

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(BY HYBRID MODE)**

Original Application No. 284/2023

Anuj Singh

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 19.07.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Vanshdeep Dalmia, Adv.

Respondents: Mr. Daleep Dhyani, Adv. for UPPCB
Mr. Mukesh Verma, Adv. for the Mining Department, State of UP
Mr. Shubham Singh, Adv. for MoEF & CC
Ms. Priyanka Swami, Adv. for SEIAA, UP

ORDER

1. The main relief in the original application as prayed by the applicant is to restrain the Respondents No. 1 to 7 from allowing mining lease holders from excavating the entire quantity available at any sand ghat in District Banda, Uttar Pradesh and to restrict the quantity to the mineral replenished as per pre-post monsoon replenishment study and to direct respondents not to permit mining in excess of 60% of the available quantity in terms of clause 4.3(r) of the EMGSM, 2020 guidelines issued by the MoEF&CC and further the respondents should be restrained from conducting mining in a submerged water area of the said mines situated in Tehsil Pailani, District Banda before replenishment study.

2. Basis of the above averment made by learned Counsel appearing for the applicant is judgment of Hon'ble Supreme Court of India dated 27.02.2012 in Deepak Kumar vs. State of Haryana, (2012) 4 SCC 629, where it has been directed that though the economic value of minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals but it should be taken precautions while the mining is done in riverbed mining. Relevant paras are quoted below:

“xxxxxx.....xxx

4.9. Riverbed mining

4.9.1. Environment damage being caused by unregulated riverbed mining of sand, bazari and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

- (a) In the case of mining leases for riverbed sand mining, specific river stretches should be identified and mining permits/ lease should be granted stretchwise, so that the requisite safeguard measures are duly implemented and are effectively monitored by the respective Regulatory Authorities.*
- (b) The depth of mining may be restricted to 3m/water level, whichever is less.*
- (c) For carrying out mining in proximity to any bridge and/ or embankment, appropriate safety zone should be worked out on case-to-case basis, taking into account the structural parameters, locational aspects, flow rate, etc. and no mining should be carried out in the safety zone so worked out.*

5.0. Conclusion

Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the 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 the mined out areas. Further, while granting 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 be duly noted. The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore make necessary provisions

in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States.”

(emphasis supplied)

20. The Report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a relook to the definition of “minor minerals” per se. The necessity of the preparation of “comprehensive mines plan” for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.

21. Further, it was also recommended that the 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, the number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in the 2010 Rules. A proper framework has also to be evolved on cluster of mining of minor minerals 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.

22. The Minister for (Environment and Forests) wrote DO Letter dated 1-6-2010 to all the Chief Ministers of the States to examine the Report and to issue necessary instructions for incorporating the recommendations made in the Report in the Mineral Concession Rules for mining of minor minerals under Section 15 of the Mines and Mineral (Development and Regulation) Act, 1957. Following are the key recommendations reiterated in the letter:

- “(1) Minimum size of mine lease should be 5 ha.*
- (2) Minimum period of mine lease should be 5 years.*
- (3) A cluster approach to mines should be taken in case of smaller mine leases operating currently.*
- (4) Mine plans should be made mandatory for minor minerals as well.*
- (5) A separate corpus should be created for reclamation and rehabilitation of mined out areas.*
- (6) Hydrogeological reports should be prepared for mining proposed below groundwater table.*
- (7) For riverbed mining, leases should be granted stretchwise, depth may be restricted to 3m/water level. whichever is less. and safety zones should be worked out.*
- (8) The present classification of minerals into major and minor categories should be re-examined by the Ministry of Mines in consultation with the States.”*

25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics."

3. The contention of learned Counsel for the applicant is that the Hon'ble Supreme Court vide its Order dated 29.11.2022 dismissed the said Civil Appeal No. 8035-8036 of 2022 filed by the State of UP being aggrieved by the abovementioned Judgment dated 6.05.2022, and clarified that the State authorities shall undertake Replenishment studies for both years i.e. year ending 31.12.2021 as well as the current year ending 31.12.2022. OA No. 410 of 2022 titled 'Avinash Kumar Ray v. MOEF' & OA No. 411 of 2022 titled 'Ishhita Foundation v. MOEF' were filed before this Hon'ble Tribunal in June 2022 challenging certain NITs/ E-Auction Notices on the ground that proper Replenishment Studies have not been conducted in District Banda. The Respondent No. 5, District Magistrate Banda filed a Status Report dated 11.01.2023 in 'Avinash Kumar Ray v. MOEF' stating that Replenishment Studies has been conducted by the Central Mine Planning & Design Institute Limited (CMPDI) for 135 Sand Mining Leases in District Banda (both Pre-Monsoon & Post Monsoon) and a Report dated 30.12.2022 has been submitted by CMPDI in that regard. Along with the status Report dated 11.01.2023, the Respondent No. 5 attached a Chart indicating the quantity Replenished & the total Available Quantity in respect of the said 135 Sand Mining leases. Pursuant to the Replenishment Studies conducted by CMPDI, the Respondent No. 5 issued various Orders in respect of several existing Sand Mining leases wherein the entire (Total)

available Quantity (including the Quantity Replenished and existing quantity) was permitted to be fully mined, in complete disregard to the Environmental Rule of Law, the Principle of Sustainable Development, and in violation of the Sand Mining Guidelines issued by the MOEF in 2016 and 2020.

DETAILS OF CERTAIN SUCH ORDERS PASSED BY THE RESPONDENT DISTRICT MAGISTRATE, BANDA ARE DEMONSTRATED AS UNDER:

TABLE

SNO	DETAILS OF MINE	AVAILABLE QUANTITY PRE-MONSOON	REPLENISHED QUANTITY (CUM)	TOTAL AVAILABLE QUANTITY (CUM)	TOTAL QUANTITY PERMITTED TO BE MINED
1.	Gata No. 176Mi, 172, 182, 187, Tehsil Pailani, District Banda admeasuring 25.29 ha. (Allotted in favour of Respondent No. 8)	166332	125186	291518 (At Serial No. 107 of Chart)	291518 [vide Order dated 25.01.2023 by the District Magistrate, Banda]
2.	Gata No. 100 (Part of Khand No. 3), admeasuring 16 ha. (Allotted in favour of Respondent No. 9)	194044	45888	239932 (At Serial No. 72 of Chart)	239932 [vide Order dated 27.01.2023 by the District Magistrate, Banda]

4. It is submitted that permitting the lease holders to mine the entire quantity available in the Sand ghats situated along the River would amount to excessive, disproportionate and unsustainable mining which would invariably have a serious and direct adverse impact on the River's physical habitat characteristics, including bed elevation, substrate composition, stability, velocity, depth, turbidity, sediment transport, apart from causing irreparable harm to the biodiversity and result in flood risk and loss of habitat. Such permission to mine the entire available Quantity is violative of the Doctrine of Sustainable Development, various Judgments passed by

the Hon'ble Supreme Court and the Sand Mining Guidelines issued by the MOEF [SSMG, 2016 & EMGSM, 2020].

