

Item No. 01

(Court No. 2)

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

(Through Physical Hearing with Hybrid VC Option)

Original Application No.142/2022
(I.A. No.803/2023, I.A. No. 593/2023,
I.A. No. 68/2022 and I.A. No. 17/2024)

Jayant Kumar

...Applicant

Versus

Ministry of Environment,
Forest and Climate Change & Ors.

...Respondents

Date of hearing: 19.01.2024

Date of uploading: 18.04.2024

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.**

Applicant: Mr. Vikas Kumar Singh, Advocate (through VC).

Respondents: Mr. Ravindra Kumar Gupta, Advocate for respondent
no. 1-MoEF&CC (through VC).
Mr. Pradeep Misra, Advocate for UPPCB (through VC).
Mr. Utkarsh Sharma and Mr. Sharad Chauhan,
Advocates for respondents no. 5 and 6 (through VC).

**Application under Section 18 of the National Green Tribunal Act,
2010 read with Rule 8 of the National Green Tribunal (Practice &
Procedure) Rules, 2011**

ORDER

1. Mr. Jayant Kumar has filed the present application complaining about grant of mining lease to respondent no.5 (M/s. Sai Ram Enterprises) and respondent no.6 (M/s. C.S. Infra-construction Ltd.) on 5.10.2020 and 06.11.2020 respectively on the basis of environmental clearance by the District Environment Impact Assessment Authority (DEIAA), in violation of the judgment of the Hon'ble Supreme Court in **Deepak Kumar Vs. State of Haryana and others (2012), 4 SCC 629** and order dated 13.09.2018 passed by this Tribunal in **O.A. no.**

186/2016 titled as *Satendra Pandey Vs. Ministry of Environment, Forest and Climate Change and Another.*

2. Vide order dated 28.02.2022 this Tribunal constituted a Joint Committee comprising of State PCB, SEIAA and District Magistrate, Sonbhadra, (Uttar Pradesh) and directed the same to submit factual and action taken report within three months.

3. In compliance thereof report dated 30.06.2022 of the Joint Committee was filed vide email dated 01.07.2022. The relevant part of the report of the Joint Committee is reproduced as under:

“Report of Committee constituted by Hon'ble NGT in the matter of O.A. No.-142/2022 in case of Jayant Kumar V/s MoEF & CC & Ors.

X X X X X X

That, in compliance of order dated 28.02.2022 passed by this Hon'ble Tribunal, the following committee has been constituted:-

1. *Sri Umesh Chandra Sharma, Member SEAC, Lucknow.*
2. *Dr. T.N. Singh, Regional Officer, UPPCB, Sonbhadra.*
3. *Sri Ashutosh Kumar Dubey, ADM (NGWRS), Sonbhadra.*

That, the members of the nominated committee along with other personnel of the concerned department examined the official record of both mining leases on dated 27.04.2022 and thereafter paid the visit on the site of the both lease hold areas.

That, the report of the factual position of both areas are mentioned as under:-”

1. *That, the grievance of the applicant is that the mining was stalled on lease in violation of direction issued by Hon'ble Supreme Court in the case of Deepak Kumar Vs State of Haryana & Ors.(2012) 04 SCC 629 by breaking homogeneous blocks deliberately in smaller blocks to defeat the impact assessment of mining.*

2. *The Rule 10(1) of the Uttar Pradesh Minor Minerals (Concession) Rules, 2021 regarding extent of area for which a mining lease may be granted provides as under:-*

"...10 (1) Extent of area for which a mining lease may be granted:-

(1) Minimum area for grant of a mining lease for sand or morrum or bajri or boulder or any of these in mixed state exclusively found in river shall ordinarily be five hectare and mineral found in the form of rock and not displaced from the place of its origin and other minor minerals shall be one hectare:

Provided that in case of non availability of such extent of area this sub rule shall not apply.

(2) No mining lease shall be granted in respect of any area which is not compact and contiguous or otherwise not suitable to scientific development:

Provided that in respect of small deposits not suitable to scientific mining in isolated patches, a Mining lease may be granted for a cluster of such deposits without any division.

(3) No person shall acquire in respect of any minor mineral, except sand or morram or bajri or boulder or any of these in mixed state exclusively found in river-bed, exceeding three mining lease, covering a total area of more than 25 Hectares:

Provided that mining leases in respect of sand or morrum or bajri or boulder or any of these in mixed state, exclusively found in the river bed exceeding two in number or total fifty Hectares in area shall not be granted in favour of any person in the State of Uttar Pradesh:

Provided further that if the State Government is of opinion that in the interest of mineral development, it is necessary so to do, it may for reasons to be recorded in writing permit any person to acquire one or more mining leases covering an area in excess of the limits mentioned above.

