

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

(Through Physical Hearing with Hybrid V.C. Option)

**Original Application No. 176/2022
(I.A No. 300/2024, I.A No. 39/2023 & I.A No. 40/2023)**

IN THE MATTER OF:

1. Sh. Aman Chaudhary

S/o Late Sh. Mukesh Choudhary
R/o 1884/86, Jagram Mandir Gali,
Kotla Mubarakpur, Delhi-110 003
Mob: 9899666122
Email: amanchoudhary@outlook.in

Applicant

VERSUS

1. Union of India

Through Secretary
Ministry of Environment and Forest,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-110003
Email: secy.moef@nic.in

2. Sh. Nagendra Singh

S/o Sh. Ravender Singh
R/o House No. 113, MIG 2,
Mahabalipuram, Kalyanpur, Kanpur,
Uttar Pradesh Mob: 8174069100

3. Central Pollution Control Board,

Through Chairman
Parivesh Bhawan, CBD-cum-Office Complex,
East Arjun Nagar, Delhi-110032
Email: ccb.cpcb@nic.in

4. Uttar Pradesh Pollution Control Board

Through Chairman
Building No. TC-12V, Vibhuti Khand,
Gomti Nagar, Lucknow Uttar Pradesh-226 010
Email: grievance@uppcb.com

5. Government of Uttar Pradesh

Through Chief Secretary Vibhuti Khand, Gomti Nagar Lucknow
Email: csup@nic.in

6. Directorate of Geology and Mining

Through its Director
Khanij Bhawan, 27/8, Raja Ram Mohan
Rai Marg, Lucknow-226 001
Email: dgmupexp@gmail.com

Respondents

For the Applicant:

None for the applicant.

Amicus Curiae:

Mr. Raj Panjwani, Senior Advocate.

For the Respondents:

Mr. Somesh Chandra Jha, Advocate for respondent no. 1.

Ms. Pushpila Bisht, Advocate for respondent no.2.

Mr. Saurav Balwani, Advocate for respondent no.3.

Mr. Pradeep Misra, Advocate for respondent no. 4.

Mr. Mukesh Verma, Advocate for respondents no. 5 and 6.

PRESENT:

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

Judgment Reserved on:- 12.12.2025
Judgment pronounced on:- 16.01.2026

JUDGMENT

PRONOUNCED BY: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JM

1. The Applicant-Aman Chaudhary has filed the present original application under Section 14 read with Sections 15 and 18 (1) of the National Green Tribunal Act, 2010 raising substantial questions relating to environment more specifically air and water pollution caused by illegal mining in the region of Kanpur and nearby areas and has sought the following reliefs:-

- “i) Allow the present application;*
- ii) direct the Respondents to stop illegal mining of Sand from Ganga in Kanpur and Unnao area and to impose heavy penalty for diverting stream of Ganga River and also polluting it;*
- iii) direct the respondents to remove the Baandh/ Dam/ Sand Mountain/bridge from the stream of Ganga so that the Ganga can have its natural stream and the nearby villages and cities can have reach to pollution free Ganga River;*
- iv) direct the respondents to keep a trace of illegal mining in UP and also to take action and stop these illegal mining of Sand in Ganga river so that pollution being caused to Ganga can be*

curtailed;

v) pass any such further and other orders and directions this Hon'ble Court may deem fit and proper."

2. The Applicant has referred to the orders passed by the Hon'ble Supreme Court in **Deepak Kumar versus State of Haryana and others (2012) 4 SCC 629** and also more specifically order dated 13.07.2017 passed by this Tribunal in **O.A. No. 200 of 2014** titled as **M.C. Mehta versus Union of India and others** whereby this Tribunal directed that 100 meters from the edge of the river be treated as no development/construction zone in Segment-B of Phase -1 (Haridwar to Unnao, Kanpur) and while carrying out precautionary dredging of the river, no in stream mechanical mining be permitted and even the mining on the floodplain should be semi-mechanical and preferably more manual. The applicant has also referred to several articles published in the daily edition of the Newspaper Amar Ujala in 2019 regarding illegal mining of sand from river Ganga in Kanpur and Unnao Areas, due to which the stream of the river Ganga has been divided and which has resulted in rising pollution in river Ganga. The applicant has submitted that sand mining activities have been carried out without having Environmental Clearance and even if Environmental Clearances have been granted then those norms of Environmental Clearances have not been complied with by the mining lessees which has caused severe damage to river belt.

3. The Applicant has further submitted that Respondent no. 2 is the person involved in illegal sand mining in Bilhaur near Kanpur where he is ramparting mining outside the coordinates almost till 500 metres as marked in the Form MM 11 and built an illegal bridge in between Ganga River thereby dividing it into two streams which has become hazardous to the nearby villages and the people and can be catastrophic for the region. Villages Sunaudi, Bandi Mata, Bara Heen Purva, Fatehpur, Birhi Purva in

Kanpur as well several other villages in Unnao are thereby adversely affected.

4. The applicant has also mentioned that the Applicant had filed O.A. No. 41 of 2022 which was, due to error of not mentioning the name of the person involved in illegal mining of Sand, withdrawn with liberty to file fresh application.

5. Vide order dated 07.03.2022, this Tribunal constituted a Joint Committee comprising of the Uttar Pradesh Pollution Control Board (UPPCB), District Magistrate, Unnao and District Magistrate, Kanpur City (Uttar Pradesh) and directed the same to meet within four weeks, undertake site visit, look into the grievance of the applicant and submit Factual and Action Taken Report within three months.

6. In compliance thereof, the Joint Committee carried out field visit on 02.04.2022. Report of the Joint Committee was filed by Regional Officer, UPPCB, Kanpur vide email dated 10.08.2022. The relevant part of the report reads as under:-

“Report of Joint Inspection Team in compliance to Hon’ble NGT Order dated 07.03.2022 in the Original Application No. 176 of 2022 in the matter Aman Chaudhary Vs. Union of India and others

X X X X X X

The District Magistrates of Kanpur Nagar/Unnao and UPPCB issued order of the Committee based on the nominations. As instructed in order, the committee has carried out field visits on 02.04.2022 to verify the status on the issues raised in Hon'ble NGT order.

Following are the details of joint committee visit:-

1. *The Committee carried out survey of mining area located at Village-Katari Sunaudha, Tehsil-Bilhaur, District-Kanpur Nagar. Village-Katari Sunaudha (Population approx. 1400) situated near river Ganga which is approx. 800 meters away from mining area.*

2. *In the interaction with District Administration the committee found that several orders/ directives have been issued by*

concerned departments in the matter. The compilation of action taken/ directive issued by various departments in this matter is tabulated and attached at Annexure-1.

- 3. *Environmental Clearance (EC) was issued to Shri Nagendra Singh, M/s. Vaishnavi Enterprises, R/o MIG-02, Mahabalipuram, Kanpur Nagar, U.P. on 12.02.2018 by State Level Environmental Impact Assessment Authority (SLEIAA) for ordinary Sand Mining at Gata No. 2mi, Village-Katari Sunaudha, Tehsil-Billhaur, District-Kanpur Nagar. The EC was granted for sanctioned lease area of 26.0 acres (10.50ha).*
- 4. *The period of Mining lease is for 5 years from the date of execution.*
- 5. *Permitted annual capacity is 2,10,000 M³ per annum of ordinary sand mining by manual/Semi Mechanised method.*
- 6. *Mining lease deed was registered on 07.04.2018 for the period up to dt. 06.04.2023.*
- 7. *The District Magistrate, Kanpur Nagar has restricted the mining Vide notice dt. 03.02.2021, which is restored vide order dt. 13.12.2021.*
- 8. *As per the information of mining department, the mining activities was started in April, 2018. Details of extraction is as below against the allowed permitted capacity.*

Year	Annual Mining Extraction in m ³
April, 2018 to March, 2019	169297
April, 2019 to March, 2020	35339
April, 2020 to January, 2021	92154
December, 2021 to March, 2022	51306

The average daily vehicles movements during the mining operations is 30-35 vehicles per day.

9. *At the mining site facilities/equipments available are as below-*

- *Office*
- *Weigh bridge*
- *Water supply*
- *Electricity*
- *03 No. tankers for water sprinkling*
- *01 No. Compactor*

• 03 No. Excavators (JCB)

10. Mining area identified by revenue department was marked by using pillars and mining activity was found within the marked area.

11. One temporary water way is found developed for transportation vehicles moment in the mining area.

12. During joint inspection it was found that mining activities is carried out only in the Jurisdiction of Kanpur Nagar at right bank of river Ganga.

13. In the EC issued by SEIAA, several conditions are imposed. The compliance of some (sic of) the major conditions are as given below-

- The proponent was to establish ambient air quality monitoring stations to monitor the ambient air during the mining operations. The proponent was also to submit monitoring reports of ambient air quality/water & waste water/flora & fauna, six monthly compliance report, annual environmental statement and detailed replenishment study report to SIA/PCB/district administration.
- No such data/compliance reports are submitted by the project proponent.
- The proponent was to carry out various Corporate Social Responsibility (CSR) activities including community development & income generating programs, maintenance of village road, free distribution of smoke less chulha, etc.
- No such data/compliance reports are submitted by the project proponent.
- The project proponent has to develop green cover belt in an area equivalent to 20% of the total leased area either on river bank or along road side.
- No such efforts are been made by the proponent.

14. The Photographs taken during visit and Google Earth Images of various timescale are attached as Annexure-02.

Findings of the visit:-

- River bed mining lease is sanctioned at Vill-Katari Sunaudha, Tahsil-Bilhaur, District-Kanpur Nagar. The Committee found the issues raised in the Hon'ble NGT order are matter of concerns w.r.t. construction of temporary bridge at mining site. During inspection no such temporary bridge was found in the mining lease area.
- According to Google Earth timeline map of dated 25.03.2018 & 18.04.2019, no such temporary bridge was observed.
- During inspection approach road was found at the mining lease site in the main stream area of River, which obstruct the flow of the River.
- Project proponent has not taken any significant measures for environmental safeguard and also not made any efforts/initiatives for conducting activities under CSR.
- Compliance of conditions of Environmental Clearance issued by SEIAA are not found.

Hence, the Committee is in view that the lease holder may be directed to comply the conditions of Environmental Clearance and mining deed. Environmental compensation may be imposed for violation of various Norms and degradation of surrounding environment.”

7. Vide order dated 16.08.2022 notices were ordered to be issued to the respondents no. 1 to 6 requiring them to file their responses/replies to the allegations made in the application and observations made in the report of the Joint Committee.

8. Reply was filed by respondent no-2-Mr. Nagendra Singh vide email dated 01.02.2023 (Pages no. 95-138 of the paper book). The relevant part of reply dated 31.01.2023 is reproduced below:-

“REPLY ON BEHALF OF THE RESPONDENT NO. 2

X	X	X	X
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1. That the answering Respondent has been impleaded as respondent no. 2 in the above noted Original Application vide order dated 16.08.2022 passed by this Hon'ble Tribunal.

2. That the applicant has filed the instant Original Application with a sole objective of deliberately misleading this Hon'ble Tribunal to believe that the respondent no. 2 has been indulged in illegal sand mining and further alleging that a bridge has been constructed by the respondent no. 2 in river Ganga dividing it into two streams whereas it is blatant falsehood to misguide this Hon'ble Tribunal.

3. That before submitting a para wise objection to this Original Application, the applicant seeks leave of this Hon'ble Tribunal to submit relevant facts for the adjudication of this present Original Application.

4. That the Respondent no. 2 had participated in the E-Tender cum E-Auction and being the highest bidder was granted a letter of intent for Gata no. 2Mi, area of 10.50 Hectare, Village Katari Sunaudha, Tehsil Bilhaur, District Kanpur Nagar for a total quantity of 2,10,000 cubic meter per year. True copy of the Letter of Intent no. 1111/ tees-up khanij/2017 dated 12.12.2017 is filed herewith as Annexure No.1.

5. That pursuant to the Letter of Intent, the Respondent no. 2 deposited the amount and got the mining plan prepared and ultimately was granted Environmental Clearance on 12.02.2018. True copy of the Environmental Clearance dated 12.02.2018 is filed herewith as Annexure No.2.

6. That after obtaining the Environmental Clearance in the respect of the aforesaid, the mining lease deed was executed in favour of the Respondent no. 2 for a period of 5 years on 07.04.2018. True copy of the lease deed is annexed herewith as Annexure No. 3.

7. That vide order dated 03.02.2021 the mining activity of the Respondent no. 2 was stopped on the charge of illegal mining and demand was raised.

8. That being aggrieved by the order dated 03.02.2021, Respondent no. 2 preferred a statutory revision bearing Revision no. 48(R)/SM/2021 (M/s Vaishnavi Enterprises v Director, Directorate of Geology and Mines) under Rule 78 of the

Uttar Pradesh Minor Minerals (Concession) Rules, 1963, which was dismissed vide an order dated 09.08.2021.

9. That being aggrieved by the order dated 09.08.2021 passed in Revision No. 48 (R)/SM/2021, the Respondent no. 2 filed a Writ Petition No. 18966 (M/S) of 2021 (M/s Vaishnavi Enterprises through its Proprietor Sri Nagendra Singh versus State of U.P Thru. Secy. Geology and Mining, Lko & Ors) before the Hon'ble High Court of Judicature at Allahabad in which this Hon'ble Court vide judgment and order dated 22.09.2021 was pleased to grant an interim protection on the condition that the Respondent no. 2 has to deposit 50% of the amount and furnish a security for the remaining 50% before the District Magistrate, Kanpur Nagar within a period of three weeks. True copy of the interim order dated 22.09.2021 is annexed herewith as Annexure No. 4.

10. That pursuant to this Hon'ble Court's order dated 22.09.2021, the Respondent no. 2 deposited an amount of Rs. 1,20,00,000/- (Rupees One Crore, Twenty Lacs) before the District Magistrate, Kanpur Nagar through a Challan no. AKV210012782 dated 20.11.2021 and further furnished a security for the remaining 50% amount before the District Magistrate, Kanpur Nagar.

11. That post-deposit of the aforesaid amount and the security by the Respondent no. 2, the District Magistrate, Kanpur Nagar vide letter no. 1067 tees-upkhanij 2021 dated 13.12.2021 granted the permission to the Respondent no. 2 to resume their mining activities for Gata no. 2Mi, having area of 10.50 Hectare situated in Village Katari Sunaudha, Tehsil Bilhaur, District Kanpur Nagar. True Copy of the letter no. 1067 tees-upkhanij/2021 dated 13.12.2021 is annexed herewith as Annexure No. 5.

12. That the Respondent no. 2 resumed their mining activities from 17.12.2021 in pursuance to the letter no. 1067 tees-upkhanij/2021 dated 13.12.2021 and undertook the mining operations till 31.05.2022.

13. That on an inspection held by the office of the District Magistrate, Kanpur Nagar, the mining activity of the Respondent no. 2 was stopped from 31.05.2022 and till date the Respondent no. 2 are not carrying on any mining.

14. That the respondent no. 2 seeks leave of this Hon'ble Tribunal to submit the paragraph-wise reply of the Original Application as under:

15. That in reply to the contents of paragraph number 1 of the original application it is respectfully submitted that the allegations of Air and Water pollution levelled against the Respondent no. 2 are unsound. It is further submitted that the Respondent no. 2 was operating his mining lease after the grant of a valid Environmental Clearance dated 12.02.2018. Furthermore, an Environmental Clearance can be issued only after various stages of decision making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal or components of the decision making process which ensure that the likely impacts of the industrial/mining activity of expansion of an industrial/mining activity are considered in the decision making calculus.

16. That in reply to the contents of paragraph number 2 of the original application it is respectfully submitted that the

Respondent no. 2 operated on his mining lease after the grant of a valid Environmental Clearance and has never indulged in any Illegal Mining. Furthermore, no charge of illegal mining as ever been established upon the Respondent no. 2. It is further submitted that the Respondent no. 2 did not indulge in any illegal mining as the Respondent no. 2 only commenced the mining in the area leased to the Respondent no. 2 and further only resumed his mining activities from 17.12.2021 in pursuance to the letter no. 1067 tees-upkhanij/ 2021 dated 13.12.2021 after getting due permission from the District Magistrate, Kanpur Nagar.

17. That in reply to the contents of paragraph number 3 of the original application the averments made in previous paragraphs of this instant objection are reiterated.

18. That in reply the contents of paragraph number 4 of the original application it is respectfully submitted that the allegations made by the applicant regarding the construction of a bridge in river Ganga dividing it into two streams is false and baseless. In this regard it is further submitted that even in the report of the Joint Committee dated 10.08.2022, the findings clearly state that according to Google Earth Timeline map of dated 25.03.2018 and 18.04.2019, no such temporary bridge was observed.

19. That in reply the contents of paragraph number 5 of the original application it is respectfully submitted that the Respondent no. 2 has carried out the mining in compliance to the various guidelines enunciated in the judicial pronouncements of the Hon'ble Supreme Court of India.

20. That the contents of paragraph number 6 of the original application the averments made in previous paragraphs of this instant objection are reiterated, it is further submitted that the mining lease area of the Respondent no. 2 is situated at a distance of 900 meters from the river Ganga and the same can be ascertained from the previous inspection report dated 06.12.2020 hence the question of carrying activity in "Eco Sensitive and Prohibited Zone" does not arise. Furthermore, no charge of illegal mining has ever been established upon the Respondent no. 2 and it is evident from the joint inspection report dated 10.08.2022 that no such bridge was ever constructed by the Respondent No. 2.

21. That in reply the contents of paragraph number 7 of the original application need no reply.

22. In view of these glaring facts, it is the respectful submission of the answering Respondent No. 2, that the claim of the applicant cannot be sustained and deserves to be dismissed outright with exemplary costs, so as to dissuade such motivated claims from being made in the future

23. For the foregoing reasons, none of the prayers/reliefs prayed by the applicant deserve to be granted. It is the respectful submission of the Respondent No. 2 that the present application filed before this Hon'ble tribunal deserves to be dismissed with exemplary costs.

(A) Pass any such other order or orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."

to the Joint Committee Report vide email dated 01.02.2023 (Pages no. 139-269 of the paper book). The relevant part of the written submissions is reproduced below:-

“WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 2 TO THE REPORT DATED 10.08.2022

X

X

X

15. That during the period the Respondent no. 2 was carrying on the mining in the leased area, the Respondent no. 2 has duly followed all the environmental norms.

