

In this context, it is pertinent to submit that the MOEF Report has concluded that the assessment made by the SEAC lacked due diligence and was based on limited information. (@ Pg. 918, 923). The relevant portion is extracted hereunder for the ready reference of this Hon'ble Tribunal:

"The purpose of due diligent appraisal of the project by SEAC is to identify the probable environmental concern and prescribe appropriate conditions for conducting impact assessment studies so that EMP can be prepared considering all externalities. All projects have been appraised by SEAC for issuance of TOR, but it is observed that SEAC recommendations of specific conditions lack due diligent assessment and to be in agreement with the provisions of the Notification dated 15.01.2016" (@ Pg. 918)

"...however, the attributes and comprehensiveness of the content were not assessed. The SEAC is required to make such assessment and with limited information available on deliberation held during appraisal process, it was felt inappropriate to put any observation on qualitative and comprehensiveness of the content". (@ Pg. 923)

Furthermore, the MOEF in the Minutes of the third EAC meeting held on 25/26th March, 2019 @Pg 941-955 (MoEF compliance report) noted as under:

- The District Survey Report comprised of many mining leases, however the 5 REIAs in question did not consider the impact of all such mining leases, and that only specific portion of a river stretch was considered. (@Pg 949-950)
- The EAC found that REIA-1 was with respect to a stretch of land of 160 Kms (130 Kms in Dist. Hamirpur and 28 Kms in Dist. Jalaun/Betwa) which had a total mineable area of 10,000 Ha carved into 238 mines (166 mining leases in Hamirpur and 72 in Jalaun/Betwa), however the impact assessment for the entire region was done only on the basis of 11 mining leases. (@Pg 949)
- The EAC further found that the REIA did not reveal the carrying capacity of the area, number of mines considered, their production capacity etc. (@Pg 950)
- The photographic evidence submitted for air quality monitoring w.r.t all the 5 REIAs at different locations and monitoring stations were of the same physical location. (@Pg 951)
- Soil grain analysis had not been done for the core zone. (@ Pg 952)
- The SEIAA and SEAC have taken decisions in a hurry to comply with the time period specified in the EIA Notification which has resulted in procedural, technical and scientific lapses. (@Pgs 953-954)

- (vi) Admittedly, all the 36 ECs impugned in the present Appeal were appraised on the basis of the 5 Regional Environmental Impact Assessment reports (5 REIAs) prepared by private consultants which is impermissible, unsustainable and void. Furthermore, the Public hearings were also done on the basis of such REIA and neither on cluster or individual EIAs. In this context, the Appellant seeks to rely on the portion of the MOEF Report which is as under:

"All projects (Cluster or individual) were granted EC based on appraisal of individual EIA/EMP reports". (@ Pg 915)

"Records suggest that corresponding content of each project were derived from respective REIA/EMP and accordingly, individual EIA/EMP were prepared and uploaded on the website for consideration of competent authority". (@ Pg. 921)

Thus, it is submitted that conceptually, a REIA is peculiar to and limited to the State of Rajasthan only, and alien/ impermissible for all other states including the State of Uttar Pradesh. The MOEF in its Report (@ pg. 916) has reproduced the contents of the MOEF Notification dated 1.07.2016 as it applied to the State of Rajasthan, but curiously has wrongly equated the same as a cluster EIA and failed to further notice that a REIA is a macro level EIA prepared only by the state and not by a private body as allegedly done in the present case.

B. CLUSTER/ INDIVIDUAL EIA NOT CONDUCTED - NEITHER SPECIFIED IN TORs

(All 36 mines were appraised on the basis of REIA alone, and granted on individual EIAs)

- (i) The MOEF found that out of the 36 impugned mines, 30 mines formed a cluster and 6 mines were individual. Accordingly all cluster projects were required to prepare a cluster EMP, however only 14 projects were prescribed for preparation of Regional combined EMP in the TOR. (@ Pg. 910)
- (ii) As per the MOEF, and rightly so, the genesis of the illegality was in the TOR letter that ought to have specified for preparation of a Cluster EIA/EMP along with a common Public hearing for the entire cluster. (@ Pg. 905).

It is submitted that despite the above correct factual and legal understanding, the MOEF erred in giving the finding (Pg. @ 910-912) that only 20 projects were non-compliant and 16 projects were compliant, overlooking an essential fact that an REIA could not have been equated as a Cluster EIA since a REIA is a macro document to be prepared by the State and not limited to a 500 m periphery.

- (iii) The MOEF further noted that clusters have not been defined properly and the cumulative impact of individual projects have not been performed. (@Pg 945,953)
- (iv) It is submitted that the 30 mines that formed a cluster ought to have been appraised and assessed on the basis of cluster EIA(s) by conducting common public hearing for such mines that formed a cluster. As for the 6 mines that were not part of a cluster, independent and individual EIAs ought to have been prepared which was to be appraised for grant of EC after an individual public hearing. Admittedly, all 36 mines (including the 14 mines wherein cluster EIA was recommended under the TOR) were appraised on the basis of a macro REIA (@ Pg. 910, 916) , whose extracts were then conspicuously

compressed into 36 individual EIAs by a impermissible and unwarranted process of reverse engineering, without an independent assessment of such individual EIA based on the common Public hearing on the REIA.

It is trite to submit that in actuality, three concepts / modes of assessment i.e. REIA, Cluster EIA and Individual EIA have been illegally merged together, and neither of them have been correctly followed. This is self evident from the Written Submissions of one of the project proponents, M/s Sanevin Infrastructure Pvt. Ltd (@ Pg. 1463-1476) submitted before this Hon'ble Court, wherein the said project proponent has stated as under:

"37. In this regard it is submitted that on the basis of TOR, study has been made regarding the points in TOR. Thereafter on the draft report of environmental assessment, public hearing took place and thereafter, the final report consisting of individual EIAs amalgamated for the relevant cluster which was titled as REIA Report was submitted to SEIAA, as was observed by the SEAC in its minutes of meeting".

C. THE PUBLIC HEARINGS FOR ALL 36 PROJECTS WERE BASED ON REIA, WHEREIN ADMITTEDLY ECs WERE ISSUED ON INDIVIDUAL EIAs

(In some case, Public hearings were conducted before issuance of TOR)

- (i) Since admittedly 30 mines formed a Cluster, as per the provisions of the MOEF Notification dated 15.01.2016 a common Public hearing was required to be conducted on the basis of a Cluster EIA. However admittedly, the public hearing was conducted on the basis of the REIA.
- (ii) Further, the ECs were eventually issued on the basis of individual EIAs as submitted before the SEAC on 15/16.11.2018 which were nothing but based on extracts of the REIA. (@ Pg. 915) It is a matter of record that no Public hearing was conducted on such individual EIA which makes the entire process illegal even if one assumes that either Individual EIA, cluster or REIA was the correct method.
- (iii) The MOEF has found that in some cases, the Public hearing was infact conducted before the grant of TOR, which shows the lack of diligence and complete disregard to the provisions of the Notification dated 14.09.2006 and 15.01.2016 on the part of the SEAC. (@ Pg. 914, 946)

D. CONTRADICTION STANDS OF RESPONDENTS

(DIRECTOR OF MINING AND GEOLOGY, UP/ SEAC)

- (i) **Director of Mining and Geology (DMG).**
 - The DMG vide letter dated 19.06.2019 (@Pg 927,928) submitted before the MOEF that project proponents/consultants were asked to disaggregate the REIA to demonstrate individual leases and that all the 36 cases were

considered individually, public hearings were conducted individually on the basis of individual sensitive analysis.

- In its oral arguments at the time of hearing held on 28.08.2019 the counsel representing the DMG argued that all 36 mines impugned herein formed a cluster and are appraised on REIA, also the public hearings was conducted on REIA scheme which as per the instructions given to him is synonymous to a cluster.

(ii) **State of Uttar Pradesh**

- The State of UP in its reply to the appeals has taken the categorical stand that *"REIA is nothing but an amalgamation of individual EIA. The individual EIA study was initially conducted and thereafter, the REIA was prepared considering some common features such as carrying capacity, transportation and related issues, replenishment and recharge issues, geo-hydrological study"*. (@ Pg. 792, Appeal No. 263/2018)
- At the time of hearing the counsel representing State of UP/SEIAA argued that the environmental impact for all the mines was done collectively by a combined and cumulative impact assessment as the said mines formed a cluster and not on an individual basis.

The aforesaid makes it extensively clear that the state authorities are themselves unclear and confused with the procedure, manner and methodology adopted to appraise, assess and to grant such 36 ECs. **It is submitted that the sole reason the state authorities have changed their respective stands from having earlier said that the 36 ECs were granted on individual EIAs to now saying that they are granted on REIA/combined EIAs is due to the correct factual depiction from the MoEF report that 30 out of 36 impugned mines form a cluster and ought to be appraised and assessed on a cluster EIA. The State Authorities have even then miserably failed to acknowledge the distinction between cluster EIA study and a REIA study and wrongly equated them to be terminologies that yield similar outcome in relation to environmental impact study of the projects which is scientifically and practically, a fallacious understanding.**

E. MOEF REPORT IS SELF-CONTRADICTORY AND NOT ENTIRELY CORRECT

It is submitted that the MOEF has correctly stated that 30 out of the 36 mines formed a cluster and ought to have been appraised, assessed, public hearing on such cluster EIA, and that the same have been wrongly done on the basis of individual EIAs.

However, despite the aforesaid fact situation, the MOEF have wrongly concluded (@ Pg. 923) that 10 mines are legally complaint. It is submitted that the sole reason for such an erroneous conclusion as logically inferred from a complete reading of the Report is that the MOEF has wrongly observed @ Pg. 922) that the Joint meeting of the SEAC/SEIAA held on 14.11.2018 does not reject the REIA report which is factually fallacious since the Joint meeting expressly and irrefutably (@ Pg. 1050-1051) stated that

"No REIA will not be entertained. There will be only individual or cluster EIA...

... The Commmitte/ Authprity also decided that in case there is any mention of REIA/ REMP in any of the minutes of SEIAA/ SEAC it should be treated as deleted".

Thus, the Appellant submits that this portion of the MOEF Report be negeted as the same is perverse being based on factual infirmity.

F. GROSS VIOLATION OF STAY ORDER DATED 17.12.2018

- (i) This Hon'ble Tribunal vide its Order dated 17.12.2018 was *prima facie* of the view that grant of such 36 ECs were inconsistent with law and directed that *"In the meanwhile, the Environmental Clearance may not be proceeded with"*. Further vide Order dated 31.01.2019 this Hon'ble Tribunal refused to modify the interim Order and stated that *"we do not find any ground to modify interim order dated 17.12.2018 as on precautionary principal without proper EIA, grant of mines in category I & II can be detrimental to the environment"*.
- (ii) The appellant filed I.A No. 125/126 of 2019 in Appeal No. 263/264 of 2018 respectively highlighting as under:
- That four (4) out of the twelve (12) mines in Appeal No. 263 were granted mineral transport permits which could have only been issued after execution of mining leases. (@Pg 262)
 - Appellant attached three (3) mining leases executed on 15/17.01.2019 and additionally mineral transport permits w.r.t nine (9) project proponents. (@ Pg 217-219)

Thus the appellant submitted that in its knowledge 16 out of 36 ECs were proceeded with and mining leases were granted in blatant disregard and violation of the Order passed by this Hon'ble Tribunal.

- (iii) Vide Order dated 11.03.2019 this Hon'ble Tribunal directed the District Magistrates of Jalaun, Hamirpur and Banda to furnish an Action Taken Report w.r.t to the allegations of execution of mining leases in aforesaid I.As.
- (iv) The District Magistrate/collector Hamirpur vide its letter dated 06.04.2019 addressed to this Hon'ble Tribunal stated that one Vijay Dwivedi, social worker had brought to their notice the order dated 17.12.2018 by his application dated 22.12.2018 and the same was duly forwarded to the Director Mining and Geology Department, UP vide office letter dated 03.01.2019. It further stated that three (3) mining leases were granted on 15/19/25.01.2019.

Note - No other District Magistrate filed any Action Taken Report/ reply in dissonance with the Order dated 11.03.2019 passed by this Hon'ble Tribunal.

A translated copy of the Action Taken Report dated 06.04.2019 by the District Collector Hamirpur to this Hon'ble Tribunal is hereby enclosed and marked as ANNEXURE A.

Therefore on the conspectus of the above it is absolutely clear that mining leases have indeed been granted/executed in deliberate defiance and wilful disobedience of the order dated 17.12.2018 passed by this Hon'ble Court which a fortiori has had an adverse, deleterious and irreparable impact on the environment which ought to be reversed and remedied apart from punishing the offenders (State as well as private), on the strict application of the Polluter Pays Principle. It is further submitted that not reprimanding such illegal and environmentally damaging acts would encourage such scrupulous parties to not comply with future directions passed by this Hon'ble Tribunal which would undermine the power and authority of this Hon'ble Tribunal and grossly violate the Environmental Rule of Law as propounded by the Hon'ble Supreme Court in the recent judgment of Hanuman Laxman Aroskar vs UOI (2019) SCC Online SC 500.


Note: It is pertinent to mention that during the course of argument on 28.08.2019 one of the counsels representing some project proponents had brought to the notice of this Hon'ble Court that more than 150 mines have been appraised and granted ECs on the basis of the same REIAs that were in question in the present case.

PRAYER

In view of the above submissions, the Appellant hereby prays that:

- I. All 36 ECs impugned herein and all other ECs granted on the basis of such 5 REIAs be rejected being illegal, unsustainable, void and being violative of the procedure stipulated under the EIA Notification 2006, and opposed to the Precautionary Pay Principle and Doctrine of Sustainable Development as envisaged under Section 20 of the NGT Act;
- II. The Appellant prays that strict action be taken under Section 26, 28 of the NGT Act against the Respondents, in particular the Director of Mining and Geology, UP and the District Magistrates of Hamirpur, Betwa, Jaluan, Banda for blatant and deliberate violation of the orders dated 17.12.2018 and 31.01.2019 whereby certain mining leases were granted in respect to and in furtherance of some of the 36 ECs that were stayed by this Hon'ble Tribunal vide its Order dated 17.12.2018;
- III. Further if this Hon'ble Tribunal deems it fit and proper, the appellant requests that some compensation under section 15 and 17 of the NGT Act be granted (*to an appropriate agency or MOEF*) by affixing liability on non-compliant state authorities and private violators (mining lease holders) towards restitution of the environment that has been adversely affected and irreparably damaged due to such illegal and contemptuous mining.

