

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
MA NO. 121 OF 2023  
IN  
ORIGINAL APPLICATION NO. 692 OF 2022**

**IN THE MATTER OF:**

**JUNAID AYUBI**

**...APPLICANT**

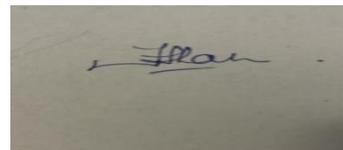
**VERSUS**

**STATE OF UTTARAKHAND & ORS. ...RESPONDENTS**

**INDEX**

<b>S. No.</b>	<b>Particulars</b>	<b>Pages</b>
1.	Written Submissions on behalf of Applicant	1-19

**APPELLANT**



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**Versus**

**State of Uttarakhand & Ors.**

**... Respondents**

**Written Submissions on behalf of Respondent No. 5 /  
Applicant in MA 121 of 2023 ("Applicant")**

**FACTUAL SUBMISSION**

- 1.** The Applicant entered into a Memorandum of Understanding (MoU) with Garhwal Mandal Vikas Nigam (GMVN) to carry out mining activities in Lot 21/1, located in the Dehradun district. The Applicant agreed to an annual fee of INR 17,02,21,600 for mining rights.
- 2.** According to the Uttarakhand Minor Mineral Policy (2002), GMVN was granted the right to lease mining rights in the Dehradun area. Mining in the Doon Valley (Dehradun) is allowed with prior consent from the Ministry of Environment, Forest and Climate Change (MoEF), as per the Doon Valley Notification (01.02.1989) and the 2020 Notification.
- 3.** On 14.09.2006, the MoEF permitted sand mining in areas exceeding 50 hectares with prior Environmental Clearance (EC) from MoEF. The Department of Geology & Mining granted GMVN a lease for Lot 21/1 on 23.01.2013 for a five-year period, which has since been extended and is now valid until June 2025.
- 4.** On 03.03.2015, the Department of Geology & Mining granted GMVN approval for mining 8,00,000 tonnes of sand annually from Lot 21/1. The MoEF granted an EC to

GMVN on 17.08.2016 to carry out sand mining activities in Lot 21/1.

- 5.** The Uttarakhand Upkhanij Policy of 30.09.2016 allowed GMVN to enter into agreements with third parties to carry out mining activities on the leased land. Consequently, GMVN entered into the MoU with the Applicant on 01.02.2021.
- 6.** In January 2022, the Applicant approached the Hon'ble High Court of Uttarakhand for the demarcation of Lot 21/1, as part of the land was in Himachal Pradesh. Following the court's order, the mining area was reduced from 123.19 hectares to 114 hectares, and the mineable quantity was reduced from 8,00,000 tonnes to 756,601 tonnes. This adjustment resulted in a corresponding change in the contractual amount payable by the Applicant.
- 7.** In September 2022, OA 692 of 2022 was filed seeking the stoppage of sand mining in Lot 21/1, which was tagged with OA 422 of 2022 seeking to halt mining in Lot 21/3.
- 8.** The January Order passed by this Hon'ble Tribunal on 30.01.2023 is contested by the Applicant, as the findings were based on several incorrect assumptions about the facts of the case.
- 9.** The Applicant was not properly served with notice, and the procedure for substituted service under the Code of Civil Procedure was not followed. The Tribunal itself noted in its Order dated 12.01.2023 that service was incomplete.
- 10.** The Tribunal's reliance on the Joint Committee report is flawed, as the Committee only surveyed Lot 21/3 and not Lot 21/1. The Committee's conclusion that only 6,00,000 tonnes of sand were mineable in Lot 21/1 is inaccurate, as the MoEF EC allowed for 8,00,000 tonnes of mineable sand.
- 11.** Contrary to the Tribunal's finding, mining in the Doon Valley is not prohibited. The relevant MoEF notifications (01.02.1989 and 06.01.2020) allow sand mining in the area with prior consent from MoEF.