16. That moreover, the Respondent no. 2 has not constructed a bridge dividing the river Ganga into two streams as alleged by the applicant. It is further submitted that the resident farmers of the Village Katari Sunaudha construct a small tent like structure near the riverbank of river Ganga so as to prevent the water from reaching their crops. True Copy of the images clicked by the Respondent no. 2 via GPS Map Camera of the said construction are annexed herewith as Annexure No. 2.

X

X

X

X

25. That the Respondent no. 2 seeks leave of this Hon'ble Tribunal to submit the paragraph-wise reply of the report dated 10.08.2022 as under:

26. That the paragraphs nos. 1 to 10 of the Joint Inspection Report are a matter of record, hence, need no reply.

27. That the reply to the contents of paragraph number 11. of the Joint Inspection Report need no comment.

28. That the reply to the contents of paragraph number 12 of the Joint Inspection Report need no comment.

29. That in reply to the contents of paragraph number 13 of the Joint Inspection Report it is respectfully submitted that the Respondent No. 2 has undertaken various Corporate Social Responsibility Activities such as organizing free eye care camps and distribution of various amenities amongst the locals and has further submitted the six monthly compliance report for the period of January to June 2022 before the Joint Director, Ministry of Environment, Forest & Climate Change, Lucknow (U.P.) vide letter dated 16.09.2022. True copy of the letter dated 16.09.2022 along with the Six Monthly compliance report and the photographs evincing the aforesaid are annexed herewith as Annexure No. 3.

30. That in reply to the contents of paragraph number 14 of the Joint Inspection Report the averments made in the previous paragraphs of this written submission are reiterated. Furthermore, it is respectfully submitted that no bridge was ever constructed by the Respondent No. 2 at the mining site and that the approach road has been paved by the Respondent No. 2 in his own lease area and the same was done after obtaining

a written permission from the Gram Pradhan. Furthermore, for the construction of the same no environmental pollution or degradation is caused.

It is further submitted that the approach road wasn't made in the mainstream area of the river, neither it obstructed the flow of the river. Due to the phenomenon of water being stored in the pores of the Sand, the water seeps out of the Sand after heavy rainfall. True copy of the written permission from Gram Pradhan dated 10.04.2018 is annexed herewith as Annexure No. 4”

10. In the course of hearing and in compliance with the orders passed by this Tribunal replies/affidavits/reports were filed by other respondents. Report has been filed by respondent no. 4-UPPCB vide email dated 05.09.2022 (Pages no. 52-54 of the paper book); reply has been filed by respondent no. 3-CPCB vide email dated 06.09.2022 (Pages no. 56-64 of the paper book); reply has been filed by respondent no. 3-Director, Geology & Mining, Uttar Pradesh vide email dated 13.09.2022 (Pages no. 65-66 of the paper book); counter affidavit has been filed by respondent no.1-MoEF&CC vide email dated 11.01.2023 (Pages no. 67-81 of the paper book); affidavit has been filed by respondent no.6-Mining Department, UP vide email dated 30.01.2023 (Pages no. 82-94 of the paper book); Short Affidavit has been filed by respondent no.4-UPPCB vide email dated 08.02.2023 (Pages no.280-293 of the paper book); affidavit has been filed by respondent no.6-Director, Geology & Mining, Uttar Pradesh vide email dated 21.04.2023 (Pages no. 294-309 of the paper book); affidavit has been filed by respondent no.4-Member Secretary, UPPCB vide email dated 21.04.2023 (Pages no. 310-673 of the paper book); affidavit has been filed by respondent no. 3-CPCB vide email dated 18.05.2023 (Pages no. 674-780 of the paper book); affidavit has been filed by respondent no. 1-MoEF &CC vide email dated 18.05.2023 (Pages no. 781-786 of the paper book); additional affidavit has been filed by respondent no. 1-MoEF & CC vide email dated 05.10.2023 (Pages no. 792-802 of the paper book); report has been filed by respondent no. 4-UPPCB

vide email dated 14.10.2023 (Pages no. 803-982 of the paper book); additional affidavit has been filed by respondent no.1-MoEF&CC vide email dated 20.11.2023 (Pages no. 983-993 of the paper book); report has been filed by respondent no.6- Mining Department, UP vide email dated 08.12.2023 (Pages no. 994-1025 of the paper book); additional status report has been filed by respondent no.4-UPPCB vide email dated 10.12.2023 (Pages no. 1026-2002 of the paper book); report has been filed by respondent no.3-CPCB vide email dated 09.01.2024 (Pages no. 2003-2225 of the paper book); report has been filed by respondent no.4-UPPCB vide email dated 10.01.2024 (Pages no. 2226-2805 of the paper book); affidavit has been filed by respondent no.6- Director, Geology & Mining, Uttar Pradesh vide email dated 12.01.2024 (Pages no. 2806-2809 of the paper book); report has been filed by respondent no.4-UPPCB vide email dated 19.03.2024 (Pages no. 2810-2817 of the paper book); reply has been filed by respondent no.3-CPCB vide email dated 19.03.2024 (Pages no. 2818-2924 of the paper book); affidavit has been filed by District Magistrate, Kanpur vide email dated 08.07.2024 (Pages no. 2925-2973 of the paper book); reply has been filed by respondent no.3-CPCB vide email dated 09.07.2024 (Pages no. 2974-2987 of the paper book); additional affidavit has been filed by respondent no.6- Director, Geology & Mining, Uttar Pradesh vide email dated 10.07.2024 (Pages no. 3098-3146 of the paper book); Reply has been filed by respondent no.4-UPPCB vide email dated 30.04.2025 (Pages no. 3147-3164 of the paper book) and additional affidavit has been filed by respondent no. 2-Mr. Nagendra Singh vide email dated 20.05.2025 (Pages no. 3165-3278 of the paper book).

11. In order to avoid repetition and also for reasons of brevity, the contents of above mentioned replies/affidavits/reports filed by the respondents as mentioned hereinabove are not reproduced here and the

relevant parts thereof will be reproduced/referred/discussed in the later parts of this Judgment.

12. Arguments were heard by Bench comprising Hon'ble Mr. Justice Sudhir Agarwal, Judicial Member and Hon'ble Dr. Afroz Ahmad, Expert Member and judgment was reserved vide order dated 11.07.2024.

13. However, vide order 21.03.2025 this Tribunal considered clarification on some aspects to be necessary due to which the matter was relisted for further hearing on 24.03.2025.

14. After requisite clarifications, arguments were heard by Bench comprising Hon'ble Mr. Justice Sudhir Agarwal, Judicial Member and Hon'ble Dr. Afroz Ahmad, Expert Member and judgment was reserved vide order dated 28.05.2025.

15. However, before the judgment could be pronounced, change took place in the constitution of this Tribunal due to retirement of Hon'ble Mr. Justice Sudhir Agarwal, Judicial Member and vide order dated 26.08.2025 the matter was relisted for final hearing on 25.09.2025.

16. I.A. No. 39/2023 (Pages no. 270-274 of the paper book) was filed by respondent no. 2 for exemption from filing English translation of some portion of Annexure No. 1 and Annexure No. 4 and I.A. No. 40/2023 (Pages no. 275-279 of the paper book) was filed by respondent no. 2 for exemption from filing English translation of some portion of Annexures No. 1, 3 and 5 and in view of the reasons mentioned **I.A. No. 39/2023** and **I.A. No. 40/2023** are **allowed**.

17. I.A. No. 300/2024 (Pages no. 2988-3097 of the paper book) was filed by Shri Ram Associate for permitting the applicant to intervene in the present original application and direct the UPPCB to refrain from initiating

unnecessary and baseless proceedings against the applicant on the purported ground of the applicant operating its mining lease without a CTO/CCA.

18. None appeared for intervenor applicant in I.A. No. 300/2024 before this Tribunal. In view of default in appearance **I.A. No. 300/2024** is **dismissed** in default.

19. The applicant did not appear before this Tribunal on 25.09.2025, 31.10.2025 and 12.12.2025 despite having been informed about date of hearing fixed.

20. We have heard submissions made by Mr. Somesh Chandra Jha, learned Counsel for respondent no. 1; Mr. Tanay, Proxy counsel for Ms. Pushpila Bisht, learned Counsel for respondent no.2; Mr. Saurav Balwani, learned Counsel for respondent no.3; Mr. Mukesh Verma, learned Counsel for respondents no. 5 and 6, who appeared before this Tribunal physically and Mr. Pradeep Misra, learned Counsel for respondent no. 4 who appeared before this tribunal through VC and we have gone through the material on record carefully.

21. In their arguments learned Counsels for the respondents have reiterated the factual and legal submissions made in their replies/responses.

22. Before looking into the grievances raised by the applicant and submissions made by learned Counsels for the respondents relevant legal position and factual background regarding the mining activity emerging from the material on record may be observed.

Legal framework

23. In its counter affidavit dated 11.01.2023 (Pages no. 67-81 of the paper

book) filed vide email dated 11.01.2023 respondent no. 1-MoEF & CC submitted that MOEF&CC issued Environmental Impact Assessment Notification dated 14.09.2006 requiring projects and activities mentioned in the schedule categorized into two categories Category "A" and Category "B", to obtain prior Environmental Clearance from MoEF&CC for all projects or activities included as Category 'A' and from the State/Union territory Environment Impact Assessment Authority (SEIAA) for all projects or activities included as Category 'B'. In the absence of a duly constituted SEIAA or SEAC, a Category "B" project shall be treated as a Category 'A' project. In exercise of the powers conferred upon the Central Government under sub section (3) of section 3 of the Environment (Protection) Act, 1986 and in accordance with the procedures specified in the EIA Notification, 2006, SEIAAs have been constituted in different States/UTs to discharge the functions of the regulatory authorities for the respective States/UTs. MOEF&CC vide notification S.O. 1886 (E) dated 20.04.2022 directed that environmental clearances of all minor mineral shall be dealt at State level irrespective of mine lease area. In compliance of directions given by this Tribunal in its order dated 04.09.2018 in **O.A. 173/2018 Sudarsan Das vs. State of West Bengal & Ors**, MOEF&CC has formulated "Enforcement & Monitoring Guidelines for Sand Mining, 2020" (EMGSM-2020) supplemental to the existing "Sustainable Sand Management Guidelines, 2016" (SSMG-2016), which focus on the effective monitoring of the sand mining since from the identification of sand mineral sources to its dispatch and end-use by consumers and the general public. State Department of Mines and Geology is the Nodal Authority in the State for dealing with the allotment of mining leases under the Mines and Minerals (Development and Regulation) Act, 1957(MMDR Act, 1957) and is entrusted with the enforcement and regulation of mining operations in a State including illegal mining. The State Government is empowered under Section 23 C of the MMDR Act, 1957 to

make rules for prevention of illegal mining, transportation and storage of minerals and the State Department of Mines & Geology is the nodal authority in the State for dealing with the allotment of mining leases under the MMDR Act, 1957 and is entrusted with the enforcement and regulation of mining operations in a state. State Pollution Control Board is the Nodal Authority in the State for dealing with cases related to pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act 1986.

Factual Background

24. Respondent no. 2 had participated in the E-Tender cum E- Auction and being the highest bidder was granted a letter of intent for Gata no. 2Mi, area of 10.50 Hectare, Village Katari Sunaudha, Tehsil Bilhaur, District Kanpur Nagar for a total quantity of 2,10,000 cubic meter per year. Pursuant to the Letter of Intent, the Respondent no. 2 deposited the amount and got the mining plan prepared and ultimately was granted Environmental Clearance on 12.02.2018. Lease deed was executed on 07.04.2018 in favour of lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh r/o 113 MIG-2, Mahabali Puram, Kalyanpur, Kanpur Nagar for the period of 05 years from 07.04.2018 to 06.04.2023.

25. In the present case the Applicant raised grievances regarding (i) sand mining activities without having Environmental Clearance; (ii) non-compliances of conditions of Environmental Clearances by mining lessees; (iii) building of bridge in between Ganga River in Bilhaur near Kanpur by Respondent no 2; (iii) damage to stream of Ganga river in Kanpur and Unnao due to illegal sand mining and illegal bridge and prayed for stopping of illegal mining and ensuring compliance of conditions of Environmental

clearances for river sand mining,

26. In view of the averments made in the original application and responses filed by the respondents following substantial environmental questions arise in the present case relating to implementation of the enactments specified in Schedule I to the National Green Tribunal Act, 2010:-

- (i) Whether Respondent No.2-Nagendra Singh carried out river sand mining in violation of environmental norms without obtaining CTE/CTO from UPPCB?**
- (ii) Whether Respondent No.2-Nagendra Singh is liable to pay environmental compensation for carrying out river sand mining without obtaining CTE/CTO from UPPCB?**
- (iii) Whether Respondent No.2-Nagendra Singh illegally carried out river sand mining in violation of environmental norms by constructing bridge over river Ganga?**
- (iv) Whether Respondent No.2-Nagendra Singh illegally carried out river sand mining in violation of/without complying with EC/CTO conditions/environmental norms?**
- (v) Whether this Tribunal is required to issue any directions in the case and if so to what effect?**

27. The findings of this Tribunal on the above-mentioned substantial environmental questions along with the reasons for the same are given in this judgment hereinafter.

- (i) Whether Respondent No.2-Nagendra Singh carried out river sand mining in violation of environmental norms without obtaining CTE/CTO from UPPCB?**

28. Since the averments made in the original application raised substantial environmental questions, this Tribunal constituted Joint Committee and the report submitted by the Joint Committee pointed out serious environmental violations including the violation that Respondent No.2-Nagendra Singh carried out mining without obtaining Consent to Establish (CTE) and Consent to Operate (CTO) under the Water (Prevention and Control of Pollution Act, 1974 and the Air Prevention and control of Pollution Act, 1981 from UPPCB.

29. This Tribunal, considered the report of the Joint Committee on 29.09.2022 and made the following observations with consequential directions vide Order dated 29.09.2022 as under :-

*"....We have noticed that **"Mining lease deed was registered on 07.04.2018 for the period up to dt. 06.04.2023"** and out of five years lease period more than four years period has already expired without requisite compliance with environmental compliance conditions and without obtaining CTO from UPPCB. No doubt, UPPCB has imposed environmental compensation amounting to Rs.4,29,37,500/- on respondent No.6 the Project Proponent for not obtaining consent to operate from UPPCB under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 before commencement of mining but the same has been imposed after initiation of the present proceedings and such imposition appears to be without issuing any notice and giving opportunity of being heard to respondent No.6 the Project Proponent. Detailed guidelines have been laid down in **Sustainable Sand Mining Management Guidelines 2016** and **Enforcement & Monitoring Guidelines for Sand Mining 2020** issued by MoEF & CC and specific directions have also been issued by this Tribunal in **OA No. 360/2015 National Green Tribunal Bar Association Vs. Virender Singh** for operationalization of monitoring/supervisory/review mechanism and periodical audits/inspections/returns/reports for ensuring compliance with **environmental clearance** and **consent to operate conditions** and environmental norms, which prima facie, appear to have been flouted by the Director, Directorate of Geology and Mining, Government of Uttar Pradesh and UPPCB in the present case. However, before making any further observations in the matter we consider it appropriate to give them opportunity to file detailed replies and to direct them to give their account of measures taken by them for compliance with the guidelines issued by MOEF & CC and*

directions given by this Tribunal. In its reply the Director, Directorate of Geology and Mining, Government of Uttar Pradesh shall specifically mention as to (i) whether copy of environmental clearance/ mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent? (ii) whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by designated third party/departmental agency regarding compliance with **environmental clearance and consent to operate conditions** and environmental norms by the project proponent, if yes produce copies of the same if not the reasons for the same? (iii) whether the project proponent was entitled to and could commence mining before grant of CTO by UPPCB if not why the project proponent was allowed to commence such mining without CTO from UPPCB and (iv) whether any notice for non compliance with **environmental clearance/consent to operate**/environmental norms was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof. In its reply the UPPCB shall specifically mention as to (i) whether copy of environmental clearance/ mining lease agreement was sent to UPPCB, if yes when and if no, whether any reference was made for obtaining the same? (ii) whether UPPCB conducted any inspection regarding mining in the mining site in question to ascertain compliance of environmental clearance conditions/obtaining of CTO before initiation of the present proceedings, if yes what action was taken on the basis thereof and if no, what are the reasons for the same? and in how many cases copies of environmental clearance/ mining lease agreement was not sent to UPPCB during the last five years and in how many cases mining was commenced without obtaining CTO from UPPCB. Reply/response by the Director, Directorate of Geology and Mining, Government of Uttar Pradesh be filed by within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF."

30. In compliance of order dated 29.09.2022 affidavit dated 30.01.2023 (Pages No. 82-94 of the paper book) was filed by the Mines Officer, Kanpur Nagar vide email dated 30.01.2023. The relevant part of the affidavit is reproduced below:-

"AFFIDAVIT OF COMPLIANCE FILED BY THE MINING DEPARTMENT

X	X	X	X
4. That on the basis of report from Mines Officer, Kanpur Nagar, dated 28.12.2022; letter no.1243/S-218/22 of Regional Officer U.P. Pollution Control Board, Kanpur Nagar, dated 5.12.2022; Letter no.NGT/509/81-7-2022 of the Secretary Environment Forest and Climate Change, Section-7, Govt. of U.P. Lucknow dated 05.01.2023			

and letter no.1523/M-NGT-Kanpur Nagar/2022 of the Director Geology and Mining Directorate U.P. Khanij Bhawan, Lucknow dated 16.1.2023 the information on above points are as follows:-

5. Point no. (i) Whether copy of environmental clearance /mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent?

With reference to above point, it is submitted that the copy of environmental clearance certificate issued in favour of project proponent /lease holder was sent to Member Secretary, U.P. Pollution Control Board, Environment Bhawan, Vibhuti Khand, Lucknow from State Environment Impact Assessment Authority (SEIAA). It is an established Practice of SEIAA to send the copy of environmental clearance certificate to member secretary U.P. Pollution Control Board. (Copy of said environmental clearance certificate is Attached for perusal)

6. Point no.(ii) - Whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by designated third party/departmental agency regarding compliance with environmental clearance and consent to operate conditions and environmental norms by the project proponent, if yes produce copies of the same if not the reasons for the same?