In response to the order of Hon'ble NGT dated 13.09.2018 in O.A. No. 186/2016, it has been mentioned in available documents of Mining Department, Sonbhadra that the referred leases were granted in the light of Uttar Pradesh Minor Minerals (Concession) Rules, 2021 as described above by the permission of District Magistrate, Sonbhadra vide letter No. 111/khanij/2018 dated 23.05.2018 to carved out the mining leases on Gatta no.7536 with other 03 Gattas as Gatta Nos. 4078, 4949 & 5593. As per order of District Magistrate, Sonbhadra, it has been directed to Mining Department, Sonbhadra to conduct detailed survey of available minerals in referred Gattas and be submitted. The detailed joint survey report had been submitted by the Geologist and Assistant Geologist, Mining Department, Sonbhadra vide its letter No. 267/Khanij/2018-19 dated 23.05.2018. In the referred survey report dated 23.05.2018, it was mentioned that Gatta No. 7536 had been carved out into 04 blocks of areas. However, out of the 04 mining

blocks, the concerned blocks as Khand No. 01 & Khand No. 03 has been mentioned below:-

A. Khand No. 01- This Khand is situated between 24°27'45.90" N to 24°27'54.94" and 83°01'57.00" to 83°02'10.77". This area has abundant mineable minerals but due to unsystematic mining in the past, the topography of the area has become undulatory and accordingly the available mineable mineral is approximately 6,93,667 cubic meter.

B. Khand No.03- This Khand is situated between 24°27'34.68" N to 24°27'43.62" and 83°02'7.25" to 83°02'18.08" and contains 7,68,069 Cubic Meter mineable minerals.

As per report submitted by Mining Department, Sonbhadra, the tender was invited for e-auction of the above refereed 02 Blocks and other 02 as Khand No. 02 & Khand No. 04 and accordingly above concerned 02 blocks were allotted to M/s Sai Ram Enterprises, Village-Billi-Markundi, Obra, District-Sonbhadra (Khand No. 01) and M/s C.S. Infraconstruction, Village-Billi-Markundi, Obra, District-Sonbhadra (Khand No. 03).

Apart from those mentioned above, it has been mentioned in the revenue record that the Gatta No. 7536 has total area of 106.396 Hectare out of which 4.122 Hectare is private land, 60.1220 Hectare is Reserve Forest and rest area 42.1520 Hectare marked as 7536 Ga Mi is recorded in the name of PAHAD consisting of mineable minerals like Dolo Stone Boulders.

Khand No. 01 (Area-4.970 Hectares), Khand No. 02 (Area- 4.0 Hectares), Khand No. 03 (Area-4.0 Hectares) and Khand No. 04 (Area- 4.0 Hectares) are the parts of Gatta No. 7536 Ga Mi.(Area 42.1520 Hectare). Since this Gatta No. 7536 Ga Mi is very large in area, hence 04 blocks were carved out as Khand No. 01, 02, 03 & 04 for practical solution of e-auction leaving 100 meter area as minimum safety distance of the reserve forest on Gatta No. 7536 Gha.

The details of the mining leases in the area concerned have been provided by the Mining Department, Sonbhadra vide its Reference No.1090/khanij/2022 dated 28.06.2022 with all necessary documents with map of the area has been annexed with this report.

3. That, the Environmental Clearance for the concerned leases namely Khand No.01 and Khand No.03 were issued by the District Level Environmental Assessment Authority, Sonbhadra on 23.10.2018 and thereafter mining leases have been executed and registered in favour of respondents no. 05 and 06 on dated 05.10.2020 and 06.11.2020 respectively which is against the order dated 13.09.2018 passed by this Hon'ble Tribunal by which direction have been issued to MoEF & CC to take appropriate steps to revise the procedure laid down in the notification dated

15.01.2016 and in compliance of which MoEF & CC, Govt. of India issued on dated 12.12.2018 in which the working of District Level Environmental Assessment Authority, Sonbhadra was stopped.

4. That in view of above statutory provisions, it is evident that on 23.10.2018 the District Level Environmental Assessment Authority, Sonbhadra was legally working and the EC Issued to respondent no 5 and 6 is valid as well as in accordance with law.

Briefing the above mentioned facts, it is utmost to tell that these blocks are homogeneous in nature but heterogeneous for purpose of mining looking the topography of the area and capability of bidders interested for mining."

4. Vide order dated 04.08.2022, notices were ordered to be issued to the respondents.

5. None appeared for Ministry of Environment, Forest and Climate Change (MoEF&CC) and District Magistrate, Sonbhadra.

6. Replies on behalf of respondent no. 2-State Environment Impact Assessment Authority, Uttar Pradesh (UPSEIAA) and respondents no. 5 and 6-project proponents were filed vide emails dated 01.09.2022 and 14.07.2022 respectively.

7. Objections to the report of Joint Committee and rejoinders to the replies of respondent no. 2 and respondents no. 5 and 6 were filed by the applicant vide emails dated 04.08.2022, 08.09.2022 and 02.09.2022 respectively.

8. Arguments were heard and judgment was reserved vide order dated 08.09.2022 but subsequently vide order dated 06.12.2022, the matter was ordered to be listed for further hearing in view of the detailed reasons mentioned therein. The relevant part of the order is reproduced as under:-

“5. Arguments were heard and judgment was reserved vide order dated 08.09.2022.

6. However, while going through the material on record, we have observed that some material documents have not been furnished to this Tribunal and material aspects of the case have not been referred to and specific arguments in respect thereof have not been addressed during hearing of the case.

7. Vide order dated 13.09.2018 passed by this Tribunal in O.A. No. 186/2016 titled as Satendra Pandey vs. MoEF&CC & Anr., the MoEF&CC was directed to take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the directions given and observations made therein so that it is in conformity with the letter and spirit of the directions passed by the Hon’ble Supreme Court in Deepak Kumar vs. State of Haryana & Ors., (2012) 4 SCC 629. However, in the present case no reply/response has been filed by the MoEF&CC and response of MoEF&CC in respect of such revision of notification dated 15.01.2016 is essential for just and fair adjudication of the questions involved in the present case.

