

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

(By Hybrid Mode)

Original Application No. 248/2022

In re: News item published in The Hindu dated 27.03.2022 titled
“Digging up the Chambal”

Date of hearing: 06.02.2023

**CORAM: HON’BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON’BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON’BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON’BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Respondents: Mr. Subodh Agarwal, ACS, Mines, Rajasthan with Ms. Prachi Mishra &
Mr. Dipesh Singhal, Advocates

Mr. Manoj Singh, ACS, Forest & Environment, UP
Mr. Ashish Tiwari, Secretary, Forest,
Mr. Vipin Kumar, Jain, Spl. Secretary, Mining,
Mr. Amit Kaushik, Joint Director, Mining with Mr. Mukesh Verma,
Advocate

Mr. Nikunj Shrivastava, Principal Secretary, Madhya Pradesh with Mr.
Sachin K. Verma, Advocate
Mr. Raghav Sharma, Adv. for MPPCB

Mr. Roh, IG Forest & Wildlife, Mr. Biswas Ranjan ADG, Forest & Wildlife
and Mr. Shrawan Kumar Verma, DIG & RO, IRO, Jaipur with Mr.
Paritosh Anil, Advocate

ORDER

1. The matter was taken up on the basis of captioned media report to the effect that illegal mining was taking place in the periphery of Keoladeo National Park in Rajasthan near Dholpur, close to National Chambal Sanctuary which was habitat of rare species of animals particularly Gharial, roofed turtles and also river dolphins. It has been now found that such illegal mining is not confined to area in Rajasthan but is much more in adjoining areas of MP also in UP. Such Illegal and unscientific mining

was resulting in pollution in the area, adversely affecting the environment and wildlife. Blanket clearances were given for mining projects in violation of Sustainable Sand Mining Guidelines, 2016 and 2020. Mining was being allowed without requisite EC in terms of directions of the Hon'ble Supreme Court in *Deepak Kumar v. State of Haryana & Ors.*, (2012) 4 SCC 629 without requisite District Survey Report and Replenishment study and environmental appraisals.

2. Vide order dated 05.04.2022, the Tribunal constituted Eight Member Joint Committee comprising DGF&SS, Wildlife, MoEF&CC; Director, National Chambal Sanctuary; Secretaries Mining, Rajasthan, UP and M.P. and UP, MP and Rajasthan State PCBs. The Committee was to prepare an action plan for remedial measures for protecting aquatic habitats, demarcating and notifying areas for sand mining operations in conformity with ESMG 2016 and SSMG 2020, replenishment potential without conflicting with the national parks/ sanctuaries or any ecological habitat area, whether notified or not.

3. Thereafter, the matter was further considered on 21.09.2022 in the light of report of the joint Committee dated 14.07.2022 giving factual status of the issues and making recommendations for further action. It was found that illegal sand mining was taking place continuously on the bank of Chambal River not only in Rajasthan but also in Madhya Pradesh and some area of UP was also similarly vulnerable. The report stated that sand Mafias were using interior routs for conducting illegal mining in the national park. They were supported by influential persons, who were well equipped with modern weapons. Recommendation was made for constitution of inter-state Special Task Force equipped with latest weapons, installing of CCTV cameras, coordination with all stakeholders, taking safety measures in dispensing diesel and petrol for the vehicles

involved in illegal mining, creating awareness, listing public participation and handling the law violators by enforcing the law as well as by providing them alternative means of livelihood.

4. The Tribunal broadly accepted the above suggestions and directed further remedial action in the light of recommendations to be overseen by Additional Chief Secretaries, Mining and Environment Departments of Uttar Pradesh, Rajasthan and Madhya Pradesh in their respective jurisdictions. They were directed to remain present by VC for further consideration. The Director-General of Forests & Special Secretary (DGF&SS), Wildlife, MoEF&CC was also directed to remain present in person by V.C.