SUBMITTED BY:


VANSHDEEP DALMIA
(Counsel for the Appellant)

ANNEXURE - A

Sender

**Collector,
Hamirpur**

To

**Hon'ble National Green Tribunal,
Principal Bench, New Delhi**

Number: 32/Mineral-MMC-30-Diverse (2018-19) dated
06th April, 2019

Sub: Regarding order dated 11/03/2019 passed by
the Hon'ble National Tribunal Principal Bench
New Delhi, in Appeal No. 263/2018 and
Appeal No. 264/2018 Amit Upadhyay vs State
Level Environmental Impact Assessment
Authority and Others.

Sir,

The following orders have been passed by order
dated 11.03.2019 by the Honorable National Green
Tribunal Principal Bench, New Delhi in Appeal Nos.
263/2018 and 262/2018 Amit Upadhyay Vs State Level
Environmental Impact Assessment & Authority.

1. The part of order dated 17.12.2018 passed in Appeal No.263/2018 and Appeal No.264/2018 titled as Amit Upadhayay Versus State Level Environmental Impact Assessment Authority & Others filed in the Hon'ble Court is as follows:-

This appeal has been preferred under Section 16 of the National Green Tribunal Act, 2010 against Environmental Clearance granted to mines in Category I and Category II Based on the report of the Regional Environment Impact Assessment Authority, which is not permissible under the EIA Notification dated 14.09.2006. The said Regional EIAs were rejected on 14.11.2018 and fresh individual EIA report were directed to be furnished. Without such reports being furnished, Environmental Clearance has been granted based on extract of the rejected Regional EIAs.

In view of above, prime-facie, the grant of Environmental Clearance does not appear to be consistent with law.

Let the State Level Environmental Impact Assessment Authority furnish a report as to why Environmental Clearance be not set aside. We also

direct the Ministry of Environment, Forest and Climate Change (MoEF&CC) to examine the matter and furnish their detailed report about legality of the procedure followed.

In the meanwhile, the Environmental Clearance may not be proceeded with.

The District Magistrate Hamirpur is not made a party in the above appeal.

2. While enclosing one copy of the order dated 17.12.2018 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi in the said Writ Petition along with his application dated 22.12.2018 was sent to this office by Shri Vijay Dwivedi, Social Worker, Vivek Nagar, Hamirpur, which was received on 26.12.2018. With reference to the application sent by Shri Vijay Dwivedi for taking further action with regard to order dated 17.12.2018 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi. The said application was forwarded to the Director, Mines and Mineral Department, Uttar Pradesh Lucknow for guidance by this office letter No.1311/mines-mmc-thirty-miscellaneous (2018-19) dated

03.01.2019. In the meantime, in the interest of availability minerals sand/mauram and mineral development, as per the directions/provisions issued by government order No.1875/86-2017-57 (s)/2017 T.C.-01 dated 14.08.2017 by Mines and Minerals Department, Government of U.P., the execution of mine lease was executed with this condition to the 03 mine areas covered by this appeal in District Hamirpur on condition that the orders of Hon'ble National Green Tribunal will be binding on them. The list of details of mining lease is enclosed.

Therefore, the report is submitted.

Enclosure - As stated above.

Yours Sincerely,

Sd/-

(Abhishek Prakash)
District Magistrate
Hamirpur

Vandana

//TRUE TRANSLATED COPY//

HONORABLE NGT IN HAMIRPUR DISTRICT LIST OF APPROVED MINING LEASES AFTER ORDER DATED
14/12/2014

S. No.	Lease holder name	Village/ Block No.	Area	Tehsil	Date of L.O.A	Environmental cleanliness certificate number and date	Date of mining lease contract
1	M/s Senvin Infrastructure Pvt. Ltd., Branch-06, Sarojini Naidu Marg, Lucknow	Chandwari Ghuroli 26/7	36.437	Sarila	09.05.2018	Letter No. 492 dated 24.11.2018	15.01.2019 to five years
2	M/s Balaji Enterprises, 3271, Vishwas Khand Gomti Nagar, Lucknow	Bhedi Kharka- 23/20	12.145	Sarila	26.02.2018	Letter No. 504 dated 24.11.2018	19.01.2019 to five years

3.	Sh. Rahul Gupta S/o Sh. Vinod Babu Gupta 15/74-75 Baba Ghat, Civil Lines, Badagaon, Kanpur Nagar	Beri- 10/4	36.437	Hamirpur	24.07.2018	Letter No. 523 dated 24.11.2018	25.01.2019 to five years
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Sd/-

Mines Officer
Hamirpur

Sd/-

Collector
HamirPur

Va P V
//TRUE TRANSLATED COPY//

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APPEAL NO. 263 & 264 OF 2018**

IN THE MATTER OF:

AMIT UPADHAYA

...APPELLANT

VERSUS

SEIAA, UP & ORS

...RESPONDENTS

LIST OF DATES

DATE	PARTICULARS
14.09.2006	<p>The MOEF issued the parent EIA Notification dated 14.09.2006 ("EIA, 2006") under Section 3 of the Environmental Protection Act, 1986.</p> <p>That the EIA, 2006 as originally issued did not envisage the concept of Regional Impact Assessment Report ("REIA") and only provided for individual EIAs for all projects including mining.</p>
15.01.2016	<p>The MOEF Notification dated 15.01.2016 for the first time introduced the concept of a '<u>Cluster EIA</u>' whereby a common EIA was to be undertaken for an area wherein the distance between the peripheries of one lease is less than 500m from the other. The said Notification further stipulated for one public hearing for the entire cluster, and this cluster EIA could then be used by individual project proponents to get individual EC's.</p>
1.07.2016	<p>Due to practical difficulty in implementing the cluster process in the State of Rajasthan wherein a large number of small size leases were located adjacent to each other with no space between them and had been operational for many years, the MOEF issued a Notification dated 1.07.2016 wherein the concept of REIA was introduced being limited only to the State of Rajasthan.</p>

13.11.2018	<p>The Appellant herein filed OA No. 912 of 2018 before this Hon'ble Tribunal. This Hon'ble Tribunal vide Order dated 13.11.2018 directed as under:</p> <p><i>“2. According to the applicant, it is not permissible to consider the report of REIA, private body, in violation of Sand Mining Policy and EIA Notification dated 14.09.2006.</i></p> <p><i>3. We are of the view that this objection may be considered in the joint committee of SEIAA and SEAC in accordance with law before a decision is taken in the matter. If this objection is rejected, the reasons may be given. The applicant will be at liberty to raise this objection before the committee.”</i></p> <p>A Copy of the Order dated 13.11.2018 passed by this Hon'ble Tribunal in OA No. 912 of 2018 is annexed as Annexure A-1 at pages 20 to 21 .</p>
14.11.2018	<p>That SEIAA and SEAC, UP in its Joint Meeting dated 14.11.2018 categorically held that <u>“No REIA will be entertained. There will be only individual or cluster EIA...”</u> and further directed the project proponents to follow the procedure under the EIA Notification <i>de novo</i>.</p> <p>A Copy of the Joint Minutes of the Meetings of SEIAA/SEAC dated 14.11.2018 is annexed as Annexure A-2 at pages 22 to 24 .</p>
15.11.2018/ 16.11.2018	<p>That SEAC/SEIAA thereafter contradicted themselves by appraising individual EIAs submitted on 15.11.2018 and 16.11.2018 which were mere extracts of the REIA and admittedly whose appraisal and public hearings were based on the REIA.</p>
24.11.2018	<p>The impugned EC's were granted by SEIAA, UP on the basis of REIA.</p>

17.12.2018	<p>This Hon'ble Tribunal vide Order dated 17.12.2018 observed "prima facie, the grant of EC does not appear to be consistent with law", and directed that "<i>In the meanwhile, the Environmental Clearance may not be proceeded with</i>".</p> <p>The MOEF was directed to examine the matter and furnish a detailed report.</p> <p>A Copy of the Interim Order dated 17.12.2018 passed by this Hon'ble Tribunal in the present Appeals is annexed as Annexure A-3 at pages 25 to 26 .</p>
31.01.2019	<p>This Hon'ble Tribunal vide Order dated 31.01.2019 refused to interfere/modify its interim Order dated 17.12.2018.</p> <p>A Copy of the Order dated 31.01.2019 passed by this Hon'ble Tribunal in the present Appeals is annexed as Annexure A-4 at pages 27 to 29 .</p>
11.03.2019	<p>This Hon'ble Tribunal vide its Order dated 11.03.2019 directed the District Magistrates of Jalaun, Hamirpur and Banda to furnish an Action Taken Report qua 16 mining leases that were executed in violation of the orders passed by this Hon'ble Tribunal.</p>
11.03.2019	<p>Aggrieved by the Order dated 17.12.2018, the Project Proponents filed Civil Appeal Diary No. 7298 of 2019 being '<i>M/s Awasthi Traders v Amit Upadhyay</i>' before the Hon'ble Supreme Court.</p> <p>The Hon'ble Supreme Court vide Order dated 11.03.2019 refused to interfere with the interim Order dated 17.12.2018 passed by this Hon'ble Tribunal.</p> <p>A Copy of the Order dated 11.03.2019 passed by the Hon'ble Supreme Court in Civil Appeal Diary No 7298 of 2019 being '<i>M/s Awasthi Traders v Amit Upadhyay</i>' is annexed as Annexure A-5 at pages 30 to 32 .</p>
---	<p>MOEF filed a comprehensive Report in the present Appeals.</p>

25.09.2019	<p>This Hon'ble Tribunal vide its Judgment dated 25.09.2019 in the present Appeals quashed the impugned EC's.</p> <p>A Copy of the Judgment dated 25.09.2019 passed by this Hon'ble Tribunal in the present Appeals is annexed as Annexure A-6 at pages 33 to 76 .</p>
23.10.2019	<p>SEAC and SEIAA in its Joint Meeting dated 23.10.2019 discussed the operative part of the Judgment dated 25.09.2019 passed by this Hon'ble Tribunal and further noted that SEIAA has already sent a letter to DGM, UP for compliance thereof.</p> <p>A Copy of the Minutes of Meeting of SEIAA/SEAC dated 23.10.2019 is annexed as Annexure A-7 at pages 77 to 78 .</p>
13.12.2019	<p>The Judgment dated 25.09.2019 was challenged before the Hon'ble Supreme Court in Civil Appeal No. 8590 of 2019 being '<i>M/s Kamtanath Enterprises Pvt Ltd v Amit Upadhyay</i>' wherein the Hon'ble Supreme Court vide Order dated 13.12.2019 set aside the Judgment dated 25.09.2019, without expressing any view on the merits of the matter for the reason that the ECs were set aside without giving an opportunity to the Projects proponents to be heard.</p> <p>A Copy of the Order dated 13.12.2019 passed by the Hon'ble Supreme Court in Civil Appeal No. 8590 of 2019 being '<i>M/s Kamtanath Enterprises Pvt Ltd v Amit Upadhyay</i>' is annexed as Annexure A-8 at pages 79 to 82 .</p>
17.12.2019	<p>This Hon'ble Tribunal vide Order dated 17.12.2019 directed that "<i>In the meanwhile, status quo may be maintained and the EC granted prior to the order of this Tribunal be not given effect to treating the order of this Tribunal dated 25.09.2019 as an interim order</i>".</p>

	<p>A Copy of the Order dated 17.12.2019 passed by this Hon'ble Tribunal in the present Appeals is annexed as Annexure A-9 at pages 83 to 84 .</p>
13.01.2020	<p>The Order dated 17.12.2019 passed by this Hon'ble Tribunal in the present Appeals was challenged before the Hon'ble Supreme Court in Civil Appeal No 54-55 of 2020 being '<i>State of UP v Amit Upadhyay</i>'.</p> <p>The Hon'ble Supreme Court vide Order dated 13.01.2020 directed as under:</p> <p><i>“Until further orders, there shall be a stay of operation of the impugned order(s) dated 17.12.2019 passed by the National Green Tribunal, Principal Bench, New Delhi, in Appeal Nos.263 and 264 of 2018.”</i></p> <p>A Copy of the Order dated 13.01.2020 passed by the Hon'ble Supreme Court in Civil Appeal No 54-55 of 2020 being '<i>State of UP v Amit Upadhyay</i>' is annexed as Annexure A-10 at pages 85 .</p>
27.08.2024	<p>The Hon'ble Supreme Court vide Order dated 27.08.2024 in Civil Appeal No 54-55 of 2020 disposed of the said Appeals filed against the interim Order dated 17.12.2019 and observed that:</p> <p><i>“We find that since the present appeals are being disposed of, the learned Tribunal can very well decide the issue with regard to compensation on account of alleged illegal mining on its own merits after hearing both the parties.”</i></p> <p>A Copy of the Order dated 27.08.2024 passed by the Hon'ble Supreme Court in Civil Appeal No 54-55 of 2020 being '<i>State of UP v Amit Upadhyay</i>' is annexed as Annexure A-11 at pages 86 to 89 .</p>

Item No. 13

20

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHIOriginal Application No. 912/2018
(M.A. No. 1622/2018)

Amit Upadhyay & Ors.

Applicant(s)

Versus

Ministry of Environment, Forest and Climate Change & Ors.

Respondent(s)

Date of hearing: 13.11.2018

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): Mr. I.K. Kapila, Advocate

ORDER

1. It is stated that a joint committee is scheduled tomorrow of State Environment Impact Assessment Authority (SEIAA) and State Expert Appraisal Committee (SEAC), Uttar Pradesh to consider a report of Regional Environment Impact Assessment (REIA) which is a private agency recommending grant of Environmental Clearance to 4 project proponents for mining leases, of more than 5 hectares, of sand mining on the banks of river Betwa in Districts Hamirpur and Jalaun in Uttar Pradesh.

2. According to the applicant, it is not permissible to consider the report of REIA, private body, in violation of Sand Mining Policy and EIA Notification dated 14.09.2006.

3. We are of the view that this objection may be considered in the joint committee of SEIAA and SEAC in accordance with law before a decision is taken in the matter. If this objection is rejected, the reasons may be given. The applicant will be at liberty to raise this objection before the committee.

4. The application is disposed of.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

Dr. Nagin Nanda, EM

November 13, 2018

Joint Meeting Minutes of State Environment Impact Assessment
Authority (SEIAA) and State Expert Appraisal Committee (SEAC), U.P.
dated 14/11/2018

The joint meeting of SEIAA/SEAC was held to dispose the 3 complaints of Shri Amar Jeet Singh Bedi, Advocate Delhi High Court and NGT, Principal Bench, Delhi and one complaint of Shri Amit Upadhyay, Advocate, Allahabad, High Court. Both were called to explain their point of view. However, in the meeting one more complaint of Shri Chandra Deo Singh, Advocate, High Court, Allahabad was also received.

The complainant Shri Amit Upadhyay and Shri Akhil Prasad, DAS (I) Pvt. Ltd. turned up to explain their point of view. Whereas, Shri Amarjeet Singh Bedi through his letter dated 07/11/2018 requested for additional time of 15 days to mark his personal appearance before the Directorate.