- 12.** The Tribunal's assumption that mining in river floodplains is prohibited under the 14.02.2022 notification is also erroneous. The notification applies to the setting up of industries, not sand mining, and the Applicant already holds an EC for mining, which includes conditions for sustainable mining practices.
- 13.** The Tribunal incorrectly assumed that the Applicant was conducting mining in Himachal Pradesh. Following the demarcation exercise directed by the Hon'ble High Court of Uttarakhand, the mining area was adjusted to exclude any part in Himachal Pradesh, with a buffer zone created between the two states. Additionally, no illegal mining is being carried out by the Applicant in Himachal Pradesh.
- 14.** The Tribunal's claim that the Applicant was the mining leaseholder and was mining without the proper transfer of EC is mistaken. The Applicant operated under the MoU with GMVN, and the EC was valid throughout the term of the MoU. The EC was subsequently transferred to the Applicant by the Hon'ble Supreme Court on 07.08.2023.
- 15.** Finally, the Tribunal's assumption that the Applicant had mined 10,00,000 tonnes of sand annually is incorrect. The permissible quantity of sand in Lot 21/1 was 8,00,000 tonnes, later reduced to 756,601 tonnes. The actual sand mined by the Applicant in 2020-21, 2021-22, and 2022-23 were 70,148 tonnes, 78,492 tonnes, and 22,945 tonnes, respectively.
- 16.** The compensatory costs of INR 100 Crores imposed by the Tribunal are based on the erroneous assumption of mining 10,00,000 tonnes, which should be set aside.
- 17.** The Applicant requests that the January Order be modified to reflect the correct factual position, and that the compensatory costs be annulled, as they are without basis.

### **Legal Submissions**

1. List 1 Entry 53 of the VIIth Schedule provides for regulation of mines and mineral development to the extent to which such regulation and development under the control of the union is declared by Parliament by law to be expedient in

public interest. Entry 23 List 2 of the VIIIth Schedule empowers the State Legislature to frame laws relating to regulations of mines and minerals development under the control of Union. The Mines and Minerals (Development and Regulation) Act 1957 has been enacted by the parliament under this Entry. Section 3 (E) describes minor minerals which includes ordinary sand. Section 15 of the act empowers State governments to make rules in respect of minor minerals. Section 14 provides that section 5 to section 13 of the MMDR Act do not apply to mining leases in respect of minor minerals. Section 15(1a)(a) provides that State may make Rule providing for the person by whom and the manner in which the application for mining leases may be made as also any other matter.

2. Government of Uttarakhand has framed Uttarakhand Minor Mineral Concession Rules, 2001 and Uttarakhand Minor Minerals Prevention of illegal Mining, Transportation and Storage Rules, 2005, in exercise of powers under section 15. The State Government being owner of minor minerals has power to reserve areas to be mined by the State Government or its Corporations

See:

State Tamil Nadu versus M/s Hind Stone and others (1981)  
2 SCC 205

Amritlal Nathubai Shah v. UOI and Anr (1976) 4 SCC 108  
State of T.N. v. M.P.P. Kavery Chetty. (1995) 2 SCC 402

3. Rule 3(3) of the 2001 Rules provide that where statutory corporations express their inability to extract minerals, mining leases may be granted to private individuals. The Uttarakhand Minor Mineral (Concession) Rules 2001 which make provision for such reservation was upheld by the Hon'ble Supreme Court in Doiwala Sehkari Shram Samvida Samiti Ltd. V. State of Uttaranchal (2007) 11 SCC 641.
4. The state vide mining Policy dated 17/10/2022 laid down that riverbed mining/picking leases would be granted to Government Corporations for better coordination and control. For this purpose, mining would be done by Garwhal

Mandal Vikas Nigam in all areas of the Dehradun district. In the year 2016, the Governor was pleased to promulgate the Uttarakhand Minor Mineral (Sand, gravel and boulder) Picking Policy 2016. The 2016 Policy is not uncanalised but for “mineral development” in the State. Clause 8 of the Said Policy provides that lease for the picking of minor minerals etc. in the revenue River minor areas of the State would be sanctioned to GMVN and other named statutory corporations. AFTER OBTAINING ENVIRONMENTAL CLEARANCE, Clause 8(B) of the said Policy further provides for selecting lot operator for extracting the minor minerals on behalf of the Corporation. Clause 11 provides that term of the picking these for corporations is 5 years and for those lots which are left by corporations and are given to private individuals, it is from 1st October to 30th June of the next year. Clause 17 of the Policy provides that the corporations will start picking only after signing an MOU with the declared successful bidder.