5. It is further argued that The Hon'ble Supreme Court in the case of *Deepak Kumar v. State of Haryana*, 2012 (4) SCC 629 stated that unregulated mining and the extraction of alluvial material from and within, and near a streambed has a direct impact on the stream's physical habitat characteristics and affects its biodiversity and ought to be conducted in an environmentally sustainable manner. Lack of proper planning and sand management causes disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand. The Hon'ble Apex Court held that "Quarrying of River sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and the construction industry but excessive in-stream sand and gravel mining cause degradation of rivers. In-stream mining lowers the stream bottoms the rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas cause the deepening of rivers which may result in destruction of aquatic riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics."

6. Similar directions have been issued in *N.D. Jayal & Anr. v Union of India & Ors.*, (2004) 9 SCC 362 and in *Vellore Citizens Welfare Forum v. Union of India*, (1961) 5 SCC 647.

7. Contention of the applicant is that quantity allowed in EC is much higher than the quantity described in annual replenishment plan. The main objective of the preparation of district survey report as per sustainable sand mining guidelines is to ensure the identification of areas

of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area. In absence of these details mining cannot be done in sustainable manner. MoEF &CC has come out with Sustainable Sand Mining Guidelines 2016 as well as Enforcement and Monitoring Guidelines for Sand Mining 2020.

8. Vide order dated 19.04.2023, this Tribunal constituted a joint Committee consisting of SEIAA, UP, State PCB and District Magistrate, Banda to verify the factual position and take remedial action.

9. In compliance thereof, the joint Committee visited the site, examined the matter and submitted the report dated 19.06.2023 as follows:

“xxxxxx.....xxx
3. The nominated Joint Committee member carried out field visit around mining place Gata. No- 176Mi, 172Ga, 182, 187, Village- Amlorkhadar, Tehsil- Pailani, District- Banda (Vipul Tyagi) and mining place Gata No-100, Khand No- 3, Village-Khapatiha, Tehsil- Pailani, District- Banda (IS. Enterprises) as mentioned in O.A. no- 284/2023 on dated 26.05.2023. The aforesaid lease hold area is in the river- Ken in District - Banda.

The aforesaid lease hold area Gata No- 176Mi, 172Ga, 182, 187, Village- Amlorkhadar, Tehsil- Pailani, District- Banda was not found operational and lease hold area Gata No-100, Khand No- 3, Village-Khapatiha, Tehsil- Pailani, District- Banda was found operational at the time of committee visit.

4. Lease hold area Gata No- 176Mi, 172Ga, 182, 187, Village- Amlorkhadar, Tehsil- Pailani, District- Banda on River Ken is allotted to lessee Shri Vipul Tyagi S/o Shri Ravindra Kant Tyagi, R/o **H.** No.- 319, Noor Nagar Sihani, Tehsil and District- Gaziabad, U.P. via registered lease agreement for 5 years from dated 13.05.2021 to 12.05.2026.

Lease hold area Gata No- 100, Khand No- 3, Village-Khapatiha, Tehsil- Pailani, District- Banda on River Ken is allotted to lessee M/s J.S. Enterprises, Partner Shri Balvinder Singh S/o Sri Satyapal Singh R/o H.No- 96/A, Nakora (128), District- Sirsa, Haryana via registered lease agreement for 5 years from dated 16.04.2021 to 15.04,2026.

The details of permission issued by concern department given is below: -

Address of lease	Co-ordinate of Lease area of mentioned in Environmental Clearance	Sanction Detail of lease
Gata No-176Mi, 172Ga, 182, 187, Village-Amlorkhadar, Tehsil-Pailani, District-Banda	(A) 25°44'59.76' N, 80°21'29.63' E (B) 25°44'56.90" N, 80°21'30.33' E (B1) 25°44'14.5K N, 80°20'59.54' E (B2) 25°44'13.76" N, 80°21'00.41" E (B3) 25°44'08.39" N, 80°21'00.29' E (B4) 25°44'07.72" N, 80°21'00.6T E (B5) 25°44'00.4T N, 80°21'00.6T E (B6) 25°44'00.07' N, 80°21'00.3r E (C) 25°43'37.6T N, 80°21'13.05" E (D) 25°43'36.87" N, 80°21'12.33' E	Letter of intent issued vide letter dated 22.10.2018. 2. Letter of cluster issued vide letter dated 29.01.2019. 3. Letter of mining plan issued vide letter dated 01.03.2019. 4. Environmental Clearance by SEIAA issued vide letter dated 28.01.2020. 5. Lease Area- 25.29 hectare, Mineable Area- 25.29 hectare, Mineable Capacity- 505800 Cub. Meter/Annum (2023 Cub. Meter/day) 6. Lease Deed Execution issued vide letter dated 13.05.2021. 7. Sanction tenure of lease mining — 5 years 8. CTO issued by UPPCB vide letter dated 24.10.2020 (from 23.10.2020 to 31.12.2024) 9. Total mineable quantity after replenishment study report year 2022 - 291518 Cub. Meter.
Gata No-100, Khand No- 3, Village-Khapatiha, Tehsil-Pailani, District-Banda	(A) 24°40'36.12- N, 80°22'06.06" E (B) 24°40'32.64- N, 80°21'40.40" E (C) 24°40'27.83- N, 80°21'39.12" E (D) 24°40'28.4T N, 80°22'09.08- E	1. Letter of intent issued vide letter dated 07.05.2018. 2. Letter of cluster issued vide letter dated 31.07.2019. 3. Letter of mining plan issued vide letter dated 31.10.2018. 4. Environmental Clearance by SE1AA issued vide letter dated 03.03.2021. 5. Lease Area- 16.00 hectare, Mineable Area- 16.00 hectare, Mineable Capacity- 320000 Cub. Meter/Annum (1422 Cub. Meter/day) 6. Lease Deed Execution issued vide letter dated 16.04.2021. 7. Sanction tenure of lease mining — 5 years

		8. CTO issued by UPPCB vide letter dated 18.04.2023 (from 18.04.2023 to 31.12.2025) 9. Mineable quantity in replenishment study report year 2022- 239932 Cub. Meter.
--	--	--