The committee listened to Shri Amit Upadhyay and his counsel Shri I.K. Kapila. They empathetically told that there is no provision of REIA. Therefore the committee should not entertain any REIA.

After going through all the complaints in depth and listening to Shri Amit Upadhyay, the committee chartered out following issues related to complaints:-

Issue 1:- There is no provision of REIA.

Issue 2:- The sequence/methodology of issuance of TOR, preparing draft EIA, submission to UPPCB, public hearing and submission of final EIA.

Issue 3:- Issue related to uploading of EIA/EMP to maintain transparency.

The committee called Shri Akhil Prasad to explain his point of view on issues mentioned above. His point of view is given below:-

Issue 1:- Provision of EIA not substantiated by satisfactory documentary evidence.

Issue 2:- As per EIA Notification, 2006 (as amended) the procedure in brief is (i) Uploading of application of TOR/additional TOR. (ii) Issuance of TOR/in case not received within 30 days it is deemed to be issued. (iii) Preparation of draft EIA. (iv) Submission of draft EIA to UPPCB. (v) Public hearing. (vi) Final EIA submission.

Issue 3:- The consultant mentioned that file is around 85 MB and even after compression it is around 28 MB, while available space for loading EIA is 20 MB.

After a detailed and in depth discussion authority and committee decided:-

- ❖ No REIA will be entertained. There will be only individual or cluster EIA. All concerned cases listed on 15, 16, 17 & 22 October, 2018 shall be heard on 16/11/2018 as additional agenda before SEAC.
- ❖ The brief procedure/sequence to be followed by PP/consultant will be as follows:-
 - (i) Uploading of application of TOR/additional TOR.
 - (ii) Issuance of TOR (in case not received within 30 days, standard TOR developed by MoEF&CC shall be deemed approved for the project or activity).
 - (iii) Preparation of draft EIA, strictly in accordance with the terms of reference.
 - (iv) Submission of draft EIA to UPPCB.

- (v) Public hearing.
- (vi) Final EIA submission.
- ❖ The committee/Authority also decided that in case there is any mention of REIA/REMP in any of the minutes of SEIAA/SEAC it should be treated as deleted.
- ❖ The Secretariat should write to MoEF&CC to increase the space to accommodate full EIA report. Till such provision is made consultants can cover brief summary of EIA apart from risk assessment, public hearing etc in case it exceeds the available space of 20 MB.

The meeting ended with a vote of thanks to each chair.

(Prof. Rana Pratap Singh)
Chairman, SEIAA

(Dr. Madhu Bhardwaj)
Member

(Shri Ashish Tiwari)
Member-Secretary, SEIAA

(Dr. (Prof.) S. N. Singh)
Chairman

(Dr. Richhpal Singh Sangu)
Member

(Prof. D.P. Singh)
Member

(Dr. Ajoy Kumar Mandal)
Member

(Shri Meraj Uddin)
Member

(Shri Rajive Kumar)
Member

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHIAppeal No. 263/2018
(M.A. No. 1772/2018)

Amit Upadhaya

Appellant(s)

Versus

State Level Environmental Impact
Assessment Authority & Ors.

Respondent(s)

Date of hearing: 17.12.2018

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Appellant(s): Mr. Vanshdeep Dalmia, Advocate

ORDER

1. This appeal has been preferred under Section 16 of the National Green Tribunal Act, 2010 against Environmental Clearance granted to mines in Category I and Category II based on the report of the Regional Environment Impact Assessment Authority, which is not permissible under the EIA Notification dated 14.09.2006. The said Regional EIAs were rejected on 14.11.2018 and fresh individual EIA reports were directed to be furnished. Without such reports being furnished, Environmental Clearance has been granted based on extract of the rejected Regional EIAs.
2. In view of above, *prime-facie*, the grant of Environmental Clearance does not appear to be consistent with law.
3. Let the State Level Environment Impact Assessment Authority furnish a report as to why Environmental Clearance be not set aside. We also direct the Ministry of Environment, Forest and Climate Change (MoEF&CC) to examine the matter and furnish their detailed report about legality of the procedure followed.

4. In the meanwhile, the Environmental Clearance may not be proceeded with.
5. Reports may be furnished to this Tribunal within one month by e-mail at ngt.filing@gmail.com.
6. Copy of this order be sent by e-mail the MoEF&CC as well as to the State Level Environment Impact Assessment Authority.
7. The applicant may also furnish complete set of papers to the MoEF&CC as well as to the State Level Environment Impact Assessment Authority and file an affidavit of compliance within one week from today.

List for further consideration on 25.02.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

December 17, 2018
Appeal No. 263/2018
(M.A. No. 1772/2018)
R

Item No. 12

Court No. 1

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

I.A. No. 14/2019, I.A. No. 15/2019, I.A. No. 16/2019,
I.A. No. 17/2019 & I.A. No. 68/2019
IN Appeal No. 263/2018
I.A. No. 67/2019
IN Appeal No. 264/2018

Amit Upadhaya

Applicant(s)

Versus

State Level Environmental Impact
Assessment Authority & Ors.

Respondent(s)

Date of hearing: 31.01.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Vanshdeep Dalmia and Ms. Natasha Dalmia,
Advocates

For Respondent (s): Mr. Pradeep Mishra, Advocate for UP
Mr. Amit Tiwari, Advocate for SEIAA
Mr. Anil Grover and Mr. Rahul Khurana, Advocates
for I.As.

ORDER

The issue for consideration is whether Environmental Clearance (EC) granted for Category I and II mines only on the basis of the report of the Regional Environment Impact Assessment Authority (REIAA) without individual EIA is valid in law.

On 17.12.2018, this Tribunal noted that individual Environment Impact Assessment (EIA) reports were never considered and EC was granted based on rejected Regional EIAs. Accordingly, this Tribunal directed that EC may not be proceeded with, pending further consideration.

The Tribunal also directed Ministry of Environment, Forests and Climate Change (MoEF&CC) to furnish a report about the legality of the procedure followed. The MoEF&CC filed an application being I.A. No. 56 of 2019 on which the matter has been deferred to 08.04.2019.

In the said application, it is stated that the MoEF&CC is waiting for the information from the State Level Environment Impact Assessment Authority (SEIAA), Uttar Pradesh and Directorate of Mining and Geology, Government of UP about the procedure followed which will require detailed examination by the MoEF&CC for which more time was required. The MoEF&CC also referred to order of this Tribunal dated 11.12.2018 in Execution Application No. 55 of 2018 in O.A. no. 520/2016, Vikrant Tongad V. Union of India, directing that notification dated 15.01.2016 may not be acted upon till a fresh procedure is laid down for EC.

The fact remains that question whether due procedure has been followed in the present case while granting EC i.e. whether individual EIAs report has been furnished as required, remains to be considered and for such consideration, report of MoEF&CC has to be seen.

Being technical matter, we require assistance of MoEF&CC on the subject of validity of the EIAs. We further direct Central Pollution Control Board may also be involved in the process by the MoEF&CC and report furnished to this Tribunal before the next date.

Even after hearing the project proponents and SEIAA, we do not find any ground to modify interim order dated 17.12.2018 as on precautionary principle, without proper EIA, grant of mines in Category – I and II can be detrimental to the environment.

Accordingly, let the matter be listed on 08.04.2019 as earlier directed.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 31, 2019

I.A. No. 14/2019, I.A. No. 15/2019, I.A. No. 16/2019,

I.A. No. 17/2019 & I.A. No. 68/2019

IN Appeal No. 263/2018

I.A. No. 67/2019

IN Appeal No. 264/2018

A

IN THE SUPREME COURT OF INDIA

30

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). _____ OF 2019
(Diary No. 7298/2019)

M/S AWASTHI TRADERS & ANR.

Appellant(s)

VERSUS

AMIT UPADHYAY & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO(S). _____ OF 2019
(Diary No. 5296/2019)O R D E R

Permission to file the Civil Appeals is granted.

Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the appellants submits that by the impugned order of the National Green Tribunal¹ dated 17 December 2018, the Tribunal has followed its Order in Appeal No. 263 of 2018 passed on the same day, directing that environment clearance be not proceeded with.

The grievance is that though the appellants were not parties to the proceedings before the Tribunal, the result of the impugned order is that the environmental clearance granted to the appellants has been stayed.

Since the Tribunal is seized with the proceedings, we are of the view that the grievance of the appellant should be considered by the Tribunal.

We accordingly, direct that if the applicant moves an application for variation of the interim order within a period of one week from today, the Tribunal may expedite the disposal of the application preferably within a period of two weeks thereafter.

All the rights and contentions of the parties are kept open.

The civil appeals are, accordingly, disposed of. No costs.

Pending application(s), if any, shall stand disposed of.

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
MARCH 11, 2019

ITEM NO.23

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No(s). 7298/2019

(Arising out of impugned final judgment and order dated 17-12-2018 in AN No. 264/2018 passed by the National Green Tribunal)

M/S AWASTHI TRADERS & ANR.

Petitioner(s)

VERSUS

AMIT UPADHYAY & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.38457/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.38458/2019-EX-PARTE STAY and IA No.38456/2019-EXEMPTION FROM FILING O.T. and IA No.38455/2019-PERMISSION TO FILE APPEAL)

WITH

Diary No(s). 5296/2019 (XVII)

(IA No.38758/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.38763/2019-STAY APPLICATION and IA No.38760/2019-EXEMPTION FROM FILING O.T. and IA No.38755/2019-PERMISSION TO FILE APPEAL)

Date : 11-03-2019 These appeals were called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s)

Mr. Ranjit Kumar, Sr. Adv.
Mr. Abhishek Yadav, AOR
Mr. Saurabh Yadav, Adv.

For Respondent(s)

Mr. Vanshdeep Dalmia, Adv.
Ms. Natasha Dalmia, Adv.
S. Jain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed order is placed on the file)

Item Nos. 04&05

Court No. 1

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

Appeal No. 263/2018

(M.A. No. 1772/2018, I.A. No. 15/2019, I.A. No. 17/2019,
I.A. No. 125/2019, I.A. No. 259/2019, I.A. No. 508/2019,
I.A. No. 510/2019, I.A. No. 511/2019 & I.A. No. 512/2019)

WITH

Appeal No. 264/2018

(M.A. No. 1773/2018, I.A. No. 126/2019, I.A. No. 260/2019,
I.A. No. 509/2019, I.A. No. 513/2019 & I.A. No. 514/2019)

Amit Upadhaya

Appellant(s)

Versus

State Level Environmental Impact
Assessment Authority & Ors.

Respondent(s)

Heard on : 28.08.2019

Uploaded on: 25.09.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Appellant (s) : Mr. Vanshdeep Dalmia, Mr. Suchakshu Jain,
Advocates
Mr. Suraj Prakash Singh, Ms. Pushpila Bisht,
Advocates, Applicant in I.A No. 509/2019

For Respondent(s): Ms. Pinky Anand, ASG for SEIAA
Mr. Amit Tiwar, Advocate
Mr. Shlok Chandra, Advocate for MoEF&CC
Mr. Mayank Pandey, Advocate
Mr. Pradeep Misra, Advocate for UPPCB
Mr. Anil Grover with Mr. Rahul Khurana, Advocate,
Applicant in I.A Nos. 14, 15, 16, 17, 258, 259, 260,
261, 510, 511, 512, 513, 514 of 2019

ORDER**Per Justice S.P. Wangdi, Judicial Member**

1. These two Appeals being Appeal Nos. 263/2018 and 264/2018 have been taken up together as common questions arise in both the cases. In Appeal No. 263/2018 Environmental Clearance (EC) granted to 12 minor mineral-sand/morrum mining projects on the rivers Betwa and Ken, situated in State of Uttar Pradesh have been challenged on the ground that mandatory requirements of the EIA Notification, 2006 as amended have not been satisfied. It is stated that in respect of five of the mining projects, no Terms of References (ToR) were at all issued and in remaining seven it was issued after the public hearing.
2. In respect of the first five projects, it is stated that ECs having been granted without the ToRs being issued rendered it to be invalid. Similarly, regarding other seven, ToRs having been issued after public hearing, the entire process stood vitiated and, therefore, the ECs granted to those projects were also illegal. According to the Appellant all the 12 projects also suffered from a third deficiency in as much as the ECs were based on a Regional Environmental Impact Assessment (REIA) Report which had been rejected in a joint meeting of the State Level Environment Impact Assessment Authority (SEIAA) and the State Expert Appraisal Committee (SEAC) held on 14.11.2018 advising the project proponents to submit individual Environment Impact Assessment (EIA) Reports. The Appellant asserts that the individual EIA Reports submitted by the

project proponents pursuant to the advice had been prepared without any “ToR” or without conducting “public consultations”. The individual EIA Reports were merely extracts from the “REIA” and, therefore, the ECs granted on the basis of such flawed EIA Reports were invalid also on this ground.

3. It is contended that EC can be granted for projects involving mining of minor minerals only in accordance with the procedures laid down in the EIA Notification, 2006 read with relevant provisions of Schedule I thereto. Procedures laid down under Rule 6 requiring submission of application for EC and Rule 7 providing for Screening, Scoping, Public Consultation and appraisal are required to be followed in a sequential order as each step is closely intertwined before finally granting EC.
4. It is stated that in the present case, a REIA for five rivers over which sand mining projects exist, was prepared by the environmental consultant in the process of which several critical documents required as per Form 1 were not uploaded. The respondent, however, went ahead in processing the project and public hearings invited by the State Pollution Control Board although no ToRs had been issued and notified. Several public hearings actually did not take place and, the cases where public hearing was conducted were based on false statements. The specific objections raised by the District Mining Officer, Banda, with regard to non-availability of the EIA Reports or the ToR had been ignored. The proceedings of the public hearing were copies of the ones conducted earlier for the purpose of the REIA and individual EIA Reports in respect of all the

mining projects were generated from the REIA with only its summary being submitted on the specious plea of there being software problems in uploading the entire EIA. The Applicant states that all the deficiencies had been brought to the notice of Respondent Nos. 1 & 2 but, despite that, the process for grant of EC was continued and the State PCB despite there being no ToR, had notified the proposals for being processed further. Based on the above facts and circumstances, the Applicant has prayed for the following:

- “i) Declare the Environment Clearance accorded to the 13 Mines in Category I and Category II above in Para 5 above as illegal, non-est and void ab-intio;*
- ii) Prohibit the Respondent No. 1 and 2 from conducting any further meetings to approve the grant of Environment Clearances to projects that do not strictly comply with the process and procedure as laid down in the EIA Notification, of the MoEF dated 14.09.2006;*
- iii) Any other order that this Hon’ble Tribunal may deem fit in the facts and circumstances of the case.”*

5. When the matter came up before the Tribunal on 17.12.2018, it was observed that the grant of the ECs *prima facie* did not appear to be consistent with law which led the SEIAA being directed to furnish a report as to why the ECs should not be set aside and, the MoEF&CC to examine the matter and furnish detailed report on the legality of the procedure followed. The question as to whether the required procedure had been followed or not while granting EC, i.e., whether individual EIA Reports had been considered or not, being technical, *vide* order dated 31.10.2019 assistance of the Ministry of Environment Forest and Climate Change (MoEF&CC) was sought for

on the subject by involving the Central Pollution Control Board (CPCB).