5. Section 9, 9A, 15(3) MMDR Act, 1957 itself contemplates that royalty may be extracted by the holder of the mining lease or by his agent, manager, employee, contractor or sublessee from the least area.
  - a. Environment Protection Act 1986 was enacted by the Parliament. Environment protection Rules 1986 were framed thereunder. MOEF Notification dated 14/09/2006 was issued directing that from the date of its publication, the required activities listed in the schedule to the Notification would require prior environmental clearance from the central Government or as the case may be, by the Statelevel environment impact assessment authority constituted by the Central Government. Mining activity requires prior environmental clearance. It is important to bear in mind that environmental clearances are given for a project. Clause 11 of the said Notification also permits transferability of environment clearance. There is nothing in the MoEf Notification to prohibit engagement of agents/contractors/ lot operators by the project proponent.

b. In most cases of infrastructure development like construction of roads, thermal power stations, construction of national highways (EC is in name of NHAI) etc., Government/statutory corporations usually enter into contracts with private entities for execution of such work. In a large contract, Government corporations may not have enough workforce to undertake projects themselves and may thus appoint contractors/Agents to do the work on their behalf or it may enter into joint-venture agreements with other private players (as was upheld by the Hon'ble Supreme Court in *Pallava Granite Industries (India) (P) Ltd. v. Union of India, (2007) 15 SCC 30*). Therefore, there is no prohibition in law for Governments or Government corporations to enter into contracts for delegating its activities. An example of that would be collection of toll on national highways.

6. A tabulation of the assumptions and the factual position as per the Applicant has been reproduced hereinbelow:

S. No.	Assumption in Order dt 30.01.2023	Factual Position
a.	<b>Ex-parte proceedings:</b> The Tribunal notes that the Applicant and Mr. Vinod Negi have not appeared despite being served ( <b>Pr. 7, Pg. 38</b> ).	The Applicant was never served. Moreover, even the procedure required to effect substituted service as per Order V, Rule 17 of the Code of Civil Procedure, 1908 was not followed. Reliance is also placed upon the decision of the Hon'ble Supreme Court in <i>Sushil Kumar Sabharwal v. Gurpreet Singh, (2002) 5 SCC 377</i> . It is also relevant to note that the Order of <b>12.01.2023</b> in the above-captioned matter notes that service is not complete.
b.	<b>Joint Committee had inspected Lot 21/1:</b> Reliance was placed upon the Joint Committee Report, and it is noted that the Applicant was granted mining rights of up to	i. The Joint Committee had only conducted a survey of Lot 21/3, and not of Lot 21/1 ( <b>See: Ann. A26, Pg. 433</b> ). ii. The Survey was conducted on 26.08.2022, when no mining was being carried out as per the Mining Policy dated 30.09.2016 ( <b>Ann.</b>