5. The quantity of excavated mineral in year 2022-2023 against quantity mentioned in replenishment study report year 2022 as per information provided by Mine Officer, Banda is given as below

Annexure-1:-

Lease area	Resources available at pre-Monsoon (in cubic meter)	Quantity replenished (in cubic meter)	Total resource available (in cubic meter)	Mined mineral quantity between 01.07.2022 to 26.05.2023 (in cubic meter)
Gata No- 176Mi, 172Ga, 182, 187, Village- Amlorkhadar, Tehsil- Pailani, District- Banda	166332	125186	291518	0
Gata No- 100, Khand No- 3, Village- Khapatiha, Tehsil- Pailani, District- Banda	194044	45888	239932	4290

6. It is submitted regarding allegation of mining is being carried out in submerged area water area, extent of mining has been allowed to the extent of entire available mineral including replenished mineral whereas permissible mining is only to the extent of 60% in context of SSMG 2016 and EMGSM 2020 at lease hold area Gata No- 176Mi, 172Ga, 182, 187 and Gata No- 100, Khand No- 3 in river Ken, it was found during the visit of committee that mining work had been done within allotted co-ordinate. Mining work had not been found in the stream of river. Obstruction in the stream of river was not found.

According to the details of mined material provided by Mine Office, Banda, the quantity of mined material is less than the total mineral quantity with available mineral before pre- monsoon and replenished mineral quantity in year 2022. **Annexure-1**

7. In compliance of direction issued by Hon'ble National Green Tribunal, observation of non-compliance of provision mentioned in SSMG 2016 and EMGSM 2020 are given as below: -

7.1) Issue related to allotment of mineral against replenished mineral quantity.

7.1.1) As per the provision of EMGSM 2020 of Ministry of Environment, Forest and Climate Change January 2020, River bed sand mining shall be restricted within the central 3/4th width of the river/rivulet or 7.5 meters (inward) from river banks but up to 10% of the width of the river, as the case may be and decided by regulatory authority while granting environmental clearance in consultation with irrigation department. Regulating authority while regulating the zone of river bed mining shall ensure that the objective to minimize the effects of riverbank erosion and consequential channel migration are achieved to the extent possible. In general, the area for removal of minerals shall not exceed 60% of the mine lease area, and any deviation or relaxation in this regard shall be adequately supported by the scientific report.

7.1.2) In the letter issued by Mine Office, Banda, as per quantity mentioned in replenishment study report year 2022, the letter issued to lessee Shri Vipul Tyagi S/o Shri Ravindra Kant Tyagi, R/o H. No.- 319, Noor Nagar Sihani, Tehsil and District- Gaziabad, U.P of lease hold area Gata No- 176Mi, 172Ga, 182, 187 Village-Amlorkhadar, Tehsil- Pailani, District- Banda for mining the total mineral quantity 291518 cubic meter vide letter no- 490/ Mineral- 30, Banda dated- 25th January 2023 and letter issued to lessee M/s J.S. Enterprises, Partner Shri Balvinder Singh S/o Sri Satyapal Singh R/o H.No- 96/A, Nakora(128), District- Sirsa, Haryana of lease hold area Gata No- 100, Khand No- 3, Village-Khapatiha, Tehsil- Pailani, District- Banda for mining the mineral total quantity 239932 cubic meter vide letter no- 500/ khanij- 30, Banda dated-27th January 2023.

7.1.3) According to detail of mined material provided by Mine Office, Banda, the quantity of mined material is less than the total mineral quantity with available mineral before pre- monsoon and replenished mineral quantity in year 2022.

7.1.4) The co-ordinate of lease hold area is nearby the river bank and it was found that mining work has been done leaving the 7.5 meter distance of river bank. Whereas the mining work has been restricted within the central 3/4th width of the river/rivulet or 7.5 meters (inward) from river banks through the various guidelines.

7.2) Issue related to in- stream mining

7.2.1) The lease area (sanctioned and allotted) is situated partly in the river stream section. Whereas the in-stream mining is prohibited through the various guidelines.

7.2.2) It has been informed by the Mines Officer Banda that as per lease deed agreement, lessee were instructed not to conduct excavation in the active river stream.

7.2.3) During visit of committee, Mining work is being found nearby the stream of river. It was observed that mining work had not been done in the river stream. Obstruction in the stream of the river was not found.

73) Issue related to use of heavy machinery

7.3.1) During visit of committee, excavated depth of mining was found within permitted depth 3.0 meter.

7.3.2) The use of excavator has not been allowed under semi mechanized condition in the EC issued to project.

7.3.3) The use of excavator is permitted by the Director, Mining Department, UP vide letter dated 21.06.2019 which was issued in accordance with honorable NGT order in the matter of OA No. 44/2016. However, the condition of EC and said letter regarding use of excavator for the mining activities is contradictory to each other.

7.3.4) During visit of committee, restricted machinery was not found for mining activity at mining place. The machinery (Excavator cum loading machine boom length size 3.0 meter and bucket capacity less than one cubic meter) was found for mining activities at mining place.

7.4) Issue related to illegal mining.

7.4.1) During visit of committee, mining work was not being found in lease hold area Gata No- 176Mi, 172Ga, 182, 187 Village-Amlorkhadar, Tehsil- Pailani, District- Banda. It was informed by MO, Banda that aforesaid mining lease is not in operation due to non-payment of royalty installment in season 2022-2023.

7.4.2) During the visit of committee, mining work was being done in lease hold area Gata No- 100, Khand No- 3, Village-Khapatiha, Tehsil- Pailani, District- Banda. It was observed that mining work was found to be done in allotted Co- ordinate of lease area. It was informed by MO, Banda that aforesaid mining lease has started the mining from 27.04.2023 in season 2022-2023.

7.4.3) As per the provision of EMGSM 2020 of Ministry of Environment, Forest and Climate Change January 2020, In general, the area for removal of minerals shall not exceed 60% of the mine lease area, and any deviation or relaxation in this regard shall be adequately supported by the scientific report

8. Post mining environment restoration plan.

8.1) Due to mining season, mining closer activity was not carried out during visit of committee.

8.2) The green cover development/tree plantation is to be done in an area equivalent to 20% of total lease area either on river bank or along road side (Avenue Plantation) However, no such planned plantation has been observed along the approach road sides.

8.3) Regarding environmental Audit, environmental statement etc. are also not been strictly complied with.

9. Conclusion

Considering the observations as listed above the following measure are suggested

9.1) Mining lease near river bank should not be allotted to avoid the mining in restricted area of river banks.