6. By filing I.A. No. 56/2019, the MoEF&CC sought for time to submit its report on the ground that information was awaited from the SEIAA, UP and the Directorate of Mining and Geology, Government of UP on the procedure that was followed which the MoEF&CC required to examine in detail.
7. In Appeal No. 264/2018, EC granted to 24 mining projects have been challenged on the same ground as those involved in Appeal No. 263/2018 and, therefore, we need not delay ourselves on those for the sake of brevity.
8. Although the individual mining projects have not been impleaded as parties in the proceedings, some of them have approached the Tribunal by filing I.As. It appears that M/s. Gyan Infrabuild Pvt. Ltd., one of the mining projects, had filed Civil Appeal before the Hon'ble Supreme Court against the interim order of stay dated 17.12.2018 passed by the Tribunal. *Vide* order dated 11.03.2019 in Diary No. 5296/2019, the Hon'ble Supreme Court granted liberty to the Appellant to move an application before the Tribunal for variation of the interim order directing the Tribunal to expedite the disposal of such application preferably within a period of two weeks after such application was filed. Pursuant to the said order I.A. No. 260/2019 for impleadment and I.A. No. 261/2019 for necessary directions were filed by M/s. Gyan Infrabuild Pvt. Ltd. in Appeal No. 264/2018. Four other mining projects, namely M/s. Rama Traders,

M/s. Kanha Construction Company and M/s. Sanevin Infrastructure Pvt. Ltd. and M/s. Silver Mist Retail Pvt. Ltd. filed I.A. Nos. 514/2019, 513/2019, 508/2019 and 509/2019 have been preferred in Appeal No. 264/2019, respectively directly before the Tribunal seeking impleadment as parties in the Appeals.

9. Pursuant to the order dated 17.12.2018, the SEIAA, UP filed a detailed compliance report in Appeal No. 263/2018 pertaining to the afore-mentioned 12 projects denying all material allegations contending that the procedure laid down under the law had not been violated while granting the ECs.
10. The SEIAA, UP in its report has stated that, as per MoEF&CC Notification dated 10.04.2015, the standard ToR developed by the Ministry in consultation with the sector specific EAC shall be deemed as the approved ToR for the project activities which shall be placed on the website of the MoEF&CC with the mandate upon the EAC or the SEAC to finalize amendments, if necessary, for the projects within 30 days from the acceptance of the specified application Form I or Form IA. The standard ToR displayed in the website would enable the project proponents to prepare EIA Reports after successful online submission and registration of the applications. Therefore, according to the MoEF&CC, the project proponent as per the procedure can commence EIA study as soon as his application for issuance of ToR is registered. Any amendment made by the SEAC shall also be incorporated in the EIA study. The baseline data used for preparation of EIA/EMP Reports can be used at any stage but should not be older than three years at the time of

submission of the proposal for grant of EC as per the prescribed ToR. As per procedure this is followed by public hearing and thereafter by submission of EIA that finally culminates in the grant or rejection of EC after considering the reports and the documents.

11. It is contended that all the procedures have been followed in respect of the 12 projects in question. In respect of first category, i.e., those five projects where no ToRs were issued, it is stated that after applications were received on varying dates, online appraisal for issuing ToR was conducted by the SEIAA, also on varying dates and, the additional ToR was granted by the SEIAA in respect of all the projects. According to the SEIAA, the additional conditions prescribed for the ToR were only procedural and did not materially affect the nature, content and substance of the study. The EIA study was conducted by the Project Proponents based upon the standard ToR displayed in the Ministry's website as per the provisions of Notification dated 10.04.2015 and draft EIA submitted to the State PCB. Public hearings were conducted for three projects on 19.09.2018 and for other two on 26.09.2018 under the first category. Hard copy of the REIA was submitted for all the projects which were appraised by the SEAC and recommended for grant of EC by the SEIAA. During the presentation of the EIAs before the EAC, it had been submitted on behalf of the project proponents that the REIA was an amalgamation of individual EIAs and that individual EIA study was initially conducted and thereafter the REIA was prepared taking into consideration some common features such as carrying capacity, transportation and related issues,

replenishment and recharge issues, geo-hydrological study, etc. However, on the direction of the SEAC individual EIAs were submitted. Based on the decision of the SEAC and the SEIAA taken on 14.11.2018, instead of the REIAs individual EIAs of the project proponents were considered for appraisal. It was only after due diligence on the various aspects of the EIA that it was recommended for the EC to the SEIAA which was ultimately granted for the five projects. Thus, it is submitted that the EIA conforms to all the requirements having been considered by an expert body re-emphasising that common feature such as impact assessment, transportation, public hearing, EMP and other important features had been taken into consideration.

12. Adverting to second category, i.e., where ToRs were issued after public hearing, it is stated that the additional ToR was issued by the SEIAA beyond 30 days after of the acceptance of the application and, therefore, as per MoEF&CC Notification dated 10.04.2015, the standard ToR is deemed to be the approved ToR for the projects and the project proponents in such a situation were entitled to commence EIA study in terms of the standard ToR displayed on the Ministry's website. The public hearings in all the seven cases falling under the second category were held only after the preparation of draft EIA Reports and issuance of notices for public hearing by State PCB. The ToR appraisal by the SEIAA and SEAC after completion of 30 days was only a formal approval and, therefore, there was no violation of law regarding approval of ToR or public hearing.

13. As regards the issue that the individual EIAs in the 12 cases were nothing but extracts of the REIA, it is stated that the Sustainable Sand Mining Management Guidelines, 2016 issued by the MoEF&CC suggest preparation of Regional Environmental Management Plan (REMP) for projects which are in the vicinity of each other and would contain suggestion on strategy for mitigating the impact. It is stated that REIA is a valuable document as it captures the impact of the projects collectively including carrying capacity, transportation, replenishment and recharge issues, geo-hydrological study, etc., on a region which was essential for preparing and taking steps for mitigating environmental damage.
14. According to the SEIAA, UP, as the REIAA was nothing but amalgamation of individual EIAs depicting some common features of collective impact and corresponding mitigation measures to be adopted, it was resolved that appraisal of the projects should be on the basis of individual EIAs considering the content of the EIA and not its source to be relevant for grant of EC. It is submitted that all the individual EIAs conformed to the mandate and provisions of the law and, therefore, there was no violation in the grant of the ECs as alleged.
15. On the contention that after rejection of REIA by the SEIAA and the SEAC, and that, public hearing should also have been conducted on the basis of individual EIA, it is stated that the requirements of public consultation under the EIA Notification had been fully satisfied in the case of the projects in question. The views recorded in the public hearing were duly incorporated in the individual EIAs

and, therefore, according to the SEIAA, there was no infraction with regard to public consultation as alleged by the Appellant.

16. Being a technical matter, by order dated 17.12.2018, the Tribunal sought the assistance of the MoEF&CC on the validity of the EIAs in both the Appeals by involving CPCB and required a report to be furnished.
17. As directed, a report was submitted by the CPCB on 01.08.2019 which was taken up on 28.08.2019 during which all parties including the Applicants in the I.As were heard.
18. After setting out the various requirements of the EIA Notification, 2006 pertaining to grant of EC, the Committee comprising of the MoEF&CC and the CPCB considered the questions on the following heads:
 - a) Compliance to all steps as prescribed under EIA Notification, 2006, were followed (*viz.*: Screening, Scoping, Public Hearing, Appraisal by Competent Authority)?
 - b) Screening status of the projects as per the Cluster certificate issued by DMG-UP.
 - c) Whether all projects were in possession of valid ToR?
 - d) Whether projects were compliant to the conditions of ToR?
 - e) Public Hearing before Issuance of ToR?

- f) Environmental Clearances granted were based on Regional EIA/EMPs or individual EIA/EMP?
 - g) Regional Environment Impact Assessment studies (REIA)/ Environment Management Plan (EMP) is legally acceptable for grant of EC?
 - h) Fresh Public consultation is required after additional details are sought by SEAC?
 - i) EIA reports considered for appraisal were in compliance to the provision of the Notification, 2016.
 - j) Specific deviations observed from stipulated procedure and provisions of the Notification.
19. It has been observed that the inputs considered in the report were limited to the projects to which EC was granted by the SEIAA and the subject matter of the two Appeals. The observations on each of the heads referred to above are dealt with below:
- a) Compliance to all steps as prescribed under EIA Notification, 2006, were followed (*viz.* Screening, Scoping, Public Hearing, Appraisal by Competent Authority)?

All steps *viz.* Screening, Scoping, Public Consultation and appraisal by competent authority has been followed for all the projects under examination.
 - b) Screening status of the projects as per the Cluster certificate issued by DMG-UP.

Out of the 36 projects under consideration in the report, category B1 projects comprised of 6 individual and 30 cluster forming. Although all cluster forming projects were required to prepare cluster EMP, only 14 projects were prescribed for preparation of Regional Combined EMP in ToR. ToR recommendation of SEAC also did not specify combined EMP (Cluster EMP) requirement for many of the cluster forming projects. Therefore, such ToR had been considered as Individual EMP and accordingly, the assessment for its acceptability had been made in the report. Project classification as per DMG-UP, ToR condition for EMP issued by SEAC and their compliance to the provision of Notification dated 15.01.2016 were in the below table:

Index No.	File No	Project Name	Cluster Status (DMG-UP)	ToR Condition	Remarks
1	4141	M/s Pehalwan Traders	Cluster	Individual	Non-compliant
2	4192	M/s Kanha Construction Company	Cluster	Individual	Non-compliant
3	4325	M/s Sai Constructions & Suppliers	Cluster	Combined REMP	Compliant
4	4155	M/s Balaji Enterprises	Cluster	Individual	Non-compliant
5	4182	M/s Bindu And Ram Construction	Cluster	Individual	Non-compliant
6	4140	M/s Indus Mines and Minerals	Cluster	Individual	Non-compliant
7	4050	M/s Eureka Mines and Minerals LLP	Individual	Individual	Compliant
8	4358	M/s Vikas Enterprise	Cluster	Combined REMP	Compliant
9	4227	M/s Chaudhary Traders	Individual	Individual	Compliant

10	4233	M/s Gyan Infrabuild Pvt Ltd	Cluster	Individual	Non-compliant
11	4061	M/s Kunwar Infradevelopers Pvt Ltd	Cluster	Individual	Non-compliant
12	4322	M/s Senvin Infrastructure Pvt. Ltd.	Cluster	Individual	Compliant
13	4103	M/s Saneywin Infrastructure Pvt. Ltd.	Individual	Individual	Compliant
14	4304	M/s Senvin Infrastructure Pvt. Ltd.	Cluster	Individual	Non-compliant
15	4376	M/s Baba Bholenath Traders	Cluster	Combined REMP	Compliant
16	4156	M/s. D V Construction	Cluster	Individual	Non-compliant
17	4070	M/s. Rama Traders	Cluster	Individual	Non-compliant
18	4219	Smt. Kaushilya Chobey Contractor	Cluster	Individual	Non-compliant
19	4234	M/s Silvrr Mist Retail Pvt. Ltd.	Cluster	Individual	Non-compliant
20	4337	M/s Awasthi Traders	Cluster	Combined REMP	Complaint
21	4194	M/s Bharat Earth Movers	Cluster	Individual	Non-compliant
22	4164	M/s. Rajesh Enterprises	Cluster	Individual	Non-compliant
23	4160	M/s. Harihar Minerals LLP	Cluster	Individual	Non-compliant
24	4100	M/s Silvrr Mist Retail Pvt. Ltd.	Cluster	Individual	Non-compliant
25	4404-4510	M/s New Eoan Associates	Cluster	Combined REMP	Compliant
26	4384 - 4512	M/s Eureka Mines and Minerals LLP	Cluster	Combined REMP	Compliant
27	4406	M/s Harihar Minerals LLP	Cluster	Combined REMP	Compliant
28	4335	M/s Chaudhary Int Udyog	Cluster	Individual	Non-compliant
29	4437	M/s Satyam Construction	Cluster	Individual	Non-compliant
30	4439 - 4528	M/s Disha Enterprises	Individual	Combined REMP	Non-compliant
31	4529	M/s Yadav And Sons	Cluster	Combined REMP	Compliant
32	4438 - 4533	M/s New Praveera Infracright Pvt. Ltd.	Cluster	Combined REMP	Compliant

33	4446 - 4534	Shri Rahul Kumar Gupta	Cluster	Combined REMP	Compliant
34	4420 - 4531	M/s Kanhaiyalal And Sons	Cluster	Combined REMP	Compliant
35	4426 - 4532	M/s Kamalnath Enterprises Private Limited	Cluster	Combined REMP	Compliant
36	4433 - 4538	M/s Shri Construction	Individual	Combined REMP	Non- compliant

c) Whether all projects were in possession of valid ToR?

As per the provision of MoEF&CC Notification S. O. 996 (E) dated 10.04.2015, the Standard ToR (SToR) prescribed and available at PARIVESH portal of MoEF&CC becomes deemed ToR from the date of application by the project Proponent (PP). However, recommendations made by SEAC within 30 days of acceptance of application makes the ToR as project specific. For convenience, such ToR has been referred to as Prescribed ToR (PToR) in the report.

Compliance of all conditions stipulated in either SToR or PToR, as applicable was necessary to make the EIA/EMP report legally acceptable and therefore, non-issuance of ToR by regulatory authority would not make the process of appraisal for EC, as legally not acceptable and projects are deemed to be in possession of ToR after successful submission of application for TOR.

It was observed that all projects were appraised by SEAC for grant of ToR and were recommended for issuance of ToR. Therefore, application of standard ToR did not arise. SEIAA had issued ToR for all projects except for the following 5 projects:

Index No.	File No.	Project Name	TOR Status and Recommendation date by SEAC
1	4510-4404	M/s. New Eoan Associates	354 th Meeting dated 30/08/2018, but not Issued by SEIAA
2	4512-4384	M/s. Eureka Mines & Minerals	353 th Meeting dated 29/08/2018, but not Issued by SEIAA
3	4513-4406	M/s. Harihar Minerals LLP	354 th Meeting dated 30/08/2018, but not Issued by SEIAA
4	4335	M/s. Choudhary Int Udyog	367 th Meeting dated 23/10/2018, but not Issued by SEIAA
5	4437	M/s. Satyam Construction	367 th Meeting dated 23/10/2018, but not Issued by SEIAA

d) Whether projects were compliant to the conditions of ToR?

The project mentioned below was observed to be not in compliance to the provision of ToR.