8. Further, we also find from the material on record that a joint meeting of SEIAA and SEAC was held on 05.02.2019 and it was decided that all mining cases of minor minerals having 0 to 5 hectare area will be appraised by UPSEIAA for Environment Clearance and all concerned project proponents will apply to UPSEIAA in Form I with other required supporting documents for this purpose. The Director, Directorate Environment and Director, Geology and Mining, vide orders dated 14.02.2019 requested to all the District Magistrates in the State of UP to act as per decision taken on 05.02.2019 by Joint Committee of SEIAA and SEAC. However, the project proponents, respondents no. 5 & 6 have claimed in their reply that thousands of other EC’s have been granted in the State of Uttar Pradesh and in other parts of the country in accordance with the legal regime established by the EIA Notification dated 15.01.2016 for grant of EC by DEIAA. Specific response from MoEF&CC and UPSEIAA in respect of compliance with order dated 13.09.2018 passed by this Tribunal in respect of such mining leases for mining to be carried out after 13.09.2018 is also essential for just and fair adjudication of the questions involved in the present case.

9. In the facts and circumstances of the case, we are of the considered view that the matter requires further specific response by MoEF&CC and UP-SEIAA and clarification/arguments with respect to all martial aspects of the case.

10. In view of the above, the Registry is directed to list the matter for further hearing on 07.12.2022.

11. Learned Counsels for the parties be informed about the date of hearing fixed by email accordingly.”

9. The factual and legal contextual background giving rise to the environmental questions involved in the present case may also be briefly referred to here.

10. The Environment (Protection) Act, 1986 was enacted to implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated in so far as they related to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property.

11. Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as EIA Notification dated 14.09.2006) was issued under Sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 for imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy as approved by the Union Cabinet on 18.05.2006 and the procedure specified in the notification by the Central Government or the State or Union Territory Level Environment Impact Assessment Authority.

12. EIA Notification dated 14.09.2006 was amended vide Notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 whereby Environmental Clearance was made necessary even in area less than 5 hectares and provision was made that B-2 Category projects pertaining to mining of

minor mineral of lease area of less than or equal to five hectare shall require prior environmental clearance from DEIAA which shall base its decision on the recommendations of DEAC, as constituted for said notification.

13. Said amendments were challenged before this Tribunal by filing **O.A. No. 186/2016** titled as **Satendra Pandey vs. Ministry of Environment, Forest and Climate Change and Another** and connected applications. This Tribunal decided OA 186/2016, Satendra Pandey vs. MoEF & Ors. (supra) along with OA 200/2016, Rajeev Suri vs. Union of India; OA 580/2016, Badal Singh vs. Union of India & Ors.; OA 102/2017, Nature Club of Rajasthan (NGO) vs. Union of India & Ors.; OA 404/2016, Naresh Zargar vs. Ministry of Environment & Forest and Anr.; OA 405/2016, Rajeev Suri vs. Union of India & Anr. and OA 520/2016, Vikrant Tongad vs. Union of India vide order dated 13.09.2018. Relevant part of the order reads as under:-

“21. Dispensing with the requirement of Public Hearing which forms a part of the Public Consultation under Stage-III of the Environmental Clearance process under EIA Notification, 2006 for areas measuring 0 to 25 ha for individual mine areas and in cluster situation where public hearing has been provided, has resulted in gross dilution of EIA Notification dated 14th September, 2006. Such dilution would, in our view, result in its misuse by unscrupulous elements and the situation would revert back to the lawless state prevailing prior to the decision in the case of Deepak Kumar (supra). Stringent measures are, therefore, necessary if the rampant exploitation of the minor minerals is to be curbed. This apparently was also the view of the Hon’ble Supreme Court in the case of Deepak Kumar (supra).

22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by

SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; (vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.

23. We have permitted retention of 0-5 ha as a category keeping in view that some States grant isolated single lease of 5 ha and less not falling in cluster situation for which stringent requirements in Form-1M will serve the purpose of providing safeguards for protection of the environment and sustainable mining of minor minerals. This is particularly true in smaller and mountainous States as will also appear from condition no. 2 under "The Issues and Management of Mining in Cluster" referred to earlier in para 20 of this order.

24. It is reiterated that any attempt to split the lease area for the purpose of avoiding the applicable regulatory regime shall be viewed seriously. This in our view will be in the interest of the environment as deliberated in detail in the case of Deepak Kumar (supra) and would also satisfy the Precautionary Principle and the Principle of Sustainable Development contemplated under Section 20 of the National Green Tribunal Act, 2010.

25. The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in Deepak Kumar (supra).

The applications stand disposed of."

14. In compliance of said order, MoEF&CC issued Office Memorandum (OM) No. F.No. L-11011/175/2018-IA-II(M) dated 12.12.2018. Relevant part of said OM reads as under:-

“

Office Memorandum

Sub: Order dated 04th September, 2018 & 13th September, 2018 passed by the Hon'ble National Green Tribunal, New Delhi in O.A. No. 173 of 2018 & O.A. No. 186 of 2016 in the matters titled "Sudarsan Das Vs. State of West Bengal & Ors." & "Satendra Pandey Vs. Ministry of Environment Forest & Climate Change & Anr." respectively-regarding.