	6,00,000 tonnes (Pr. 5, Pg. 37).	<p><b>A11, Pg. 155 @ 159)</b> and the MoU between the Applicant and GMVN (<b>Ann. A18, Pg. 343 @ Cl. 51, Pg. 369</b>).</p> <p>iii. The finding that 6,00,000 tonnes are mineable in Lot 21/1 in the January Order is <i>ex facie</i> incorrect, as the permissible mineable sand was 8,00,000 tonnes as per the MoEF EC.</p> <p>Therefore, the Joint Committee Report could not have been relied upon insofar as the Applicant and Lot 21/1 in concerned.</p>
c.	<p><b>Mining in Doon Valley barred:</b> Mining is impermissible in Doon Valley area, for which reliance was placed upon <i>Rural Litigation &amp; Entitlement Kendra v. State of UP, 1989 Supp 1 SCC 504</i> (Pr. 14, Pg. 42).</p>	<p>Sand mining in the Doon Valley area (Dehradun) is permissible with the prior consent of the MoEF (See: <b>Doon Valley Notification dated 01.02.1989 @ Ann. A4, Pg. 50 r/w Notification dated 06.01.2020 @ Ann. A13, Pg. 207</b>).</p>
d.	<p><b>River floodplain mining is impermissible as per the notification dated 14.02.2022</b> (Pr. 10, Pg. 38).</p>	<p>The Notification dated 14.02.2022 (<b>Ann. A22, Pg. 411</b>) is inapplicable to the present case as:</p> <p>i. The said notification is concerned with setting up of industries.</p> <p>ii. The Applicant has already been granted an EC (<b>Ann. A10, Pg. 120</b>), which has already laid down a list of sustainable mining activities to be followed (<b>Pg. 129 onwards</b>).</p>
e.	<p><b>Mining taking place in Himachal Pradesh:</b> Mining in Lot 21/1 is taking place in the State of Himachal Pradesh (Pr. 11, Pg. 39, Pr. 15, Pg. 42).</p>	<p>i. At the outset, it is submitted that pursuant to the Order of the Hon'ble High Court of Uttarakhand, a demarcation activity was carried out to assess the mineable land in the state of Uttarakhand and Himachal Pradesh. Thereafter, by way of an Order dated 07.01.2022, the Government of Uttarakhand reduced mineable area in Lot 21/1 from 123.19 hectares to 114 hectares, and the mineable quantity was reduced</p>

		<p>from 8,00,000 tonnes to 7,56,601 tonnes, with a consequential change in the royalty amount (<b>Ann. A21, Pg. 391-410</b>). As per the Order of 07.01.2022 a buffer zone was also created between Lot 21/1 and the Himachal Pradesh.</p> <p>ii. Furthermore, it is also a matter of record that no illegal mining is being carried out by the Applicant in Himachal Pradesh, <i>per contra</i>, mining is being carried out by Himachal Pradesh miners in the State of Uttarakhand (<b>See: Ann. A29, Pg. 8 and Ann. A30, Pg. 10 in IA 897/2023</b>).</p> <p>iii. It is also relevant to note that Himachal Pradesh in its counter-affidavit has stated that no miner from the Uttarakhand is carrying out mining activities in the Himachal Pradesh.</p>
f.	<p><b>The Applicant was the mining lease-holder to whom the EC had not been transferred:</b> Mining without transferring EC is impermissible (<b>Pr. 11, Pg. 39, Pr. 15, Pg. 42</b>).</p>	<p>i. It is submitted that EC and mining-lease was in the name of GMVN, which was valid and subsisting during the term of the MoU dated 01.02.2021.</p> <p>ii. The Mining Policy of 30.09.2016, permitted lease-holders such as GMVN to enter into agreements with third-parties to carry out mining activities (<b>Ann. A11, Pg. 155-194 @ Cl. 17 @ 179</b>).</p> <p>iii. The Applicant was carrying out sand mining activities under the provisions of the Mining Policy of 30.09.2016 (<b>Ann. A11, Pg. 155 @ Cl. 17, Pg. 179</b>) as a contractor / operator.</p> <p><b>Note:</b> The 30.09.2016 policy did not contemplate the transference of the EC to the contractor.</p>

		<p><b>Note (2):</b> The 30.09.2016 policy has not been challenged in the present proceedings, and is valid.</p> <p>iv. Even the Uttarakhand mining policy makes a distinction between a lessee (<i>Patta dharak</i>) and operator (<i>Lot Sanchalak</i>).</p> <p>v. The issue of transferring the EC has been rendered redundant, as in terms of the liberty granted by the Hon'ble Apex Court in C.A. 4287 of 2023 on 07.08.2023 (<b>Ann. A2, Pg. 44</b>), the EC stands transferred in the name of the Applicant (<b>Ann. A3, Pg. 46</b>).</p>
g.	<p><b>That the Applicant had actually mined all the permissible mineable sand:</b> The Hon'ble Tribunal had imposed compensatory costs of approximately INR 100 Crores by finding that at least 10,00,000 tonnes have been mined annually by reading in specific condition (ix) (<b>Pr. 16, Pg. 42</b>).</p>	<p>i. It is a matter of record that the mineable sand per year is only 8,00,000 tonnes, which has been reduced to 756,601 tonnes as has been stated hereinabove, and not 10,00,000 tonnes which forms the basis of the calculation in the January Order.</p> <p>ii. Moreover, the actual figures of sand that has been mined are as under:  2020-21- 70,148 tonnes (Ann. A5, Pg. 58 in IA __ OF 2024)  2021-22- 78,492 tonnes (Ann. A6, Pg. 59 in IA __ OF 2024)  2022-23- 22,945 tonnes (Ann. A7, Pg. 60 in IA __ OF 2024).</p> <p>iii. Moreover, specific condition (ix) in the EC (<b>Pg. 127</b>) only provides a ceiling of the maximum sand that may be taken, i.e., 356 trucks with 1,000 tonnes each, which does not shed any light on the actual sand that was mined.</p> <p>iv. Therefore, the compensatory costs that have been imposed as per the polluter pay</p>