9.2) The mine area across/ within the river course should not be allotted to avoid the in stream mining.

9.3) Strict vigilance and stringent action are required to be taken for stopping the illegal mining.

9.4) The mine work should be allowed as per the provision of EMGSM 2020 of Ministry of Environment, Forest and Climate Change January 2020 and mining plan submitted by Lessee.

9.5) Post mining environmental restoration activity should be completed after closing the mining before start monsoon season.”

10. Main contention of the applicant is that the District Magistrate, Banda while granting the mine considered the report that replenished quantity is approximately 125186 cubic meter in item no. 1 which was allotted in favour of Respondent No. 8, while total quantity permitted is 291518 cubic meter which is more than replenished quantity. Similarly in item no. 2 in the mining area which was allotted in favour of Respondent No. 9, the replenished quantity is approximately 45888 cubic meter, while permitted quantity is reported to be 239932 cubic meter and this is in violation of SSMG 2016 and EMGSM 2020.

11. In reply to the contention raised by the applicant, learned Counsel for the State PCB has submitted that in item no. 1, mined mineral quantity is zero while in item no. 2, mined mineral quantity is 4290 cubic meter and this is below the reported quantity of replenished.

12. Mineral Laws (Amendment) Act 2020, as notified with effect from 10th of January 2020 has enacted a new section 8 (B) which is relating to the provisions for transfer of statutory clearances. After which the MoEF&CC issued a notification dated 27th March, 2020 and amended the Environmental Impact Assessment Notification 2006. The Notification states that it shall be lawful for the new lessee to continue mining operations on the land in which mining operations were being carried out by the previous lessee for a period of 2 years from the date of commencement of the new lease. The notification dated 27th March, 2020 is as follows :-

“Now therefore in exercise of the powers conferred by Sub Section (1) and Clause (v) of Sub Section (2) and Section 3 of the Environment (Protection) Act 1986 (29 of 1986) read with Sub - Rule (4) of Rule 5 of the Environment (Protection) Rules 1986, the Central Government after having dispensed with the requirement of notice under Clause (a) of Sub Rule (3) of the Rule 5 of the said rules in public interest and in supersession of the Notification No. S.O. 4307 (E) dated 29th November 2019 hereby makes the following further amendments in the EIA Notification 2006 namely –

(i) In paragraph 11 after sub-paragraph (2) the following subparagraph shall be inserted namely –

*(3) The successful bidder of the mining leases expiring under the provisions of Sub-Section (5) and (6) of section 8A of the Mines and Minerals Development and Regulation Act 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made there under shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee **for a period of two years, from the date of commencement of new lease** and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee **on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier :***

Provided that the successful bidder shall apply and obtain prior environmental clearance

from the regulatory authority within a period of two years from the date of grant of new lease.”

Requirement of preparation of District Survey Report

13. Consequent upon the decision taken at the United Nation Conference on Human Environment held in Stockholm, the Parliament enacted the Environment (Protection) Act, 1986 in September, 2006. The parent EIA Notification dated 14.09.2006 was issued by the MoEF & CC under Section 3 of the EP Act with an endeavour to provide a substantive legal framework and comprehensive procedural mechanism for evaluation, assessment and monitoring of the Environmental Impact on the land, air and water due to various projects undertaken by person in all sectors throughout the territory of India. The EIA Notification dated 14.09.2006, regulated certain activities including mining of minor mineral as laid down in the schedule therein and provided that a prior environmental clearance is mandatory for such regulated and specific projects across all sectors. The notification provided for constitution of central and state level environmental impact assessment authorities, SEIAA manned by professional, experts and technical individuals that shall screen, scope and appraise projects from an environmental prospective and further monitor the same from time to time, in order to achieve much desired goals of sustainable development. The MoEF & CC issued notification dated 15.01.2016 which amended the EIA Notification, 2006 by introducing clause 7 (III) (A) which mandated for the preparation of DSR for sand mining or River Bed Mining and mining of other mineral. Vide another notification dated 20.01.2016, the MoEF & CC constituted the DEIAA and the DEAC. The DEIAA comprised of 04 members and headed by District Magistrate whereas DEAC comprised of 11 members, who were mostly the government officer's bureaucrats. Further, MoEF & CC issued the Sustainable Sand Mining Management Guidelines, 2016 with an endeavor

to ensure that sand and gravel mining is done in an environmentally sustainable and socially responsible manner, and to further ensure the conservation of river equilibrium and its natural environment by protection and restoration of the ecological system. One of the key and nodal objectives enumerated in the SMMG, 2016 was the preparation of the DSR report that would identify the areas of aggradations/deposition where mining can be allowed, and identification of areas of erosion and proximity to infrastructural structures and installation wherein mining should be prohibited.

14. This Tribunal, in the case titled *Anjani Kumar v. State of U.P.* 2017 SCC Online NGT 979 vide its Judgment dated 8.12.2017 held that a **District Survey Report (DSR) is a pre-requisite and conditional precedent before the grant of any mining leases of sand and bajri.** The Relevant portion is extracted below:

“31. From the extracted portion, it could well be understood that to begin with the process prescribed for preparing of survey document mapping the status of the sand sources in a District is an integral but an essential part. The Survey has to be conducted and report be prepared for each District. It must also be noticed that while taking into consideration the fact that rivers cut across districts and States and every river is an ecosystem in itself but keeping in mind the fact that district is a most established unit of administration conduct of survey, planning and monitoring can be ensured effectively, the scheme proposed that every district will prepare this document (District Survey Report) taking river stretch in that district as an ecological and inventorising other sources of sand in the district...”

65. Thus there is merit in the contention of the applicant that the District Survey Report is not only an important act but it should be conducted prior to sanctioning of the permission/concession.

71. In other words it is evident that absence of the factual District Survey Report after due inspection grant of mining lease will be in conflict of the environmental laws as sand mining lease could be granted in an area only when aspect of replenishment of miner mineral especially in river sand is clearly established.

96. It is true that under the Mining Policy, Rules the State is empowered to conduct survey for the purpose of inviting bids opine. The preparation of DSR and obtaining if Environmental Clearance is also a conditional precedent to carrying on mining activity. It is for the State Government to ensure that there is no conflict between two and they are balanced so as to ensure that neither there is scope for illegal mining nor there should

be environmental degradation.