This is with reference to the recent order of the Hon'ble NGT dated 04th September, 2018 in the matter titled as Sudarsan Das Vs. State of West Bengal & Ors. and order dated 13th September, 2018 in the matter titled as Satendra Pandey Vs. Ministry of Environment Forest & Climate Change & Anr. Copy of the orders are enclosed herewith for ready reference.

2. The Hon'ble NGT vide order dated 13th September, 2018 in OA No. 186 of 2016 (Satendra Pandey Vs. Ministry of Environment Forest & Climate Change & Anr.) has inter-alia directed as follows:-

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

3. In view of the above, the undersigned is directed to forward the copy of the aforementioned orders for necessary compliance and inform the Ministry about the action taken. A copy of the same has been sent to the Chief Secretaries of all the States/UTs.”

15. However, EIA Notification dated 14.09.2006, as amended vide notifications dated 15.01.2016, 20.01.2016 and 01.07.2016, was not suitably revised by MoEF&CC as directed by this Tribunal vide order

dated 13.09.2018 passed in Satendra Pandey's case (supra) which has not only created confusion but has also resulted in non-compliance with the same as demonstrated by the facts of the present case as well as hundreds/thousands of other cases.

16. Such confusion has even led to contradictory stands by the concerned authorities in different cases at different stages as demonstrated in the following paragraphs.

17. In **O.A. No. 474/2019** tilted as **Surender Singh Vs. MoEF&CC and Others**, in the report filed by the Joint Committee it was mentioned as under:-

“VI. As per order of NGT dated 11.12.2018 a joint meeting of SEIAA and SEAC was held on 05.02.2019 and following decision was taken.

“In compliance of MoEF&CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UPSEIAA for Environment Clearance. All concerned project proponents will apply to UPSEIAA in Form-I with other required supporting documents on online MoEF&CC website www.environmentclearance.nic.in to process the application for grant of prior environment clearance with immediate effect till further order.

VII. The Director, Directorate Environment and Director, Geology and Mining by their orders dated 14.02.2019 requested all the District Magistrate to act as per decision taken by Joint Committee of SEIAA and SEAC on 05.02.2019 as follows (Annexure-12).

“In compliance of MoEF&CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UPSEIAA for Environment Clearance. All concerned project proponents will apply to UPSEIAA in Form-I with other required supporting documents on online MoEF&CC website www.environmentclearance.nic.in to process the application for grant of prior environment clearance with immediate effect till further order.”

18. However, in the report of the Joint Committee filed in the present case no reference was made to the decision taken in the joint meeting of SEIAA and SEAC held on 05.02.2019 and orders dated 14.02.2019 conveyed by the Director, Directorate Environment and Director, Geology and Mining to all the District Magistrates in the State of U.P. On the other hand while referring to the provisions of the Uttar Pradesh Minor Minerals (Concession) Rules, 2021 and by completely ignoring directions given by Hon'ble Supreme Court in **Deepak Kumar's case** (supra) and order dated 13.09.2018 passed by this Tribunal in **Satendra Pandey's case** (supra) and OM dated 12.12.2018 issued by MoEF&CC, it has been submitted that on 23.10.2018, the District Level Environmental Assessment Authority was legally working and the EC issued to respondents no. 5 and 6 were valid as well as in accordance with law.

19. Pursuant to information given regarding listing of this case for further hearing, Mr. Ravindra Kumar Gupta, Advocate appeared for MoEF&CC.

20. This Tribunal observed in order dated 07.12.2022 that OM dated 12.12.2018 was issued by MoEF&CC for compliance with order dated 13.09.2018 passed by this Tribunal in **Satendra Pandey** (supra) whereas MoEF&CC was thereby required to revise Notification dated 14.09.2006 as amended by notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 which were challenged in that case. The notification issued in exercise of statutory powers could be revised only by issuance of another notification in exercise of such statutory powers. OM dated 12.12.2018 issued in exercise of administrative powers could not be said to be due compliance of the order for revision of the notification.

21. Accordingly, MoEF&CC was directed, vide order dated 07.12.2022, to file an affidavit regarding compliance by it with order dated 13.09.2018 passed by this Tribunal in **Satendra Pandey** (supra). In case the notification had already been revised after 12.12.2018 then copy of the revised notification be filed before this Tribunal and in case, the notification had not been revised so far then the same be revised in consonance with the orders of Hon'ble Supreme Court and the Tribunal in the matter within one month and compliance report in this regard be filed within two months.

22. Further, this Tribunal observed in order dated 07.12.2022 that mining leases in which environmental clearance was granted by DEIAA in view of amendment notification dated 15.01.2016 were still continuing even after passing of order dated 13.09.2018 by this Tribunal in **Satendra Pandey** (supra) and issuance of OM dated 12.12.2018 by MoEF&CC without any re-appraisal by SEIAA and appropriate remedial action on the basis of such re-appraisal. All such mining leases in which environmental clearance was granted by DEIAA were ordered to be brought in consonance with the directions given by Hon'ble Supreme Court in **Deepak Kumar** (supra) and order dated 13.09.2018 by this Tribunal in **Satendra Pandey** (supra) by re-appraisal by SEIAA and only such mining leases be continued which had been on re-appraisal granted environmental clearance by SEIAA.