5. In above background, the matter has been taken up today after more than four months. ACS, Mining, Rajasthan, ACS Environment and Forest, UP, Principal Secretary, Mining, Madhya Pradesh and DGF&SS, MoEF&CC are present by VC. Compliance affidavit dated 6.2.2023 has been filed by Mines and Geology Department, Rajasthan and by the District Collector, Dholpur dated 23.01.2023. Affidavit dated 5.2.2023 has also been filed by State of MP.

6. We may at the outset note that the States have failed to show seriousness required to handle the grim situation. Affidavits filed and interaction with the officers present shows that no serious plan, as expected in terms of earlier orders, has been prepared. Some superficial action appears to have been taken close to the date of hearing. The action taken hardly matches the rampant violations. Our observations are supported by the record. According to the report filed by the State of Rajasthan, a meeting was held by the District Collector, Dholpur on 11.10.2022 and Independent Special Task Force was constituted on

15.1.2023 with members from Police Department, National Crocodile Sanctuary Department, Forest Department, Mines Department and the Transport Department. This statement is against letter of the District Magistrate dated 15.1.2023 which shows that only a suggestion has been given for constitution of Independent Special Task Force. CCTV surveillance cameras are to be installed. We have expressed and conveyed our disappointment with lack of good governance on the subject to enforce rule of law, protect natural environment and wildlife. The officers present have assured the Tribunal that remedial measures will now be taken. While we take on record such assurance, we also record that so far action of the States has not been satisfactory at all and very stringent measures are necessary if State means business in enforcing law and doing its basic duty under the Constitution.

7. Report of the Collector, Dholpur shows that on 13.1.2023, ACS Mining, Rajasthan visited the site with other officers and noted that 40 – 50 tractors were coming from Morena, District of Madhya Pradesh, towards Chambal river, full of mined material. They were moving freely transporting illegally mined material without any fear of law. They tried to jam the road by hitting an empty tractor trolley, seeing the visiting party. Since law and order situation appeared to be unsatisfactory in MP, the Rajasthan team returned back. The incident mentioned may not be isolated but routine. While law violations are rampant, action taken reported is 12 persons arrested in Rajasthan and 4 in MP in the last one year. In MP, 40 vehicles were seized and fine of Rs. 97 lacs recovered from the violators. It is well known that number of such offending vehicles may be in the range of thousands per day and few lakhs in year. The value of illegally mined material may be running into crores. It is difficult to understand how State can allow such lawlessness. There is dire need to control illegal and

unscientific mining which is to the detriment of environment and wildlife. Endangered species - particularly crocodile, turtles, gharials, dolphins are affected. According to annual survey/census of NCS area, the population of mugger, dolphins, gharials and Indian skimmers count observed a shortfall in year 2022 as compared to year 2021. There is no meaningful action taken in pursuance of joint Committee report and order of this Tribunal dated 21.9.2022. There is no credible inter-state coordination mechanism. Instead of the matter being taken casually, as is happening, there has to be strong monitoring mechanism with monitoring at suitably higher level such as DMs/SSPs on daily basis. Further monitoring is required at the State level by Chief Secretaries and DGPs. There has also to be inter-departmental and inter-state coordination. In the course of continuous unchecked mining and transportation of illegally mined material, large number of JCBs and other machines are engaged resulting in damage to environment and wildlife.

8. During interaction, one of the reasons mentioned is zigzag inter-state border of three States – Rajasthan, MP and UP, lack of inter-state coordination and inadequate deployment of police force with suitable modern weapons and communication technology. There are no incentives for the challenging job. This needs to be remedied by evolving mechanism for inter-state communication, coordination and co-operation, deployment of adequate force, with provision for reserve force which can be called at short notice. This action has to be coordinated with the DGPs of Rajasthan, MP and UP.