Notice Inviting Tender (NIT)

15. The rules provide for a conservative estimation of the permissible quantity and in no way discounts the importance of NIT or accord primacy to mining plan. NIT is primary document and it is the constitutional requirement to give level playing field to all the bidders as held in *Manohar Lal Sharma vs principal secretary (SC) 2014 all SCR 3470* as follow:-

49.The constitutional philosophy about law making in relation to mines and minerals and List I Entry 36 (Federal Legislative List) and List II Entry 23 (Provincial Legislative List) in Schedule VII of the Government of India Act, 1935 which correspond to List I Entry 54 (Union List) and List II Entry 23 (State List) in our Constitution has been noticed by this Court in *Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1*. Speaking through one of us (R.M. Lodha, J., as he then was) in *Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1*, this Court has noted the statement of the learned Solicitor General in the House of Commons made in the course of debate in respect of the above entries in the Government of India Bill that the rationale of including only the "regulation of mines" and "development of minerals" and that, too, only to the extent it was considered expedient in the public interest by a federal law was to ensure that the provinces were not completely cut out from the law relating to mines and minerals and if there was inaction at the Centre, then the provinces could make their own laws. Thus, power in relation to the mines and minerals was accorded to both, the Centre and the States. The Court in *Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1* said:

"130. The management of the mineral resources has been left with both the Central Government and the State Governments in terms of List I Entry 54 and List II Entry 23. In the scheme of our Constitution, the State Legislatures enjoy the power to enact legislation on the topics of "mines and minerals development". The only fetter imposed on the State Legislatures under Entry 23 is by the latter part of the said entry which says, "subject to the provisions of List I with respect to regulation and development under the control of the Union". In other words, the State Legislature loses its jurisdiction to the extent to which the Union Government had taken over control, the regulation of mines and

development of minerals as manifested by legislation incorporating the declaration and no more. If Parliament by its law has declared that regulation of mines and development of minerals should in the public interest be under the control of the Union, which it did by making declaration in Section 2 of the 1957 Act, to the extent of such legislation incorporating the declaration, the power of the State Legislature is excluded. The requisite declaration has the effect of taking out regulation of mines and development of minerals from List II Entry 23 to that extent. It needs no elaboration that to the extent to which the Central Government had taken under "its control" "the regulation of mines and development of minerals" under the 1957 Act, the States had lost their legislative competence. By the presence of the expression "to the extent hereinafter provided" in Section 2, the Union has assumed control to the extent provided in the 1957 Act. The 1957 Act prescribes the extent of control and specifies it. We must bear in mind that as the declaration made in Section 2 trenches upon the State legislative power, it has to be construed strictly. Any legislation by the State after such declaration, trespassing the field occupied in the declaration cannot constitutionally stand ".....

83. Two recent decisions viz., (1) **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** and (2) **Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1** directly deal with the question of auction as mode for the disposal or allocation of natural resources. But before we consider these two decisions, reference to some of the decisions of this Court, which had an occasion to deal with disposal of natural resources, may be of some help in appreciating this aspect in correct perspective.

84. P.N. Bhagwati, J. in **Kasturi Lal Lakshmi Reddy & Ors. v. State of J&K & Anr., (1980) 4 SCC 1** had said that where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging setting up of industries within the State, the State was not bound to advertise and tell the people that it wanted a particular industry to be set up within the State and invite those interested

to come up with proposals for the purpose. It was also observed that if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose.

85. In **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295** this Court had observed that ordinary rule for disposal of State-owned or public-owned property, was by way of public auction or by inviting tenders but there could be situations where departure from the said rule may be necessitated but then the reasons for the departure must be rational and should not be suggestive of discrimination and that nothing should be done which gives an appearance of bias, jobbery or nepotism.

86. The statement of law in **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295** was echoed again in **Haji T.M. Hassan Rawther v. Kerala Financial Corporation, (1988) 1 SCC 166**, wherein this Court reiterated that the public property owned by the State or by an instrumentality of State should be generally sold by public auction or by inviting tenders. It was emphasised that this rule has been insisted upon not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities and to obviate the factors like bias, favoritism or nepotism. Clarifying that this is not an invariable rule, the Court reiterated that departure from the rule of auction could be made but then it must be justified.

87. The above principle is again stated by this Court in **M.P. Oil Extraction & Anr. v. State of M.P. & Ors., (1997) 7 SCC 592**, in which this Court said that distribution of largesse by inviting open tenders or by public auction is desirable but it cannot be held that in no case distribution of such largesse by negotiation is permissible.

88. In **Netai Bag & Ors. v. State of West Bengal & Ors., (2000) 8 SCC 262** this Court said that when any State land is intended to be transferred or the State largesse is decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people as that would be a sure method of guaranteeing compliance with mandate of Article 14 of the Constitution but non-floating of tenders or not holding public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner.

89. In **Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors., (2009) 7 SCC 561** the matter before this Court related to the selection of

contractor for development of the port of Pondicherry without floating a tender or holding public auction. The Court said that where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging development of the port, the State was not bound to advertise and tell the people that it wanted development of the port in a particular manner and invite those interested to come up with proposals for the purpose.

90. There are numerous decisions of this Court dealing with the mode and manner of disposal of natural resources but we think it is not necessary to refer to all of them. Having indicated the view taken by this Court in some of the cases, now we may turn to **2G case, Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1**. In that case, the two-Judge Bench of this Court stated that a duly publicised auction conducted fairly and impartially was perhaps the best method for alienation of natural resources lest there was likelihood of misuse by unscrupulous people who were only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. Court laid emphasis that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.

91. The above view in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** necessitated the reference by the President of India to this Court under Article 143(1) of the Constitution. The first two questions ? Question 1 and Question 2 ? referred to this Court for consideration and report read as under:

“Question 1	Whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions?
Question 2	Whether a broad proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to several judgments of the Supreme Court including those of the larger Benches?

92. The Constitution Bench which dealt with the above reference observed that the answer to the following three questions would provide comprehensive answer to the parent question, viz., Question 1:

- (i) Are some methods ultra vires and others intra vires the Constitution of India, especially Article 14?
- (ii) Can disposal through the method of auction be elevated to a constitutional principle?
- (iii) Is this Court entitled to direct the executive to adopt a certain method because it is the "best" method? If not, to what extent can the executive deviate from such "best" method?

93. The Constitution Bench clarified that the statement of law in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction was confined to the specific case of spectrum and not for dispensation of all natural resources. The Constitution Bench said that findings of this Court in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** were limited to the case of spectrum and not beyond that and that it did not deal with the modes of allocation for natural resources other than spectrum.