Index No.	File No.	Project Name	Compliance of ToR Conditions
3	4325	M/s Sai Constructions & Suppliers	Not Complied Monitoring will be carried out in postmonsoon, i.e., October to December

e) Public Hearing before Issuance of ToR?

All projects under consideration of the report had been appraised by SEAC as per recommendation of specific ToR. So, applicability of standard ToR did not arise.

Provision of para (vii) of MoEF&CC OM no. J-11013/41/2006-IA-II(I) Part dated 29.08.2017 allows acceptance of public hearing not older than 3 years from the date of appraisal of project for EC. However, two projects mentioned

below were appraised by SEAC and recommended for issuance of ToR with certain conditions, which were in variation with the Standard ToR.

<i>Index No.</i>	<i>File No</i>	<i>Project Name</i>	<i>ToR Date</i>	<i>Public Hearing Date</i>
1	4335	M/s Chaudhary Int Udyog	367 th meeting dt. 23/10/2018	26.09.20 18
2	4437	M/s Satyam Construction	367 th meeting dt. 23/10/2018	05.10.20 18

Therefore, the Public hearing carried out on Draft EIA/EMP study report based on SToR was legally not valid for acceptance for its appraisal for grant of EC.

- f) Environmental Clearances granted were based on Regional EIA/EMPs or individual EIA/EMP?

All projects (**Cluster** or **Individual**) were granted EC based on appraisal of individual EIA/EMP reports.

Regional EIA/REMP were considered for first time appraisal for projects under **Cluster** category, and in-principle recommendation for grant of EC was made by SEAC, subject to submission of Individual EIA/EMP. Thereafter, in compliance to the decision of joint meeting held on 14.11.2018 of SEIAA and SEAC, all projects except, individuals were appraised by SEAC on individual EIA/EMP reports and recommended for grant of EC to SEIAA.

- g) Regional Environment Impact Assessment studies (REIA) / Environment Management Plan (EMP) is legally acceptable for grant of EC?

As per provision of notification dt. 15.01.2016, the projects related to Minor Minerals of smaller size, and having potential to form cluster are required to be screened for its cluster formation. Based on the cluster situation, cluster EIA/EMP is required to be prepared and accordingly Public hearing to be conducted.

The Committee observed that there was no specific mention for non-acceptance or legal invalidity in consideration of REIA/REMP in any Notification pertaining to prior EC for minor mineral projects.

MoEF&CC Notification No. S.O.2269(E) dated 01.07.2016 has been referred to which reads as follows:

“Note: In the State of Rajasthan, for mining of minor minerals, in situation of a large number of leases or quarry licenses of very small size (up to one hectare each) in contiguous area, the mines and Geology Department of the State shall:

(C) prepare a Regional mine plan and Regional Environmental Management Plan including all the clusters in that contiguity.

Therefore, the concept of Regional EIA/EMP is not alien and not unacceptable, if the SEAC/SEIAA after due diligence consider it necessary to meet the underlying objective of EIA notification, 2006.”

Therefore, according to the Committee where cluster is formed for minor mineral projects, cluster EIA/EMP are

legally required under Notification dated 15.01.2016 as per Appendix-XI thereto.

The REIA/REMP received by MoEF&CC was examined and found that the essential requirements as stipulated in para 2 of the Appendix XI have been provided. Therefore, the reports are legally acceptable as cluster EIA/EMP.

According to the report, 29 projects forms cluster (i.e., <500 m distance criteria) at the time of TOR application. There are projects which are forming cluster like situation where the distance is more than 500 m but are in close proximity of other mines, not included in this report. However, if the critical conditions are available in the report either for the cluster or regional, REIA/REMP will be more scientifically acceptable report, but has to be accepted by the SEAC after due diligence at the stage of grant of ToR.

SEAC after appraising the projects had recommended following two conditions:

- a) There is no specific mention of scope in reference to cluster or Individual EIA/EMP, but has highlighted the reference of Notification dated 15.01.2016
- b) Specific mention of Regional Combined Regional Combined Environment Management Plan (RCEMP).

From the above, it was understood by the Committee that recommendation of Regional Combined EMP was a

considered decision and had been given to certain number of projects.

The purpose of the requirement of due diligent appraisal of the project by SEAC is to identify the probable environmental concern and prescribed appropriate conditions for conducting impact assessment studies so that EMP can be prepared considering all externalities. All projects had been appraised by SEAC for issuance of ToR, but it is observed that SEAC recommendations of specific conditions lacked due diligent assessment to be in agreement with the provisions of Notification dated 15.01.2016.

Therefore, projects forming cluster not prescribed for scoping/RCEMP were not in compliance to the provision of the Notification dated 15.01.2016 and legally not acceptable. The list of such projects is as given below:

Index No.	File No.	Project Name
1	4141	M/s Pehalwan Traders
2	4192	M/s Kanha Construction Company
4	4155	M/s Balaji Enterprises
5	4182	M/s Bindu And Ram Construction
6	4140	M/s Indus Mines and Minerals
10	4233	M/s Gyan Infrabuild Pvt Ltd
11	4061	M/s Kunwar Infradevelopers Pvt Ltd
14	4304	M/s Senvin Infrastructure Pvt. Ltd.
16	4156	M/s. D V Construction
17	4070	M/s. Rama Traders

18	4219	Smt. Kaushilya Chobey Contractor
19	4234	M/s Silver Mist Retail Pvt. Ltd.
21	4194	M/s Bharat Earth Movers
22	4164	M/s. Rajesh Enterprises
23	4160	M/s. Harihar Minerals LLP
24	4100	M/s Silver Mist Retail Pvt. Ltd.
28	4335	M/s Chaudhary Int Udyog
29	4437	M/s Satyam Construction

- h) Fresh Public consultation is required after additional details are sought by SEAC?

Referring to the relevant part of the Notification dated 15.01.2016, the Committee observed as follows:

The decision to call for fresh public consultation is generally applied when the Public consultation procedure as stipulated in Appendix IV of Notification 2006 has not been complied. The SEAC/SEIAA during their appraisal and consideration of the project has to take such decision. Any additional details called for by SEAC are required for further appraisal and doesn't require any fresh public hearing.

In views of the above, the Committee was of the view that call for fresh public hearing was not required as per provision of Notification dated 2016, provided the projects were in cluster and the Public hearing has been conducted as per the requirement of Appendix IV of the Notification 2006.

- i) EIA reports considered for appraisal were in compliance of the provision of the Notification, 2016.

EIA Notification 2006, Appendix III stipulates generic structure for preparation of EIA/EMP document, wherein all relevant information in structured form is required to be presented in a document. Any additional information sought or study prescribed in ToR has to be appropriately incorporated in the EIA/EMP report.

Additionally, provision of Appendix XI of Notification dated 15.01.2016 (Notification, 2016) stipulates certain essential requirements in EIA study reports for minor minerals.

SEAC/SEIAA informed during the interactive meeting with EAC on 22.03.2019 that all reports which were appraised by SEAC for grant of EC were in conformity with the prescribed structure of Appendix III of EIA Notification 2006.

The available records, after examination suggested that EIA/EMP reports of **individual** projects, which were uploaded and considered for appraisal, were in conformity with the provisions of Appendix XI, of EIA notifications, 2016 and structure prescribed in Appendix III of Notification, 2006. Therefore, according to the Committee, the EIA/EMP reports considered by SEAC for recommending grant of EC to SEIAA was acceptable for all individual projects with regard to generic requirement for preparation of EIA/EMP document as per the provision of Notification, 2016.

Records suggested that corresponding content of each projects were derived from respective REIA/EMP and accordingly, Individual EIA/EMP were prepared and uploaded on the website for consideration of Competent authority.

Further, on examination of the EIA/EMP reports pertaining to **cluster** projects which were available on the web-portal SEIAA, all requisite chapters were available in the report as per provision of Appendix XI of EIA Notification 2016.

Technical and scientific content of the reports had not been examined.

- j) Specific deviations observed from stipulated procedure and provisions of the Notification.

A joint meeting of SEIAA and SEAC was held on 14.11.2018, where certain decisions were taken, which included the following:

“No REIA will be entertained. There will be only individual or cluster EIA.

“The committee / authority also decided that in case there is any mention of REIA/REMP in any of the minutes of SEIAA/SEAC, it should be treated as deleted.

The Committee observed that the scope of EIA/EMP studies is defined at the stage of ToR appraisal. SEIAA did not have the authority to define the scope of TOR and, the SEAC has to appraise the projects with due diligence and specify project specific conditions. Such decision according to the Committee defies the underlying objectives of the notification.

It was further noted that the decision of the joint meeting did not reject the REIA report, but has asked for Individual or cluster EIA. However, any change in scope of work for EIA /EMP Studies after lapse of 30 days from date of

application for ToR was not legally acceptable within the provision of Notification S.O. 996(E) dated 10 April 2015. Therefore, the changes arising out of this decision had been considered as legally not acceptable.”

20. Based on the above observations, the Committee has concluded as follows:

- “a). *Following projects were found to be in compliance to the procedural requirement and acceptable as per the provision stipulated in Notification 2006, 2015 and other OM issued by MoEF&CC for grant of prior EC given in **Table 6.1**.*

Table 6.1

Projects found legally compliant to the procedural provisions of Notification

S.No.	Index No.	File No.	Project Name
1	8	4358	M/s Vikas Enterprise
2	9	4227	M/s Chaudhary Traders
3	15	4376	M/s Baba Bholenath Traders
4	26	4384-4512	M/s Eureka Mines and Minerals LLP
5	27	4406-4513	M/s Harihar Minerals LLP
6	31	4529	M/s Yadav and Sons
7	32	4438-4533	M/s New Praveera Infraheight Pvt. Ltd.
8	33	4446-4534	Shri Rahul Kumar Gupta
9	34	4420-4531	M/s Kanhaiyalal And Sons
10	35	4426-4532	M/s Kamalnath Enterprises Private Limited

- b). *The provision of para 2 of the Appendix 11 of EIA Notification 2015 were found to be incorporated in the REIA/REMP reports, however, the attributes and comprehensiveness of the content were not assessed. The SEAC is required to make such assessment and with limited information available on deliberation held during appraisal process, it was felt inappropriate to put any observation on qualitative and comprehensiveness of the content. It is submitted that such information be submitted by SEAC/SEIAA directly, if deemed necessary by Hon’ble NGT.*
- c). *The decision to change the scope of EIA study after 30 days of application in a joint meeting held on 14.11.2019 is not as per provision of the notification,*

and due care should be taken in future to avoid such procedural lapses.

- d) The Screening and Scoping needs to be more comprehensive and in accordance with the provision made in the notification.”*

21. From the report of the CPCB and MoEF&CC it appears that all steps prescribed for grant of EC, namely Screening, Scoping, Public Consultation, Appraisal by the Competent Authority had been followed in respect of all the projects in question as would appear from the following observations:-

- “a) All the 36 projects were considered in the report. There were 16 individual and 30 cluster forming projects in Category B-I. 30 cluster forming projects were required to prepare cluster EMP but only 14 projects were prescribed for preparation of Regional Combined EMP in the ToR. ToR recommendation of SEAC also did not specify combined EMP (cluster EMP) for the cluster forming projects. Accordingly such ToR had been considered as individual EMP for assessment of its acceptability in the report. Applying this principle out of the 36, 16 were found to be compliant under the cluster category and 20 non-compliant.*
- b) All projects were appraised by the SEIAA for grant of ToR were recommended for issuance of ToR and, therefore, application for standard ToR did not arise. SEIAA had issued ToR for all projects except 05.*
- c) Only 01 project was found to be non-compliant of the provisions of the ToR.*
- d) Only in respect of 02 projects hearing was carried out before the issuance of ToR. All projects, be it cluster or individual, were granted EC based on appraisal of individual EIA/EMP Reports. Regional EIA/EMP was considered for appraisal under cluster category and in-principle recommendation for grant of EC was made by SEAC subject to submission of EIA/EMP. Thereafter following the decision of joint meeting of the SEAC/SEIAA held on 14.11.2018 all projects except individual, were appraised by SEAC on individual EIA/EMP reports and recommended for grant of EC to SEAC.*
- e) REIA was found to be acceptable having regard to the provision contained in MoEF&CC Notification dated 01.07.2016 which makes provisions in Regional Mine Plan (RMP) and Regional Environment Management Plan (REMP) and the fact that cluster EIA/EMP is necessary where cluster is formed for minor mineral projects. Apart from the requirement of Part 2 of Appendix XI to the EIA Notification for preparation of EIA and EMP Reports for mining of minor minerals including cluster, capturing of possible*

externalities, carrying capacity of cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of cluster area have been satisfied. Thus the essential requirements of para 2 of Appendix XI having been satisfied, the REIA/REMP Report was legally acceptable as a cluster EIA/EMP. The recommendation of RCEMP was found to be a considered decision and has been given to some of the projects.

- f) All projects have been appraised by the SEAC for issuance of ToR but the recommendations of the SEAC of specific conditions lack due diligence and assessment and put inconsonance with the provisions of Notification dated 15.01.2016.*
- g) Thus the projects forming cluster and not prescribed for Scoping RCEMP were not in compliance of the provisions of Notification 15.01.2016 and, therefore, legally not acceptable. There were 29 projects were found to be falling under this mischief.*
- h) No fresh public hearing was required, provided the projects are in cluster and public hearing as per requirement of Appendix IV of EIA Notification, 2006.*
- i) The EIA/EMP Reports of individual projects which were uploaded and considered for appraisal were in conformity to the provisions of Appendix XI of EIA Notification, 2016 and structure prescribed in Appendix III of EIA Notification, 2006. Thus, EIA/EMP Report considered by SEAC for recommending grant of EC to SEIAA is acceptable for all individual projects with regard to generic requirement for preparation of EIA/EMP document as per the provision of EIA Notification, 2016.*

It has been specifically noted that corresponding content of each project were derived from respective REIA/REMP based on which individual EIA/EMO were prepared and uploaded on the website for consideration of Competent Authority. The EIA/EMP Reports pertaining to cluster projects contain all requisite chapters as per provision of Appendix XI of EIA Notification, 2016.

- j) Though by decision of the SEIAA/SEAC taken in the meeting dated 14.11.2018 not to entertain REIA except individual or cluster EIA and to delete any mention of REIA/REMP in any of the minutes of the SEIAA/SEAC, was considered to be arbitrary. The REIA Report, in fact, was not rejected but individual or cluster EIA was sought for. Since no change in the scope of the work for EIA/EMP studies was permissible after 30 days from the date of application of ToR, the changes arising out of any decision making changes in the scope of the work was considered as legally not acceptable.”*

22. Thus, taking into consideration the above facts and circumstance, it had been found that only 10 of the projects were legally compliant to the prescribed provisions of the EIA Notification, 2006.