9. In the light of discussion, we direct the Chief Secretaries of all the three States to take stock of the situation within one month in a joint meeting, after separate review meetings in respective States. Since epicenter of illegal mining is Morena in Madhya Pradesh, the Chief

Secretary, MP may take initiative for holding joint meeting, in consultation with the Chief Secretaries of Rajasthan and UP on mutual convenience basis. Meeting may be held online or offline. The Chief Secretary, MP will be nodal agency for all purposes to prepare a credible action plan in the matter after coordination with other Chief Secretaries. The action plan may include surveillance by drones, requirement of GPS fitted vehicles moving in the area, installing CCTV cameras, providing satellite phones and modern weapons to the police force deployed and extra honorarium. Provision be made on extra forces as per assessment. Check posts may be installed to verify whether transportation was of validly extracted mineral, duly supported by documents of which record may be maintained. In absence of such documents, the vehicles alongwith mined material may be seized and confiscated. Directions of this Tribunal in order dated 26.2.2021 in OA No. 360/2015, *NGT Bar Association v. Virender Singh (State of Gujarat) and other connected matters*, are quoted in order dated 22.03.2021 in OA No. 99/2020, *Ashish Bhadauria vs. State of M.P.*¹ as follows:

“1to26...xxx.....xxx.....xxx

27. We direct all the States/UTs to strictly follow the SSMG-2016 read with EMGSM-2020 reinforced by mechanism for preparation of DSRs (in terms of directions of this Tribunal dated 14.10.2020 in Pawan Kumar, supra and 04.11.2020 in Rupesh Pethe, supra), Environment Management Plans, replenishment studies, mine closure plans, grant of EC (in terms of direction dated 13.09.2018 in Satendra Pandey, supra), assessment and recovery of compensation (as per discussion in Para 25), seizure and release of vehicles involved in illegal mining (in terms of order dated 19.02.2020 in Mushtakeem, supra), other safeguards against violations, grievance redressal, accountability of the designated officers and periodical review at higher levels. As already noted, EMGSM-2020 contemplates extensive use of digital technology, including remote sensing.

¹ 2021 SCC OnLine NGT 64

28. We further direct that periodic inspection be conducted by a five-members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC regional office is available, its Regional Officer will be included in the Committee. Where neither CPCB nor MoEF&CC regional office exists, Chairman, SEIAA will tie up with the nearest institution of repute such as IIT to nominate an expert for being included in the Committee. Such inspection must be conducted at least thrice for each lease i.e. after expiry of 25% the lease period, then after 50% of the period and finally six months before expiry of the lease period for midway correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on website of the SEIAA. Every lessee, undertaking mining, must have an environment professional to facilitate sustainable mining in terms of the mining plan and environmental norms. This be overseen by the SEIAA. Environment Departments may also develop an appropriate mobile App for receiving and redressing the grievances against the sand mining, including connivance of the authorities and also a mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of UP quoted earlier may be duly taken into account.

The mechanism must provide for review at the level of the Chief Secretary at least once in every quarter, in a meeting with all concerned Departments in the State. The Chief Secretary UP may ensure further action in the light of the report of the Oversight Committee.

Similarly, at National level, such review needs to be conducted atleast once in a year by the Secretary, Environment in coordination with the Secretaries Mining and Jalshakti Ministries the CPCB.

29. We further direct all the States/UTs to publish their annual reports on the subject and such annual reports may be furnished to MoEF&CC by 30th April every year giving status till 31st March. First such report as on 31.03.2022 may be filed with the MoEF&CC by all the States/UTs on or before 30.04.2022. The report may also be simultaneously posted on the website of the Environment Department of the States/UTs. Based on such reports, MoEF&CC may consider supplementing its Guidelines from time to time. The MoEF&CC may prepare a consolidated report considering the reports from the States/UTs and publish its own report on the subject, preferably by 31st May every year.

30. We direct the Secretary MoEF&CC to convene a meeting in coordination with the CPCB and Mining and Jalshakti Ministries of Central Government and such other experts/individuals at National level and representatives of States within three months for inter-action on the subject which may be followed by such meetings being convened by the Chief Secretaries in all States in next three months. Holding of

such meetings will provide clarity on enforcement strategies and help protection of environment.”