		principle is without any basis and liable to be set aside.
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### **No liability of the Applicant**

1. The Policy of the state Government to engage agents/contractors for excavation of minerals in areas which are reserved for mining by State corporations has been in existence since 2001 and remains unchallenged. Various statutory corporations have entered into similar MOU's with other lot operators, pursuant to clause 17 of the Mining Policy 2016.
2. In the present case, the applicant has entered into contract with GMVN, under the 2016 Policy read with the 2001 Policy, and acts only as an agent of GMVN. Mining lease is issued in favour of GMVN, The mining plan is also submitted by GMVN has been approved. The mining plan also provides for that the lessee I.e. GMVN will obtain environment clearance from MoEF. The lessee is made liable for violation of the mining plan as also for making proper arrangements for safety and health of workers.

### **Presumption of validity/ No person can be penalized for compliance with law**

1. In law, there is a presumption in favour of validity and constitutionality of subordinate legislation. See: State of TN v. P. Krishnamurthy (2006) 4SCC 517
2. It is also trite law that for striking down the provisions of law or for declaring any Rules as ultra vires, specific pleading to challenge the Rules and asking of such relief ought to be made See: Union of India v. Manjurani Routray, (2023) 9 SCC 144.
3. It was the Policy of the State Government to reserve some mining areas for statutory corporations and employ contractors for extracting minerals from these reserve lots. This is just a matter of expediency in execution. It may be due to various reasons including financial viability, lack of

manpower etc. public authority often has to take into consideration diverse factors, concerns and interests before arriving at any Policy decision. It is not the domain of the Courts to consider whether a particular public Policy is wise or a better Policy may be framed. The formation of opinion/satisfaction by the Government is a subjective process.

See: *Rajeev Suri v. DDA* (2022)11SCC 1

4. A citizen is entitled to arrange his affairs on the basis of existing law, on the presumption that such a law is valid. Even if this Tribunal is to hold that the procedure adopted by the State of the Uttarakhand is not consistent with MoEF Notification dated 14/09/2006, no liability can be fastened on the present applicant. The principle that current law governs current activities, which is applicable to retrospective legislation, would also be applicable in the present case. Fastening of retroactive liability would be contrary to the principle of fairness. See: *G.J. Raja v. Tejraj Surana*, (2019) 19 SCC 469 (v) The principle of Nulla Peona Sine Lege which provides that no one can be penalised on ground of conduct which was not penal on the day it was committed is a basic principle of natural justice. The same is fully applicable to the facts of the present case, where the present applicant has acted in accordance with policy existing as on the date. See: *Pyare Lal Sharma v. Managing Director* (1989)3SCC 448  
*State of A.P. v. Gandhi* (2013) 5SCC 111 (vi) There is also a presumption that acts done by State have been done rightly and regularly. The legal maxim *omnia rite esse acta praesumuntur* i.e, all acts are presumed to have rightly and regularly been done is applicable. The Petitioner had no cause to suspect that the Policy which provides that EC is to be obtained by the Corporation, may in future be held to be bad in law.

### **Complete control of the Corporation**

1. MOU dated 1/12/2021 executed between GMVN and the present applicant (annexure A 18, page 343) specifically

States that it is executed in accordance with 2016 Policy, only for the purposes of picking tendered quantity of minor mineral, on payment of tendered amount to Nigam. The tendered amount is fixed as Rs. 17,01,21,600(including tax) per mining season for 8,00,000 tons(i.e, Rs. 212.652/- per ton) (Clause 1.)