In compliance of above direction of this Hon'ble Tribunal it is submitted that neither the lease holder /project proponent has not filed any periodical returns nor in compliance of conditions of environment clearance and conditions of C.T.O. the project proponent has got done any audit /periodical inspection from third party /departmental agency. It is mentioned in letter no.NGT-509/81-7-2022 dated 5.1.2023 of the Secretary, Environment Forest and Climate Change Section-7, U.P. Lucknow that the relevant part of the order dated 26.2.2021 passed by this Hon'ble Tribunal in O.A. no.360/2015 National Green Tribunal Bar Association Vs. Virendra Singh (State of Gujarat &Ors.) in connected O.A. Union of India &Ors. is as follows:-

"....28. We further direct that periodic inspection be conducted by a five members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC regional office is available, its Regional officer will be included in the Committee. Where neither CPCB nor MoEF&CC regional office exists, Chairman, SEIAA will tie up within the nearest institution of repute such as IIT to nominate an expert for being included in the Committee. Such inspection must be conducted at least thrice for each lease i.e. after expiry of 25% the lease period, then after 50% of the period and finally six months before expiry of the lease period for midway correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on website of the SEIAA. Every lessee, undertaking mining, must have an environmental professional to facilitate sustainable mining in terms of the mining

plan and environmental norms. This be overseen by the SEIAA. Environment Departments may also develop an appropriate mobile app for receiving and redressing the grievances against the sand mining, including connivance of the authorities and also mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of U.P. quoted earlier may be duly taken into account..."

In Environment clearance Certificate issued in favour of project proponent it is mentioned that the responsibility to get the compliance of environment clearance and operating conditions and environmental conditions was on the part of Regional Officer U.P. Pollution Control Board, Kanpur Nagar and Mines Officer, Kanpur Nagar, which has not been got done by them and nor in compliance of these conditions deponent has been informed about the mandatory requirement for inquiry.

It is pertinent to mention here that site has been inspected from time to time for getting the compliance of conditions of lease deed and above regulation 2021 by the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh for the normal sand mining area village KatariSunadha Plot no.2m rakba 10.50 hectare of Tehsil DANA Billaaur, Due to not installing CCTV Camera of 360 degree in 19718 mining area, due to violation of Rule 59(3) notice no.1434/30 Sub Mineral /2019 was issued on 8.5.2019 and penalty of Rs.25,000.00 has been imposed. On 7.12.2020 the Revenue Department and Sub Divisional Magistrate Billaaur inspected the site, in which it was found that in distance of about 700 mtr from approved mining area in west side the plain impact of sand, height of which was equal to water level, the same was got removed and first information report has been got registered in concerned police station against the unknown persons. By letter no.446/ST-Misc/20 dated 12.12.2020 of Sub Divisional Magistrate, Billaaur it has been informed that the above lease holder has done mining and transportation of normal sand illegally of about 54219 cubic mtr from plot no.01m rakba 5.4219 hectare outside the approved mining area. With reference to above illegal mining-

(a) notice was issued by office letter no.385/30 sub mineral /2020 dated 22.12.2020 and direction was given to place its case within 15 days.

(b) The team of Directorate of Geology and Mining, Khanij Bhawan, Lucknow did surprise inspection of above lease area on 11.1.2021. By inspection report no.1911/M Enforcement Kanpur Nagar/2020 dated 12.1.2021 the inquiry team was constituted for getting done correct demarcation of coordinate of boundary pillar of mining area and for detailed survey of the mined quantity.

(c) on the basis of joint committee report dated 13.01.2021 which was forwarded by Director Geology & Mining by latter no 1921/M-Enforcement kanpur nagar dated 14.01.2021 it was instructed to take action.

(d) In pursuance of above enclosed report, notice by office letter no.443/30-Sub Mineral/2021 dated 3.2.2021 was issued to the

lease holder M/s Vashnavi Enterprises Proprietor Nagendra Singh and he was directed to deposit total amount of Rs.2,39,06,360.00 in Govt. Treasury within 15 days due to illegal mining and transportation of normal sand of about 54219 cubic mtr. from plot no.01m, rakba 5.4219 hectare beyond the approved mining area and due to catch holding two overload trucks of normal sand during inspection dated 11.1.2021 and if, the amount is not deposited, mining work will be banned.

Against above notice the lease holder filed Revision No.48(R)/SM/2021 to the Government which was dismissed by the revisional Authority by deciding the same on 9.8.2021. Thereafter, the lease holder filed Writ Petition No.18966/2021 M/s Vashnavi Enterprises through proprietor Nagendra Singh Vs. State of U.P. &Ors. in Hon'ble High Court of Allahabad Lucknow Bench. In compliance of order dated 22.9.2021 of Hon'ble High Court of Allahabad Lucknow Bench after completing all formalities vide office order no.1067/30-sub mineral/2021 dated 13.12.2021 permission was given to lease holder for mining and transportation of normal sand. Again in pursuance of joint inspection report dated 5.12.2021 by office notice no.1058/30-sub mineral/2021 dated 9.12.2021 fine of Rs.72,500.00 was imposed on lease holder due to constructing passage /road without permission and was directed to deposit the same within three day. In inspection dated 31.5.2022 of Distt. Magistrate due to non-installation of PTZ Camera on lease site and in pursuance of report dated 21.6.2022 of inspection team constituted in compliance of questioner dated 10.6.2022 of Distt. Magistrate, notice by office letter no. 1532/30-sub mineral/2022-23 dated 10.8.2022 was issued to the lease holder for depositing total amount of Rs.11,55,837.00 and in pursuance of letter no.1243/S-218/22 dated 5.12.2022 of Regional Officer U.P. Pollution Control Board Kanpur Nagar due to not getting permission (CTO) of operating by project proponent/lease holder, the operation of mining lease was again banned by office letter no. 1690/30-sub mineral/2022 dated 13.12.2022. Thus, proceeding according to rule has been constantly done against lease holder due to violating the provisions of Rules 2021 and conditions of lease deed.

7. Point no.(iii) -Whether the project proponent was entitled to and could commence mining before of CTO by UPPCB if not why the project proponent was allowed to commence such mining without CTO from UPPCB?

With reference to above point, it is submitted that the Regional officer U.P. Pollution Control Board, Kanpur Nagar by letter no. 1243/S-218/22 dated 5.12.2022 has informed that the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh, r/o 113, MIG-2, Mahabali Puram, Kalyanpur, Kanpur Nagar without previous consent (water /air) has done mining work on plot no.2m, rakba 10.50 hectare of village KatariSunodha of Tehsil Billaur and for imposing environment compensation show cause notice by letter no.H-85021/C-2/NGT-OA-176/22 dated 2.12.2022 has been issued. According to office records the above mining project owner

has not got permission certificate (water/air) from State Board for mining work before starting mining work in compliance of water and acts which is patent violation or provisions of water (prevention and control of pollution) Act, 1974 as amended and air (prevention and control of pollution) Act, 1981 as amended, in the light of which it would be appropriate to impose restrictions according to rules against the above mining project/lease holder.

For violation of above, the Regional Officer U.P. Pollution Control Board Kanpur Nagar has evaluated loss of environment of amounting to Rs.4,29,37,500.00 for total 1145 days against the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh. In continuation of above the Chief Environment Officer Circle -2 U.P. Pollution Control Board Lucknow had imposed compensation of amounting to Rs.4,29,37,500.00 for 1145 days, against which the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh had filed Civil Writ No.6812/22 in the Hon'ble High Court of Lucknow. In compliance of order dated 30.9.2022 passed by Hon'ble High Court of Lucknow, show cause notice dated 2.12.2022 has been issued to the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh by the Chief Environment Officer Circle-2 U.P. Pollution Control Board, Lucknow.

It is further submitted that keeping in mind the order dated 29.9.2022 of this Hon'ble Tribunal and also due to not getting permission (water /air) certificate (CTO) from State Board by the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh for mining/ before starting mining work in normal sand mining area of plot no.2m rakba 10.50 hectare of village KatariSunodha of Tehsil Billaur and by M/s Moti Construction Company Proprietor, Moti Bai R/o 405kha, Naya Patel Nagar, Urai Distt. Jalaun in the normal sand mining area in plot no.698ka, 699, 721 rakba 21.58 hectare of village Katari Ludhwa Kheda of Tehsil Sadar, the operation of lease has been banned.

According to guidelines received by the letter no.1523/M-NGT-Kanpur Nagar /2022 dated 16.1.2023 of the Director Geology and Mining Directorate U.P. about requirement of consent (water/air) certificate (CTO) from State Board for mining in mining of sand river bed, the U.P. Pollution Control Board has informed that by mining of sand/moram in river bed any fugitive emission does not arise and any permanent structure is not constructed rather temporary toilet is constructed hence, the possibility of being water and air pollution is negligible.

The Ministry of Forest Environment and climate change under water (prevention and control of pollution) Act, 1974 and air (prevention and control of pollution) Act, 1981 different type of industries are categorized for the requirement of consent /permission under which the mining process has been placed in red zone due to specific reason which has not been evaluated on the basis of mining of sand/moram in the river bed.

Hence, there is requirement to keep mining of sand/moram in river bed to be separated from other mining work. Keeping in mind these facts intimated by Uttar Pradesh Pollution Control Board there should not be requirement of CTO permission for operation before mining of sand/moram.

8. Point no. (iv) Whether any notice for non-compliance with environmental clearance/consent to operate /environmental norms was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof?

With reference to above, it is submitted that for environment clearance/consent to operate and for non-compliance of environmental norms:-

(a) Notice was issued to the project proponent by office letter no.1464/30-sub mineral/2022 dated 29.6.2022. (b) Thereafter, in continuation of letter no.1243/S-218/22 dated 5.12.2022 of U.P. Pollution Control Board, Kanpur Nagar the operation of lease was banned to the project proponent/lease holder in absence of consent to operate(C.T.O.) and show cause notice has been issued to lease holder for imposing environment compensation of Rs.4,29,37,500.00 by letter no.H-85021/C-2/NGT-OA-176/2022 dated 2.12.2022 of Chief Environment Officer, Circle-2, U.P. Pollution Control Board Lucknow enclosed with above letter.

From amongst the lease holders of normal sand operating within the district due to not getting consent (water/air) certificate (CTO) from State Board by M/s Vaishnavi Enterprises Proprietor Nagendra Singh for mining over plot no.2m rakba 10.50 hectare normal sand mining area of village Katari Tehsil Billaur and by M/s Moti Construction Company proprietor Moti Bai r/o 405kha Naya Patel Nagar, Urai Distt. Jalaun mining over plot no.698ka, 699, 721 rakba 21.58 hectare normal sand mining area of village katari Ludhwa Kheda of Tehsil Sadar, the operation of lease has been banned.

In future in compliance of order of this Hon'ble Tribunal the lease deed would be operated only after receiving consent (water/air) certificate (CTO) from U.P. Pollution Control Board Lucknow in normal sand mining areas of the district by the above lease holder.

X

X

X

X"

(Emphasis Added)

31. The affidavit was considered by this Tribunal on 17.10.2023 and this Tribunal observed that Director, Geology & Mining, Uttar Pradesh was directed to file the reply but instead of filing of reply by him reply has been filed by the Mines Officer without any approval/forwarding of the same by the Director, Geology & Mining, Uttar Pradesh. In the reply complete

information has not been given and vague and evasive answers have been given without specifically mentioning how the mining was allowed to commence without obtaining CTO from the UPPCB.

32. Short affidavit dated 01.02.2023 (Pages No. 280-293 of the paper book) was filed by the Environmental Engineer, Regional Office, UPPCB, Kanpur Nagar vide email dated 08.02.2023. The relevant part of the short affidavit is reproduced below:-

“SHORT AFFIDAVIT ON BEHALF OF U.P. POLLUTION CONTROL BOARD IN COMPLIANCE OF THE ORDER DATED 29.09.2022

X X X X

5. That so far as the answer to Clause (i) aforesaid is concerned, the answering Respondent was not given a copy of the Environment Clearance/Mining Lease Agreement and regarding Clause (ii) it is submitted that the answering Respondent has not carried out any inspection regarding mining as no information was furnished to the answering Respondent about the Environmental Clearance granted in favour of the Project Proponent either by the Mining Department or by Project Proponent. It is further submitted that the Project Proponent did not apply for Consent to Operate before commencement of mining activities to the answering Respondent. As the replying Respondent was not aware about grant of mining lease or mining operations, hence no inspection was done. As a matter of fact it is submitted that the replying respondent is not informed about the grant of ECs in favour of any of the Project Proponent either by the authority or the Project Proponent unless the Project Proponent submits an application for Consent to Operate

6. That the replying Respondent came to know about the mining when this Hon'ble Tribunal has directed constitution of Committee and report was submitted. Accordingly, answering Respondent has imposed Environmental Compensation amounting to Rs. 4,29.37,500/- vide office order dated 02.09.2022 for carrying out the mining activates for 1145 days without obtaining Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The aforesaid levy of penalty by the answering Respondent was assailed by the Project Proponent by filing Writ Petition No. 6812 of 2022 before the Hon'ble High Court of Judicature at Allahabad Lucknow Bench, Lucknow and Hon'ble High Court vide order dated 30.09.2022 set aside the imposition of Environmental Compensation due to not affording an opportunity of hearing to the Project Proponent prior to imposition of Environmental Compensation. Thereafter, in compliance of the order of Hon'ble High Court answering Respondent has issued show cause notice dated 02.12.2022 thereby calling upon the Project

Proponent for imposition of compensation of Rs. 4,29,37,500/- towards illegal extraction of sand as no Consent to Operate was obtained from the answering Respondent which was received by the Project Proponent on 21.12.2022. Further, the Project Proponent has not applied or obtained consent to operate under the Environmental Laws from the answering Respondent. However, mining operations are not being carried out at present. True copy of order dated 30.09.2022 passed by Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in WRIT-C No.6812 of 2022 is being enclosed herewith and marked as Annexure-1.

7. That in response to the aforesaid show cause notice the answering Respondent has received a reply dated 03.01.2023. After reviewing the reply and recommendation of Regional Officer, Kanpur Nagar, environmental compensation of Rs. 4,29,37,500/- has been imposed against the unit on 30.01.2023. Copy of the letter dated 30.01.2023 is being enclosed herewith and marked as Annexure-2.

The above information is being furnished to this Hon'ble Tribunal for its kind consideration and the answering Respondent further crave leave of this Hon'ble Tribunal to file detailed affidavit, if so required."

33. This Tribunal considered the affidavit filed by the Environmental Engineer, Regional Office, UPPCB, Kanpur Nagar on 17.03.2023 and observed that instead of filing of reply by the Member Secretary, UPPCB, reply has been filed by Environmental Officer, Regional Office, UPPCB, Kanpur Nagar, Uttar Pradesh. In reply to queries no (i) and (ii) it has been merely mentioned that a copy of EC/mining lease agreement was not given to the UPPCB and that UPPCB could not carry out any inspection as no information was furnished to it regarding the EC and the Project Proponent did not apply for CTO but no answer has been given to the questions as to in how many cases copies of environmental clearance/mining lease agreement was not sent to UPPCB during the last five years and in how many cases mining was commenced without obtaining CTO from UPPCB.

34. Accordingly, vide order dated 17.03.2023 this Tribunal directed that affidavits in terms of order dated 29.09.2022 be filed by the Director, Geology & Mining, Uttar Pradesh and the Member Secretary, UPPCB personally and that in their affidavits they shall specifically give detailed information in

respect of the State of Uttar Pradesh as to in how many cases copies of environmental clearances/mining lease agreements were not sent to/received by UPPCB during the last five years and in how many cases mining was commenced without obtaining CTO from UPPCB and what measures have been taken for implementation of the guidelines and orders of this Tribunal as mentioned in the above said order.

35. In compliance of order dated 17.03.2023, affidavit dated 21.04.2023 (Pages No. 294-309 of the paper book) was filed by the Director, Geology & Mining, Uttar Pradesh. The relevant part of the affidavit filed by the Director, Geology & Mining, Uttar Pradesh is reproduced as under:-

“AFFIDAVIT OF COMPLIANCE

X X X X
 3. That in compliance of above direction of this Hon'ble Tribunal, it is submitted that in Chapter - 4 of U.P. Minor Mineral (Concession) Rules 2021 (previously Rule 1963) the lease deed of normal sand mining area, plot no.2m rakba 10.50 hectare of village Katri Sunada, Tehsil Billaour situated at the bank of Ganga River of the district was executed in favor of lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh R/o 113 MIG-2, Mahabali Puram, Kalyanpur, Kanpur Nagar on 07.04.2018 for the period of 05 years from 07.04.2018 to 06.04.2023. Now the lease has been expired.

4. Point no. (i) - Whether copy of environmental clearance /mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent?

With reference to above point, it is submitted that the copy of environmental clearance certificate issued by State Environment Impact Assessment Authority (SEIAA) in favor of project proponent/lease holder vide letter no.174/environment/SEAC/4026/20 1 7 dated 12.02.2018 was forwarded to 07 persons/authorities, in which through S.No. 04 same was forwarded to Member Secretary, U.P. Pollution Control Board, Environment Bhawan, Vibhuti Khand, Lucknow. It is also pertinent to mention that a copy of environmental clearance certificate is available on Parivesh Portal which is in public domain. After issuance of environmental clearance certificate, it is considered that the lease deed will be executed and mining operation will start. Therefore, sending a copy of lease deed separately to UPPCB will be duplication of the same.

Considering this, it is not customary to send the copy of deed to UPPCB.

5. Point no.(ii) - Whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by designated third party/departmental agency regarding compliance with environmental clearance and consent to operate conditions and environmental norms by the project proponent, if yes produce copies of the same if not the reasons for the same?

In compliance of above direction of this Hon'ble Tribunal it is submitted **that the lease holder /project proponent has not filed any periodical returns and in compliance of conditions of environment, the project proponent has not got any audit /periodical inspection done from any third party /departmental agency.** It is mentioned in letter no.NGT-509/81-7-2022 dated 05.01.2023 of Secretary, Environment, Forest and Climate Change Section-7, U.P. Lucknow that the relevant part of the order dated 26.02.2021 passed by this Hon'ble Tribunal in O.A. no.360/2015 titled as National Green Tribunal Bar Association Vs. Virendra Singh (State of Gujarat &Ors.) is as follows:-

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

It is pertinent to mention here that site has been inspected from time to time for compliance of conditions of lease deed and UPMPCR, 2021 by the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh for the ordinary sand

mining area village Katari Sunadha Plot no.2Miarea 10.50 hectare of Tehsil Bilhaur.