23. Accordingly, MoEF&CC was directed vide order dated 07.12.2022 to take appropriate steps for compliance in this regard by issuance of requisite directions in exercise of the statutory powers under the Environment (Protection) Act, 1986. For this purpose, MoEF&CC was directed to collect information regarding such mining leases in which environmental clearance was granted by DEIAA and the period of which

had not yet expired and were still continuing in all the States and Union Territories and by issuing appropriate directions for compliance with directions given by Hon'ble Supreme Court in **Deepak Kumar's case** (supra) and order dated 13.09.2018 passed by this Tribunal in **Satendra Pandey's case** (supra) by re-appraisal for grant of EC by SEIAA. MoEF&CC was directed to file Action Taken report in this regard within two months.

24. Affidavit was filed by Mr. Pankaj Verma, Scientist 'E', MoEF&CC, New Delhi vide email dated 04.02.2023 mentioning about filing of civil appeals no. 3799-3800 in the Hon'ble Supreme Court titled as Union of India Vs. Rajeev Suri against orders dated 13.09.2018 and 11.12.2018 passed by this Tribunal in O.A No. 186 of 2016 titled as Satendra Pandey Vs. Ministry of Environment, Forest and Climate Change and E.A No. 55/2018 titled as Vikrant Tongad Vs. Union of India but learned counsel for the respondent no. 1 has conceded that mere filing/pendency of an appeal does not construed as stay of operation of the orders appealed against and sought time to file affidavit regarding compliance with order dated 13.09.2018 passed by this Tribunal in Satendra Pandey (supra).

25. In compliance of order dated 07.12.2022 passed by this Tribunal in the present case, MoEF&CC filed affidavit vide email dated 12.05.2023. The relevant part of the affidavit reads as under:-

"ADDITIONAL AFFIDAVIT ON BEHALF OF THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE (RESPONDENT No. 1)

X	X	X	X
5. That it is mentioned that over the period of time Answering Respondent has complied with the directions passed by the Hon'ble NGT vide order dated 13.09.2018. That the Answering Respondent issued an Office Memorandum (OM) No. L-11011/175/2018 IA-II(M) vide dated 12.12.2018 addressed to the Chief Secretaries of all the States/UTs for necessary			

compliance of direction issued by Hon'ble NGT. A copy of the OM No. L-11011/175/2018 IA-II (M) vide dated 12.12.2018 is marked and annexed herein as Annexure- R1/1.

6. That it is stated that some directions given in the said order have been implemented or are under consideration within the Ministry. The Answering Respondent has approach the Hon'ble Supreme Court against the NGT order dated 13.09.2018 and for upholding the Ministry's notification dated 15.01.2016, by way of a Civil Appeal in the matter titled C.A. No. 3799-3800 "Union of India Vs Rajiv Suri". Therefore, Ministry is yet to consider the direction regarding the revision of the Notification dated 15.01.2016 as the said matter is sub-judice before Hon'ble Supreme Court.

7. That it is stated that in pursuance to the Hon'ble NGT order and OM dated 12.12.2018, DEIAA is not functional and does not exist as on date. DEIAA 's work is now looked after by SEIAA w.e.f from 13.09.2018.

8. That the Answering Respondent has issued an OM vide dated 15.12.2021 stating that, "for all category B2 projects, the project proponent shall apply in Form-2 on PARIVESH portal along with requisite documents. The same is in compliance to the direction where it was asked that Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of by DEAC/DEIAA. Copy of the OM dated 15.12.2021 is marked and annexed herein as ANNEXURE R1/2

9. That in regard to the direction issued for the revised procedure to incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area, the Answering Respondent formulated the guidelines i.e. "Enforcement & Monitoring Guidelines for Sand Mining" (EMGSM-2020) supplemental to the Sustainable Sand Management Guidelines, 2016 (SSMG-2016). In the new guidelines, detailed procedure for Replenishment Study has been incorporated.

10. That in compliance to the clause where the Ministry was required to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining. Hon'ble NGT vide its order dated 17.8.2020 and 26.2.2021 in the matter National Green Tribunal Bar Association v. Virender Singh (State of Gujarat); OA No. 360/2015 accepted the approach II as stated by the Central Pollution Control Board (CPCB) regarding the approach for calculating the scale of compensation and directed for its adoption for calculating the scale of compensation by all the States/UTs. In compliance of the same, the CPCB, vide letter dated 11.06.2021 issued directions under Section 5 of the Environment (Protection) Act, 1986 to all the States/UTs for the same. Copy of the letter issued by CPCB dated 11.06.2021 is marked and annexed herein as ANNEXURE R1/3

11. That it is reiterated that the Answering Respondent issued a notification S.O. 1886 (E) vide dated 20.04.2022 wherein, Environmental Clearances of all minor mineral irrespective of mine lease area shall be dealt at the level of State Level Impact Assessment Authority. The said notification is in compliance to

the (i) Deepak Kumar judgment, (ii) NGT order dated 13.09.2018 and (iii) the OM dated 12.12.2018. A Copy of the Ministry's Notification S.O. 1886 (E) dated 20.04.2022 is marked and annexed herein as ANNEXURE R1/4.

12.That in pursuance to the compliance of the order dated 07.12.2022 passed by this Hon'ble NGT regarding the re-appraisal of the EC's issued by DEIAA to be done by SEIAA. It is stated that Answering Respondent issued an OM F.No. IA3-22/11/2023-IA.III dated 28.04.2023, where all the valid ECs issued by DEIAA (between 15.01.2016 to 13.09.2018) shall be re-appraised through SEAC/SEIAA. The OM also specifies that scrutiny and appraisal of such ECs shall be based on the checklist provided therein. Copy of the OM F. No. IA3-22/11/2023-IA.III (E-208230) dated 28.04.2023 is marked and annexed herein as ANNEXURE R1/5.

