

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH :: NEW DELHI
ORIGINAL APPLICATION No. 142 of 2022
(I.A. NO. 68 OF 2022) & (I.A. NO. 17 OF 2024)**

IN THE MATTER OF:

Jayant Kumar

..... Applicant

Vs.

Ministry of Environment,
Forest & Climate Change & Ors.

..... Respondents

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH :: NEW DELHI

ORIGINAL APPLICATION NO. 142 OF 2022

(I.A. No. 68 OF 2022) & (I.A. No. 17 OF 2024)

IN THE MATTER OF :

JAYANT KUMAR

..... APPLICANT

Versus

MoEF&CC & ORS.

..... RESPONDENTS

**WRITTEN SUBMISSIONS ON BEHALF OF APPLICANT IN
COMPLIANCE OF ORDER DATED 22.05.2024**

That SECTION 19 OF THE NATIONAL GREEN TRIBUNAL ACT, 2010 provides for Procedure and Powers of Tribunal which says the Tribunal shall be guided by the principles of natural justice. The Hon'ble Supreme Court of India interpreted "natural justice" in 2003 (7) SCC 492 as "the rules of natural justice cannot be put in a straitjacket and applicability thereof would depend upon the facts and circumstances relating to each particular given situation".

That now as per order dated 18.04.2024 limited issues survive in the present case regarding *first*, validity of the mining leases executed in favour of Respondent Nos. 5 & 6 on the basis of EC granted by DEIAA after 13.09.2018 and *second*, liability of Respondent Nos. 5 & 6 to pay Environmental Compensation for past violations.

1. This present Original Application has been filed raising grievance that Respondent Nos. 5 & 6 granted mining leases situated at Billi Markundi, Sonbhadra Gata No. 7536 Ga Mi (Khand-1) area 4.970 ha. & Gata No. 7536 Ga Mi (Khand-3) area 4.000 ha. by breaking homogeneous block deliberately into smaller blocks less than 5 hectares for issuance of Environmental Clearance by DEIAA which was issued on 23.10.2018 by DEIAA in violation of (2012) 4 SCC 629 Deepak Kumar v State of Haryana and Judgment & order dated 13.09.2018 passed by this Tribunal in O.A. No. 186 of 2016 Satendra Pandey v MoEF & CC, seeking reliefs *first*, Cancellation of EC dated 23.10.2018 granted by DEIAA; *second*, Cancellation of Mining Leases dated 05.10.2020 & 06.11.2020 respectively; *third*, Re-appraisal of EC by SEIAA; and *fourth*, Recovery of compensation from respondent nos. 5 & 6.

2. That further other grievances are Mining Lease Deeds of Respondent No. 5 & 6 have been executed and registered after about two years on 05.10.2020 & 06.11.2020 respectively from issuance of EC on 23.10.2018 by DEIAA; R-5 & 6 also carrying out illegal mining outside the approved mining area and converting the mining area into dangerous state by unscientific mining causing heavy damage to the Environment. (*Grounds C, I, J, & L in O.A.*)

3. A Report dated 30.06.2022 has been submitted by Committee stating availability of minor minerals on survey of Gata No. 7536; the fact has been admitted that homogeneous block deliberately broke into 4-Khands less than 5 hectares and EC dated 23.10.2018 issued to R-5 & 6 are valid as DEIAA was legally working. No Report has been submitted on the aspect of 2 years delay in registration of mining lease deeds; illegal and outside mining by R-5 & 6 as well as conversion of mining area into dangerous state by unscientific mining (Pages 254-258). **Most important Report does not deal with the fact of decision taken by SEIAA/SEAC on 05.02.2019 that all mining cases of minor mineral having 0 to 5 ha area will be appraised by UP-SEIAA for EC made for all concerned project proponents (Pages 272-273) and this decision was addressed to all District Magistrates by order dated 14.02.2019 of the Director, Directorate Environment & the Director, Geology and Mining vide letter no. 1063/Envir.NGT/OA No. 186/2016 dt. 14.02.2019 for necessary action.** (Para VII, Page 350)