It is respectfully submitted that due to non-installation of CCTV Camera in mining area and violation of Rule 59(3), a penalty of Rs.25,000.00 has been imposed vide notice dated 05.09.2019 against the Lease holder.

Sub Divisional Magistrate Bilhaur inspected the site on 07.12.2020, a passage of height same as water level was removed and an FIR was registered in concerned police station against unknown persons.

Vide letter no.446/ST-Misc./20 dated 12.12.2020 of Sub Divisional Magistrate, Bilhaur it was informed that the above lease holder has done illegal mining and transportation of ordinary sand of about 54219 cubic mtr. from plot no.01m of area 5.4219 hectare outside the approved mining area. With reference to above, a notice was issued on 22.12.2020 and direction was given to place its case within 15 days.

Director, Directorate of Geology and Mining, Lucknow inspected the area on 11.01.2021 and henceforth constituted a team for correct demarcation of boundary pillar of mining area and for detailed survey of the mined-out quantity. The Joint inspection team ratified the Sub Divisional Magistrate Billaaur report dated 12.12.2020. In light of above the lease holder was again issued a notice on 03.02.2021 to deposit total amount of Rs.2,39,06,360.00 in Govt. Treasury within 15 days in lieu of illegal mining and transportation. Against above notice the lease holder filed Revision No.48(R)/SM/2021 to the Govt. which was dismissed by the Govt. on 09.08.2021. Thereafter, the lease holder filed Writ Petition No.18966/2021 in Hon'ble High Court of Allahabad Lucknow Bench. In compliance of order dated 22.09.2021 passed by Hon'ble High Court, permission was given to lease holder for mining and transportation of ordinary sand. Writ Petition No. 18966 of 2021 is pending before the High Court.

It is respectfully submitted that again in pursuance of joint inspection report dated 05.12.2021 notice dated 09.12.2021, a fine of Rs.72,500.00 was imposed on lease holder due to constructing passage /road without permission.

On the basis of inspection by DM. Kanpur Nagar on 31.05.2022 and report dated 21.06.2022 of inspection team constituted by DM, a notice dated 10.08.2022 was issued to the lease holder for depositing total amount of Rs. 11,55,837.00.

Thus periodical inspection of the lease has been constantly done by the District Administration, Kanpur and Director, Geology and Mining, Govt. Of Uttar Pradesh.

6. Point no.(iii) -Whether the project proponent was entitled to and could commence mining before of CTO by UPPCB if not why the project proponent was allowed to commence such mining without CTO from UPPCB?

In pursuance to this, it is humbly submitted that

- i. For harmonization of Classification of Industries under Red/Orange/Green/White Categories CPCB vide letter dated 19.08.2015 forwarded a copy of draft document on revised concept of categorization of industrial sectors to all SPCBs, PCCs and concerned ministries. CPCB further issued modified directions to revise/prepare categories of industrial sector in Red, Orange, Green and White as per final report to all SPCBs/PCCs on 07.03.2016.***

- ii. That is further worthwhile to mention here that in compliance to the directions issued by CPCB, UPPCB in its meeting dated 29.03.2016 adopted the same categorizations of industries and issued letter dated 18.04.2016 to all concerned controlling officers of the UPPCB and Regional officers of the UPPCB to comply the same. A true copy of the letter dated 18.04.2016 is being annexed herewith as Annexure No-1.***

- iii. That there are two additional notes in the list of Industrial Sectors mentioned in the final report and Note (ii) is being quoted as below;***

Sl.No.	Origin at Sl. No.	Industry Sector	Original Category	Remarks
1	24	Excavation of sand form the River Bed (excluding manual excavation)	O	Since such type of activities cause ecological disturbances the instructions issued by the Government from time to time be followed to be categorized by MoEF & CC.

iii. That at Serial No. 1 which was originally at SI.No 24 regarding excavation of Sand from the riverbed (excluding manual excavation), it has been mentioned in remark column that such type of activities cause ecological disturbances, the instructions issued by the Government (MoEF&CC) from time be followed. So, excavation of Sand from the riverbed (excluding manual excavation) has to be categorized by MoEF&CC separately.

iv. That pursuant to remarks made in categorization of sector up till now no categorization has been made by the MoEF&CC for excavation of sand from the riverbed therefore the sand mining is not covered under the categorization of the industrial Sector. It is also submitted that as per the MOEF&CC, EIA notification 2006, EC has been obtained in this particular case and also in cases of Sand Mining across the state.

v. Under the provisions of Water Act 1974 and Air Act 1981, industries, which causes underground/surface water and Air pollution, requires CTE /CTO from concerning SPCB. But in the case of Sand Mining no fugitive emissions are released. It is to be mentioned that neither permanent structure of any kind is erected during the mining operations of Sand/Morrum situated in the river bed nor heavy machinery are used in the mining operations. In the said mining operations, neither anything is added to the water nor is anything released, so water or air does not get polluted.

(Emphasis Added)

8. Point no. (iv) — Whether any notice for non-compliance with environmental clearance /consent to operate /environmental norms was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof?

In compliance Regular inspection was done by district authorities for compliance of the UPMMCR 2021 and the conditions of the lease deed. Notices were issued to project proponent when any irregularities were found during inspection, details are mentioned in point no. 06.

As per the facts mentioned in point no. 07, there is no requirement to obtain CTO.”

(Emphasis Added)

36. However, despite directions given by this Tribunal vide order dated

17.03.2023 to file affidavit in terms of order dated 29.09.2022, the Member Secretary, UPPCB did not submit the relevant information in affidavit dated 21.04.2023 and did not file separate affidavit in this regard. The relevant part of the affidavit dated 21.04.2023 is reproduced as under:-

“Affidavit on behalf of Member Secretary, Uttar Pradesh Pollution Control Board in pursuance to the order dated 29.09.2022 and 17.03.2023 passed by the Hon’ble National Green Tribunal

X X X X

3. That it is pertinent to mention here that the CPCB under the powers conferred under Section 18(1)(b) of the Water Act, 1974 and the Air Act, 1981 has issued direction dated 07.03.2016 regarding Harmonization of classification of Industrial Sectors under Red/Orange/Green/White categories. The directions dated 07.03.2016 are annexed here with as Annexure No-1 to this affidavit.

4. That it is further worthwhile to mention here that in compliance to the directions issued by Central Pollution Control Board, were adopted by the UP Pollution Control Board in its 96th Board meeting dated 29.03.2016 and direction dated 18.04.2016 were issued to all concerned officers of the Board. A true copy of the letter dated 18.04.2016 is being annexed herewith and marked as Annexure No.-2 to this affidavit.

5. That in the final List issued by CPCB on 07.03.216 of Orange Category of Industrial Sectors the following comment regarding "Excavation of sand from the river bed" has been mentioned.

"There are specific remarks in respect of some of the industrial sectors. These sectors are either merged with other relevant sectors or deleted due to duplication /vague category. The details are as follows:-

SL No.	Origin at SL No.	Industry Sector	Original Category	Remarks
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1	24	Excavation of sand form the River Bed (excluding manual excavation)	o	Since such type of activities cause ecological disturbances, the instructions issued by the Government from time to time be followed. To be categorized by MoEF&CC
”				

6. That pursuant to above remarks made in categorization of sector, until now no clarification of MoEF&CC regarding categorization of 'Excavation of sand from the river bed', has been received from CPCB. In compliance of the Hon'ble NGT order dated 17.03.2023 in aforesaid case the details as desired by Hon'ble NGT regarding the status of issuance of CTO/CTE, Environmental Clearance (EC) by SEIAA and action against defaulter units etc. are being annexed herewith and marked as Annexure no.-3 to this affidavit.”

37. In view of the submissions made by the Director, Geology & Mining, Uttar Pradesh and the Member Secretary, UPPCB in the affidavits referred above, this Tribunal vide order dated 26.04.2023 directed respondent no. 1-MoEF & CC and respondent no. 3-CPCB to file their detailed response about requirement of consent/NoC from UPPCB for the excavation of sand from the river bed (excluding manual excavation), since such activities are having ecological impacts.

38. This Tribunal, vide order dated 26.04.2023, appointed Mr. Raj Panjwani, Learned Senior Advocate as amicus curie to assist this Tribunal in just and fair adjudication of the substantial environmental questions involved in the present case.

39. In compliance thereof respondent no. 1-MoEF & CC filed affidavit dated 18.05.2023 (Pages No. 781-786 of the paper book) vide email dated 18.05.2023. The Relevant part of the affidavit is reproduced below:-

“It is humbly submitted that, the Environmental Clearance (EC)

granted to the project/activity is strictly under the provisions of the Environmental Impact Assessment (EIA) Notification, 2006 and its amendments issued from time to time. It does not tantamount/ construe to approvals/ consent/ permissions etc. required to be obtained or standards/conditions to be followed under any other Acts/ Rules/ Subordinate legislation, etc., as may be applicable to the project. Further, the requirement of consent/ No objection Certificate (NOC) are issued by the respective State Pollution Control Board (SPCBs) as per provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

5. That, the State Pollution Control Board is the Nodal Authority in the State for dealing with the cases related to pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981.

6. It is submitted that the present reply may kindly be taken on record and into consideration and the Hon'ble Tribunal may pass appropriate Order(s)/Direction(s) as deemed fit and proper under the facts and circumstances of the present case. Further, the other ancillary issues raised in the application under reply do not pertain to the answering respondent."

40. Respondent No.3-CPCB filed affidavit dated 18.05.2023 (Pages No. 674-780 of the paper book) vide email dated 18.05.2023. Relevant part of the affidavit is reproduced below:-

"2. That it is humbly submitted that the applicable law as well as relevant procedural requirement for any project proponent for the purposes of the excavation of sand from the river bed are provided below for perusal:

The Procedural requirement as laid down under the Central Acts of Water and Air Act along with EIA notification

i. Clause 25 of the Water Act 1974 relates to Consent of SPCB

"25. Restrictions on new outlets and new discharges -

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board -

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) *begin to make any new discharge of sewage."*

Definitions

"2 (g) *"sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drains; "*

"2 (k) *"trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage"*

ii. Clause in Air Act 1981 related to Consent of SPCB

"21. Restrictions on use of certain industrial plants -

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area

Definitions

"2(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere; "

iii. Clause in EIA Notification 2006 related to Environment Clearance (EC)

The EIA Notification 2006 is issued under Section 3(2)(v) of Environment (Protection) Act 1986 which is related to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards and under Section 5 of Environment (Protection) Rules 1986 which is related to prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas. The said notification prescribe as below:

"2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector,

that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

Projects / activities have been categorised into Category A and Category B in the Schedule.

iv. Categorisation of projects/activities by CPCB

CPCB has provided a uniform categorisation criteria of industries into Red, Orange, Green and White categories to SPCBs vide directions dated **07.03.20216**. The said criteria suggested different validly periods for consent as below:

"5. SPCBs/PCCs may issue consent to the industries:

- Red category of industries for 5 years.
- Orange category of industries for 10 years.
- Green category of industries for 15 years.
- No necessity of consent for non-polluting industries."

The Copy of the Directions dated 07.03.2016 is annexed herewith as Annexure R-1.

3. That it is humbly submitted that the U.P. Mining and Geology Department and U.P. Pollution Control Board both have mentioned in their responses before Hon'ble NGT-PB in the present case that "Excavation of sand from river bed (excluding normal excavation)" has not been assigned Category under the above mentioned uniform categorisation by CPCB in 2016 because such type of activities cause ecological disturbances.

4. In this regard it is submitted that Central Government has already covered the mining of river bed material under Schedule of the EIA Notification 2006. In consideration of this, the SPCBs themselves can categorise this activity for the purpose of deciding validly of the consent as already directed by CPCB for categorisation of any left out sector in the directions dated 07.03.2016. In the case of U.P., CPCB has informed U.P. Geology and Mining Department and UPPCB by a recent letter dated 24.03.2023 also that SPCB may categorise any left out sector by following the criteria / methodology prepared by CPCB. The Copy of the same is annexed herewith as Annexure R-2.

5. That it is further pertinent to note that the MOEF has already formulated the Sustainable Sand management guidelines 2016 & 2020 which primarily focuses on the management of Sand mining in India as well as the fact that section 23 C of the MMDDRR Act, 1957 further grant the relevant state government to make rules & policy to prevent any illegal mining, transportation and storage of minerals including sand. The Enforcement and monitoring guidelines for Sand Mining dated January 2020 contains specific guidelines for process and procedural requirements for approvals for the project proponents.

The Copy of the Enforcement and monitoring guidelines for

Sand Mining dated January 2020 is annexed herewith as Annexure R-3.

6. The Hon'ble Supreme Court in its Judgment dated the 27.02.2012 in I.A. No.12-13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc. made prior environment clearance mandatory for mining of minor minerals irrespective of the area of mining lease. On 24.12.2013, the MoEF issued an OM which mandates that "EC will be valid for the lease period subjected to a ceiling of 5 years". Thereafter, in 2016 the MOEF issued the Sustainable Sand Mining Management Guidelines, 2016 (hereinafter referred to as SMMG, 2016), inter alia, 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. The same was again updated in 2020 and the same made it a sine qua non that EC is valid only for a period of 5 years, after which the same has to be renewed only with prior permission of the nodal agencies.

7. It is humbly submitted that continuation of sand mining in the absence of environmental clearances obtained by the Project Proponent contravenes the various decisions passed by the Hon'ble Supreme Court in its Judgment dated the 27th February 2012 in I.A. No.12- 13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc. and various directions of this Hon'ble Tribunal in order dated 13th January, 2015 in the case of Himmat Singh Shekhawat v. State of Rajasthan and Ors., 2015 ALL (I) NGT Reporter (1) (Delhi) 44, National Green Tribunal Bar Association Vs Ministry of Environment and Forest & Ors. in Original Application No. 364 Of 2015 and Order dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal & Ors and MoEF & CC guidelines for Sustainable Sand Mining Management Guidelines 2016 & 2020 for scientific and sustainable sand mining in the Country."

41. At the cost of repetition it may be mentioned here that reply was filed by the Respondent no. 2- the project proponent vide email dated 01.02.2023. In his reply Respondent no. 2- the project proponent has made vague and general averments regarding carrying out of mining by him in accordance with environmental clearance granted to him while denying allegations regarding illegal mining and construction of temporary bridge. In his reply Respondent no. 2 has not specifically replied and given any specific response with respect to the findings of the Joint Committee regarding violations of

conditions of environmental clearance and mining lease deed and has also not mentioned anything regarding requirement of obtaining CTE/CTO from UPPCB and also show cause notice dated 02.12.2022 for imposition of environmental compensation issued to him by Chief Environment Officer, Circle-2, U.P. Pollution Control Board Lucknow.

42. This Tribunal heard learned Counsels for the Respondents and learned Amicus Curiae on the question of requirement of CTE/CTO from SPCBs/PCCs for Excavation of sand from the River Bed (excluding manual excavation) and considered the affidavits filed by Respondent No.6- Director, Geology & Mining, Uttar Pradesh and Respondent No.4- Member Secretary, UPPCB and responses filed by Respondent No.1-MOEF&CC and Respondent No.3-CPCB and the relevant material and passed order dated 30.05.2023. Relevant part of order dated 30.05.2023 is reproduced as under:-

"14. In the directions issued by CPCB in June 2012 in the context of categorization of industries as Red, Orange & Green, mining and ore beneficiation were included at serial no. 35 of Table G-2:Final List of Red category of Industrial Sectors. Respondent no. 3-CPCB vide letter dated 19.08.2015 forwarded a copy of draft document on revised concept of categorization of industrial sectors to all SPCBs/PCCs and concerned Ministries for harmonization of classification of industries under Red, Orange, Green and white categories in which "excavation of the sand from the river bed (excluding manual excavation)" was mentioned at serial no. 24. Based on the revised criteria, Respondent no. 3-CPCB evolved the 'Final Report on Revised Categorization of Industrial Sectors under Red/Orange/Green/White' with number of industries in Red, Orange, Green and newly introduced White categories in the above said final list being 60, 83, 63 and 36 respectively. Accordingly, the earlier Directions issued in June 2012 in the context of categorisation of industries as Red, Orange & Green were withdrawn and modified directions were issued vide letter no. B-29012/ESS(CPA)/2015-16 dated 07.03.2016.

15. Even though in the draft list of Orange category of industries "excavation of the sand from the river bed (excluding manual excavation)" was mentioned at serial no. 24 but the CPCB did not finalize said categorization and made the remarks "since such type of activities cause ecological disturbances, the instructions issued by the Government from time to time be followed" and left the industrial sector for being categorized by MoEF & CC.

16. No categorization has been done by MoEF & CC so far. On

the other hand, in the affidavit filed on behalf of respondent no. 1-MoEF & CC, it has been mentioned that the State PCB is the nodal authority for dealing with the cases related to pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. In the response filed on behalf of respondent no. 3-CPCB, it has been submitted that the Central Government has already covered the mining of river bed material under Schedule of the EIA Notification 2006. In consideration of this, the SPCBs/PCCs themselves can categorise this activity for the purpose of deciding validly of the consent as already directed by CPCB for categorisation of any left out sector in the directions dated 07.03.2016.

17. It may also be observed here that vide above referred letter no. B-29012/ESS(CPA)/2015-16 dated 07.03.2016 following 'Directions' were issued for compliance by all SPCBs and PCCs :

“1. That the SPCBs and PCCs shall adopt the Revised Criteria of categorization of industrial sectors as detailed in table nos. F1, F2, F3 and F4 and Revised Lists of Red, Orange, Green and White categories of industrial sectors, presented at table no. G2, G3, G4 and G5 respectively, in the 'Final Report' as attached herewith immediately.

2. That all pending applications for consideration of 'Consent to Establish' and 'Consent to Operate' and future such applications shall be processed as per revised criteria.

3. That the SPCBs and PCCs will provide the list of industries identified in each category existing in the State which have been considered for grant of consents. SPCBs/PCCs will forward the list of such industries before 31.05.2016 and the same will be uploaded on the websites of respective SPCB/ PCC.

4. That the 'Revised Lists of Red, Orange, Green and White category of industrial sectors' shall be used by the SPCBs and PCCs for Consent Management and inventorization of industries under Red, Orange ,Green and White categories. Siting of industries shall be only in conforming areas. SPCBs / PCCs shall evolve sector specific plans for control of pollution and industrial surveillance for verifying compliance.