23. Mr. Pradeep Misra, learned counsel for the State of UP by filing written submissions has relied upon the report of the Committee of the CPCB and the MoEF&CC and his only additional submission pertained to exclusion of M/s. Awasthi Traders from the list of the legally compliant projects given in table 6.1 of the Report of the CPCB and MoEF&CC which, according to him, required to be rectified.
24. Upon hearing the learned counsel for the parties, examination of the affidavits and report filed by the CPCB and MoEF&CC and the written submissions on record, it is quite evident that all the individual ECs submitted were based upon the REIA and no EIA studies had been carried out in respect of the individual projects. Therefore, it would first be necessary to determine as to whether such process was valid in accordance with law and satisfies the requirement of environmental safeguards enunciated by the Hon'ble Supreme Court in *Deepak Kumar & Ors. v. State of Haryana & Ors.*¹ case, the EIA Notification, 2006, the Office Memorandums and Notification in relation thereto. Rest of the questions would then fall in its places.
25. In order to determine the question, it would be necessary to survey the legal regime relating to mining of minor minerals. Prior to the year 1994, there was no specific regime governing mining activity being carried out. The Notification issued by MoEF on 27.01.1994, in exercise of the powers vested in it under Sub-Rule 3 of Rule 5 of the Rules of 1986 and Sub Section (1) and Clause (v) of Sub-Section (2) of Section 3 of the Act of 1986, prescribed the requirement and

¹ (2012) 4 SCC 629

procedure for seeking Environmental Clearance for the projects listed in Schedule I. Schedule I of this Notification did not list mining projects of minor minerals. On the contrary, the projects covered under S. No. 20 of Schedule I of this Notification were only mining projects (major mineral) with leases more than 5 hectare. It provided for the constitution of Expert Committees and preparation of Environmental Impact Assessment Report which was to be evaluated and assessed by the Impact Assessment Agency. In exercise of its aforesaid statutory powers, the Central Government on 14th September, 2006, issued the 'Environment Impact Assessment Notification, 2006'. In terms of this Notification, the projects as stated in the Schedule to this Notification required prior Environmental Clearance as per the procedure. The projects have been categorised into two kinds, i.e., Category 'A' and Category 'B' under Clause 2 of the Notification. Projects under Category 'A' were required to take prior Environmental Clearance from the MoEF&CC. For Category 'B' projects, Environmental Clearance was to be granted by State Environment Impact Assessment Authority (SEIAA).

26. The mining of minerals (both major and minor) were also brought under the ambit of the EIA Notification, 2006 according to which the mine lease area of more than equal to 50 ha was Category 'A' and those less than 50 ha and more than equal to 5 ha was category 'B' project. Mine lease area of less than 5 ha (both major and minor) was kept out of the purview of the EIA Notification.
27. In *Deepak Kumar* (supra) case, the Hon'ble Supreme Court extensively examined the environment concerns arising out of mining

of minor minerals and its impact on the environment. After appreciating the serious environmental impact of mining of minor minerals on the river's physical habitat characteristics, it was observed that it was necessary to have a proper Environmental Assessment Plan. This led to the MoEF&CC issuing Office Memorandum dated 18.05.2012 by which it was *inter alia* provided that all mining projects of minor minerals including their renewal, irrespective of the size of the lease, would thenceforth require prior EC and that such projects with lease area of less than 5 hectare would be treated as Category B as defined in EIA Notification, 2006 which would be considered by the respective SEIAA as notified by the MoEF&CC following the procedure prescribed under the EIA Notification, 2006.

28. In I.A. No. 12-13 of 2011 in SLP Nos. 729-731/2011, 21833/2009, 12498-499/2010, SLP (C) CC 16157/2011 & CC 18235/2011 (*Deepak Kumar* (supra)) Hon'ble Supreme Court in its order dated 27.02.2012 on the subject of cluster, has quoted the following submission of the MoEF&CC in its affidavit dated 23.11.2011.

"The Ministry is of the opinion that where the mining area is homogeneous, physically proximate and on identifiable piece of land of 5 hectare. or more, it should not be broken into smaller sizes to circumvent the EIA Notification, 2006 as the EIA Notification, 2006 is not applicable to the mining projects having lease area of less than 5 hectare. The Report of Committee on Minor Minerals, under the Chairmanship of Secretary (E&F) with representatives of various state governments as members including the State of Haryana and Rajasthan recommended a minimum lease size of 5 hectare for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Only in cases of isolated discontinued mineral deposits in less than 5 hectare, such mining leases may be considered keeping in view the mineral conservation".

29. The order further quotes that "Cluster of Mine Approach for Small Sized Mines: Considering the nature of occurrence of minor mineral, economic condition of the lessee and the likely difficulties to be faced by Regulatory Authorities in monitoring the environmental impacts and implementation of necessary mitigation measures, it may be desirable to adopt cluster approach in case of smaller mine leases being operated presently. Further these clusters need be provided with processing/crusher zones for forward integration and minimizing excessive pressure on road infrastructure. The respective State Governments/Mine Owners Association may facilitate implementation of Environment Management Plans in such cluster of mines." The order has further quoted the letter dated 01.06.2010 written by the then Minister of Environment, Forest and Climate Change which states that "A cluster approach to mines should be taken in case of smaller mines leases operating currently".
30. It was directed that all the States, UTs, MoEF&CC and Ministry of Mines were directed to adopt the recommendations of the MoEF&CC. According to Office Memorandum dated 24.06.2013 issued by the MoEF&CC, cluster situation would arise if the periphery of one lease area is less than 500 meters from the periphery of other lease area. On the issue of cluster, the National Green Tribunal (NGT) by order dated 13.01.2015 in O.A. No. 123/2014 directed the MoEF&CC to formulate a uniform cluster policy in consultation with the States for permitting minor mineral mining activity including its regulatory regime, in the light of the judgement of the Hon'ble Supreme Court in *Deepak Kumar* (supra).

31. In the Sustainable Sand Mining Management Guidelines, 2016 it has *inter alia* been observed as follows:

“The EIA Notification, 2006 does not provide for issuance of Environment Clearance to Cluster of mines. It provides for EC to individual lease holders / project proponents. This position has also been upheld by the Hon'ble Supreme Court in its judgment of Vivek Bansal Vs. State of Haryana that EC should be applied for and granted to the individual lease holder.

There has been rising concerns about adverse impact of mining on small leases (less than 5 hectare) in case the numbers of such leases are large and they are located in close proximity to each other. This leads to the definition of Cluster. To avoid the rigors of environment impact assessment studies, environment management plan and the environment clearance there has been a tendency to break the leases into size which does not attract the provisions of environment impact assessment studies, environment management plan, public consultation and the environment clearance. In Deepak Kumar's case Hon'ble Supreme Court also encountered this situation and in its order dated 27.02.2012 mandated that no mining lease or renewal be done without environment clearance irrespective of size.

It is seen that the categorization of mines into 'B1' and 'B2' category in which Category 'B2' leases are being exempted from the requirement of Environment Impact Assessment, Environment Management Plan, and Public Consultation for grant of EC, in many cases now the mining leases are being given for 25 hectare or less. This defeats the purpose and intent of Hon'ble Supreme Court Judgment which orders environment clearance for all mining leases irrespective of size. The environment clearance without Environment Impact Assessment, Environment Management Plan, and Public Consultation does not serve the purpose of environment clearance which is to ensure environmentally sustainable and socially responsible mining. So if a cluster or individual lease size exceeds 5 hectare, the EIA/ EMP should be completed in the process of grant of prior environment clearance.

The EIA Notification, 2006 and subsequent amendments to that or any O.M. issued by the Ministry do not provide for procedures and Competent Authority for environment clearance for cluster. In a cluster there will mostly be situation where there are a number of different lease holders and as per the settled law the lease holder has to do the working of mine and the lease holder is the one who can apply for and get the environment clearance. The conditions stipulated in the environment clearance have to be complied by the EC holder and any violation of that empowers the authority to cancel the environment clearance or prosecute the EC holder if necessitated by the circumstances.

For cluster there is no mechanism about who will apply for EC, EC will be issued in whose name, and who will be responsible for compliance of EC conditions.

The intent of cluster assessment is to have a holistic knowledge of the impact on environment by different mines operating in close proximity of each other. There are also requirement of mitigative measures which need implementation in concerted

manner by different EC holders of that cluster. To ensure that it is important that there should be an integrated Environment Impact Assessment / Environment Management Plan for the cluster to be presented before the authority appraising the projects and considering the proposals for grant of EC. This integrated EIA/ EMP can be prepared by either the lease holder, group of lease holders, State or the State Agencies. This EIA/ EMP need to be prepared by the accredited consultants / Registered Qualified Persons of the State Governments. The application for EC and grant of EC should be done in the name of individual lease holders in the background of the integrated EIA/EMP report. The Competent Authority (SEIAA/ SEAC / EAC) will entertain individual lease holder's application for grant of EC to individual mining lease projects in that cluster in the name of lease holders. The conditions related to mitigative measures necessitated by the integrated EIA/EMP may run across more than one lease holder or EC holders, that should figure in each EC accordingly and its compliance be ensured by the individual EC holders.

The Hon'ble Supreme Court, NGT, SEAC/EAC and the Project Proponents have raised issue of cluster in mine lease allotment and environment clearance for the same, so following conditions need to be ensured for cluster of mines:

1. To address the concern of adverse impact of minor mineral mining on environment it is proposed that all mining activity including river sand mining (above 5 hectare individual or cluster) will need to prepare Environment Impact Assessment Report and Environment Management Plan before grant of environment clearance. These reports (EIA /EMP) can be prepared by the State or State nominated Agency / the Project Proponent (s).
2. As can be seen from the data provided by the States most of the mining leases for minor minerals are of lease area less than 5 hectare. It is also reported that in hill states getting a stretch in river with area more than 5 hectare is very uncommon. So the size of lease for minor minerals including river sand mining will be determined by the States as per their circumstances.
3. The EIA Notification, 2006 does not provide for cluster EC, it provides for issuance of EC to individual project proponents and the same has also been upheld in the judgment of Hon'ble Supreme Court in Vijay Bansal vs. State of Haryana case. So EC will have to be applied for and issued to the individual project proponent.
4. A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area.
5. The mining of minor minerals is mostly in clusters. The Environment Impact Assessment or Environment Management Plan are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The Environment Impact Assessment or Environment Management Plan shall be prepared by the State or State nominated Agency or group

of project proponents in the Cluster or the project proponent in the cluster.

6. *The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management Plan shall be updated as per need keeping in view any significant change.*
7. *There shall be one public consultation for entire cluster after which the final Environment Impact Assessment or Environment Management Plan report for the cluster shall be prepared.*
8. *The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each environmental clearance in that cluster and District Expert Appraisal Committee (DEAC), SEAC, and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental clearance conditions in the environmental clearance's of individual project proponents in that cluster.*
9. *As the sand is mostly mined from rivers and majority of the rivers which are important source of sand also form boundary between States, so because of General Conditions most of the sand mining projects become Category 'A' project. So the General Conditions will not apply in case of river sand and gravel mining projects on account of being in 5 kilometer of inter-state boundary.*
10. *The Committee headed by the District Magistrate or District Collector will be empowered to appraise and grant EC for mining leases up to 5 ha in case of individual lease and up to 25ha in case of cluster for sand mining."*

32. By Notification dated 15.01.2016, Category 'B' was split into Category 'B1' and 'B2'. Category 'B2' was again split into areas of 0-5 hectare and 5-25 hectare. While 0-5 hectare was exempted from the requirement of EIA/Public Consultation, such exemption was provided also for mining areas of 5 hectare to 25 hectare with the District Expert Appraisal Committee (DEAC) and the District Environment Impact Assessment Authority (DEIAA) as the prescribed authority for evaluation and grant of EC. Category 'B1' being mining areas of 25 hectare to 50 hectare, the authorities prescribed were the

SEAC and SEIAA. For those lease areas in excess of 50 hectare being 'A', it was the EAC and the MoEF&CC.

33. The procedure for grant of the EC by the DEIAA for areas between 0 to 5 hectare falling under Category 'B2' was prescribed in paragraphs 6, 7(iii)(a) and 7(iii)(b) of the impugned Notification read with appendices VIII, X and XI. The Schematic Presentation of Requirement of Environment Clearance of Minor Minerals including cluster situation provided in a table to Appendix XI substantiated that even for areas between 5 to 25 hectare, no EIA and Public Hearing was required and in cluster situation also, the requirement of EIA and Public Hearing had been exempted.
34. At this stage it may be observed that in *Satendra Pandey v. Ministry of Environment, Forest and Climate Change & Anr.*² along with a batch of other applications, the NGT by order dated 13.09.2018, rejected the procedure for grant of EC by the District Environment Impact Assessment Authority (DEIAA) for areas 0 to 5 hectare falling under Category B-2 as prescribed in paragraphs 6, 7(iii)(a) and 7(iii)(b) of the EIA Notification dated 14.09.2006 as amended vide Notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 holding it to be inconsistent with the directions contained in *Deepak Kumar* (supra). It was observed that mining area upto and from 5 hectare to 25 hectare had been completely exempted from the EIA and Public Consultation and, for the areas below 5 hectare, it had been made only subject to a separate procedure of preparing a District Survey Report (DSR). It was, therefore, directed as follows:

² O.A. No. 186/2016 (M.A. No. 350/2016) and other connected matters

“22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of *Deepak Kumar (supra)* by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (*supra*) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; (vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.”