94. The Constitution Bench while dealing with the aspect of disposal of natural resources other than auction, divided the consideration of this aspect under two heads, viz., "Legitimate deviations from auction" and "Potential of abuse". Under the head "Legitimate deviations from auction" the Court considered the earlier decisions of this Court in **Kasturi Lal Lakshmi Reddy & Ors. v. State of J&K & Anr., (1980) 4 SCC 1**, **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295**, **Haji T.M. Hassan Rawther v. Kerala Financial Corporation, (1988) 1 SCC 166**, **M.P. Oil Extraction & Anr. v. State of M.P. & Ors., [(1997) 7 SCC 592]**, **Netai Bag & Ors. v. State of West Bengal & Ors., (2000) 8 SCC 262** and **Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors., (2009) 7 SCC 561**, which we have briefly noted above, and it was held that there is no constitutional mandate in favour of auction under Article 14. In the main judgment (paras 129 to 131, pg. 92), the Constitution Bench stated as under:

"129. Hence, it is manifest that there is no constitutional mandate in favour of auction under Article 14. The Government has repeatedly deviated from the course of auction

and this Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. Essentially whenever the object of policy is anything but revenue maximization, the Executive is seen to adopt methods other than auction.

130. A fortiori, besides legal logic, mandatory auction may be contrary to economic logic as well. Different resources may require different treatment. Very often, exploration and exploitation contracts are bundled together due to the requirement of heavy capital in the discovery of natural resources. A concern would risk undertaking such exploration and incur heavy costs only if it was assured utilisation of the resource discovered; a prudent business venture, would not like to incur the high costs involved in exploration activities and then compete for that resource in an open auction. The logic is similar to that applied in patents. Firms are given incentives to invest in research and development with the promise of exclusive access to the market for the sale of that invention. Such an approach is economically and legally sound and sometimes necessary to spur research and development. Similarly, bundling exploration and exploitation contracts may be necessary to spur growth in a specific industry.

131. Similar deviation from auction cannot be ruled out when the object of a State policy is to promote domestic development of an industry, like in *Kasturi Lal's case*, discussed above. However, these examples are purely illustrative in order to demonstrate that auction cannot be the sole criteria for alienation of all natural resources."

95. While dealing with the argument that even if the method of auction was not a mandate under Article 14, it must be the only permissible method due to the susceptibility of other methods to abuse, the Court under the head "Potential of abuse" held that a potential for abuse cannot be the basis for striking down the method as ultra vires the Constitution. The Court noted two decisions of this Court in **R.K. Garg v. Union of India & Ors., (1981) 4 SCC 675** and **D.K. Trivedi & Sons & Ors. v. State of Gujarat & Ors., 1986 Supp SCC 20** and held that neither auction nor any other method of disposal can be held ultra vires the Constitution merely because of a potential abuse. The Constitution Bench (para 135, pgs. 93-94) stated as under:

"135. Therefore, a potential for abuse cannot be the basis for striking down a method as ultra vires the Constitution. It is the actual abuse itself that

must be brought before the Court for being tested on the anvil of constitutional provisions. In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an unconstitutional methodology either. These drawbacks include cartelization, "winnerscurse" (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licenses for exploitation of more resources than he can pragmatically execute), etc. However, all the same, auction cannot be called ultra vires for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximization is a priority. Therefore, neither auction, nor any other method of disposal can be held ultra vires the Constitution, merely because of a potential abuse."

96. In **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]** the Constitution Bench, in the main judgment, thus, concluded that auction despite being a more preferable method of alienation/allotment of natural resources cannot be held to be constitutional requirement or limitation for alienation of all natural resources and, therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate. The Court also opined that auction as a mode cannot be conferred the status of a constitutional principle. While holding so, the Court held that alienation of natural resources is a policy decision and the means adopted for the same are, thus, executive prerogatives. The Court summarised the legal position as under:

"146. To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-a-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and

circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.

147. Finally, market price, in economics, is an index of the value that a market prescribes to a good. However, this valuation is a function of several dynamic variables: it is a science and not a law. Auction is just one of the several price discovery mechanisms. Since multiple variables are involved in such valuations, auction or any other form of competitive bidding, cannot constitute even an economic mandate, much less a constitutional mandate.

148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.

149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."

97. J.S. Khehar, J., while concurring with the main opinion

has stated that auction is certainly not a constitutional mandate in the manner expressed, but it can be applied in some situations to maximise revenue returns, to satisfy legal and constitutional requirements. In his view, if the State arrives at a conclusion, in a given situation, that maximum revenue would be earned by auction of the particular natural resource, then that alone would be the process which it would have to adopt. In the penultimate para of his opinion, J.S. Khehar, J., observed, "there can be no doubt about the conclusion recorded in the 'main opinion' that auction which is just one of the several price recovery mechanisms, cannot be held to be the only constitutionally recognised method for alienation of natural resources. That should not be understood to mean, that it can never be a valid method for disposal of natural resources".

98. In **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]**, the Constitution Bench said that reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). In the main judgment, with reference to Article 39(b), the Court stated as follows:

"113. The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on "distribution" built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing "distribution" is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word "distribution". Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately sub-serve the "common good".

*** **

115. It can thus, be seen from the aforequoted paragraphs

that the term "distribute" undoubtedly, has wide amplitude and encompasses all manners and methods of distribution, which would include classes, industries, regions, private and public sections, etc. Having regard to the basic nature of Article 39(b), a narrower concept of equality under Article 14 than that discussed above, may frustrate the broader concept of distribution, as conceived in Article 39(b). There cannot, therefore, be a cavil that "common good" and "larger public interests" have to be regarded as constitutional reality deserving actualization.

116. The learned counsel for CPIL argued that revenue maximization during the sale or alienation of a natural resource for commercial exploitation is the only way of achieving public good since the revenue collected can be channelized to welfare policies and controlling the burgeoning deficit. According to the learned counsel, since the best way to maximise revenue is through the route of auction, it becomes a constitutional principle even under Article 39(b). However, we are not persuaded to hold so. Auctions may be the best way of maximizing revenue but revenue maximisation may not always be the best way to subserve public good. "Common good" is the sole guiding factor under Article 39(b) for distribution of natural resources. It is the touchstone of testing whether any policy subserves the "common good" and if it does, irrespective of the means adopted, it is clearly in accordance with the principle enshrined in Article 39(b).

*** **

119. The norm of "common good" has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional yardstick? it would depend on the economic and political philosophy of the Government. Revenue maximisation is not the only way in which the common good can be subserved. Where revenue maximisation is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method. Where revenue maximisation is not the object of a policy of distribution, the question of auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations.

120. Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximisation, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies? Article 14 does not predefine any economic policy as a constitutional mandate. Even the mandate of Article 39(b) imposes no restrictions on the means adopted to sub-serve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed.