5. That the SPCBs and PCCs shall revise / prepare the inventory of Red, Orange, Green and White categories of industries operating in their jurisdiction based on the revised criteria specified in the Final Report and submit the same to CPCB within 90 days i.e., before 30.05.2016 in hard copy as well as soft copy.

6. *That the listed category of industries or those identified later-on under different categories shall not be linked to sanction of loan /finance or bank proceedings.*

7. *That any further addition of any new or left-over industrial sector and their categorization which is not listed in the revised list of Red, Orange, Green and White industrial sectors, shall be done at the level of concerned SPCB /PCC following revised criteria & guidelines as detailed in the attached document and no concurrence of CPCB shall normally be required. It is further clarified that while categorizing the industries, fractional numbers shall be rounded off to nearest integer.”*

18. *In the response filed on behalf of respondent no. 3-CPCB, it has also been mentioned that in the case of State of U.P., CPCB has informed U.P. Geology and Mining Department and UPPCB by a recent letter dated 24.03.2023 also that SPCB may categorise any left out sector by following the criteria / methodology prepared by CPCB.*

19. *Even after receipt of the above said letter no categorization has been done by UPPCB so far. The attendant facts and circumstance show that despite the Union of India and the States being under Constitutional obligation under Article 48A of the Constitution of India to protect and improve the environment, their executive agencies/instrumentalities have slept over the issues/concerns raised and have therefore allowed confusion and contradictions to prevail, suffered massive violations of environmental laws, ignored the dangers involved and brushed aside the questions of their accountability.*

20. *We find that the respective stands taken by Department of Geology and Mining and UPPCB have resulted into utter confusion leading to contradictory practices in the State of Uttar Pradesh regarding enforcement of the regime of environmental norms including mandatory requirement of obtaining of CTE/CTO from UPPCB. The UPPCB is indulging in contradictory practices. On the one hand UPPCB is claiming that there is no mandatory requirement of CTE/CTO from UPPCB for river bed sand mining and on the other hand UPPCB is issuing show cause notices and passing orders for imposition of environmental compensation for not obtaining CTE/CTO from UPPCB.*

21. *In O.A No. 485/2022 titled as Gautam Sharma Vs. State of U.P. and Others pending before this Tribunal, UPPCB has taken the stand in its reply that CPCB has issued a letter dated 02.02.2017 regarding mechanism to be followed for granting Consent to Operate (CTO) under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, for certain category of industries and that as per said letter the projects which have obtained Environmental Clearance (EC) from SEIAA and installed requisite pollution control system, may be issued Consent to Operate (CTO) directly.*

22. *In O.A No. 160/2022 titled as Om Pal and others Vs. State*

of U.P. and others pending before this Tribunal the Project Proponent filed Civil Appeal No. 8872/2022 before Hon'ble Supreme Court against restraint order passed by this Tribunal by asserting compliance with the environmental norms on the basis of the Joint Committee reports and in view of the directions of the Hon'ble Supreme Court, this Tribunal vacated the restraint order on 08.12.2022 and directed the Project Proponent to file compliance status report and the Director, Geology and Mining Department, U.P. and UPPCB to file joint report after verifying the same. In the Joint Report filed by the Director, Geology and Mining Department, U.P. and UPPCB vide email dated 24.03.2023 the Project Proponent is stated to be non-compliant inter alia on the ground that the Project Proponent obtained CTO from the UPPCB on 05.01.2023 and condition no. 8 of the EC was violated as mining was started before obtaining CTO.

23. The Extent of such contradictory practices is revealed by the table in annexure III appended to the affidavit filed by the Member Secretary, UPPCB vide email dated 21.04.2023 which is reproduced as under.

“Consolidated Status of Mining Leases in UP

- Total Number of Mining Leases (As per the information received by concerned Regional officer from the District Mining Officer) : 1232
- Total No. of CTO Granted to Mining Leases : 444
- Total No. of CTO Rejected of Mining Leases : 18
- Total No. of CTO pending of Mining Leases : 62
- Total No. of Mining Leases which have not applied for CTO : 708
- Total Number of Cases Carrying Out Mining without Grant of CTO by UPPCB : 577
- Total No. of E.C. issued by SEIAA to Mining Leases : 1232
- Total Number of Cases in which Environmental Compensation has been Imposed on Mining Units : 18”
- Total Number of Cases in which Show Cause for Environmental Compensation has been issued on Mining Units: 639
- Total Amount of Environmental Compensation has been Imposed on Mining Units : Rs. 35,92,30,032 /-
- Total Number of Cases in which Environmental Compensation has been Recovered/Realized from Mining Units : 04
- Total Amount of Environmental Compensation that has been Recovered/Realized from Mining Units: Rs. 71,90,000 /-
- Total Number of Cases in which Recovery of Environmental Compensation is Pending from Mining Units : 14”

24. UPPCB cannot be allowed to create confusion and take such contradictory stands and indulge in such legally untenable contradictory practices, when the legal position is clear and unambiguous. We do not find any reason for such confusion

and any scope for contradictory practices and divergent views in applicability of environmental laws, directions given by Hon'ble Supreme Court and this Tribunal and guidelines issued by MOEF&CC and CPCB.

Directions Given by Hon'ble Supreme Court.

25. The Department of Mines and Geology, Government of Haryana issued an auction notice dated 3.6.2011 proposing to auction the extraction of minor mineral boulder, gravel and sand quarries of an area not exceeding 4.5 hectares in each case in the District of Panchkula, auction notices dated 8.8.2011 in the District of Panchkula, Ambala and Yamuna Nagar exceeding 5 hectares and above, quarrying minor mineral, road metal and masonry stone mines in the District of Bhiwani, stone, sand mines in the District of Mohindergarh, slate stone mines in the District of Rewari, and also in the Districts of Kurukshetra, Karnal, Faridabad and Palwal, with certain restrictions for quarrying in the river beds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River basin etc. The validity of the auction notices was challenged before Hon'ble Supreme Court, apart from the complaint of illegal mining going on in the State of Rajasthan and Uttar Pradesh in **I.A. No.12-13 of 2011** in **Special Leave Petition (C) No.19628-19629 of 2009**, in the matter of **Deepak Kumar etc. Vs. State of Haryana and Others** etc. In its order dated 27.02.2012 Hon'ble Supreme Court noticed the adverse impact of sand mining on river ecology and aquatic life and observed as under:-

"7. We have no materials before us to come to the conclusion that the removal of minor mineral boulder, gravel, sand quarries etc. covered by the auction notices dated 3.6.2011 and 8.8.2011, in the places notified therein and also in the river beds of Yamuna, Ghaggar, Tangri, Markanda, Krishnavati river basin, Dohan river basin etc. would not cause environmental degradation or threat to the biodiversity, destroy riverine vegetation, cause erosion, pollute water sources etc. Sand mining on either side of the rivers, upstream and in-stream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India's rivers and Riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of river beds, destruction of natural habitats of organisms living on the river beds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers etc. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these

habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

8. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3.6.2011 and 8.8.2011 have permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on bio-diversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. Rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna."

26. In the above mentioned case Hon'ble Supreme Court, while directing all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, made prior environment clearance mandatory for mining of minor minerals irrespective of the area of mining lease. The Relevant part of the order is reproduced as under:-

"14. We are of the view that all State Governments/Union Territories have to give due weight to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments and Union Territories. Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and biodiversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.

15. 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 in-stream 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.

16. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio assessment protocol. Sand mining, it may be noted, may have an adverse effect on biodiversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.

17. The State of Haryana and various other States have not so far implemented the above recommendations of the MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the river beds and elsewhere of less than 5 hectares. We, therefore, direct to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports.

18. Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules 2010 at the earliest. State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of

Mines, Govt. of India. Communicate the copy of this order to the MoEF, Secretary, Ministry of Mines, New Delhi, Ministry of Water Resources, Central Government Water Authority, the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the concerned Departments.

19. We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF."

Proactive Role of Pollution Control Board/Committees for protection of Environment.

27. In Goa Foundation v. Union of India (SC)- 2014(6) SCC 590 Hon'ble Supreme Court emphasized the powers and role of Pollution Control Board and observed as under:-

"72. The Goa State Pollution Control Board has immense powers under the Water (Prevention & Control of Pollution) Act, 1974 (for short 'the 1974 Act') to prevent pollution of water. Section 33A of the 1974 Act which confers on the State Pollution Control Board the power to give directions is quoted here in below:

"33A. Power to give directions - Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation. For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct (a)the closure, prohibition or regulation of any industry, operation or process; or

(b)the stoppage or regulation of supply of electricity, water or any other service."

73. Similarly, the Air(Prevention and Control of Pollution) Act, 1981(for short 'the 1981 Act') confers immense powers on the State Pollution Control Board to prevent air pollution. Section 31A of the 1981 Act which confers powers on the State Pollution Control Board to give directions is quoted here in below:

"31A. Power to give directions. Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or

authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation. For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct (a) the closure, prohibition or regulation of any industry, operation or process; or (b) the stoppage or regulation of supply of electricity, water or any other service."

74. It will be clear from the aforesaid provisions of Section 33A of the 1974 Act and Section 31A of the 1981 Act that the Goa State Pollution Control Board had powers to issue any direction including the power to close, prohibit or regulate mining operations or even to stop or regulate supply of electricity, water or any other service with a view to prevent water pollution or air pollution. Yet, from the report of the Expert Committee as well as the reports of ISM, Dhanbad and NEERI, it is clear that iron ore production in Goa has led to massive negative impacts on all ecosystems leading to enhanced air, water and soil pollution affecting quality of life across Goa. The Goa State Pollution Control Board in its note filed in Writ Petition (C) No.435 of 2012, however, states:

"Details of monitoring of water quality (with regards to mining leases) from 2007 to 2012 - The Board conducts inspections during the monsoon and other seasons also to verify the discharge of surface runoff/discharge from the pit outside the mining lease and also collects samples for analyzing in the Board Laboratory. Wherever the parameters exceed the prescribed limits necessary directions are issued to the mining units to take remedial measures for controlling the waste water being discharged into the water bodies/fields without treatment. Directions are also issued to provide settling ponds, arrestor walls, filter beds so as to ensure that no untreated waste water is discharged into the water bodies/fields.

Details of monitoring of air quality (with regards to mining leases) from 2007 to 2012 - The Board is presently carrying out the periodic monitoring of Air Quality in pre-selected areas throughout the State to comply with one of the mandates of the Central Pollution Control Board (CPCB) under National Ambient Monitoring Programme (NAMP) at 16 stations."

75. We do not agree with Mr. Arvind Datar, learned senior counsel for the Goa State Pollution Control Board, that sincere efforts were made by the Pollution Control Board to monitor the water quality and air quality in the mining areas. Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties. We hope that in future the Goa State Pollution Control Board exercises strict vigil and monitors the water quality and air quality in accordance with the provisions of the two Acts and if necessary, exercises

the powers conferred on it to close down mining operation of a lessee, if the lessee does not conform to the air emission and water discharge standards while carrying on mining operations and does not take other preventive measures as directed by the State Pollution Control Board.

28. Central Government has already covered the mining of river bed material under "Mining of Minerals" at serial no. 1 (a) in the Schedule of the EIA Notification 2006. The MOEF&CC issued the "Sustainable Sand Mining Management Guidelines" in 2016 and "Enforcement & Monitoring Guidelines for Sand Mining-2020 in 2020, inter-alia, 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. CPCB has provided a uniform categorisation criteria of industries into Red, Orange, Green and White categories to SPCBs/PCCs vide directions dated 07.03.20216 with different validly periods of consent of 5, 10 and 15 years for Red, Orange and Green categories. It was specifically mentioned therein that there shall be no necessity of obtaining the Consent to Operate for White category of industries and an intimation to concerned SPCB /PCC shall suffice.

29. In 2012 categorization of industries by CPCB "mining and ore beneficiation" were mentioned at serial number 49 in Table 7.3: List of Red Category of Industries. Modification thereof was proposed by including "excavation of the sand from the river bed (excluding manual excavation)" in the draft list of orange category of the industrial sectors but the same was not finalized by the CPCB which aborted the proposed modification with the remarks that since such type of activities cause ecological disturbances the instructions issued by the Government from time to time be followed and to be categorized by the MoEF & CC". In 2016 final categorisation of industries issued by CPCB vide letter dated 07.03.2016 "mining and ore beneficiation" is mentioned at serial number 35 in Table G2: Final List of Red Category of Industrial Sectors which will continue to prevail with "excavation of the sand from the river bed (excluding manual excavation)" as part of the same. Since the CPCB did not convert the same to any other Orange, Green or White category and merely remarked that MOEF&CC may categorize "excavation of the sand from the river bed (excluding manual excavation)", categorization of "Mining and Ore beneficiation" as red category industry by CPCB will continue to prevail regarding excavation of the sand from the river bed (excluding manual excavation)" till any modification is made by MOEF&CC by making any such categorization. Consequently, "excavation of the sand from the river bed (excluding manual excavation)" cannot be even considered to be left over category.

30. Even otherwise, even if the same be held to be left over category due to the reason that CPCB did not finalize draft categorization of Excavation of sand form the River Bed (excluding manual excavation) in orange category, the remarks made by (CPCB "since such type of activities cause ecological disturbances, the instructions issued by the Government from

time to time be followed. To be categorized by MoEF&CC"), did not bar UPPCB from categorizing the same, which is also now the stand of both MOEF&CC and CPCB. UPPCB has not done so even on receipt of letter dated 24.03.2023 from CPCB. However, it is pertinent to observe even in the absence of any such categorization, when it is acknowledged, (as also observed by the Hon'ble Supreme Court) that excavation of the sand from the river bed (excluding manual excavation) may cause ecological degradation/disturbances, as also observed by the Hon'ble Supreme Court, the excavation of the sand from the river bed (excluding manual excavation) cannot be treated, by any stretch of imagination to fall in the **White category of Industrial Sectors** and in which ever of the other three categories **Red, Orange or Green** the same is considered to fall as per the revised criteria, obtaining of consent from SPCBs/PCCs will be mandatory in all eventualities.

31. In any case, even CPCB, while leaving categorization to MOEF&CC, also recommended that due to excavation of sand from the River Bed (excluding manual excavation) causing ecological disturbances, the instructions issued by the Government from time to time be followed. MOEF&CC while granting EC for sand mining from river bed is imposing condition requiring the Project Proponent to obtain consent from concerned SPCB.

32. Reference in this regard may be made to O.A No. 581/2022 titled as *Vikas Kumar Vs. State of Haryana and Others* pending before this Tribunal. In para no. 11 part A Specific Conditions clause (iv) of EC F.No.-J-11015\112\2015-IA-II (M) dated 28.01.2016 granted by MoEF & CC for Mining of Sand (Minor Mineral) in the Mines of "Jainpur-2 Sand Unit" 44 hectares mainly laying on the bed of river Yamuna (34.40 Ha) and partly outside river bed (10.0 Ha) with production capacity of 16 lakh TPA Sand (Minor Mineral) by M/s Yodha Mines and Minerals located at Village – Jainpur, Tehsil and District-Sonipat, Haryana, specific condition has been imposed that the Project Proponent shall obtain consent to operate from the State Pollution Control Board, Haryana and effectively implement all the conditions stipulated therein.

33. It may also be observed here that in *Enforcement & Monitoring Guidelines for Sand Mining* issued by MOEF&CC in 2020 reference has been made to Annexure VIII "Salient Provisions for Sand Mining in Tamil Nadu" in which the relevant part of the Steps to be followed before execution is reproduced as under:-

- | | | | |
|----|---|---|---|
| "X | X | X | X |
|----|---|---|---|
- On receipt of the Environmental Clearance, the Executive Engineer, PWD shall apply for Consent to Establish (CTE), from the Tamil Nadu Pollution Control Board as per the Air and Water Act, to enter upon the sand quarry site and commence the preliminary works such as construction of temporary sheds, bio-toilets, formation of biodegradable road using sugar cane leaves etc., drilling of bore wells etc. as per the statutory requirements. After all the preliminary works are completed, the Executive Engineer, PWD shall apply for the Consent to Operate (CTO) from the

Tamil Nadu Pollution Control Board. Earmarking boundary of the identified land site through the concrete posts along with red flags need to be established.”

34. In her Affidavit Dr. Roshan Jacob, Director, Geology and Mining Department, U.P. has stated that in the case of Sand Mining no fugitive emissions are released, neither permanent structure of any kind is erected during the mining operations of Sand/Morrum situated in the river bed nor heavy machinery are used in the mining operations and in the said mining operations, neither anything is added to the water nor is anything released, so water or air does not get polluted.

35. Section 2(e) of the Water (Prevention and Control of Pollution) Act, 1974 defines pollution to mean such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms. Section 2(a) of the Air (Prevention and Control of Pollution) Act, 1981 defines air pollutant to mean any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment and Section 2(b) of the above said Act defines air pollution to mean the presence in the atmosphere of any air pollutant. Sections 24 and 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Sections 21 and 22 of the Air (Prevention and Control of Pollution) Act, 1981 have to be interpreted in view of the above said definitions. It is now universally acknowledged that excavation of minor mineral may disturb or change the underlying soil characteristics of the river bed/catchment/basin; may disturb the velocity and flow pattern (discharge) of the river water and may also adversely affect river morphology/ecology, the ground water regime and habitat of wild fauna in the river bed significantly. The river bed sand mining involves causing of air pollution due to generation of dust during excavation of dry sand and also fugitive emissions from the heavy vehicles used for transportation of the mined material. Such river bed sand mining requires setting up of temporary habitation camps for accommodating the labour employed for mining and also utilization of river/ground water for human consumption and sprinkling to control dust pollution. Discharge of waste water from temporary human habitation camps and mobile toilets may pollute the river water. Transportation of such river bed sand mining material also requires construction of road/pathways. In cases where heavy quantity of sand mining is permitted from the river bed, deployment of large number of heavy vehicles for transportation of sand also results in fugitive emissions and dust generation thereby affecting the residents of neighbouring villages. Consequently, the stand taken by Dr. Roshan Jacob, Director, Geology and Mining Department, U.P. that river sand mining

does not cause air and water pollution is factually and scientifically wrong.