4. That the Report, Respondent Nos. 5 & 6 and SEIAA states on 23.10.2018 DEIAA was legally working and ECs issued on 23.10.2018 were valid as EIA Notification dated 15.01.2016 neither stayed nor set-aside vide order dated 13.09.2018 passed by this Hon'ble Tribunal in O.A. No. 186/2016 (*Satendra Pandey v. MoEF&CC*) as well as neither O.M. dated 12.12.2018 nor SEIAA/SEAC decision dated 05.02.2019 having mentioned retrospective effect, although vide order dated 11.12.2018 passed by this Hon'ble Tribunal in Execution Application No. 55/2018 interpreted the order dated 13.09.2018 as "**disapproving**" the Notification dated 15.01.2016 w.e.f. 13.09.2018 and acting upon Notification dated 15.01.2016 post 13.09.2018 illegal and violation of the said judgment, therefore issuance of EC on 23.10.2018 is a violation. (Para 6, Page 1001)

5. That further in order dated 11.12.2018 it was pointed out that State of Uttar Pradesh vide letter dated 25.10.2018 directed to issue EC in accordance with notification dated 15.01.2016 and in the present case EC issued to Respondent

Nos. 5 & 6 on 23.10.2018 before the direction dated 25.10.2018 issued by State of Uttar Pradesh and after the judgment dated 13.09.2018 disapproving Notification dated 15.01.2016, hence illegal and violation. (Para 4, Page 1001)

6. EIA notification dated 14.09.2006 amended by notification dated 15.01.2016 by which EC for B-2 category (0 ha. – 25 ha.) authority given to DEAC/DEIAA, whereby this Hon'ble Tribunal vide order dated 13.09.2018 in Satendra Pandey's case directed EC be granted by SEAC/SEIAA instead of DEAC/DEIAA for area 0 to 5 ha. as well as directed MoEF&CC to revise Notification dt. 15.01.2016. This Hon'ble Tribunal vide order dt. 11.12.2018 has suspended the activities of issuing EC by DEAC/DEIAA as per Notification dt. 15.01.2016. MoEF&CC in compliance of order dt. 13.09.2018 issued O.M. dt. 12.12.2018 and in compliance of O.M. dt. 12.12.2018 U.P.-SEAC/SEIAA decided on 05.02.2019 that minor mineral having 0-5 ha. area will be appraised by UP-SEAC/SEIAA for EC for all concerned project proponents and this decision was addressed to all District Magistrates of State of U.P. vide order/letter dt. 14.02.2019.
7. Let us assume Environmental Clearance dated 23.10.2018 granted to Respondent Nos. 5 & 6 in conformity with legal regime existing on that date. That regime of DEIAA ended on 12.12.2018, more specifically for State of Uttar Pradesh regime of DEIAA ended on 05.02.2019, hardly matters in the circumstances of the present case. The crucial point to be noted here is till 05.02.2019/14.02.2019 Mining Lease Deeds of Respondent Nos. 5 & 6 neither executed and registered nor mining was made operational, therefore validity of Environmental Clearances dated 23.10.2018 issued by DEIAA expired and regime of SEIAA begins for future leases, hence Respondent Nos. 5 & 6 required to obtain Environmental Clearances as per decision of SEIAA/SEAC dated 05.02.2019 thereafter which made for all concerned project proponents.
8. That Mining Lease Deeds executed and registered on 05.10.2020 & 06.11.2020 almost after 1 year 8 months in favour of Respondent Nos. 5 & 6 respectively through District Magistrate on the basis of Environmental Clearances dated 23.10.2018 issued by DEIAA and mining made operational, therefore, it is submitted here that during this span of duration of 1 year 8 months which seems to be ample time, neither Respondent Nos. 5 & 6 acted upon for issuance of EC from SEIAA as per decision dated 05.02.2019 of SEIAA/SEAC made for all concerned project proponents nor District Magistrate verified the details of Environmental Clearance mentioned in para 20 of Lease Deeds despite

knowledge of decision of SEIAA/SEAC dated 05.02.2019 before execution of Mining Lease Deeds whether Environmental Clearances have been obtained from SEIAA or not.