2. Clause 15 provides that if picking work is not started by the contractor, then the tendered amount payable by the contractor would be recovered as arrears of land revenue. In addition, MOU will be cancelled by forfeiting the amount of 2 months instalments deposited as security.
3. A copy of the MOU is sent to the Director, Geology and Mining(Clause 18). The MOU in Clause 19 further States that if any objection is raised by the State Government or by the District Magistrate all the divisional Commissioner, permission may be withdrawn by the Government.
4. Clause 21 states that surrender of picking work by contractor is not permissible. In case, extraction is not done by the contractor, the corporation will forfeit the amount deposited, the security deposit and also recover remaining amount of the tendered amount from the Bank guarantee furnished by the contractor. In such an event, the memorandum of understanding will be cancelled and the corporation will take appropriate action to conduct the picking work of the mineral from the concerned lot. Balance amount, if any, due from the contractor may be recovered as arrears of land revenue from the contractor.
5. Clause 23 provides that all vehicles used by the contractor for transportation of minor minerals are required to be registered with the geology and mining department.
6. Clause 26 provides that before commencing work, the contractor has to make available letter expressing compliance with existing routes, quantity of minor mineral and demarcated area and mining site.
7. Clause 37 States that the contractor is liable for imposition of penalty if details of quantity lifted in the preceding month

are not made available to the corporation in the first week of the following month.

8. Clause 38 provides that a mineral production, mineral extraction, bills of sale, attendance of workers, payment and other account books are required to be submitted by the contractor to the corporation for checking and inspection on a fixed date in every quarter.
9. The assessing officer of the corporation can commence reassessment, if less revenue has been paid by the contractor by extracting more minerals from the mining concession area in a year or there is theft of royalty.
10. Clause 47 provides that the contract it is required to give information regarding any accident causing death or serious bodily injury or serious injury to property or endangering life etc in the course of operations to GMVN.
11. Clause 51 provides that the contractor cannot extract and sell minerals from the sanctioned site after expiry of MOU and between July to September in the rainy season. After expiry of MOU, GMVN has absolute right over mineral collected in the sanctioned site.
12. Clause 53 provides that if the contractor is found indulging in illegal picking in any area other than the sanctioned site, it would be considered a violation of the MOU and action will be taken against the contractor.
13. Clause 55 provides that GMVN has absolutely right to change and in terms of the MOU.
14. Clause 73 provides that quantity, type, more of transportation, registration No. of the vehicles and name of driver etc. shall be maintained by the contractor and shall be submitted at the time of inspection.
15. Thus the corporation, at all times exercises complete control over the contractor.

### **District Survey Report**

1. In the present case, mining lease was granted to GMVN on 23/01/2013, Mining approval was granted to GMVN on 03/03/2015.

2. Subsequently, Vide Notification dated 15/01/2016, the MOU modified its order Notification dated 14.9.2006 and introduced the requirement of preparation of District survey report was and mining or riverbed mining and mining of other minor minerals. The procedure for preparation of DSR was provided in appendix x to the said Notification (p.115). The appendix requires that the District survey report shall be prepared for each minor mineral and the district and that the report should be updated once every 5 years. The appendix provides for Listing of existing mines. The Sustainable Sand Mining Management Guidelines 2016 were framed by MOU. The said guidelines give structure of the District survey report.
3. The original applicant has admitted that DSR was prepared in the year 2016 . The 2016 DSR was valid for 5 years. The 2016 DSR has specifically indicated the mineable area in District Vikasnagar and mineral potential in River Yamuna.
4. In 2016 the present mining operations in lot No. 21 /1 had not commenced. However, since the DSR was valid till 2021, there was no requirement in law for conducting fresh DSR, at the time of grant of EC for the present lot on 17/08/2016. The EC specifically refers the 2016 guidelines and the requirement for having District Survey Report. The 2016 DSR was duly considered by MoEF at the time of grant of EC. The 2016 DSR was valid till 2021. The MOU was signed between the parties on 1/2/21, during the subsistence of a valid DSR and in accordance with the DSR.
5. Under the sand mining guidelines 2020, DSR is required prior to grant of/ auction of fresh mining lease. In the present case, the same was complied with. The respondent has placed reliance on judgement of Supreme Court dated 10/11/2021 in the case of State of Bihar v. Pawan Kumar (Civil Appeal No. 3661-3662 of 2020) . In the said judgement the Supreme Court itself permitted the State to make necessary arrangements and continue with illegal mining activities, the DSR was finalised. In paragraph 14 (iii) , the Supreme Court permitted the State Government to carry on mining activities through the State mining