36. Further, the stand taken by the Director, Geology and Mining Department, U.P., that sand mining from river bed does not cause Water and Air Pollution ignores condition no. 8 imposed in the EC granted in favor of the Project Proponent that “all necessary statutory clearances shall be obtained before start of mining operations. If this condition is violated, the clearance shall be automatically deemed to have been cancelled”. Condition No.2 of the EC provided that forest clearance shall be taken by the proponent as necessary under law. Condition No.36 of the EC provided that environmental clearance is subject to obtaining clearance under the Wildlife (Protection) Act, 1972 from the competent authority, if applicable to this project. Condition no. 8 of the EC essentially refers to requirement of consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. No reference was ever made by the Director, Geology and Mining Department, U.P. to SEIAA, U.P. to clarify that consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 were not required and some other statutory clearances were required to be obtained before commencement of the mining. The stand taken by the Director, Geology and Mining Department, U.P. that CTE/CTO from UPPCB was not mandatory/ necessary is illogical and illegal in view of the prevailing Environmental Acts/ Rules.

37. It is also pertinent to observe that even in the present case conditions imposed in the EC issued in favour of the Project Proponent assign important role to UPPCB and envisage monitoring by UPPCB for ensuring compliance by the Project Proponent of the conditions and environmental laws/ norms and the same may be reproduced as under:-

" X X X

7. It shall be ensured that standards related to ambient air quality/effluent as prescribed by the Ministry of Environment & Forests are strictly complied with. Water sprinklers and other dust control majors should be applied to take-care of dust generated during mining operation. Sprinkling of water on haul roads to control dust will be ensured by the project proponent.

8. All necessary statutory clearances shall be obtained before start of mining operations. If this condition is violated, the clearance shall be automatically deemed to have been cancelled.

X X X

14. It shall be ensured that there is no fauna dependant on the river bed or areas close to mining for its nesting. A report on the same, vetted by the competent authority shall be submitted to the RO, PCB and SEIAA within 02 months.

15. Primary survey of flora and fauna shall be carried out and data shall be submitted to the RO, PCB and SEIAA within six months.

16. Hydro-geological study shall be carried out by a reputed organization/institute within six months and establish that mining in the said area will not adversely affect the ground water regime. The report shall be submitted to the RO, PCB and SEIAA within six months. In case adverse impact is observed /anticipated, mining shall not be carried out.

17. Adequate protection against dust and other environmental pollution due to mining shall be made so that the habitations (if any) close by the lease area are not adversely affected. The status of implementation of measures taken shall be reported to the RO, UPPCB and SEIAA and this activity should be completed before the start of sand mining.

X X X X

22. An Environmental Audit should be annually carried out during the operational phase and submitted to the SEIAA.

X X X X

24. The project proponent shall submit six monthly reports on the status of compliance of the stipulated environmental clearance conditions including results of monitored data (both in hard & soft copies) to the SEIAA, the District Officer and the respective Regional Office of the State Pollution Control Board by 1st June and 1st December every year.

X X X

27. Waste water, from temporary habitation campus be property collected & treated before discharging into water bodies the treated effluent should conform to the standards prescribed by MoEF/CPCB.

X X X

29. Special Measures shall be adopted to protect the nearby settlements from the impacts of mining activities. Maintenance of village roads through which transportation of minor minerals is to be undertaken, shall be carried-out by the project proponent regularly at his own expenses.

X X X

32. Under corporate social responsibility a sum of 5% of the total project cost or total income whichever is higher is to be earmarked for total lease period. Its budget is to be separately maintained. CSR component shall be prepared based on need of local habitant. Income generating measures which can help in upliftment of poor section of society, consistent with

the traditional skills of the people shall be identified. The programme can include activities such as development of fodder farm, fruit bearing orchards, free distribution of smokeless Chula etc.

X X X
34. The funds earmarked for environmental protection measures should be kept in separate account and should not be diverted for other purpose. Year wise expenditure should be reported to the Ministry of Environment and Forests and its Regional Office located at Lucknow, SEIAA, U.P and UPPCB.

35. Action plan with respect to suggestion/improvement and recommendations made and agreed during Public Hearing shall be submitted to the District mines Officer, concern Regional Officer of UPPCB and SEIAA within 02 months.

X X X
40. Appropriate mitigative measures shall be taken to prevent pollution of the river in consultation with the State Pollution Control Board. It shall be ensured that there is no leakage of oil and grease in the river from the vehicles used for transportation.

X X X
45. The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of environmental clearance conditions and shall also be sent to the Regional Office of the Ministry of Environment and Forests, Lucknow by e-mail.

Specific Condition

X X X
14. Total Project Cost has been submitted as Rs. 81.0 lac. A CSR plan with minimum 5% work to be executed with installation of five hand pumps for drinking water, solar light in villages of streets, construction of two numbers of toilets at the primary school with name displayed and address and details of beneficiary and gram pradhan along with phone number, photographs should be submitted to Directorate as well as to the District magistrate / Chief Development officers, Kanpur nagar, U.P.

X X X
26. The mining work will be open-cast and manual/semi mechanized (subject to order of Hon'ble NGT/Hon'ble Courts (s)). No drilling/blasting should be involved at any stage.

X X X
 29. The project proponent shall adhere to mining in conformity to plan submitted for the mine lease conditions and the Rules prescribed in this regard clearly showing the no work zone in the mine lease i.e. the distance from the bank of river to be left un-worked (Non mining area), distance from the bridges etc. It shall be ensured that no mining shall be carried out during the monsoon season.

X X X
 32. The critical parameters such as PM10, PM2.5, SO2 and NOx in the ambient air within the impact zone shall be monitored periodically. Further, quality of discharged water if any shall also be monitored HMS, DO, pH, Fecal Coliform and Total Suspended Solids (TSS).

X X X
 42. Digital processing of the entire lease area in the district using remote sensing technique should be done regularly once in three years for monitoring the change of river course by Directorate of Geology and Mining, Govt of Uttar Pradesh. The record of such study to be maintained and report be submitted to Regional office of MoEF, SEIAA, U.P. and UPPCB.

X X X
 44. State Pollution Control Board shall display a copy of the clearance letter at the Regional office, District Industry Centre and Collectors office/Tehsildar's Office for 30 days.

45. The project authorities shall advertise at least in two local newspapers widely circulated, one of which shall be in the vernacular language of the locality concerned, within 7 days of the issue of the clearance letter informing that the project has been accorded environmental clearance and a copy of the clearance letter is available with the State Pollution Control Board and also at web site of the SEIAA at <http://www.seiaaup.in> and a copy of the same shall be forwarded to the Regional Office of the Ministry located in Lucknow, CPCB, State PCB."

38. These conditions envisaged proper consultation by the Project Proponent with UPPCB before commencement and during continuance of sand mining and also periodical monitoring by UPPCB. For this purpose sending of copy of lease deed by the concerned District Magistrate to UPPCB was essentially required. Since the Project Proponent was legally bound to obtain CTE/CTO from UPPCB before commencement of mining, the District Magistrate and the District Mining Officer were legally bound not to allow commencement of mining before grant of consent by UPPCB. However, in the present case, the Project Proponent was allowed to carry out mining without such statutory consent throughout the five year term of the lease

which has expired in April, 2023.

X X X X
 53. *In view of above discussion, CPCB and MoEF & CC are directed to look into the matter of categorization of Excavation of sand from the River Bed (excluding manual excavation) in red or orange category and issue appropriate Notification clarifying categorization thereof as red or orange category within a period of two months from the date of receipt of a copy of this order. Till issuance of such Notification, river sand mining shall continue to be treated to fall in red category. However in whichever category- red or orange excavation of sand from the River Bed (excluding manual excavation) is so notified to fall, it shall be mandatory for all the Project Proponents to obtain CTE/CTOs from concerned SPCB/PCC and with effect from 01.09.2023 no river sand mining will be allowed to continue to operate in the entire India without obtaining consents from concerned SPCB/PCC and all the concerned Directors, Geology and Mining Department, the District Magistrates and the Commissioners/Superintendents of Police of the concerned Districts shall ensure that no such mining is continued/operative without obtaining CTE/CTO from concerned SPCB/PCC. MOEF&CC is also directed to issue appropriate guidelines/OM within a period of two months from the date of receipt of a copy of this order for ensuring that the requirement of obtaining CTE/CTO from concerned SPCB/PCC is uniformly made applicable to all the river bed sand mining projects throughout India.*

54. *Affidavit in this regard be filed by respondent no. 1-MoEF & CC on or before 15.09.2023 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.*

55. *Cases have come to the notice of this Tribunal in which short term permits for sand mining in river bed/agricultural land have been issued by the District Magistrate in the State of U.P. without environmental clearance by SEIAA in violation of direction given by the Hon'ble Supreme Court in Deepak Kumar's case (Supra) and this Tribunal and therefore the Director, Geology and Mining Department, Uttar Pradesh is directed to ensure no such short term permits are issued without EC and strict compliance with statutory provisions, SSMG, 2016 and EMGSM, 2020, Environment Protection Act, 2016 environmental clearance/consent conditions and directions given by the Hon'ble Supreme Court and this Tribunal is made by all the Project Proponents and to take action against all the Project Proponents who have not complied with the same. The UPPCB is directed to periodically inspect all mining lease sites in the State of Uttar Pradesh and monitor mining activities for verifying status regarding compliance with statutory provisions, SSMG-2016, EMGSM-2020, Environment Act, 2016 and directions given by Hon'ble Supreme Court and this Tribunal and take appropriate remedial action.*

56. *The Director, Geology and Mining Department, U.P. and UPPCB is also directed to take appropriate action against Respondent No. 2 – the Project Proponent for violation of SSMG, 2016, EMGSM, 2020 and environmental clearance conditions.*

57. *The Director, Geology and Mining Department, U.P. and*

Member Secretary, UPPCB are also directed to file Compliance Reports regarding compliance with above referred aspects/directions as well as status report regarding action taken against the Project Proponent on or before 15.09.2023 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.”

Compliance by MoEF & CC

43. In compliance of order dated 30.05.2023 additional affidavit dated 05.10.2023 (Pages No. 792 to 802 of the paper book) was filed by the Scientist E, MoEF & CC) vide email dated 05.10.2023. The relevant part of additional affidavit reads as under:-

“Additional Affidavit on behalf of the Ministry of Environment, Forest and Climate Change (Respondent no.1).

X X X X
3. It is submitted that the Central Pollution Control Board has earlier issued directions to all the State Pollution Control Board(s)/Pollution Control Committee (s) u/s 18(1)(b) of the Air and Water Act on 07.03.2016, regarding "Harmonization of classification of industrial sectors under Red/Orange/Green/White categories', wherein CPCB has categorized 242 industrial sectors into red, orange, green & white categories and directed all SPCBs/PCCs for its adoption and implementation.

4. That, in compliance to the order dated 30.05.2023 passed by the Hon'ble Tribunal, Central Pollution Control Board vide letter dated 22.09.2023 has further, Categorized "Sand/riverbed material mining from riverbed and its flood plains (excluding manual excavation)". The CPCB has also directed all the SPCBs/PCCs to adopt and implement the same and submit the Action Taken Report within 15 days. A copy of the letter dated 22.09.2023 is marked and annexed herewith as Annexure-R1/1.”

44. This Tribunal observed in its order dated 17.10.2023 that in its additional affidavit, respondent no.1-MoEF & CC has not mentioned regarding issuance of O.M. by it as directed by order dated 30.05.2023 and respondent no. 1-MoEF & CC was directed to file additional affidavit regarding compliance in respect of issuance of O.M. in terms of order dated 30.05.2023.

45. In compliance of order dated 17.10.2023 additional affidavit dated 20.11.2023 (Pages No.983-993 of the paper book) was filed by MoEF & CC vide email dated 20.11.2023. The relevant part of the Additional affidavit is reproduced below:-

“3. That, in compliance to the order dated 30.05.2023 and 17.10.2023 passed by the Hon'ble Tribunal, Ministry of Environment, Forest and Climate Change has issued an Office Memorandum dated 07.11.2023, directing all the SPCBs/PCCs to adopt and implement the guidelines dated 22.09.2023 issued by the Central Pollution Control Board (CPCB) with regard to categorization of Sand/riverbed material mining from riverbed and its floodplains (excluding manual excavation)'. A copy of the Office Memorandum dated 07.11.2023 is marked and annexed herewith as Annexure- R1.”

46. It is evident from the additional affidavits filed on behalf of Respondent No.1-MoEF&CC that due compliance with order dated 30.05.2023 has been made by Respondent No.1 MOEF&CC.

Compliance by CPCB

47. Vide order dated 17.10.2023 respondent no. 3-CPCB was directed to compile information on the basis of action taken reports received from the SPCBs/PCCs in response to its letter dated 22.09.2023 and file compiled status report. Above said direction was reiterated vide order dated 12.12.2023 whereby Respondent no. 3-CPCB was directed to compile information on the basis of action taken reports received from the SPCBs/PCCs in response to its letter dated 22.09.2023 and file compiled status report.

48. In compliance of order dated 12.12.2023 report dated 09.01.2024 (Pages No.2003-2225 of the paper book) was filed by the Scientist F, CPCB vide email dated 09.01.2024. The relevant part of the report filed by CPCB

reads as under:-

“Compliance Report on Behalf of Respondent No. 3, Central Pollution Control Board in the matter of Hon’ble NGT, O.A. No. 176/2022, titled as Aman Chaudhary v/s Union of India and Ors.

X X X X

2. Classification of river sand mining projects by CPCB

In compliance of the Hon’ble NGT order, CPCB has classified ‘Sand/riverbed material mining from the riverbed and its floodplains (excluding manual excavation)’ in red and orange categories. The details of the classification (categorisation) of the said sector are as follows:

Table No. 1: Classification (categorisation) of Sand/riverbed material mining from riverbed and its floodplains (excluding manual excavation)

Sl. No. (as per CPCB Document)	Non-industrial operations	Categor y	Remarks
63	Sand / riverbed material mining from riverbed and its floodplains (excluding manual excavation)		(i) Sand / riverbed material mining from riverbed and its floodplains may cause ecological disturbances, erosion of riverbed, change in hydro-geological conditions & river ecosystem, etc.
	(i) Mining lease area more than 5 hectares	Red	ii. Cluster mining means that the distance of mining lease area is less than 500 m from periphery of another lease area.
	Or Mining lease area up to 5 hectares which is part of cluster mining		iii. This categorization is made considering the ecological and not based on pollution potential/index.
	(ii) Standalone mining lease area up to five hectares in areas (not a part of any cluster mining)	Orange	

Note: Cluster mining as defined in ‘Enforcement & Monitoring Guidelines for Sand Mining, 2020’, issued by MoEF&CC.

CPCB vide letter no. CPCB/IPC-VI/ROGW, dated 22.09.2023 directed all State Pollution Control Boards (SPCBs)/Pollution Control Committees (PCCs) to adapt and implement the above classification. A copy of the CPCB letter no. CPCB/IPC-VI/ROGW dated 22.09.2023 is attached as **Annexure-II**.

3. Follow-up by CPCB for adoption and implementation of

classification of river sand mining projects

The Hon’ble NGT, in the matter of OA No. 176/2022, vide order dated 17.10.2023 directed the following:

“...CPCB to compile information on the basis of action taken reports received from the SPCBs/PCCs in response to its letter dated 22.09.2023 and file compiled status report...”

A copy of Hon’ble NGT order dated 17.10.2023 is given at **Annexure-III**.

To expedite the submission of the Action Taken Reports (ATRs) for the adoption and implementation of the classification of river sand mining, CPCB reminded SPCBs/PCCs vide emails/letters dated 27.10.2023, 08.11.2023, 28.11.2023 and 05.12.2023. A copy of CPCB correspondences is given at **Annexure-IV (A to D)**.

The last hearing in the matter of OA No. 176/2022 was made by Hon’ble NGT on 12.12.2023, wherein Hon’ble NGT directed the following:

“CPCB is directed to compile information on the basis of action taken reports received from the SPCBs/PCCs in response to its letter dated 22.09.2023 and file compiled status report on or before 10.01.2023 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.”

In compliance of the Hon’ble NGT order dated 12.12.2023, CPCB once again vide letter/email dated 28.12.2023 and 02.01.2024 requested the remaining SPCBs/PCCs to submit the Action Taken Reports regarding adoption and implementation of classification of sand mining projects. Copy of CPCB email/letter dated 28.12.2023 and 02.01.2024 is given at **Annexure-V (A and B)**.