9. Though Mining Lease Deeds dt. 05.10.2020 & 06.11.2020 in its Para 20 (pages 119 & 132) contains details of invalid ECs issued by DEIAA ended long back and regime of SEIAA begins w.e.f. 05.02.2019, therefore respondent nos. 5 & 6 could have obtained valid ECs issued/appraised by SEIAA having ample time in their hands, hence Mining Lease Deeds dt. 05.10.2020 & 06.11.2020 are invalid and liable to be cancelled.
10. That MoEF&CC vide affidavit dated 11.05.2023 stated that in pursuance to the Hon'ble NGT order dated 13.09.2018 and O.M. dated 12.12.2018, DEIAA is not functioning and does not exist as on dated as well as DEIAA's work is now looked after by SEIAA w.e.f. 13.09.2018. (Para 7, Page 643)
11. Further, this Hon'ble Tribunal vide order dated 04.12.2023 specifically directed MoEF&CC to clarify the position in respect of mining leases for which EC was granted by DEIAA after 13.09.2018 and before the orders were conveyed to all concerned by issuance of O.M. dated 12.12.2018, to which vide additional affidavit dated 02.01.2024 MoEF&CC states that the ECs granted after 13.09.2018 to be governed by the Hon'ble NGT's order dated 13.09.2018. (Paras 2 & 6, Pages 979 & 980)
12. That in cases O.A. No. 474/2019 (Surendra Singh v. MoEF&CC & Ors.) filed on 17.05.2019 & O.A. No. 992/2019 (Surendra Singh v. MoEF&CC & Ors.) filed on 27.09.2019 before this Hon'ble Tribunal in which Environmental Clearances were also granted on 23.10.2018 by DEIAA, this Hon'ble Tribunal while disposing of these matters vide final orders dated 14.08.2019 (Pages 103-105) & 23.12.2020 (Pages 134-137) respectively directed to re-appraise the Environmental Clearances by SEIAA and till re-appraisal mining operations remain suspended as well as directed the State of U.P. to recover compensation for illegal mining in violation of O.M. dated 12.12.2018 issued by MoEF&CC in compliance of the judgment dated 13.09.2018 in the matter of Satendra Pandey which has been enforced by the State of Uttar Pradesh on 05.02.2019.
13. That the abovementioned final orders dated 14.08.2019 & 23.12.2020 in Surendra Singh cases have not been challenged and attained finality. That these final judicial orders can be treated as precedent for similar situation. The intent

of this Hon'ble Tribunal while passing these final orders following O.M. dated 12.12.2018 issued by MoEF&CC in compliance of the judgment dated 13.09.2018 in the matter of Satendra Pandey which has been enforced by the State of Uttar Pradesh on 05.02.2019 were that specifically for the State of Uttar Pradesh regime of DEIAA ended so all ECs issued by DEIAA expired and regime of SEIAA begins w.e.f. 05.02.2019, therefore for future mining operations ECs required to be obtained from SEIAA as per decision dated 05.02.2019 of SEIAA/SEAC made for all project proponents, as implemented in Surendra Singh Cases.

14. Though in the above-mentioned cases of Surendra Singh mining operations were continuing on the basis of expired ECs issued by DEIAA on 23.10.2018, therefore, this Hon'ble Tribunal stopped mining operation directed for re-appraisal from SEIAA because decision of SEIAA/SEAC dated 05.02.2019 made for all concerned project proponents for obtaining ECs from SEIAA, therefore this Hon'ble Tribunal directed for recovery of compensation for illegal mining due to non-compliance of decision dt. 05.02.2019 of SEAC/SEIAA which has already been enforced by State of U.P., hence orders passed in cases of Surendra Singh Cases (supra) are squarely applicable in the present case, hence respondent nos. 5 & 6 liable for recovery of Environmental Compensation for violation and illegal mining.
15. That it is very pertinent to mention here vide I.A. No. 68/2022 filed on 21.03.2022 stay of mining activities carried out on basis of EC dt. 23.10.2018 issued by DEIAA was sought but till date said I.A. is pending. Further vide order dated 07.12.2022 this Hon'ble Tribunal directed "**All such mining leases in which environmental clearance was granted by DEIAA need to be brought in consonance with the directions given by Hon'ble Supreme Court in Deepak Kumar (supra) and order dated 13.09.2018 by this Tribunal in Satendra Pandey (supra) by re-appraisal by SEIAA and only such mining leases may be continued which have been on re-appraisal granted environmental clearance by SEIAA.**" despite such directions mining activity of respondent nos. 5 & 6 not suspended who continued illegal mining on the basis of EC dated 23.10.2018 issued by DEIAA.
16. As one of the Ground taken in O.A. that there is a delay of about 2 years in execution and registration of Mining Lease Deeds in favour of Respondent Nos. 5 & 6 dated 05.10.2020 & 06.11.2020 respectively from the date of issuance of ECs dated 23.01.2018, answering respondents submitted reason for

delay caused due to pendency of Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) arising out of final order dated 25.03.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey v. State of U.P.) which was finally decided with other Civil Appeals vide order dated 28.10.2020 in a lead case (2021) 1 SCC 93 [Dharmendra Kumar Singh vs. State of Uttar Pradesh & Ors.]. (Pages 422-444)