Corporation. It was left open to the corporation to employ services of **contractors** for the said purpose.

6. The judgement in the case of Gaurav Kumar versus State of UP (OA No. 188 of 2023) was passed by this Hon'ble Tribunal on 02/09/2024. It was also a case of auction of various sites and not existing leases.
7. Admittedly in 2021, fresh DSR has been submitted by the geology and mining unit, State of the Uttarakhand, The same would be applicable for auction of fresh mining leases are not existing leases, The same has no bearing on the present case.

### **Service**

1. The impugned order dated 30/01/2023, also to be set aside as the present applicant was never served in accordance with law and the order was passed ex-parte. Under order 5 Rule 17, it is imperative that when the defendant or his agent refuses to sign the acknowledgement or where the serving officer after using all due and reasonable diligence cannot find the defendant, using all due and reasonable diligence cannot find the defendant, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides carries on business and shall then return the original to the court from which it was issued with the report indoors therein stating that he has so affix the copy. A failure to do the same would amount to non-service of summons.

See: Sushil Kumar Sabharwal v. Gurpreet Singh (2002) 5 SC 377

2. Even otherwise, this Hon'ble Tribunal in order dated 30/01/2023 gave liberty to the party to approach this Hon'ble Tribunal if the parties were so aggrieved. The Hon'ble Supreme Court vide order dated 07/08/2023 in Civil Appeal No.4287 of 2023, also gave liberty to the present applicant to apply for modification of order and judgement dated 30/01/2023.

FINDINGS	Ans
<p>1. Mining rights cannot be transferred w/o transfer of EC in view of Pr 11 MoEF Notification dt. 14.09.06 (Pg. 39).</p>	<ul style="list-style-type: none"> <li>- Did not consider the Mining Policy,2001 (p.59) of UK r/w UK Upkhanij (Balu, Bajra &amp; Boulder) Picking Policy 2016 (p.155).</li> <li>- 2001 Policy prescribes that Mining Lease to be in Favour of GMVN.</li> <li>- 2016 Policy prescribes that MoU tp be entered into by GMVN.</li> <li>- Therefore, no fault on the part of the Applicant. There was also no challenge to the policy.</li> <li>- In all cases, EC was in the name of the Statutory Body and lot operators were selected by floating tenders (p.209-p.342.</li> <li>- In any event, after SC Order (p.44) dated 7.08.2023, State has transferred EC vide MOM dated 3.10.2023.</li> </ul>
<p>2. EC is for one State i.e. UK, Mining taking place in Himachal. Inter state boundary procedure not followed.</p>	<ul style="list-style-type: none"> <li>- Inter State Boundary dispute was ongoing. Order of HC (Pg. 387) passed at the behest of the Applicant. State directed to resolve border dispute.</li> <li>- Vide OM dated 07.01.2022(p.391), border dispute resolved. Area reduced to 114.79h. Qty reduced to 746601.62 tonnes.</li> <li>- No violation on the part of Applicant.</li> <li>- In fact survey carried out at Himachal HC's order shows lesees in Himachal carrying</li> </ul>