4. Status of adoption and implementation of classification of sand mining projects by SPCBs/PCCs

So far, CPCB has received responses from 24 SPCBs/PCCs, namely, Andhra Pradesh, Assam, Bihar, Chandigarh, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu and Kashmir, Kerala, Maharashtra, Mizoram, Nagaland, Puducherry, Punjab, Uttar Pradesh, Uttarakhand, Tripura, Lakshadweep, Meghalaya, Arunachal Pradesh, Karnataka, Rajasthan, Telangana, and West Bengal. All these SPCBs/PCCs have adopted classification (categorisation) of ‘Sand/riverbed material mining from riverbed and its floodplains (excluding manual excavation)’. PCC Lakshadweep has however informed that there is no river in the UT. The summary of responses/action taken reports is given in the following table:

Table No. 2: Summary of Action Taken Reports (ATR) received from SPCBs/PCCs

Sl. No.	State/UT	Reference no.	Remarks
1	Andhra Pradesh	Letter no. APPCB-11022/548/2023-TEC-CFO- APPCB, dt. 17.11.2023	Adopted and implemented the classification

2	Assam	Letter no. PCBA/LGL-196/2023/NGT/16/2162, dt. 07.12.2023	Adopted and implemented the classification
3	Bihar	Letter no. 2865, Patna, dt. 30.11.2023	Adopted and implemented the classification
4	Chandigarh	Letter no. CPCC/2023/3900, dt. 06.12.2023	Adopted and implemented the classification
5	Chhattisgarh	Letter no. 6667/ तक्र/ मु/छ/ग/प/स/म/2023/ नवा	Adopted and implemented the classification
		रायपुर अटल नगर, रायपुर, 24.11.2023	
6	Gujarat	Letter no. GPCB/P-1/14(7)/759146, dt. 22.11.2023	Adopted and implemented the classification
7	Himachal Pradesh	Letter no. HPSPCB/CPCB miscellaneous/2023-12409, dt. 06.12.2023	Adopted and implemented the classification
8	Jammu & Kashmir	Letter no. JKPCB/T/CPCB/RBM/2023/8 28-31, dt. 03.11.2023	Adopted and implemented the classification
9	Kerala	Letter no. KSPCB/159/2022-SEE3, dt. 06.11.2023	Adopted and implemented the classification
10	Maharashtra	Letter no. MPCB/JD(WPC)/B-231130-FTS-0006, dt 30.11.2023	Adopted and implemented the classification
11	Mizoram	Letter no. H. 88088/Poltn/2/2023-MPCB, dt. 10.11.2023	Adopted and implemented the classification
12	Nagaland	Letter no. NPCB/IND-CON-2/5027-28, dt. 02.11.2023	Adopted and implemented the classification
13	Puducherry	Letter no.4507/DSTE/PPCC/SCI/SAND /CIRC/2023 dt. 08.11.2023	Adopted and implemented the classification
14	Punjab	Letter no. SEE (HQ-2)/2023/28179, dt. 09.11.2023	Adopted and implemented the classification
15	Uttar Pradesh	Letter no. 03265/C-2/general-348/23, dt. 24.11.2023	Adopted and implemented the classification
16	Uttarakhand	Letter no. UKPCB/HO/Gen-257(11)/2023/927, Dt. 14.10.2023	Adopted and implemented the classification

17	Tripura	Letter no. F.18(28)/TSPCB/7086-88, dt. 15.11.2023	Adopted and implemented the classification
18	Lakshadweep	Letter no.LD-03001/1/2023-LPCC, dt. 07.12.2023	Adopted and implemented the classification, state board has informed that there is no river in the state so issue of sand/riverbed mining is not arisen
19	Meghalaya	Letter no. MSPCB/LEGAL-638/2023/2023-24/2, dt. 20.11.2023	Adopted and implemented the classification
20	Arunachal Pradesh	Letter no. ASSPCB-93/2017/RCI/8191-90, dt. 04.01.2024	Adopted and implemented the classification
21	Karnataka	Letter no. PCB/17/COC/2023-24/4922, dt.13.12.2023	Adopted and implemented the classification
22	Rajasthan	F14(Policy-2023)/RPCB/Project/2992-2999, dt.29.12.2023	Adopted and implemented the classification
23	Telangana	Letter no.2/TSPCB/categorization/HO/2023,dt. 11.12.2023	Adopted and implemented the classification
24	West Bengal	Letter no. WBPCB-16015(99)/5/2022SEC(WBPCB)-WBPCB,dt.07.12.2023	Adopted and implemented the classification
25	Andaman Nicobar	ATR awaited	
26	Daman & Diu	ATR awaited	
27	Delhi	ATR awaited	
28	Goa	ATR awaited	
29	Haryana	ATR awaited	
30	Jharkhand	ATR awaited	
31	Madhya Pradesh	ATR awaited	
32	Manipur	ATR awaited	
33	Odisha	ATR awaited	
34	Sikkim	ATR awaited	
35	Tamil Nadu	ATR awaited	

However, the Action Taken Reports are still awaited from 11 SPCBs/PCCs, namely, Andaman & Nicobar, Daman Diu and Dadra Nagar Haveli, Delhi, Goa, Haryana, Jharkhand, Madhya Pradesh, Manipur, Odisha, Sikkim, and Tamil Nadu.

Copies of the responses received from SPCBs/PCCs are given at Annexure-VI.”

49. Vide order dated 12.01.2024 the CPCB was directed to obtain the information regarding adoption and implementation of the classification and

compile the information and file additional report within two months.

50. Additional report dated 19.03.2024 (Pages No. of the paper book) was filed by the Scientist F, CPCB vide email dated 19.03.2024. The relevant part of the report reads as under:-

“Hon'ble National Green Tribunal, Principal Bench vide order dated 30.05.2023, in the matter of O.A. No. 176/2022, Aman Chaudhary V/s Union of India and Ors., assigned the task of classification of river sand mining projects to Central Pollution Control Board (CPCCB),

In compliance of order dated 30.05.2023, CPCB categorised 'Sand/riverbed material mining from the riverbed and its floodplains (excluding manual excavation) in red and orange categories, based on the size and location of mining area, and vide letter dated 22.09.2023 CPCB directed all State Pollution Control Boards (SPCBs) / Pollution Control Committees (PCCs) to adopt and implement the categorisation. This action taken by CPCB for compliance of the order dated 30.05.2023 was submitted to Hon'ble NGT by MoEF&CC on 05.10.2023.

Hon'ble NGT heard the matter on 17.10.2023 and directed CPCB to compile the information based on action taken reports received from the SPCBs/PCCS and submit a report to Hon'ble NGT.

CPCB followed-up with SPCBs/PCCs and based on the ATRs received, a report was submitted to Hon'ble NGT on 09.01.2024, wherein it was reported that 24 SPCBs/PCCs have adopted the categorisation of 'Sand/riverbed material mining from riverbed and its floodplains (excluding manual excavation)'. However, the Action Taken Reports was awaited from 12 SPCBs/PCCs.

Hon'ble NGT heard the matter again on 12.01.2024 and directed CPCB to obtain the information regarding adoption and implementation of the categorisation from remaining 12 SPCBs/PCCs and submit additional report to Hon'ble NGT.

Accordingly, CPCB further followed up the matter with remaining 12 SPCBs/PCCs and has obtained the action taken reports from them. Based on the action taken reports it is to submit that all 36 SPCBs/PCCs have submitted necessary ATRS on letter dated 22.09.2023 of CPCB regarding adoption/implementation of categorisation of 'Sand/riverbed material mining from the riverbed and its floodplains (excluding manual excavation) as summarised below.

Summary of responses/action taken reports of 24+12 SPCBs and PCCs

Sl. No.	State/UT	Reference no.	Remarks
1	Andhra Pradesh	Letter no. APPCB-11022/548/2023-TEC-CFO- APPCB, dt. 17.11.2023	Adopted and implemented the classification
2	Assam	Letter no. PCBA/LGL-196/2023/NGT/16/2162, dt. 07.12.2023	Adopted and implemented the classification
3	Bihar	Letter no. 2865, Patna, dt. 30.11.2023	Adopted and implemented the classification
4	Chandigarh	Letter no. CPCC/2023/3900, dt. 06.12.2023	Adopted and implemented the classification
5	Chhattisgarh	Letter no. 6667/ तक्र/ मु/छ/ग/प/स/म/2023/ नवा	Adopted and implemented the classification
		रायपुर अटल नगर, रायपुर, 24.11.2023	
6	Gujarat	Letter no. GPCB/P-1/14(7)/759146, dt. 22.11.2023	Adopted and implemented the classification
7	Himachal Pradesh	Letter no. HPSPCB/CPCB miscellaneous/2023-12409, dt. 06.12.2023	Adopted and implemented the classification
8	Jammu & Kashmir	Letter no. JKPCCT/CPCB/RBM/2023/8 28-31, dt. 03.11.2023	Adopted and implemented the classification
9	Kerala	Letter no. KSPCB/159/2022-SEE3, dt. 06.11.2023	Adopted and implemented the classification
10	Maharashtra	Letter no. MPCB/JD(WPC)/B-231130-FTS-0006, dt 30.11.2023	Adopted and implemented the classification
11	Mizoram	Letter no. H. 88088/Poltn/2/2023-MPCB, dt. 10.11.2023	Adopted and implemented the classification
12	Nagaland	Letter no. NPCB/IND-CON-2/5027-28, dt. 02.11.2023	Adopted and implemented the classification
13	Puducherry	Letter no.4507/DSTE/PPCC/SCI/SAND /CIRC/2023 dt. 08.11.2023	Adopted and implemented the classification
14	Punjab	Letter no. SEE (HQ-2)/2023/28179, dt. 09.11.2023	Adopted and implemented the classification
15	Uttar Pradesh	Letter no. 03265/C-2/general-348/23, dt. 24.11.2023	Adopted and implemented the classification

16	Uttarakhand	Letter no. UKPCB/HO/Gen-257(11)/2023/927, Dt. 14.10.2023	Adopted and implemented the classification
17	Tripura	Letter no. F.18(28)/TSPCB/7086-88, dt. 15.11.2023	Adopted and implemented the classification
18	Lakshadweep	Letter no.LD-03001/1/2023-LPCC, dt. 07.12.2023	Adopted and implemented the classification, state board has informed that there is no river in the UT
19	Meghalaya	Letter no. MSPCB/LEGAL-638/2023/2023-24/2, dt. 20.11.2023	Adopted and implemented the classification
20	Arunachal Pradesh	Letter no. ASSPCB-93/2017/RCI/8191-90, dt. 04.01.2024	Adopted and implemented the classification
21	Karnataka	Letter no. PCB/17/COC/2023-24/4922, dt.13.12.2023	Adopted and implemented the classification
22	Rajasthan	F14(Policy-2023)/RPCB/Project/2992-2999, dt.29.12.2023	Adopted and implemented the classification
23	Telangana	Letter no.2/TSPCB/categorization/HO/2023,dt. 11.12.2023	Adopted and implemented the classification
24	West Bengal	Letter no. WBPCB-16015(99)/5/2022SEC(WBPCB)-WBPCB,dt.07.12.2023	Adopted and implemented the classification
Action Taken Report (ATR) received from 12 SPCBs/PCCs			
1	Andaman Nicobar	Letter no. 7-47/PCC/NGT/Misc/2021/916, dt.10.01.2024	A&N PCC informed that there are no sand or riverbed material mining projects in Andaman and Nicobar Islands
2	Daman & Diu	Letter no. PCC/DMN/13 (Part VII)/2020 21/467, dt. 18.12.2021	-The sand mining activity has already been classified.
3	Delhi	Letter no. DPCC/CMC-II/K 014/1/2023/15-16, dt. 02.02.2024	-Adopted and implemented the classification
4	Goa	Letter 2024/GSPCB/Letter/14140/Tech/216 93, dt. 05.01.2024	GSPCB informed that there are no sand mining projects operating in the state. Only manual sand mining is being carried out.

5	Haryana	F.No./HSPCB/Co pu. No. 109658 dated 26.02.2024	Adopted and implemented the classification
6	Jharkhand	Office order no. B-32, dt. 11.03.2024	Adopted and implemented the classification
7	Ladakh	Letter no. LPCC/UTL/F.No.31/2024/895- 99, dt. 13.03.2024	Adopted and implemented the classification
8	Madhya Pradesh	Letter no. 1002	Adopted and implemented the classification
9	Manipur	Letter no. PCB/488/2022-23, dt. 28.02.2024	Adopted and implemented the classification
10	Odisha	Letter no.2672/IND-I-CON (Misc)-1505., dt. 28.02.2024	Adopted and implemented the classification
11	Sikkim	Letter no. 3026/SPCB/8988, dt. 27.02.2024	Adopted and implemented the classification
12	Tamil Nadu	Letter no. TNPCB/P&D/9798/2006, dt. 09.01.2024	Adopted and implemented the classification

Copy of the responses/ATRs received from 24 SPCBs/PCCs was attached with the report filed by CPCB on 09.01.2024. Copies of the responses/ATRs received from the remaining 12 SPCBs/PCCs are given at Annexure-I.

51. This Tribunal considered the report on 21.03.2024 and observed that it will be appropriate that Andaman and Nicobar Islands PCC, Daman and Diu PCC and Goa SPCB also adopt and implement the classification and directed CPCB to take further action and file further report in this regard within two months.

52. Report dated 09.07.2024 (Pages No. 2974-2987 of the paper book) was filed by CPCB. The relevant part of the report reads as under:-

“In compliance of the order dated-21.03.2024, CPCB followed-up with Andaman and Nicobar Islands PCC, Daman and Diu PCC and Goa SPCB for action taken report in this regard.

- Andaman and Nicobar PCC has informed vide letter dated 29.04.2024 that the classification has been adopted and implemented.
- Daman and Diu PCC has informed by e-mails dated 12.06.2024 and 25.06.2024 that the matter of categorization of 'sand/ riverbed material mining activities' is under process.
- Goa SPCB had informed vide letter 05.01.2024 about acceptance of the classification by their Board and has been requested to confirm its adoption/implementation.

Action Taken Reports (ATR) received from 03 SPCBs/PCCs			
SI No.	State/UT	Reference No.	Action Taken Report
1	Andaman & Nicobar	Letter no. 7-47/PCC/NGT/Misc/2023/55, dt.29.04.2024	Adopted and implemented the classification
2	Daman & Diu	DNH&DD PCC e-mails dated 12.06.2024 and 25.06.2024	The matter of categorization of “sand/riverbed material mining activities ” is under process
3	Goa	Letter 2024/GSPCB/Letter/14140/Tech/21693, dt. 05.01.2024	Categorization accepted by board (CPCB has requested SPCB to conform adoption/implementation)

Copies of the responses/ATRs received from the SPCBs/PCCs are given at Annexure-I.”

53. Respondent No.3-CPCB is directed to verify whether Daman and Diu PCC and Goa SPCB have also adopted and implemented the classification and file further action and file further report in this regard within three months.

Compliance by UPPCB

54. In compliance of order dated 30.05.2023 the Member Secretary, UPPCB filed report dated 14.10.2023 (Pages No. 803-982 of the paper book)

vide email dated 14.10.2023. Consolidated status of mining leases in U.P. (As per UPPCB records) was annexed as Annexure No-1 with the report which is reproduced as under:-

“Consolidated status of mining leases in UP (As per UPPCB records) in the matter of O.A No. 176/2022 title as Aman Chaudhary Vs. State of UP & Ors.

- *Total Number of Mining Leases (As per the information received by concerned Regional officer from the District Mining Officer) : 1232*
- *Total No. of CTO Granted to Mining Leases : 445*
- *Total No. of CTO Rejected of Mining Leases : 30*
- *Total No. of CTO pending of Mining Leases : 02*
- *Total No. of Mining Leases which have not applied for CTO : 755*
- *Total Number of Cases Carrying Out Mining without Grant of CTO by UPPCB : 550*
- *Total No. of E.C. issued by SEIAA to Mining Leases : 1232*
- *Total Number of Cases in which Environmental Compensation has been Imposed on Mining Units : 623*
- *Total Number of Cases in which Show Cause for Environmental Compensation has been revoked on Mining Units: 29*
- *Total Amount of Environmental Compensation has been Imposed on Mining Units : Rs. 831734132.00 /-*
- *Total Number of Cases in which Environmental Compensation has been Recovered/Realized from Mining Units : 05*
- *Total Amount of Environmental Compensation that has been Recovered/Realized from Mining Units: Rs. 5370000/-*
- *Total Number of Cases in which Recovery of Environmental Compensation is Pending from Mining Units : 618 (in Which 10 Units have taken stay from Hon'ble Supreme Court).”*

55. This Tribunal considered the report on 17.10.2023 and observed in order dated 17.10.2023 that a perusal of the above quoted consolidated status statement shows that UPPCB has adopted self-contradictory approach as UPPCB has not issued show cause notices to all the mining lease holders who have not obtained CTE/CTO from UPPCB and has not imposed environmental compensation in all cases, UPPCB has not issued closure orders and UPPCB has not taken effective proceedings for realization of environmental compensation imposed which remains unrealized except

the amount of Rs. 53,70,000/- which has been realized but even the amount realized remains unutilized for restoration of environment. Accordingly vide order dated 17.10.2023 Respondent No.4-UPPCB was directed to verify the status of all the mining lease holders in the State of Uttar Pradesh and file additional status report mentioning the compliance status of all the mining lease holders before this Tribunal within one month from the date of receipt of a copy of the order.

56. In compliance of order dated 17.10.2023 additional status Report dated 08.12.2023 (Pages No. 994-1025 of the paper book) was filed by the Chief Environmental Officer, Circle 6, UPPCB vide email dated 10.12.2023. The relevant part of the Additional status report reads as under:-

“Additional Status Report on behalf of UPPCB in compliance to the order dated 17.10.2023 passed by the Hon'ble NGT, New Delhi in Original Application No. 176 of 2022 In Re: Aman Chaudhary Vs. Union of India and Others.

X X X X

Additional Status Report

1. That in compliance of the Hon'ble NGT order dated 30.05.2023 in aforesaid case the details as desired by Hon'ble NGT regarding the status of Mining Leases and action against defaulter units etc has been submitted to Hon'ble Tribunal vide UPPCB Letter No H01920/C-6/Gen-766/OA No 176/2023 Dated 14.10.2023.

2. That as per the submitted consolidated status of mining leases in Uttar Pradesh, there were **1232 mining leases** established, out of which **445 Mining Leases** had obtained Consent to Operate (CTO) under the section-25 of the Water (Prevention and Control of Pollution) Act, 1974 and under section-21 of the Air (Prevention and Control of Pollution) Act, 1981 and **787 Mining Leases** had not obtained CTO.

3. That in compliance of the Hon'ble NGT order dated 17.10.2023, show cause notices dated 20.10.2023 under section 31 A of The Air (Prevention and Control of Pollution) Act, 1981 were issued by UPPCB against the **defaulter 787 Mining Leases** of Uttar Pradesh for not obtaining prior consent to operate under The Air (Prevention and Control of Pollution) Act, 1981. The copy of the Show Cause Notices dated 20.10.2023 are being annexed herewith as Annexure-1 to this report.

4. That as of now, the detail of **787 Mining Leases** is given below:

- **160 Mining Leases** have obtained Consent to Operate (CTO) under the section-25 of the Water (Prevention and Control of Pollution) Act, 1974 and under section-21 of the Air (Prevention and Control of Pollution) Act, 1981. The list of the 160 Mining Leases is being annexed herewith as Annexure-2 to this report.
- The Consent to Operate applications of **36 Mining Leases** are under process for disposal. The list of the 36 Mining Leases is being annexed herewith as Annexure-3 to this report.
- UPPCB vide letter dated 08.12.2023 have issued Closure order under section 31 A of The Air (Prevention and Control of Pollution) Act, 1981 to **151 Mining Leases**. The copy of the said closure orders are being annexed herewith as Annexure-4 to this report.
- **04 Mining Leases** are not functional. The list of the 04 Mining Leases is being annexed herewith as Annexure-5 to this report.
- The verification of the remaining **436 Mining Leases** is under progress, therefore it is requested before the Hon'ble Tribunal to allow more time for completion of verification of remaining mining leases. The list of the 436 Mining Leases is being annexed herewith as Annexure-6 to this report.”