10. It is also necessary to maintain record of quantity of authorized mining, valid lease holders, valid ECs and CTOs. Record be maintained of sand material available and which can be harnessed in scientific manner, considering the eco-sensitive area in question. If so required, entire NCS area may be declared as no mining area. Inter state monitoring should be as per laid down guidelines - Enforcing & Monitoring Guidelines for Sand Mining, issued by MoEF&CC in January, 2020. Relevant extract therefrom is as follows:-

“9.3 Monitoring of Mining near Inter-district or inter-state boundary

There are situations where bifurcated river becomes district boundaries or state boundaries in such situation it is difficult to assess the mining potential, or to have close monitoring and enforcement of the regulatory provision. Such challenges have been identified and dealt with in SSMG-2016. However, in the absence of any standardized procedure, the monitoring has not been effectively practiced. This has been highlighted by the High Power Committee constituted by NGT in the matter pertaining to illegal mining.

The districts/state sharing the boundary shall constitute the combined task force for monitoring of mined materials, mining activity and also should actively participate in the preparation of DSR by providing appropriate inputs. In such cases, the draft DSR so prepared shall be put up for public consultation in both the districts through respective district administration website.

The task force shall meet every quarter to reconcile the data collected during the period and identify any gap/ lapses based on the outcome of such meeting. The respective district shall take action/ corrective measures. Effort shall be made for real-time data sharing between both the district.

The task-force shall include essentially the representative of respective districts from the mining department, transport department, regional office of SPCB concerned and a reputed citizen nominated by district administration. The Taskforce shall be headed by officer not less than ADM rank and quarterly outcome shall be submitted to District administration. In addition to the above, there is a need for strict surveillance, particularly at night. The State of Gujarat has already initiated a program called

‘Trinetra’ for night surveillance by using night-vision drones to control illegal mining incidents. This program is giving satisfactory results. Such type of system may also be developed by each State within a reasonable time.

A typical standard operating procedure for assessing illegal mining by the committee constituted shall, but not limited to, include the steps given in the following table. However, the process of assessing can be modified based on site-specific conditions and any deviation shall be recorded in the report with proper justification.

Suggestive standard Practice for assessing illegal mining

Step 1	The assessment team should collect the information and documents prescribed in the Pre-Requisite section.
Step 2	The assessment team should verify the applicability/validity of statutes under EPA-1986, Air and Water Act, MMDR 1957, State Mines and Mineral Rules, etc.
Step 3	Field visit should be conducted for identification of mining lease area (in hectare) and boundary pillar constructed to indicate the same.
Step 4	With the help of GPS instrument, the team should assess the area where any extraction or mining have been carried out on the day of visit and calculate the mined-out area in a hectare.
Step 5	If available, the team may avail the use of latest satellite images for calculating the total mined out area.
Step 6	The team should verify the Ground / Surface Level (in meter above MSL) of at least 04 highest points in or around the area where mining has been done. The Ground/surface level will then be computed based on averaging of 04 highest points verified by the team.
Step 7	With the help of Depth Measurement kit or any depth measuring instruments, the depth should be measured for at least 04 points in the mined-out area. For computing, the depth, averaging of the value obtained at 04 points should be done.
Step 8	Verification of compliance conditions of Environmental Clearance and Consent to operate, mining methodology under Mining Plan.
Step 9	Identification of vulnerable impacts observed on the field and non-compliance of conditions of Environmental Clearance and Consent to Operate.
Step 10	Field Survey for identification, monitoring and verification of ecological species based on the information available and documents mentioned in the Pre-requisite section.
Step 11	Preparation of inventory of machinery used/observed on the field. (optional)