	mining in UK not vice-versa(Addl Affidavit-p.8/p.10)
3. No EC for Lot 21/2	- Petitioner has nothing to do with Lot No. 21/2.
4. Cluster Procedure laid down in Notn dated 15.01.2016 (p.110) not followed	- No cluster - Cluster only if another mine within 500m. No mining lease in Lot No. 21/2. No other mining nearby- (pg. 110 @117)
5. Notification dated 14.02.2022(p.411)	- The said Notification is not applicable to mining. It relates to “setting up of industries”. - MoEF itself has granted EC (Pg. 120) Sustainable Mining Practices- 1.5m ( p/129/p.131/132)
6. Violation of Doon Valley Notification	- Doon valley Notn never prohibited mining activity. - In Notn dated 1.02.1989 (p.50) as well as Notn dated 6/1/20(p.207), only MOEF approval required. - EC granted by MoEF.
7. Direction for Closure	- Violation of Natural Justice. - No violation on the part of the Applicant.
8. Imposition of Rs. 100 crores as compensation	- Order Govt. 7/1/22 (Pg. 391) acknowledges that no violation on the part of the Applicant. - Purely speculative figures. Assumes that Applicant has mined on full capacity for full term i.e, 9 months.

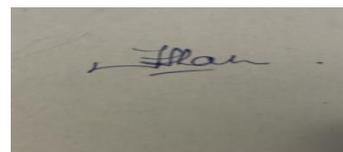
	<ul style="list-style-type: none"> <li>- Actual figures show that mining has not taken place at full capacity for full term (p. 457)</li> <li>- Applicant does not sell @ Rs. 1000 per ton as assumed but at about Rs. 380 or less,</li> </ul>
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**MODIFICATIONS SOUGHT BY THE APPLICANT IN  
ORDER DATED 30.01.2023**

1. To modify paragraph 14 of the January Order, to state as under:  
*“Mining is permissible in the Doon Valley area as per the MoEF Notifications dated 01.02.1989 and 06.01.2020, which permit mining to be carried out in the Doon Valley with the prior permission of the MoEF.”*
2. To modify paragraph 15 of the January Order, to state as under:  
*“That no illegal mining is being carried out in Lot 21/1, and the mining activities could be carried out by Mukesh Joshi without transference of the EC as per the Mining Policy of the State of Uttarakhand dated 14.09.2016.”*  
**Note:** The Applicant herein is not addressing submissions qua Lot 21/2 and Lot 21/3.
3. In substitution of paragraph 16 of the January Order, the following may be inserted:  
*“The observations made in this Order are tentative, as it has been contended that as per MoEF notifications dated 01.02.1989 and 06.01.2020, mining is permitted to be undertaken in the Doon Valley albeit with prior permission of MoEF. It is the case of Mukesh Joshi, i.e., Respondent No. 5 that he has been undertaking the mining in terms of the tender awarded by GMVN and that the mining is being undertaken only in the State of Uttarakhand, and no mining is being undertaken by him in the State of Himachal Pradesh. Respondent No. 5 has also stated he was a bona fide and successful tenderer, and was carrying out mining in terms of the MoU dated 01.02.2021 and the Mining Policy 30.09.2016. He has further stated that he has not been able to carry out entire mining, i.e., 8,00,000 tonnes annually, and has only mined 70,148 tonnes in 2020-21*

*78,492 tonnes in 2021-22, and 22,945 in 2022-23, therefore, in terms of Order dated 19.07.2022 in OA 422/2022 the Joint Committee is directed to carry out a fresh survey of Lot 21/1 for the period between 01.02.2021 to 30.01.2023, uninfluenced by the observations in this Order, while reconsidering its previous report a file a fresh report. We direct the Joint Committee to give an opportunity to Respondent No. 5 to produce all the material relating to the mining of sand between 01.02.2021 to 30.01.2023. If the need arises, Joint Committee can get the record of Respondent No. 5 inspected through his representative or proper agency. In this process, an opportunity may also be given to the Applicant to produce the material available with him in support of the plea that Respondent No. 5 has done illegal mining of sand during the relevant period. The Joint Committee will conduct an enquiry in this regard by following the principles of natural justice and will ascertain if there has been illegal mining, and if there has been illegal mining, the extent to which Respondent No. 5 has engaged in illegal mining of sand during the concerned period, and will levy environmental compensation in accordance with law. The Joint Committee is directed to submit its report within a period of 6 weeks from the date of this Order.”*

**APPELLANT**



**FUZAIL KHAN, SHISBA CHAWLA  
ADVOCATE**

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**DATED: 01.04.2025**

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