17. That final order dated 25.03.2019 (pages 367-368) passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey v. State of U.P.) prohibited leases to be given effect in pursuance of order dated 13.07.2018 (pages 335-337) passed by this Hon'ble Tribunal in O.A. No. 429/2016 (All India Kaimur Peoples Front v. State of U.P.) prohibiting leases on forest land notified U/s. 4 of the Indian Forest Act, 1927 for which notification under Section 20 of the Indian Forest Act, 1927 has not yet been issued. Further, from report dated 31.12.2018 (pages 334-348) submitted in Amit Pandey's case it is apparent that subject lease land of Respondent Nos. 5 & 6 notified U/s. 4 resultantly lease being prohibited.
18. That during proceedings in the bunch of Civil Appeals Hon'ble Supreme Court directed the State of U.P. for issuance of Section 20 notification in compliance of which Gazette Notification No. 1136/81-2-2020-20(5)2019 dated 15.06.2020 was published declaring 819.785 hectare land as reserved forest mentioned in list 'A' in which Gata No. 7536Gha area 60.122 Forest Block 85, Village-Billi Markundi, Pargana Agori, Tehsil-Robertsganj, District-Sonbhadra is also included. (Page 1128)
19. That Joint Committee Report dated 30.06.2022 (pages 157-161) states total area of Gata No. 7536 is 106.396 hectare out of which 4.122 ha is PRIVATE LAND, 60.1220 ha is RESERVE FOREST as 7536 Gha and rest 42.1520 ha is PAHAD marked as 7536 Ga Mi. and respondent Nos. 5 & 6 granted mining leases on Gata No. 7536 Ga Mi (Khand-01) area 4.970 ha and Gata No. 7536 Ga Mi (Khand-03) area 4.000 ha.
20. That it is very pertinent to submit here this 42.1520 ha marked as Gata No. 7536 Ga Mi PAHAD is in actual is Gata No. 7536 Gha RESERVE FOREST a notified Section 20 land, which is evident from FORM H-2 Case (pages 465-466) where 61 lease holders were penalised for carrying out illegal mining on FOREST LAND comprising area of around 41.937 ha apparently equivalent to area marked as PAHAD, therefore, FOREST LAND and not PAHAD

apparently similar area in measurement. *Secondly*, evident from the fact that one K.K. Stone Product granted mining lease on Gata No. 7536 Gha (page 470) whose North boundary was Arazi No. 3568 old no. = Arazi No. 7406 now new no. (as per list at page no. 482), and this arazi no. 7406 apparently North & East boundary of mining lease granted to respondent no. 5 on Gata No. 7536 Ga Mi. That earlier Gata No. 7406 now new no. sharing North boundary with Gata No. 7536 Gha now the same Gata No. 7406 sharing North boundary with Gata No. 7536 Ga Mi (page 111), therefore, apparently subject mining leases granted on RESERVE FOREST LAND Gata No. 7536 Gha which is a notified Section 20 land sharing North Boundary with Gata No. 7406.