Step 12	<i>Preparation of inventory of hydraulic structures observed on the field. (optional)</i>
Step 13	<i>Water sampling for assessment of water quality including physical and biological parameters. (optional)</i>
Step 14	<i>Reconciliation collation of data/information and compilation to maintain violation.</i>
Step 15	<i>Identification of restoration plan and computation of cost of the restoration plan.</i>

”

11. Mining is hazardous activity. It results in huge degradation of environment. Though it is otherwise lucrative activity, it poses threat to bio-diversity, destroys riverine vegetation, causes erosion, pollutes water sources, badly affects riparian ecology, damages ecosystem of rivers, safety of bridges, weakens riverbeds, causes destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of bird species, increases saline water in the rivers. It has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand.

12. The Hon’ble Supreme Court in Deepak Kumar, (2012) 4 SCC 629 noted need to permit only sustainable mining with strict regulatory measures including restoration of the area after closing of mines. It was noted that **in-stream mining lowers the stream bottom of rivers which may lead to bank erosion**. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream’s physical habitat characteristics.

13. In *State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772, at page 790, it was observed :

“32. The policy and object of the Mines and Minerals Act and Rules have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature. The Court cannot lose sight of the fact that *adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service Report. As per the contents of the Report, lack of proper scientific methodology for river sand mining has led to indiscriminate sand mining, while weak governance and corruption have led to widespread illegal mining. While referring to the proposition in India, it was stated that sand trading is a lucrative business, and there is evidence of illegal trading such as the case of the influential mafias in our country.*

33. The mining of aggregates in rivers has led to severe damage to rivers, including pollution and changes in levels of pH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal of more than 12 million tonnes of sand a year from Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 cm a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.

34. The Report also dealt with the astonishing impact of sand mining on the economy. It states that tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.

35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors—beaches

themselves. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on instream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow paths

.....Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand and gravel mining from riverbeds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the stream-bed and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from riverbeds may also cause the entire stream-bed to degrade to the depth of excavation.”

14. In *Jayant vs. MP*, (2021) 2 SCC 670, it was held that apart from other violations, mining is offence of theft and receiving stolen property.

15. Thus, to check crime, monitoring on the subject needs to be undertaken by Superintendents of Police and District Magistrates of Bhind, Morena and Gwalior in Madhya Pradesh, Agra, Etawah and Jhansi in UP and Dholpur and Bharatpur in Rajasthan. Apart from taking action against drivers of the vehicles used, owners of the vehicles may also be proceeded against. Patrolling may be adequately increased. Awareness measures be adopted involving local community. Using of boats for patrolling may also be considered. Interpretation centers be set up at appropriate locations. Necessary funds be provided for such monitoring. Measures be also taken

for protection of dolphins, turtles and crocodiles and also to regulate illegal fishing as in process of illegal fishing, dolphins, turtles and crocodiles are also killed.

16. Apart from monitoring at District level, monitoring is also required at State level as more than one Districts are involved and the problem exists in many other districts in the State. For view at State level, periodical meetings may be necessary by DGPs and the Chief Secretaries with such SPs and DMs and other concerned Departments preferably once in a month initially. Thereafter, for better inter State coordination, joint Meetings of Chief Secretaries/DGPs of MP, UP and Rajasthan need to be held preferably once in two months initially to take stock of the situation and plan further remedial action. This mechanism needs to be adopted and continued till situation is brought under control. An app may be considered to enable inflow of information about violations from all quarters. Successful models and best practices adopted in other States to tackle such situation may also be studied and adopted. Action taken reports be filed by the three States by 31.3.2023 by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

List for further consideration on 18.04.2023.

The Chief Secretaries and DGPs of Rajasthan, MP and UP may remain present in person by VC on the next date for interaction.

A copy of this order be forwarded to Chief Secretaries and DGPs of Rajasthan, MP and UP and SSPs and DMs of Bhind, Morena, Gwalior, Agra, Etawah, Jhansi, Dholpur and Bharatpur by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

February 06, 2023
Original Application No. 248/2022
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