13.That in compliance to the information sought from the Answering Respondent regarding such mining leases in which ECs were granted by DEIAA and the period of which has not yet expired, it is submitted that below mentioned is the information received from various SEIAAs across India as on 01.05.2023-

Total No. of Districts	Information received from Districts	Total valid ECs granted by DEIAA 15.01.2016 to 13.09.2018	States covered
749	108	4798	Assam (Partially), Goa, Madhya Pradesh, Meghalaya, Uttarakh and (Partially), Sikkim, Meghalaya. Note:- No EC granted by DEIAA in Manipur, Tripura, Chandigarh (U.T.), Puducherry.

14.That in view of the aforementioned facts and circumstances, this Hon'ble Tribunal may kindly be pleased to pass appropriate order(s).”

26. The relevant part of O.M. dated 28.04.2023, which granted validity for period of one year to mining leases in which EC was granted by DEIAA during the period from 15.01.2016 to 13.09.2018, reads as under:-

“Subject: Compliance of order dated 07.12.2022 passed by Hon'ble NGT in O.A.142 of 2022 in the matter of Jayant Kumar vs. Ministry of Environment, Forests and Climate Change - reg.

The Hon'ble National Green Tribunal (Principal Bench), New Delhi vide order dated 13.09.2018 in O.A. No. 186 of 2016 (Satendra Pandey vs Ministry of Environment Forest & Climate Change & Anr) had observed that the Ministry's Notification S.O. 141(E) dated 15.01.2016 was not in consonance with the directions given by Hon'ble Supreme Court in the matter of Deepak Kumar Vs. State of Haryana and Others and passed certain directions.

2. *In the above case, Hon'ble NGT had inter-alia directed that mining projects with lease areas of 0 to 5 ha are to be evaluated by State Level Expert Appraisal Committee (SEAC) for recommendation and grant of Environmental Clearance (EC) by State Level Environment Impact Assessment Authority (SEIAA) instead of District Level Environment Impact Assessment Authority (DEIAA). In compliance of the said directions, Ministry issued an OM dated 12.12.2018 addressed to Chief Secretaries of all the States/UTs directing to comply with the directions of Hon'ble NGT.*

3. *Subsequently, Hon'ble NGT vide its order dated 07.12.2022 in O.A.142 of 2022 in the matter of Jayant Kumar vs. Ministry of Environment, Forests and Climate Change inter-alia observed that "mining leases in which environmental clearance was granted by DEIAA in view of amendment notification dated 15.01.2016 are still continuing even after passing of order dated 13.09.2018 by this Tribunal in Sntendra Pandey (supra) and issuance of OM dated 12.12.2018 by MoEF&CC without any re-appraisal by SEIAA and appropriate remedial action on the basis of such re-appraisal. All such mining leases in which environmental clearance was granted by DEIAA need to be brought in consonance with the directions given by Hon'ble Supreme Court in Deepak Kumar (supra) and order dated 13.09.2018 by this Tribunal in Satendra Pandey (supra) by re-appraisal by SEIAA and only such mining leases may be continued which have been on re-appraisal granted environmental clearance by SEIAA. MoEF&CC is, therefore, directed to take appropriate steps for compliance in this regard by issuance of requisite directions in exercise of the statutonJ powers under the Environment (Protection) Act, 1986."*

4. *The matter has been examined in the Ministry and accordingly it has been decided that all valid ECs issued by DEIAA shall be reappraised through SEAC/SEIAA in compliance to the order of the Hon'ble NGT in O.A.142 of 2022. In view of above, it is hereby directed that all*

concerned SEACs shall re-appraise the ECs issued by DEIAAs between 15.01.2016 and 13.09.2018 (including both dates) and all fresh ECs in this regard shall be granted only by SEIAAs based on such appraisal. The exercise shall be completed within a time period of one year from the date of issue of this OM. DEIAAs shall transfer all such files where ECs have been granted to concerned SEIAA within a time period of one month from issue of this OM. The State Government may assess the existing workload of SEAC(s) and accordingly, send proposals for constitution of additional SEAC for a specified period to deal with such additional workload.

5. Further, in order to have a uniform approach across the country for such appraisal, SEIAA shall scrutiny and appraise the proposals based on the checklist provided below:

i. Completely filled up Form-2 as per Ministry's OM dated 15.12.2021.

ii. Pre-Feasibility Report (PFR) as per MoEF Guidelines dated 30.12.2010

iii. Valid Mine Lease Document

IV. Approved Mining Plan from the concerned Authorities

v. District Survey Report approved by SEIAA as per Ministry's Notification S.O 3611(E) dated 25.07.2018

vi. Implementation of "Sustainable Sand Mining Management Guidelines, 2016" and "Enforcement & Monitoring Guidelines for Sand Mining, 2020" in case of sand mining proposals.

v i i Details of forest land involved in the mine lease area and availability of Stage-I/II Forest Clearance (FC) for diversion of forest land for non-forestry purpose.