21. Respondent Nos. 5 & 6 pointed out that the process of earmarking be done by State Government of U.P. only, therefore, it is very pertinent to mention here that till date Gata No. 7536 Village-Billi Markundi, Pargana Agori, Tehsil-Robertsganj, District-Sonbhadra has not been yet physically demarcated as Gata Nos. 7536 Ga Mi. & 7536 Gha despite Publication of Notification dated 15.06.2020 U/s. Section 20 of the Indian Forest Act, and it is been mentioned on papers only, apparent from Map of Gata No. 7536 at (Page No. 261) . Further, State Authorities themselves modify Gata No. 7536Gha (Notified Reserve Forest) into Gata No. 7536Ga Mi for leasing out.
22. That although respondent nos. 5 & 6 have challenged the final order dated 25.03.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey v State of U.P.) prohibiting lease on Forest Land before the Hon'ble Supreme Court vide Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) wherein prayed for setting aside the final order dated 25.03.2019 but the said final order has not been set-aside and confirmed/upheld by the Hon'ble Supreme Court alongwith order dated 13.07.2018 passed in O.A. No. 429/2016 (All India Kaimur Peoples Front v. State of U.P.) vide judgment dt. 28.10.2020, granting no relief to the respondent nos. 5 & 6 who were appellant nos. 1 & 4 respectively in the said Civil Appeal.
23. In fact, respondent no. 5 being appellant no. 1 in Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) mislead the Hon'ble Supreme Court by providing wrong details of lease and suspension order by attaching its lease name Sai Ram Enterprises with Neelkanth Mining by providing lease duration as New lease through e-tender process 11.12.2018 to 10.12.2028 and date of suspension order as 05.02.2019 apparent from table drawn in Supreme Court judgment dt. 28.10.2020 (Page 431) mentioned as C.A. No. 5093 of 2019

Sai Ram Enterprises, Neelkanth Mining (the only claim in this Civil Appeal); Gyanendra Tripathi, C.S. Infraconstruction, Amit Enterprises (since other lease periods have not started).

24. It is apparent from the records in the present case that Mining Lease Deed of Respondent No. 5 – Sai Ram Enterprises (Appellant No. 1 in Civil Appeal) executed and registered on 05.10.2020 only and there was no date of suspension order.
25. That answering respondents in their reply here itself mentioned only about Mining Lease Deed of Neelkanth Mining registered on 12.12.2018 and operation of lease suspended vide order dated 05.02.2019 of DM, Sonbhadra passed in compliance of order dated 04.01.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey's Case) in pursuance of order dated 13.07.2018 passed in O.A. No. 429/2016 (All India Kaimoor Peoples Front case).
26. That answering respondents pleaded delay of 2 years caused in execution and registration of Mining Lease Deed due to pendency of Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) which was finally decided with other Civil Appeals by Hon'ble Supreme Court vide judgment dated 28.10.2020 but respondent no. 5 executed and registered his mining lease deed on 05.10.2020 before the final decision dated 28.10.2020 with an intent to mislead the Hon'ble Supreme Court regarding lease duration and date of suspension order.
27. Hence, in the facts and circumstances stated above the mining leases of respondent no. 5 & 6 granted on Gata No. 7536 Gha a notified Reserve Forest Lands which liable to be cancelled and forthwith directed to close mining activity being carried out on notified Section 20 Reserve Forest land as well as directed to be recover environmental compensation for violations and illegal mining from respondent nos. 5 & 6.
28. That surrender application dated 12.01.2022 of Respondent No. 6 has been rejected by District Magistrate, Sonbhadra vide order dated 17.05.2022 due to non-payment of penalty of Rs. 3,23,08,880/- imposed for illegal mining outside the granted mining area, which has been assailed before the Special Secretary, Geology and Mining who upheld the order dated 17.05.2022 passed by the District Magistrate, Sonbhadra vide its order dated 16.02.2023. Consequently

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Civil Misc. Writ Petition No. 29751/2023 has been filed before the Hon'ble High Court of Allahabad challenging the order dated 17.05.2022 passed by the District Magistrate, Sonbhadra imposing penalty on the petitioner for illegal mining as well as the order dated 16.02.2023 passed by the Special Secretary, Geology and Mining Department, Government of Uttar Pradesh, Lucknow rejecting the revision filed by the petitioner against the order dated 17.05.2022. The Hon'ble High Court vide its order dated 24.11.2023 stayed the penalty levelled against the petitioner (respondent no. 6 herein) through order dated 17.05.2022 and the Writ Petition is still pending for hearing.

Place : New Delhi
Dated : 25.05.2024

Filed By :



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O.A. No. 142/2022 (Jayant Kumar vs. MoEF&CC & Ors.)

1 message

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Sat, May 25, 2024 at 10:09 PM

To: Sharad Chauhan <sharadadvocate22@gmail.com>

To,
Mr. Sharad Chauhan,
Counsel for Respondent Nos. 5 & 6

Please find enclosed written submissions on behalf of applicant.

thanks and regards.

--
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