Economic logic establishes that alienation/allocation of natural resources to the highest bidder may not necessarily be the only way to sub-serve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."

*99. In light of the above legal position, the argument that auction is a best way to select private parties as per Article 39(b) does not merit acceptance. The emphasis on the word "best" in Article 39(b) by the learned senior counsel for the intervener does not deserve further discussion in light of the legal position expounded by the Constitution Bench in **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]** with reference to Article 39(b). We are fortified in our view by a recent decision of this Court (3-Judge Bench) in **Goa Foundation v. Union of India and Others, (2014) 6 SCC 590** wherein following **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]**, it is stated, "...it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made thereunder and in consonance with the constitutional provisions?"*

16. As described in the EMGSM 2020, Mining Plan is an important document to assist the mine owner to operate the mine in a scientific manner. There is no practice for regular replenishment study to ascertain the rate of depositing, plan and section needs to be prepared based on the restrictions provided in letter of intent and provisions of Sustainable Sand Mining Management Guidelines 2016. Therefore, granting EC on the basis of Mining Plan is in violation of the Guidelines and against the principles of sustainable sand mining. Considering the importance of district survey report, the Ministry of Environment Forest and climate change, after consultation with experts dealing with mining-related matters, formulated the guidelines for the preparation of comprehensive District Survey Report for sand mining. It accordingly, prescribed that District Survey Report for sand mining should be prepared before the auction/e-auction/grant of the mining lease/Letter of

Intent (LoI) by Mining department or department dealing the mining activity in respective states. DSR is to be approved at the level of SEIAA with the help of SEAC. It is surprising that SEIAA is not taking DSR or Annual Replenishment Study (ARS) into consideration. Had DSR and ARS taken into consideration the discrepancy between the quantity of sand given in NIT and EC can be easily avoided and sand mining would be sustainable. In addition to that it would also eliminate the chances of misuse of EC for illegal mining.

17. Another category of cases includes those in which the mining areas (Khasra/survey numbers) are not given in NIT but EC are granted even for them. Obviously such EC can lead to illegal mining as well as loss of exchequer to the State. It would also disrupt the system of sustainable mining and escape all kinds of monitoring and supervision, as EC would be available but the mining department would not be looking after them. It is completely out of sync so far as the mining administration in States exists.

18. Vide order dated 14.10.2020 in O.A. No. 40/2020, Pawan Kumar v. State of Bihar & Ors., the issue of preparation of District Survey Report (DSR) by Experts was considered. Vide Notification dated 25.07.2018 issued by the MoEF&CC, under Section 3(2)(v) of the EP Act, 1986 amending EIA Notification dated 14.09.2006, procedure for preparation of DSR for sand mining/riverbed mining was laid down. The DSR is crucial as it contains Environment Management plan, including the replenishment study and other safeguards and is the basis to consider the environment impact of mining based on which decision to grant the Environmental Clearance is taken. The Tribunal held that for such crucial exercise, the Experts should be out of those accredited by the National

Accreditation Board of Education and Training/ Quality Control Council of India (NABT/QCCI) in terms of O.M. of MoEF&CC dated 16.03.2010. Verification by the District Magistrate and evaluation by the SEAC was also necessary. Accordingly, following directions were issued in relation to a matter arising from the State of Bihar:- “(ii) As the DEIAA is not functioning as a consequence of the decision of the Tribunal in Satendra Pandey (supra), the DSR shall be prepared through a consultant(s) accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India in terms of O.M. of MoEF&CC dated 16.03.2010. (iii) The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the parameters prescribed in the SSMMG2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regard to the fact that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements. (iv) While preparing the DSR, the MoEF&CC Accredited Agency/Consultant shall scrupulously follow the procedure and the parameters laid down under the SSMMG-2016 and EMGSM2020 read in sync with each other.

19. Considering the above, vide order dated 04.11.2020 in O.A. No. 726 of 2018, Rupesh Pethe v. State of M.P. & Ors., the Tribunal directed that the above direction ought to be followed pan India, as follows:-

“5. The above direction may be followed by the State of MP also for the sake of uniformity. Further information required to be furnished is about the extent of illegal mining, extent of action taken, including the compensation recovered, vehicles seized and other coercive measures

and impact of such action. The State of M.P. may compile relevant directions on the subject including the binding order of any Courts or Tribunal. This exercise may be undertaken jointly by the Secretary Geology and Mining, Member Secretary State PCB and Member Secretary SEIAA. In light of above, the State may further revise its policy and exercise. Let further compliance status be furnished before the next date by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

6. We are of the view that the above directions need to be followed by all other States where the issue of mining is relevant.

7. A copy of this order be forwarded to the Chief Secretaries of all the States and UTs by e-mail for compliance.”

Adverse impact of unscientific/unregulated Sand Mining

20. It is undisputed that there is huge degradation of environment on account of unregulated sand mining remains which is otherwise lucrative activity. It poses threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird species, increase 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. The Hon'ble Supreme Court (in Deepak Kumar, supra) noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and

ground waters. A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3 meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. 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.

21. 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 streambed 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.”

22. Mining within the State is required to be regulated not only by the Mining Department but also by the State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and by the MoEF& CC under the Environment (Protection) Act, 1986. The Environmental Laws override other laws and any provision contrary in the Mines Act, 1952 will not stay in the way of enforcing environment norms. The Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM-2020) seeks to provide effective enforcement and monitoring from the stage of identification of source to its dispatch and in use which requires environment of all stakeholders, Central Government, State Government, Lease Holders, Mine Owners, Distributors, Dealers, Transporters and Consumers. The guidelines issued from the MoEF&CC makes EC mandatory irrespective of the area of mining lease, followed by monitoring in terms of the Environment Management Plan, using IT and IT enabled services.

23. Hon'ble the Supreme Court of India in State of Bihar and Ors vs. Pawan Kumar and Ors etc (Civil Appeal No. 3661-3662 of 2020) decided on **10th November, 2021** considered the essentiality and prerequisite of DSR and held as follows:

“7. It cannot be in dispute that though the developmental activities are not stalled, the environmental issues are also required to be addressed. A balanced approach of sustainable development ensuring environmental safeguards, needs to be resorted to. At the same time, it also cannot be ignored that when legal mining is banned, it gives rise to mushroom growth of illegal mining, resulting into clashes between sand mafias, criminalization and at times, loss of human lives. It also cannot be disputed that sand is required for construction of public infrastructural projects as well as public and private construction activities. A total ban on legal mining, apart from giving rise to illegal mining, also causes huge loss to the public exchequer.