35. It may be noted that the Sustainable Sand Mining Management Guidelines 2016 has adopted the recommendation of the Core Group formed by the MoEF&CC that was accepted by the Hon'ble Supreme Court in *Deepak Kumar (supra)*.
36. Pursuant to the decision of the Hon'ble Supreme Court in *Deepak Kumar (supra)* and the order of this Tribunal dated 13.01.2015, the MoEF&CC issued Notification dated 15.01.2016 by which *inter alia* clause 7 (iii) providing for preparation of District Survey Report (DSR) for sand mining or river bed mining and mining of other minor minerals was introduced and, under 7 (ii) (b) and Appendix XI, the procedure for EC for mining of minor minerals including cluster was introduced for the first time. As per Appendix XI, it was left on the States to decide on the size of the lease for minor minerals including river sand mining as per their circumstances. It was noted that as mining of minor minerals was mostly in clusters, the Environment Impact Assessment (EIA) or Environment Management Plan (EMP)

was required to be prepared for the entire cluster in order to capture all the possible externalities. The report would capture the carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area, etc. The EIA and EMP report would be prepared by the State or State nominated Agency or group of project proponents in the cluster and one public consultation for entire cluster was sufficient after which, the final EIA or EMP report for the cluster was to be prepared. The individual lease holders could use the same EIA or EMP for application for EC. The cluster was to be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogenous mineral area. Schematic presentation of requirement on EC of minor miners including cluster situation as prescribed is reproduced below:

Area of Lease (Hectare)	Category of Project	Requirement of EIA/EMP	Requirement of Public Hearing	Requirement of EC	Who can prepare EIA/EMP	Who will apply for EC	Authority to appraise / grant EC	Authority to monitor EC compliance
<i>EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease</i>								
0 – 5ha	'B2'	Form-1M, PFR and Approved Mine Plan	No	Yes	Project Proponent	Project Proponent	DEAC/ DEIAA	DEIAA SEIAA SPCB CPCB MoEFCC Agency
>5ha and < 25ha	'B2'	Form-1M, PFR and Approved Mine Plan and EMP	No	Yes	Project Proponent	Project Proponent	SEAC/ SEIAA	Nominated by MoEFCC
≥25ha and < 50ha	'B1'	Yes	Yes	Yes	Project Proponent	Project Proponent	SEAC/ SEIAA	
≥50ha	'A'	Yes	Yes	Yes	Project Proponent	Project Proponent	EAC/ MoEFC C	
<i>EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation</i>								
Cluster area of mine leases up to 5 ha	'B2'	Form-1M, PFR and Approved Mine Plan	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	DEAC/ DEIAA	DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC
Cluster	'B2'	Form-	No	Yes	State,	Project	DEAC/	MoEFCC

area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 ha		1M, PFR and Approved Mine Plan and one EMP for all leases in the Cluster			State Agency, Group of Project Proponents, Project Proponent	Proponent	DEIAA	
Cluster of mine leases of area \geq 25 hectare with individual lease size < 50ha	'B1'	Yes	Yes	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	SEAC/SEIAA	
Cluster of any size with any of the individual lease \geq 50ha	'A'	Yes	Yes	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	EAC/MoEFC C	

37. Thus the concept of cluster has since crystalized in the form of Appendix XI to the EIA Notification, 2006 as per which clusters could be formed for lease area measuring 0-5ha, 5ha-25ha, 25ha-<50ha and 50ha and above. This aspect being relevant for the purpose of the case, other parts of the provisions need not be gone into.
38. From the analysis of the *Deepak Kumar* (supra), the Sustainable Sand Mining Management Guidelines, 2016 and the various Office Memorandums issued by the MoEF&CC, more particularly Notification dated 15.01.2016, there can be no doubt that the concept of cluster would apply where distance between the peripheries of one lease area is less area than 500 meters from the periphery of other lease in a homogenous mineral area as prescribed under the Schematic Presentation referred to earlier.
39. EIA or EMP are required to be prepared for the entire cluster in order to capture all the possible externalities like carrying capacity of the

cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area.

40. The individual lease holders in cluster can use the same EIA or EMP for application for EC.
41. One public consultation for entire cluster was sufficient for preparation of the final EIA or EMP report for the cluster.
42. In the light of the above position, we may now examine the facts of the present case.
43. As already noted, all ECs in respect of the projects in question were essentially issued on the basis of the REIA as the individual EIAs were prepared on the basis of the REIA. There is no dispute in this regard. The question that calls for consideration is as to whether the REIA would satisfy the requirement provided in the EIA Notification required under Appendix XI inserted to the EIA Notification on 15.01.2016. This would be the moot question that would be relevant for a decision in the case. The case of State of UP as argued by the learned counsel for the State, the SEIAA, UP and M/s. Gyan Infrabuild Pvt. Ltd. is that the REIA was an amalgamation of all the EIA studies of the individual mining leases. Individual EIAs had first been prepared which were later combined to prepare the REIA consisting of some common features such as carrying capacity, transportation and related issues, replenishment and recharge issues, geo-hydrological study etc. However, as the SEAC had directed the project proponent to submit individual EIA study of the project before the cases would be considered, the project proponents

submitted individual EIA which culminated in the grant of the ECs. This is the stand of the SEIAA in respect of all the 12 mining leases involved in Appeal No. 263/2018. The case of 24 leases involved in Appeal No. 264/2018 is also the same. However, on a closer examination, we notice an unmistakable dichotomy in the stand and the replies rather evasive. It defeats all sense of reasoning as to why REIA should have been when it was necessary to submit individual or cluster EIAs.

44. We also find it quite extraordinary for the SEIAA to contend that the individual EIA submitted by the project proponent exhibited study on each essential aspect of environment and confirmed to generic structure of EIA document as provided in Appendix III of the EIA Notification, 2006 as amended.
45. The Report of the Committee of the MoEF&CC and the CPCB mentions that in the appraisal of the projects by the SEAC, there was no specific mention of the scope of reference to cluster or individual EIA/EMP but has highlighted Notification dated 15.01.2016 and a Regional Combined Environment Management Plan (RCEMP). The Committee has concluded that the recommendation of RCEMP was a considered decision which we find it difficult to persuade ourselves to accept. The paramount requirement is the EIA based upon which EMP is prepared and which are thereafter required to be submitted together for consideration by the SEAC before grant of EC. Moreover Notification dated 15.01.2016 envisages preparation of cluster EIA and EMP in a cluster situation arising. Therefore, the conclusion deduced by the Committee would be in conflict with the Notification

dated 15.01.2016. There appears to be failure on the part of the SEAC to exercise due diligence at the time of grant of ToR as would appear from the vagueness of the recommendation of the SEAC referred to by the Committee.

46. From the status report filed by the SEIAA, UP and the report of the Committee, we find that strenuous efforts have been made to sustain the process undertaken for the purpose of grant of ECs to the mining projects in the present case in stating that essential requirements as stipulated in paragraph 2 of Appendix XI had been provided and in conformity with the prescribed structure of Appendix III of EIA Notification, 2006.
47. In other words, the contention is that there was substantial compliance of the provisions of the EIA Notification and related Office Memorandums and its Notifications. In our considered opinion, if such proposition is to be accepted, it will run counter to the object of having the necessity of EIA studies.
48. From all these facts and circumstances, we are quite convinced that it was in fact the REIAA that was first prepared and the individual EIAs emanated later from such REIA when the SEIAA insisted upon submission of individual EIA. We may refer to the compliance report submitted by SEIAA, UP, in this regard.
49. Our impression gains support from the application filed on behalf of the project proponent, M/s. Gyan Infrabuild Pvt. Ltd. as would appear from the following averments:

“5(J) That on the basis of TOR, the consultant of the Applicant got Environment Assessment Study made not only to the area under the lease to the Applicant but also in respect of all the operating leases or potential leases for which simultaneous environment clearance applications have been made. While doing so the consultant of Applicant has located for the testing parameters and baseline data collection stations in respect of all the individual leases and where there was a duplication of stations, the same were rationalized. In total, environment impact study in respect of various parameters have been made at 82 stations (Ground water 10, Surface Water 10, Air Quality 26, Noise 26 and Soil sampling 10).

*(M) That on the draft report of Environment Impact Assessment, public hearing took place on 20.09.018 at Tehsil headquarter. Thereafter, the final report about the entire region was submitted which consists of Environment Impact Assessment in respect of individual leases of Applicant also including various parameters regarding transportation carrying capacity etc. etc. Since the report was for entire region, hence the consultant of Applicant termed it as Regional Environment Impact Assessment (REIA). The said report was considered in the meeting of State Environment Appraisal Committee (SEAC) in its 363rd meeting held on 15.10.2018 when the said committee has agreed in-principle that Environment Clearance can be granted to the Applicant, however as on Shri Amar Singh Bedi, Advocate, Delhi has made certain objections, hence the said Committee directed the Applicant to submit individual EIA to Directorate before the SEIAA meeting. Relevant extract of 363rd meeting dated 15.10.2018 is being enclosed herewith and marked as **Annexure-10.**”*

50. Further the report of the MoEF&CC and the CPCB also observes as follows:

“Records suggests that corresponding content of each projects were derived from respective REIA/EMP and accordingly, Individual EIA/EMP were prepared and uploaded on the website for consideration of Competent authority.”

51. Thus from the facts adumbrated above, the contradictory stand of the SEIAA, UP and the project proponents, we are of the firm view that it was the REIA that was carried out first and the individual EIAs were prepared based on the materials abstracted from the REIA.

52. The stand of the State of UP, the SEIAA, UP as well as the Committee is that the REIA satisfied all the requirements of a cluster projects as provided under Appendix XI of MoEF&CC Notification dated

15.01.2016. This in our view suffers from a grave fallacy considering the nature of a cluster EIA and a REIA. From the averments in paragraph 5(J) of the application submitted on behalf of the M/s. Gyan Infrabuild Pvt. Ltd. reproduced above, it eminently brings forth the fact that the Environment Assessment Study was made not only of the area under the lease to the Applicant but also in respect of all the operating leases or potential leases for which simultaneous clearance applications had been made. It is relevant to note that during the course of the hearing, the learned counsel for the State of UP has placed before us maps/drawings in respect of the area comprising as many as 20 clusters formed by the mining leases in question and others along the rivers covering considerable distances. It is contended that a REIA had been carried out for the entire region in which the clusters and individual mines are located on those rivers in the State of UP.

53. Thus, it is apparent that the REIA covered the entire region bringing within its ambit the 20 clusters and other individual lease areas. This certainly would not satisfy the procedure laid down under Appendix XI read with the schematic presentation of requirements on environmental clearance of minor minerals including cluster situation. The law mandates preparation of cluster EIA for each of the cluster along with an EMP for such cluster. If the view of the State of UP, the SEIAA, UP, the Committee and the project proponents is to be accepted, the decision in *Deepak Kumar* (supra) would be set at naught. We may refer to the following portion of the decision in that case:

“Further, it was also recommended that States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining Plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in 2010 rules. A proper framework has also to be evolved on cluster of mining of minor mineral for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked Rules/Notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.”

(Underlining supplied)

54. REIA is a macro level tool which only gives representative idea of impacts in general over in a large area. It is just an indicative tool which gives a bird’s eye view of situation. Only the individual EIA or cluster based EIA can bring out individual or cluster based impacts on environment.
55. Relying solely on REIA or carving out individual EIAs from it cannot give or capture impacts at the micro or individual levels and the EMPs based on such Impact Assessment Studies would be just representative in macro sense and not be able to mitigate impacts at the micro level. Such a situation would result in the recipient environment being the net loser, which cannot be permitted in terms of the tenets of Precautionary Principle. Moreover, such tendency of placing reliance on REIA which is a macro tool shall set a bad precedent to shadow or mask the micro level impacts which are quite significant in terms of its environmental consequences and, therefore, has a much larger need for mitigation. Reliance on such tools will give the authorities a false sense of environmental compliance whereas environmental degradation will continue at the same pace.

56. Thus, we are of the considered view that accepting the REIA as the cluster EIA for all the clusters by the project proponents, the SEIAA and the State of UP as well as the MoEF&CC and the CPCB, is fundamentally flawed. The very term REIA would mean assessment of the entire region and, therefore, would involve study at a macro level of the necessary environmental parameters and, therefore, quite different from a cluster or an individual EIA which would be more detailed bringing within its ambit deeper consideration of the various environmental questions being obviously at a micro level. Thus, considering the difference in the scale of studies, it would be fraught with risk and unsafe to apply the REIA study for the purpose of individual EIAs as is stated to have been done in the present case and is grossly inconsistent with the precautionary principle.
57. Since the foundational requirement of the EIA in all the ECs involved in the present case is flawed for the reasons aforesaid, other questions raised by the Appellant would be quite academic and, therefore, need not delay ourselves further.
58. No doubt the MoEF&CC and the CPCB in their report have referred to the note appended to Notification dated 01.07.2016 and have expressed that REIA/REMP are not alien to the process of EIA. However, on a bare reading of the Notification reproduced under paragraph (g) above, it will be quite apparent that it pertains specifically to the State of Rajasthan where there are a large number of leases or quarry licences of very small size in contiguous area. Thus, the State had been directed to prepare RMP and REMF including all the clusters in that contiguity. Clause C of the note is

clear and unambiguous in mentioning that the REIA/REMP would also include all clusters in that contiguity. Thus, the REIA referred to in the note provided in Notification dated 01.07.2019 relates to the peculiar circumstances obtaining in the State of Rajasthan whereby REIA could be carried out to include all the clusters lying in contiguity. The clusters are formed by the leases or quarry licences of very small size (upto 01 hectare each). In such a circumstance the REMP would justifiably be sufficient considering the area, size of the clusters and the studies required to be carried out.

59. For the aforesaid reasons, we hold unhesitatingly that the ECs granted to all the mining leases fail to satisfy the requirement of the EIA Notification 2006, directions issued by the Hon'ble Supreme Court in *Deepak Kumar* (supra), the Sustainable Sand Mining Management Guidelines, 2016 and the various Office Memorandums issued by the MoEF&CC in relation thereto. The ECs, therefore, deserve to be quashed and is accordingly ordered so.
60. In the result the Appeals are allowed.
61. No order as to cost.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

25th September, 2019
Appeal Nos. 263/2018 & 264/2018
avt

Minutes of State Environment Impact Assessment Authority (SEIAA) and State Expert Appraisal Committee (SEAC), U.P. Joint meeting Dated 23/10/2019

The joint meeting of SEIAA/SEAC was held on the following issues:-

Issue 1- For the compliance of Hon'ble NGT impugned order dated 13/09/2018 in the matter of O.A. No. 186 of 2016: Satyendra Pandey Vs MoEF&Cc and others.

The Authority and the Committee members examined O.M. dated 12/12/2018 issued by the MoEF&CC in compliance of the judgment of the Hon'ble National Green Tribunal order dated 13/09/2018 related to O.A. No. 186 of 2016: Satyendra Pandey Vs MoEF&CC and others. This matter was discussed earlier in the joint meeting of the SEIAA and SEAC on 05/02/2019, wherein, it was decided

"...in compliance MoEF&CC, GoI, OM dated 12/12/2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UP-SEIAA for Environmental Clearance. All concerned project proponents will apply to UP-SEIAA in Form-1 with other required supporting documents on online MoEF&CC website www.environmentalclearance.nic.in to process the application for grant of prior environmental clearance with immediate effect till further order. It has also been decided that mining area from 05 ha to 25 ha earlier falling under category B-2 will be treated as category B-1 as per NGT order dated 13/09/2018 and MoEF&CC, Govt. of India O.M. dated 12/12/2018 and shall follow all the aspects of EIA including Public Hearing/Public Consultation etc."

The Committee again discussed this issue in depth and decided that all the concerned 18 ECs annexed with letter no 559/parya/2019 dated 11/10/2019 may be revoked individually.

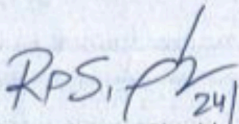
Issue 2-For the compliance of Hon'ble NGT impugned order dated 25/09/2019 related to Appeal No. 263 of 2018 and with Appeal No. 264 of 2018 : Amit Upadhyay Vs State Level Environment Impact Assessment Authority and Ors.