viii. Details of Eco Sensitive Zones (ESZ) and Eco Sensitive Areas (ESAs), National Parks, Wildlife Sanctuary, Coastal Zone, Water bodies and other ecological sensitive areas within/in the vicinity of the mine lease area and if so details of NOC/ Clearances obtained.

ix. If any Schedule-I species is present in the study area, proof of submission of Wildlife Conservation Plan to the Forest Department.

x. Cluster Certificate from State Mines and Geology Department.

xi. Compliance of Hon'ble Supreme Court judgment dated 02.08.2017 passed in Common Cause vs Union of India Writ Petition (C) 114 of 2014.

xii. Proposal of re-grassing the mining area and any other area which may have been disturbed due to their mining activities and restore the land to a condition which is fit for growth of fodder, flora, fauna etc. in compliance to the direction dated 8th January, 2020 of Hon'ble Supreme Court in Writ Petition(s) Civil No. 114/2014, Common Cause

vs Union of India & Ors.

6. *The provisions of this OM shall be operational subject to the outcome of Civil Appeal No. 3799-3800 of 2019 titled Union of India vs Rajiv Suri filed by Ministry before the Hon'ble Supreme Court of India against the order dated 13th September, 2018 passed in O.A. No. 200 of 2016 (Rajiv Suri Vs UOI) & order dated 21st December, 2018 passed in R.A. No. 47 of 2018 (UOI Vs Rajiv Suri).*

7. *This is issued with the approval of the Competent Authority."*

27. Vide order dated 15.05.2023 learned Counsel for MOEF&CC was granted time to obtain instructions and file affidavit as to whether during the period the mining leases are to be reappraised through SEAC/SEIAA the mining will remain suspended or will continue.

28. In compliance thereof MOEF&CC filed affidavit vide email dated 25.05.2023 . The relevant part of the affidavit reads as under:-

"3. It is submitted that, Hon'ble Tribunal vide order dated 15.05.2023 has directed the Ministry to inform;

"...as to whether during the period the mining leases are to be reappraised through SEAC/SEIAA the mining will remain suspended or will continue..."

4. *It is humbly submitted that Environmental Clearances (EC) granted by District Level Environment Impact Assessment Authority (DEIAA) from 15.01.2016 to 13.09.2018 will continue to be valid for one year as per the Ministry's OM dated 28.04.2023, subject to the compliance of the conditions prescribed therein. A copy of the O.M dated 28.04.2023 is marked and annexed herein as **ANNEXURE R1/1.***

5. *That in view of the aforementioned facts and circumstances, this Hon'ble Tribunal may kindly be pleased to pass appropriate order(s)."*

29. In the present case ECs in favour of respondents no. 5 and 6 were issued by DEIAA on 23.10.2018 after 13.09.2018.

30. Vide order dated 04.12.2023 learned Counsel for MOEF&CC was granted time to file affidavit to clarify the position in respect of mining leases for which EC was granted by DEIAA after 13.09.2018 before the orders were conveyed to all concerned by issuance of O.M. dated 12.12.2018.

31. In compliance thereof MOEF&CC filed affidavit vide email dated 03.01.2024. Relevant part of the affidavit reads as under:-

"4. It is submitted that, in compliance of the order passed by the Hon'ble Tribunal, vide dated 13.09.2018, the Ministry of Environment of Forest and Climate Change (MoEF&CC) has issued OM dated 12.12.2018 forwarding the order dated 13.09.2028 of Hon'ble NGT to all the States/UTs for necessary compliance. Further, the Ministry vide OM dated 28.04.2023 has granted validity for one year to mining leases in which Environmental Clearances granted by DEIAA during the period from 15.01.2016 to 13.09.2018.

5. It is submitted that further, in clarification to OM dated 28.04.2023, the Ministry has issued OM dated 03.11.2023 directing;

*"3... In view of the above, it is further clarified that the ECs granted by DEIAA which are valid as on date shall continue to be valid for one year from the date of issue of OM dated 28.4.2023 unless the validity of the EC granted by DEIAA has lapsed prior to 28.4.2024 or until SEIAA has invalidated the EC granted by DEIAA after carrying out re-appraisal as outlined above, whichever is earlier..." A true copy of the OM dated 28.04.2023 is marked and annexed herein as **ANNEXURE R1 / 1**.*

6. In view of the above, it is most respectfully submitted that as per the OM(s) issued by the Ministry as described in Para 4 & 5 above, it is again clarified that all valid ECs granted by DEIAA from 15.01.2016 to 13.09.2018, will continue to be valid for one year from the date of issue of the Ministry's OM dated 28.04.2023 subject to the compliance of the conditions prescribed therein. Further, the ECs granted after 13.09.2018 to be governed by the Hon'ble NGT's order dated 13.09.2018."

32. The relevant part of OM dated 03.11.2023 enclosed with above said affidavit reads as under:-

“Subject: Clarification with reference to Ministry's OM dated 28.04.2023 in Compliance of order dated 07.12.2022 passed by Hon'ble NGT in O.A.142 of 2022 in the matter of Jayant Kumar vs. Ministry of Environment, Forest and Climate Change .. reg.

This is with reference to the Ministry's OM dated 28.04.2023, wherein the Ministry has directed that, all valid Environmental Clearances (ECs) issued by DEIAA shall be reappraised through SEAC/SEIAA in compliance of the order of the Hon'ble NGT in O.A.142 of 2022. It was also directed that all concerned SEACs shall re- appraise the ECs issued by DEIAAs between 15.01.2016 and 13.09.2018 (including both dates) and all fresh ECs in this regard shall be issued by SEIAAs based only after such appraisal. The re-appraisal by SEIAA shall be completed within a time period of one year from the date of issue of OM dated 28.04.2023.