8. Taking into consideration these aspects of the matter, we propose to issue certain interim directions.

9. The Tribunal, in the case of Satendra Pandey (supra), has found that the notification dated 15th January 2016, which provided Environmental Clearance to be given by the District Environment Impact Assessment Authority (hereinafter referred to as the “DEIAA”) was not in consonance with the judgment of this Court in the case of Deepak Kumar v. State of Haryana and Others². The Tribunal therefore in Satendra Pandey (supra), had directed Ministry of Environment, Forest and Climate Change (hereinafter referred to as “MoEF and CC) to take steps to revise the procedure laid down in the notification dated 15th January 2016. It is to be noted that MoEF and CC, in accordance with the directions of the Tribunal, had issued Enforcement and Monitoring Guidelines for Sand Mining (hereinafter referred to as “the 2020 guidelines”) in the month of January 2020. Chapter 4 of the 2020 guidelines deals with identification of possible sand mining sources and preparation of DSR. It will be relevant to refer to Clause 4.1.1 (a), (o) and (p) of the 2020 guidelines:

“4.1 Identification of possible sand mining sources and preparation of District Survey Report (DSR)

4.1.1 Preparation of District Survey Report.

District Survey Report for sand mining shall be prepared before the auction/e-auction/ grant of the mining lease/Letter of Intent (Loi) by Mining department or department dealing the mining activity in respective states.

o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc, shall be avoided. For this, a sub divisional committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as Annexure II. The Sub Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure III. The details of the transportation need to be provided as in Annexure IV.

p) **Public consultation-** The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining' lease included in the DSR. The DSR should be placed in the

public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the sub divisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/Khatedari land, de-siltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure-V. The details regarding cluster and contiguous cluster needs to be provided in Annexure-VI. The details of the transportation need to be provided in Annexure-VII.”

10. It could thus be seen that in accordance with the 2020 guidelines, the DSR is required to be prepared before the auction/e-auction/ grant of mining lease by Mining Department or Department dealing with mining activity in the respective States. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a sub divisional committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The sub divisional committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexure appended to the said policy.

11. It is further to be noted that Appendix-X of the notification dated 15th January 2016, issued by MoEF and CC also provides for composition of the sub divisional committee:

“A Sub Divisional Committee comprising of Sub Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.”

12. It is to be noted that with the advent of modern technology, various technological gadgets like Drones and satellite imaging etc. can be used for identification of the potential sites and preparation of the DSR and also to check misuse and unauthorized mining.

13. We further find that when the 2020 guidelines as well as the notification issued by MoEF and CC of 2016 itself provide for constitution of sub divisional committees comprising of the officers of the State Government from various Departments for identification of the potential sites for mining, there would be no necessity of the DSRs being prepared through private consultants as directed by the Tribunal in the impugned order. The sub divisional committee consists of various officers from Revenue Department, Irrigation Department, State Pollution Control Board, Forest Department and Geology Mining Department of the State Government. They are better equipped to visit the sites and prepare the draft DSR for the concerned district. Apart from that, preparation of DSR through private consultants would also unnecessarily burden the public exchequer. We are therefore of the view that the direction in that regard issued by the Tribunal requires to be modified. We are further of the considered view that until the DSRs are finalized and granted approval by SEAC and SEIAA, it is appropriate that certain necessary

arrangements are permitted so that the State can continue with legal mining activities. This apart from preventing illegal mining activities, would also ensure that the public exchequer is not deprived of its share in legalized mining.

14. We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14th October 2020, with the following directions:-

(i) The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the sub divisional committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or mining officer. The same shall be prepared by *undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon;*

(ii) Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed;

(iii) Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.”

24. In view of the above, the answer is that where there is transfer of natural resource, the requirement of NIT is necessary and there must be description of area and quantity of mining in the document. If there is any expansion of business in the form of change of area, increasing area or increasing the quantity of sand mining it is within the definition of expansion of business and required fresh EC thus, the description of area and the quantity of mining is essential part to be included in the NIT.

25. In light of the settled proposition of law in *Goa Foundation vs. Union of India* 2014 (6) SCC 738 before transferring EC, environmental status of

the sand quarry has to be ascertained. Transfer of EC without taking the environmental considerations into account is brazen breach of law and abetment of destructive practices of sand mining. Requirement of District Survey Report (DSR), Environmental status of the quarry before transferring EC- As already discussed in above paragraphs, MoEF & CC has issued a guidelines named SSMG, 2016 as well as EMGSM, 2020 and before transferring EC environmental status of the quarry has to be ascertained and transfer of EC without taking the environmental considerations into account is a brazen breach of law and abetment of destructive practices of sand mining and shall be in violation of Goa Foundation case (Supra). Thus, NIT in absence of any environmental status while transfer of EC should be taken into account in accordance with the sustainable guidelines.

26. Considering the facts narrated above, the conclusions and directions are as follows:-

- I. We direct the State to follow the guidelines issued in Sustainable Sand Mining Guidelines 2016 (SSMG-2016) as well as Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM-2020) and also enforce the mechanism for the preparation of DSR, Environment Management Plan, Replenishment Studies, Mine Closure Plan, grant of EC, assessment and recovery of compensation, seizure and release of vehicles involved in illegal mining and other safeguards against violation, grievance redressal, accountability of the designated officers and periodical review at higher level of the State.
- II. A mechanism should be developed for periodic inspection by a five-members Committee, headed and coordinated by the SEIAA and comprising CPCB, State PCB and two expert members of SEAC dealing with the subject as directed by this Tribunal in O.A. No. 360/2015.

- III. The Authority constituted/nominated under Section 3(3) of the Environment (Protection) Act, 1986 as envisaged by Hon'ble the Supreme Court in Goa Foundation Vs. Union of India & Ors. and in the matter of T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SSC 61 may take further action. The monitoring must be ensured through the Chief Secretary by holding a meeting and issue the necessary guidelines and actions in accordance with the order passed by this Tribunal in O.A. No. 360/2015.
- IV. E-auction/auction/tender should be done in accordance with Sustainable Sand Mining Guidelines 2016 as well as Enforcement and Monitoring Guidelines for Sand Mining 2020 and only where details of approved DSR and Annual Replenishment Study are available.
- V. EC should be accorded only to the limit of auctioned and sustainably permissible quantity.
- VI. The respondents are directed to ensure that quantity of minerals directed to be mined will not exceed the quantity under replenishment study.

27. With these directions and observations, the application finally stands disposed of.

Sheo Kumar Singh, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

July 19, 2023
Original Application No. 284/2023
DV