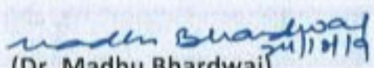
It came to the notice that after declaration of Hon'ble NGT order dated 25/09/2019 related to Appeal No. 263 of 2018 and with Appeal No. 264 of 2018 : Amit Upadhyay Vs State Level Environment Impact Assessment Authority and Ors. Member Secretary, State Level Environment Impact Assessment Authority has already sent letter for the compliance of the Hon'ble NGT order dated 25-09-2019 to DGM,UP and to the respective District Magistrates. Vide letter no. 297/Parya/SEIAA/ Appeal No. 263

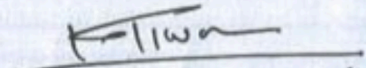
& 264 of 2018/NGT Compliance/18 dated 19 October, 2019. In the Joint meeting the following operative para of the order was discussed:-

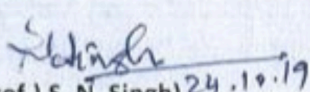
...*"For the aforesaid reasons, we hold unhesitatingly that the ECs granted to all the mining leases fail to satisfy the requirement of the EIA Notification 2006, directions issued by the Hon'ble Supreme Court in Deepak Kumar (supra), the Sustainable Sand Mining Management Guidelines, 2016 and the various Office memorandums issued by the MoEF&CC in relation thereto. The ECs, therefore, deserve to be quashed and is accordingly ordered so."*

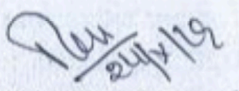
It was unanimously decided that all the concerned 36 ECs in question may be revoked immediately by the SEIAA to comply Hon'ble NGT order.

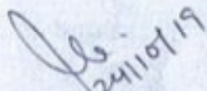

(Prof. Rana Pratap Singh)
Chairman, SEIAA

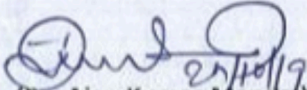

(Dr. Madhu Bhardwaj)
Member, SEIAA

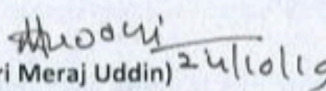

(SHRI ASHISH TIWARI, IFS)
MS- SEIAA

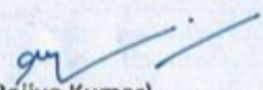

(Dr. (Prof.) S. N. Singh)
Chairman, SEAC


(Dr. Richhpal Singh Sangu)
Member, SEAC

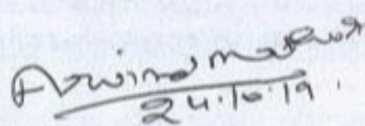

(Dr. R. K. Dalela)
Member, SEAC

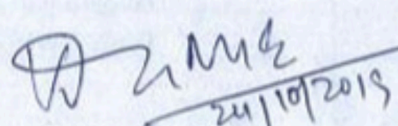

(Dr. Ajoy Kumar Mandal)
Member, SEAC

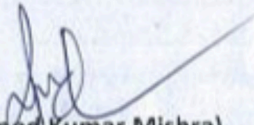

(Shri Meraj Uddin)
Member, SEAC

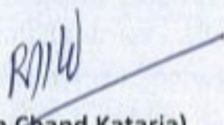

(Shri Rajive Kumar)
Member, SEAC

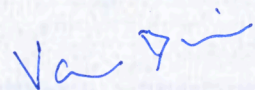
(Prof. S.K. Upadhyay)
Member


(Dr. Arvind Mathur)
Member


(Dr. Virendra Misra)
Member


(Dr. Pramod Kumar Mishra)
Member


(Shri Ramesh Chand Kataria)
Member


TRUE COPY

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.8590 OF 2019

M/S. KAMTANATH ENTERPRISES PVT. LTD. APPELLANT(S)

VERSUS

AMIT UPADHYAY & ORS. RESPONDENT(S)

WITH

Civil Appeal Nos.8591-8592/2019

Civil Appeal Nos.8152-8153/2019

Civil Appeal No.9053/2019

Civil Appeal No...../2019 (@Diary No.41496/2019)

Civil Appeal No...../2019 (@Diary No.41519/2019)

O R D E R

Applications seeking permission to file the appeals are allowed.

The appeals being Diary Nos.41496/2019 and 41519/2019 are admitted.

After hearing learned counsel appearing for the parties, upon perusal of the record and by consent of the parties, we pass the following orders :

It is not disputed that the environment clearance of large number of licensees have been set aside without an opportunity given to them for being heard by the Principal Bench, National Green Tribunal, New Delhi, (for short, the 'Tribunal').

We therefore consider it appropriate to allow these appeals, set aside the impugned orders and the consequential

orders, and remand the matter back to the Tribunal for a fresh decision after hearing the affected parties.

Order accordingly.

It is made clear that we have not expressed our view on the merits of the impugned decision rendered by the Tribunal. The Tribunal is free to pass such interim order as it may consider appropriate pending final decision in the matter.

The parties are directed to appear before the Tribunal on 17.12.2019.

.....CJI
[S.A. BOBDE]

.....J
[B.R. GAVAI]

.....J
[SURYA KANT]

NEW DELHI;
DECEMBER 13, 2019.

OUT TODAY

ITEM NO.6 + 42

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).8590/2019

M/S. KAMTANATH ENTERPRISES PVT. LTD.

Appellant(s)

VERSUS

AMIT UPADHYAY & ORS.

Respondent(s)

(With IA No.159224/2019-STAY APPLICATION TO BE LISTED)

WITH C.A. No. 8591-8592/2019 (XVII)
(For IA No.160664/2019-STAY APPLICATION)C.A. No. 8152-8153/2019 (XVII)
(For IA No.161408/2019-STAY APPLICATION)C.A. No. 9053/2019 (XVII)
(For IA No.171301/2019-EX-PARTE STAY)

Diary No.41496/2019

(With appln.(s) for exemption from filing c/c of the impugned judgment and for stay and for permission to file appeal)

Diary No.41519/2019

(With appln.(s) for exemption from filing c/c of the impugned judgment and for stay and for permission to file appeal)

Date : 13-12-2019 These applications and appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE SURYA KANT

For Appellant(s)

Mr. Shyam Divan, Sr. Adv.
Mr. Anish Kumar Gupta, AOR
Mr. Chandra Shekhar Suman, Adv.
Ms. Archana Preeti Gupta, Adv.
Ms. Deepshika Bharati, Adv.
Mr. Puneet Sheoran, Adv.
Ms. Rita Gupta, Adv.
Ms. Harsha, Adv.
Mr. Abhishek C. Gupta, Adv.

Mr. Ajit Sharma, AOR

Mr. Tushar Mehta, Ld.SG/Sr. Adv.

Mr. Pradeep Rai, Sr. Adv.

Mr. Pradeep Misra, AOR

Mr. Prateek Som, Adv.

Mr. Alok Panday, Adv.

Mr. Shaheen Parween, Adv.

Mr. Ranjit Kumar, Sr. Adv.

Mr. Daleep Dhyani, Adv.

Mr. Abhishek Yadav, AOR

For Respondent(s) Mr. P.S. Patwalia, Sr. Adv.

Mr. Vanshdeep Dalmia, AOR

Mr. Suchakshu Jain, Adv.

Mr. Mayank Pandey, AOR

UPON hearing the counsel the Court made the following
O R D E R

Applications seeking permission to file the appeals are allowed.

The appeals being Diary Nos.41496/2019 and 41519/2019 are admitted.

These appeals are allowed in terms of the signed order.

Pending interlocutory applications, if any, stand disposed of.

(SANJAY KUMAR-II)
COURT MASTER (SH)

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

PS : Copy of this Order be given today

Item No.06 & 07

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**Appeal No. 263/2019
With
Appeal No. 264/2019

Amit Upadhaya

Appellant(s)

Versus

State Level Environment Assessment
Authority & Ors.

Respondent(s)

CORAM:**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Appellant(s):

Mr. Vanshdeep Dalmia and Mr. Suchakshu Jain,
Advocates

For Respondent(s):

Mr. Purushaindra Kaurav, Sr. Advocate, Mr.
Anish Kumar Gupta, Mrs. Archana Preeti Gupta,
Mr. Chandra Shekhar Suman, Mr. Sanjay Kumar
and Ms. Amesha, Advocates for Kamtanath
Enterprises Pvt. Ltd.
Mr. Rahul Khurana, Advocate
Mr. Amit Tiwari, Advocate for SEIAA, UP
Mr. Mayank Pandey, Advocate**ORDER**

Mr. P.N. Mishra, Sr. Advocate seeks time to make
submissions.

Mr. Purushaindra Kaurav, Sr. Advocate and other Counsels
also seeks time to complete their papers.

Adjourned to 14.01.2020.

In the meanwhile, status quo may be maintained and the EC
granted prior to the order of this Tribunal be not given effect to

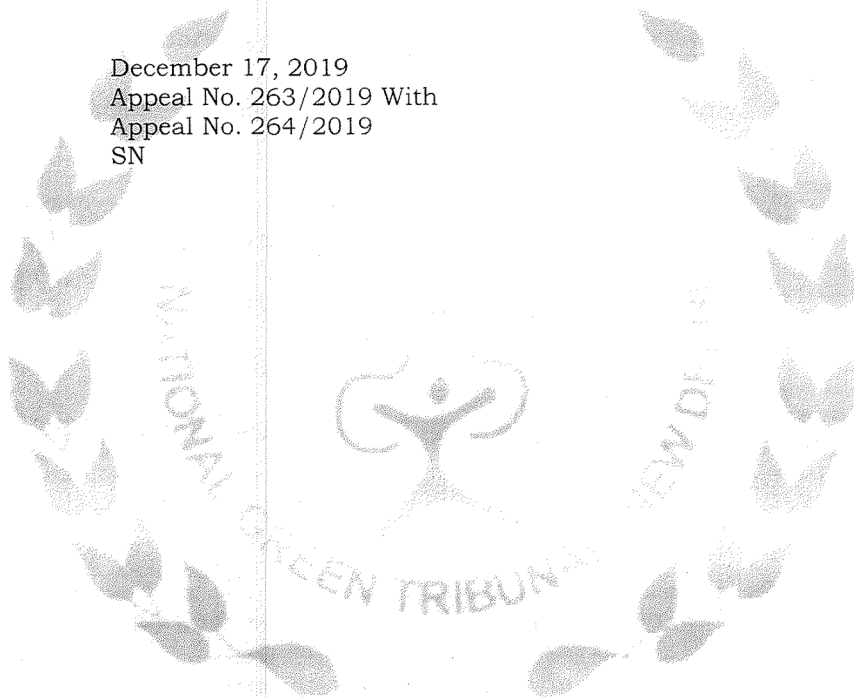
treating the order of this Tribunal dated 25.09.2019 as an interim order.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

December 17, 2019
Appeal No. 263/2019 With
Appeal No. 264/2019
SN



S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).54-55/2020

STATE OF U.P.

Appellant(s)

VERSUS

AMIT UPADHAYA & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.2805/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.2807/2020-STAY APPLICATION)

With Civil Appeal Diary No.46704/2019

(IA No.3682/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.3684/2020-STAY APPLICATION and IA No.3683/2020-PERMISSION TO FILE APPEAL)

Date : 13-01-2020 These appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE SURYA KANT

For Appellant(s)

Mr. Ranjit Kumar, Sr. Adv.
Mr. Abhishek Yadav, AOR
Mr. Saurabh Yadav, Adv.Mr. Pradeep Misra, AOR
Mr./Ms. Charu Sighal, Adv.
Mr. Suraj Singh, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Permission to file the appeal(s) being Civil Appeal Diary No.46704/2019 is granted.

Issue notice.

Until further orders, there shall be a stay of operation of the impugned order(s) dated 17.12.2019 passed by the National Green Tribunal, Principal Bench, New Delhi, in Appeal Nos.263 and 264 of 2018.

(SANJAY KUMAR-II)
COURT MASTER (SH)(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

(Copy of this Order be given today)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

86

CIVIL APPEAL NOS. 54-55 OF 2020

STATE OF U.P.

Appellant(s)

VERSUS

AMIT UPADHAYA & ORS.

Respondent(s)

WITHCIVIL APPEAL NOS. 288-289 OF 2020CIVIL APPEAL NO. 425 OF 2020O R D E R

1. The present appeals challenge the interim order dated 17.12.2019 passed by the National Green Tribunal, Principal Bench, New Delhi.

2. It is informed by the parties that during the pendency of the proceedings before this Court, the mining leases have already expired and the mining activities have now stopped.

3. However, Shri Vanshdeep Dalmia, learned counsel appearing for the respondent(s) submits that since the very mining activity itself was illegal, so the issue of compensation still remains to be decided.

4. It is further submitted that the learned National Green Tribunal did not decide the issue, though the same was raised on account of pendency of the present petition before this Court.

5. *Per contra*, Learned counsel for the petitioner submits that the mining activity can not be said to be illegal, inasmuch as the said were carried out in view of interim order(s) passed by this Court.

6. We do not propose to dwell into that issue.

7. We find that since the present appeals are being disposed of, the learned Tribunal can very well decide the issue with regard to compensation on account of alleged illegal mining on its own merits after hearing both the parties.

8. The appeals are, accordingly, disposed of.

9. Pending application(s), if any, stand(s) disposed.

.....J
(B.R. GAVAI)

.....J
(K.V. VISWANATHAN)

New Delhi
August 27, 2024

ITEM NO.50

COURT NO.3

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 54-55/2020

STATE OF U.P.

Appellant(s)

VERSUS

AMIT UPADHAYA & ORS.

Respondent(s)

(IA No. 2805/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 2807/2020 - STAY APPLICATION AND IA No. 25320/2020 - VACATING STAY)

WITH

C.A. No. 288-289/2020 (XVII)

(IA No. 3682/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 3684/2020 - STAY APPLICATION AND IA No. 25344/2020 - VACATING STAY)

C.A. No. 425/2020 (XVII)

(IA No. 4120/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 4117/2020 - STAY APPLICATION AND IA No. 25357/2020 - VACATING STAY)

Date : 27-08-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Appellant(s)

Mr. Ajit Sharma, AOR
Mr. Kanchan Kumar Singh, Adv.

Mr. Abhishek Yadav, AOR

Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
Ms. Charu Singhal, Adv.
Mr. Suraj Singh, Adv.
Mr. Manoj Kumar Sharma, Adv.

For Respondent(s)

Mr. Vanshdeep Dalmia, AOR
Ms. Anisha Jain, Adv.
Ms. Shambhavi Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The civil appeals are disposed of in terms of the signed order.
2. Pending application(s), if any, stand(s) disposed of.

(DEEPAK SINGH)
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)
COURT MASTER (NSH)

[Signed order is placed on the file]