2. In this regard, the Ministry has filed an affidavit before the Hon'ble NGT on 25.05.2023 in OA No. 142 of 2022 in the matter of Jayant Kumar Vs. MoEFCC & Ors., stating that all valid ECs granted by DEIAA from 15.01.2016 to 13.09.2018, will continue to be valid for one year from the date of issue of the Ministry's OM dated 28.04.2023 subject to the compliance of the conditions prescribed therein.

3. In view of the above, it is further clarified that the ECs granted by DEIAA which are valid as on date shall continue to be valid for one year from the date of issue of OM dated 28.4.2023 unless the validity of the EC granted by DEIAA has lapsed prior to 28.4.2024 or until SEIAA has invalidated the EC granted by DEIAA after carrying out re-appraisal as outlined above, whichever is earlier.

4. This is for necessary action and compliance please.

5. This is issued with the approval of the Competent Authority.”

33. In view of affidavit filed vide email dated 03.01.2024 MoEF & CC is directed to issue O.M. prohibiting continuance of mining all over India under mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 with the exception in respect of cases where ECs granted by DEIAA for such mining leases have been reappraised and found valid by SEIAA or fresh ECs have been granted by SEIAA.

34. CPCB is directed (a) to obtain and compile information regarding (i) mining leases executed on the basis of ECs granted by DEIAA from

15.01.2016 to 13.09.2018 all over India and (ii) mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 all over India from the concerned SPCBs and UTPCCS within one week and (b) direct SPCBS and UTPCC (i) to send status report in compiled tabulated form regarding reappraisal by SEIAA of all the mining leases executed on the basis of ECs granted by DEIAA from 15.01.2016 to 13.09.2018 all over India within two weeks and (ii) to revoke consent and issue closure orders in respect of mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 with the exception in respect of cases where ECs granted by DEIAA for such mining leases have been reappraised and found valid by SEIAA or fresh ECs have been granted by SEIAA and send compliance report in respect thereof to CPCB within two weeks.

35. The CPCB and MoEF & CC are directed to file action taken reports in this regard within one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

36. In the present case the applicant filed I.A. No. 17/2024 for issuance of direction for suspension of illegal mining operations, cancellation of mining leases and recovery of environmental compensation from respondents no. 5 and 6.

37. Respondents No. 5 and 6 claimed that respondent no. 5 had already approached SEIAA for appraisal of the mining lease on which SEIAA had granted EC dated 11.01.2024 and respondent no. 6 had surrendered the mining lease to the District Magistrate.

38. Vide order dated 12.01.2024 respondent no. 5 was directed to file copy of EC dated 11.01.2024 and the District Magistrate, Sonbhadra was

directed to send his report regarding surrender of mining lease by respondent no. 6.

39. In compliance thereof copy of EC dated 11.01.2024 granted by UPSEIAA has been filed by respondent no. 5. In view thereof respondent no. 5 is entitled to continue with the mining in terms thereof.

40. Affidavit has been filed by respondent no. 6 stating that respondent no. 6 had surrendered mining lease vide letter dated 12.01.2022 to the District Magistrate/Chief Mine Officer, Sonbhadra.

41. The District Magistrate has filed report dated 16.01.2024 vide email dated 17.01.2024 in this regard as directed by this Tribunal. In the report it has been mentioned that respondent no. 6- M/s. C.S. Infra Construction Ltd. submitted application dated 04.05.2022 that it had stopped mining since November 2021 and requested that action for cancellation of the lease be taken on application dated 12.01.2022. The relevant document were not submitted with the same due to which no action was taken on the said application. It has been further mentioned in the report that letter dated 28.11.2023 was written by his office to respondent no. 6- M/s. C.S. Infra Construction Ltd. for deposit of installment, DMF, TCS against which respondent no. 6- M/s. C.S. Infra Construction Ltd. had filed writ petition no. 42429/2023 titled as C.S. Infra Construction Ltd. Vs. State of U.P. and others. The mining site was inspected on 22.12.2023 and it was reported that no mining is being done in the mining lease area and no E-MM-11 was generated after 2.11.2021.

42. The District Magistrate, Sonbhadra and Director Mining and Geology, U.P. are directed to take further action regarding surrender of the mining lease by respondent no. 6- M/s. C.S. Infra Construction Ltd.

in accordance with law and closure of the mine as per mining plan and respondent no. 6- M/s. C.S. Infra Construction Ltd. will not be entitled to carry on any mining lease area in question.

43. The questions which survive in the present case on the present original application are now limited to adjudication of validity of the mining leases executed in favour of respondents no. 5 and 6 on the basis of EC granted by DEIAA after 13.09.2018 and liability of respondents no. 5 and 6 to pay environmental compensation for the past violations and the parties are given opportunity to address oral arguments and file written arguments if so desired on the above questions on the date of hearing hereby fixed.

44. List on 22.05.2024 for further consideration.

45. Arguments on I.A. no. 17 of 2024 and any other pending IA will also be heard on that date.

46. A copy of this order be sent by e-mail to the Secretary, MOEF&CC and Member Secretary, CPCB for requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

April 18th 2024.
AG