57. Vide order dated 12.12.2023 Respondent No.4-UPPCB was directed to file additional status report in respect of the remaining mining lease holders by way of affidavit of the Member Secretary on or before 10.01.2024. **UPPCB was also directed to upload and regularly update the information on its website regarding the mining lease holders who have obtained its consent to operate.**

58. In compliance of order dated 12.12.2023, report dated 10.01.2024 (Pages No. 2226-2805) was filed by the Member Secretary, UPPCB vide email dated 10.01.2024. The relevant part of the report reads as under:-

“Affidavit of the Member Secretary, Uttar Pradesh Pollution Control Board in compliance to the order dated 12.12.2023 passed by the Hon'ble National Green Tribunal

X X X X
Additional Status Report in respect of remaining defaulter 436 mining Leases-

3. That in compliance of the Hon'ble NGT earlier order dated 30.05.2023 and 17.10.2023 in aforesaid case the status of Mining Leases and action against defaulter units etc has been submitted to Hon'ble Tribunal vide UPPCB letter no. H01920/C-6/Gen-766/OA No 176/2023 Dated 14.10.2023 and Letter No.

H03798/C-6/Gen-766/OA No. 176/2023 dated 08.12.2023.

4. That as per the above submitted consolidated status of mining lease in Uttar Pradesh, there were 1232 mining leases established, out of which 445 Mining Leases had obtained Consent to Operate (CTO) under the section-25 of the Water (Prevention and Control of Pollution) Act, 1974 and under section-21 of the Air (Prevention and Control of Pollution) Act, 1981 and remaining 787 Mining Leases had not obtained CTO.

5. That in compliance of the Hon'ble NGT order dated 17.10.2023, show cause notices dated 20.10.2023 under section 31 A of The Air (Prevention and Control of Pollution) Act, 1981 were issued by UPPCB against the defaulter 787 Mining Leases of Uttar Pradesh for not obtaining prior consent to operate under The Air (Prevention and Control of Pollution) Act, 1981.

6. That as of now, the detail of 787 Mining Leases is given below:

i. 202 Mining Leases have obtained Consent to Operate (CTO) under the section-25 of the Water (Prevention and Control of Pollution) Act, 1974 and under section-21 of the Air (Prevention and Control of Pollution) Act, 1981. The list of the 202 Mining Leases is being annexed herewith as Annexure-1 to this affidavit.

ii. The Consent to Operate applications of 63 Mining Leases are under process for disposal. The list of the 63 Mining Leases is being annexed herewith as Annexure-2 to this affidavit.

iii. UPPCB vide different letters dated 09.01.2024 & 10.01.2024 have issued Closure order under section 31 A of The Air (Prevention and Control of Pollution) Act, 1981 to 281 Mining Leases. The copy of the said closure orders are being annexed herewith as Annexure 3 to this affidavit.

iv. Director, Geology & Mining, UP vide it's letter dated 26.12.2023 has provided the list of 210 Mining Leases which are not functional due to expiry/cancel of lease permit and other 31 Mining Leases, which are not functional in verification of UPPCB, so UPPCB vide different letters dated 09.01.2024 & 10.01.2024 have issued direction to the all such 241 Mining Leases for remain close and operate after prior CTO under the section-25 of the Water (Prevention and Control of Pollution) Act, 1974 and under section-21 of the Air (Prevention and Control of Pollution) Act, 1981. The copy of Director, Geology & Mining, UP letter dated 26.12.2023 and the copy of letters/directions dated 09.01.2024 and 10.01.2024 issued by UPPCB are being annexed herewith as Annexure 4 & 5 to this affidavit."

Compliance by the Director, Geology & Mining, Uttar Pradesh

59. The Director, Geology & Mining, Uttar Pradesh has sent report dated 07.12.2023 enclosing therewith copy of letter dated 10.11.2023 issued to all the District Magistrates in the State of Uttar Pradesh for compliance with letter dated 22.09.2023 issued by CPPCB adopted by UPPCB vide letter dated 03.11.2023 and copy of report dated 19.09.2023 of Additional District

Magistrate (City) Kanpur City summarizing action taken against respondent no. 2.

Compliance by Respondent No. 2- Nagendra Singh

60. In the present case admittedly Respondent No.2-Nagendra Singh did not obtain CTE/CTO from UPPCB and carried out mining without obtaining CTE/CTO from UPPCB.

61. Respondent No.2-Nagendra Singh has submitted that mining operations of Respondent No.2-Nagendra Singh were halted by the District Magistrate, Kanpur Nagar on 31.05.2022 and remained non-operational till 06.04.2023 when his mining lease expired much before 01.09.2023 the date of Pan India applicability of the mandatory requirement of obtaining CTE/CTO from SPCB/UTPCC.

62. The Director, Geology and Mining, Uttar Pradesh is directed to ensure that complete information with respect to all mining leases/permits granted in the State, whatever be the term thereof, is uploaded on the website of Directorate of Geology and Mining, Government of Uttar Pradesh. All the District Magistrates in the State of Uttar Pradesh are also directed to ensure that complete information with respect to all mining leases/permits granted in the District, whatever be the term thereof, are uploaded on the website of District Administration.

63. The UPPCB is directed to upload and regularly update the information on its website regarding the mining lease holders who have applied for CTE/CTO, who have been granted CTE/CTO, the period of validity of CTE/CTO, whose applications for CTE/CTO are pending and whose applications for CTE/CTO have been rejected and UPPCB is also directed to take appropriate action including issuance of closure order and imposition of environmental compensation from mining lease holders who

commenced/carried out mining without obtaining CTE/CTO.

64. The Director, Geology and Mining Department, Uttar Pradesh, the District Magistrates and the Superintendent of Police in the State of Uttar Pradesh are directed to ensure that no mining is allowed to commence or continue by any of the mining lease holders without obtaining of CTE/CTO from UPPCB as the case may be which fact has to be verified by them with reference to the information uploaded by UPPCB on its website from time to time.

(ii) Whether Respondent No.2-Nagendra Singh is liable to pay environmental compensation for carrying out river sand mining without obtaining CTE/CTO from UPPCB?

65. In compliance with order dated 29.09.2022 Short affidavit dated 01.02.2023 (Pages No. 280-293 of the paper book) was filed by the Environmental Engineer, Regional Office, UPPCB, Kanpur Nagar vide email dated 08.02.2023. The relevant part of the short affidavit is reproduced below:-

“6. That the replying Respondent came to know about the mining when this Hon'ble Tribunal has directed constitution of Committee and report was submitted. Accordingly, answering Respondent has imposed Environmental Compensation amounting to Rs. 4,29,37,500/- vide office order dated 02.09.2022 for carrying out the mining activates for 1145 days without obtaining Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1961. The aforesaid levy of penalty by the answering Respondent was assailed by the Project Proponent by filing Writ Petition No. 6512 of 2022 before the Hon'ble High Court of Judicature at Allahabad Lucknow Bench, Lucknow and Hon'ble High Court vide order dated 30.09.2022 set aside the imposition of Environmental Compensation due to not affording an opportunity of hearing to the Project Proponent prior to imposition of Environmental Compensation. Thereafter, in compliance of the order of Hon'ble High Court answering Respondent has issued show cause notice dated 02.12.2022 thereby calling upon the Project Proponent for imposition of compensation of Rs. 4,29,37,500/- towards illegal extraction of sand as no Consent to Operate was obtained from the answering Respondent which was received by the Project Proponent on 21.12.2022. Further, the Project Proponent has not applied or

obtained consent to operate under the Environmental Laws from the answering Respondent. However, mining operations are not being carried out at present. True copy of order dated 30.09.2022 passed by Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in WRIT-C No.6812 of 2022 is being enclosed herewith and marked as Annexure-1.

7. That in response to the aforesaid show cause notice the answering Respondent has received a reply dated 03.01.2023 After reviewing the reply and recommendation of Regional Officer, Kanpur Nagar, environmental compensation of Rs. 4,29,37,500/- has been imposed against the unit on 30.01.2023. Copy of the letter dated 30.01.2023 is being enclosed herewith and marked as Annexure-2."

66. Respondent No.2 filed written Submissions dated 01.02.2023 to report dated 10.08.2022 and in the written submissions raised objections to imposition of EC . The relevant part of the written submissions reads as under:-

"17. That a show cause notice cum order dated 02.12.2022 having reference no. 8502/C-2/NGT OA No-176/22 has also been issued by the Respondent no. 6 which contemplates for the award of a penalty amounting to Rs. 4,29,37,500/- (Rs. Four Crores Twenty-Nine Lacs Thirty Seven Thousand Five Hundred) upon the Respondent no. 2 for continuing the mining operation allegedly for a period of total 1145 days without obtaining Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

18. That with respect to the show cause notice cum order dated 02.12.2022 it is respectfully submitted that there exists a distinction between obtaining relevant clearances and consents from the State Pollution Control Board and obtaining an Environmental Clearance in accordance with the procedure laid down under the EIA Notification dated 14.09.2006. A consent order issued by the State Pollution Control Board allows an industry to operate within the prescribed emission norms. However, the consent orders do not account for the social cost and impact of undertaking and industrial activity on the environment and its surroundings. A holistic analysis of the environmental impact of an industrial activities only accounted for once all the steps listed out in the EIA notification dated 14.09.2006 are followed.

19. That further, the notice cum order dated 02.12.2022 has erroneously calculated the number of operational days to be 1145 days whereas the Respondent no. 2 has only carried out the mining operation on the leased area for only for a period of 816 days and thus the calculations as mentioned in the notice cum order dated 02.12.2022 are arbitrary and whimsical.

20. That moreover, the instant notice cum order dated 02.12.2022 alludes to a letter dated 26.08.2022 addressed by Regional Officer, Kanpur Nagar which has proposed to impose an environmental compensation amounting to Rs. 4,29,37,500/- (Rs. Four Crores Twenty-Nine Lacs Thirty Seven Thousand Five Hundred) upon the Respondent no. 2 for continuing the mining operation allegedly for a period of total 1145 days. In this respect it is submitted that no notice in respect of a letter dated 26.08.2022 addressed by Regional Officer, Kanpur Nagar has ever been served upon the Respondent no. 2.

21. That it is also pertinent to state here that neither the District Magistrate Kanpur Nagar nor the Uttar Pradesh Pollution Control Board ever intimated or asked the Respondent no. 2 to take a Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 prior to the commencement of the mining operation.

22. That the Hon'ble Delhi High Court in the dictum of *Splendor Landbase Ltd. v Delhi Pollution Control Committee* as reported in 2010 SCC Online Del 3466 was pleased to observe that It will not be open to the Delhi Pollution Control Board levy any environmental damages or requiring the petitioner to furnish any bank guarantee for non-compliance with the provisions of either of the Acts. to

23. That again vide the judgment and order dated 23.01.2012 in the matter of *Delhi Pollution Control Committee v Splendor Landbase Ltd.* as reported in 2012 SCC Online Del 400, the Hon'ble Delhi High Court observed that the neither under the Water Act or Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee.

24. That furthermore, in a Special Leave to Appeal CC 1842-1845/2013 titled *Delhi Pollution Control Committee v Lodhi Property Co. Ltd. Etc.* which was preferred from the judgment and order dated 23.01.2012 before the Hon'ble Supreme Court of India, the Hon'ble Supreme Court directed the appellant to refund the penalty amount deposited by the respondent along with interest at a suitable rate, as may be determined by the Court."

67. Vide order dated 28.03.2025 this Tribunal directed UPPCB to file an additional affidavit giving details regarding the methodology of computation of Environmental Compensation (EC) Rs. 4,29,37,500/- imposed upon Respondent No.2.

68. In compliance thereof Additional Reply was filed by UPPCB vide email

dated 30.04.2025. The relevant part of the UPPCB is reproduced below:-

“ADDITIONAL AFFIDAVIT ON BEHALF OF THE RESPONDENT NO.-4, UTTAR PRADESH POLLUTION CONTROL BOARD, IN COMPLIANCE TO THE ORDER DATED 28.03.2025 PASSED BY THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI.

X

X

X

X

3. That this Hon'ble National Green Tribunal, Principal Bench, New Delhi (hereinafter Hon'ble Tribunal) vide its order dated 28.03.2025 has directed the UPPCB to filed an additional affidavit giving details regarding the methodology of computation of Environmental Compensation (EC) Rs. 4,29,37,500/-, imposed upon Respondent No.6, M/s Vaishnavi Enterprises.

4. That it is pertinent to mention here that vide its office order letter number H80639/Vidhi/OA-171/22/2022 dated 02.09.2022 UPPCB has imposed an EC amounting to Rs. 4,29,37,500/- against respondent no. 6 for carrying out mining activities for 1145 days without obtaining Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

A copy of the letter dated 02.09.2022 is being annexed herewith and marked as Annexure R4/ 1

5. That the abovementioned impugned order has been set aside by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in the matter of WRITC No.- 6812 of 2022, M/S Vaishnavi Enterprises through Proprietor Nagendra Singh and Anr. Versus State of Uttar Pradesh through Secretary Department of Geology and Mining and Other, vide order dated 30.09.2022 due to not affording an opportunity of hearing to the Petitioner prior to imposition of Environmental Compensation.

A copy of the order dated 30.09.2022 is being annexed herewith and marked as Annexure R4/2

6. That further, in compliance to the order passed by the Hon'ble High Court, UPPCB has issued show cause notice vide letter number H85021/C-2/NGT OA No-176/22 dated 02.12.2022 thereby calling upon the Proprietor for imposition of compensation of Rs. 4,29,37,500/- towards illegal extraction of sand as no Consent to Operate was obtained from the UPPCB.

In response to the aforesaid show cause notice the Respondent No.6 has given a reply dated 03.01.2023 whereby the period of mining has been stated as 816 days, but no authentic record has been provided for its verification. The period of sand mining of 1145 days has been calculated as per the period contained in the permit form issued by the mining department.

Copies of the letter dated 02.12.2022 and reply dated 03.01.2023 is collectively being annexed herewith and marked as Annexure R4/3

7. That the joint inspection has been carried by the committee constituted in compliance to the order dated 07.03.2022 passed by this Hon'ble Tribunal. As per the report and records dated 02.04.2022 the work of sand mining was done by the Respondent No.6, M/s Vaishnavi Enterprises, for a total period of 1034 days from 07.04.2018 to 03.02.2021 and for 111 days

from 13.12.2021 to 02.04.2022, i.e., for a total of 1145 days:

i. The UPPCB vide its letter no.-H87882/C-2/NGT OA-176/2022 dated 30.01.2023 has sent a notice regarding issuance of EC of Rs. 4,29,37,500/- for carrying out the mining activities for 1145 days without obtaining Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The methodology of computation of EC is as under:

I. VIOLATION PERIOD:

(a) The Violation with respect of the without obtaining prior consent (water/air) in the present matter persisted for 1034 days (from 07.04.2018 to 03.02.2021).

(b) That additionally, the violation was for 111 days (from 13.12.2021 to 02.04.2022).

Total violation periods-1034+111=1145 days.

II. BASIS OF CALCULATION:

That the formula prescribed for calculating environmental compensation (EC) is as follow:

Formula-EC=PI X N X R X S X LF

Pl (pollution index) = 80 (Average Pollution Index for Red Category Industry),

N (Number of days)= 1,

R (Penalty in Rs) = 250 (Factor in Rs for EC),

S (Factor for Scale of operation) = 1.5 (large), LF (Location Factor) 1.25 for population between 1 to 5 million.)

The penalty of violations per day is Rs. 37500/-

Total EC = Rs. 37500/-per day x 1145 days

Rs. 4,29,37,500/-

That on basis of the formula the UPPCB has calculated the total Environment Compensation of Rs. 4,29,37,500/-A copy of the letter dated 30.01.2023 is being annexed herewith and marked as Annexure R4/4.

8. That further it is also worthwhile to mention here that vide its order dated 25.09.2024 the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in the matter of WRIT C No. 1643 of 2023, M/s Vaishnavi Enterprises through Proprietor Nagendra Singh and Anr. Versus State of Uttar Pradesh through Secretary Department of Geology and Mining and Other, has passed the following direction:

"In the meantime, action by which the U.P. Pollution Control Board has levied Environmental Compensation on the petitioner shall remain in abeyance, however, without prejudice to the National Green Tribunal to take such action as may be permissible in law or any other authority also to take such action as may be permissible in law in respect of the subject matter in issue."

A copy of the order dated 25.09.2024 is being annexed herewith and marked as Annexure R4/5."

69. This Tribunal took note of the fact that order imposing environmental compensation passed against Respondent No.2 project proponent is subject matter of challenge before Lucknow Bench of Hon'ble Allahabad High Court in Writ Petition No. 1643/2023, M/s. Vaishnavi Enterprises through

proprietor Nagendra Singh & Anr. vs. State of UP & Ors. wherein an interim order has been passed on 25.09.2024 and vide order dated 01.05.2025 observed as under:-

“1. Reply dated 30.04.2025 has been filed by Uttar Pradesh Pollution Control Board (hereinafter referred to as ‘UPPCB’) which shows that the order imposing environmental compensation passed against project proponent is subject matter of challenge before Lucknow Bench of Allahabad High Court in Writ Petition No. 1643/2023, M/s. Vaishnavi Enterprises through proprietor Nagendra Singh & Anr. vs. State of UP & Ors. wherein an interim order has been passed on 25.09.2024. The order of High Court shows that while environmental compensation imposed upon project proponent by UPPCB has been kept in abeyance but High Court has made it clear that the interim order is without prejudice to National Green Tribunal to take such action as may be permissible in law or any other authority also to take such action as may be permissible in law in respect to the subject matter.

2. Learned Counsel appearing for project proponent states that she wants an opportunity to file response.

3. We accept the request and also make it clear that in the response of project proponent, it shall also make submissions as to why in exercise of powers under Section 15 of NGT Act, 2010, environmental compensation may not be adjudicated and computed by Tribunal itself in respect to the violation of environmental laws in mining activities if it is ultimately found by Tribunal that mining has been carried out by the project proponent illegally.

4. The said reply/response may be given by project proponent i.e., respondent 2 within two weeks.”

70. Vide orders dated 28.03.2025 and 01.05.2025 respondent no. 2-Project Proponent was granted time to file objections/reply.

71. Pursuant to order dated 01.05.2025 respondent no. 2-Project Proponent filed affidavit vide email dated 20.05.2025. The relevant part of the additional affidavit is reproduced below:-

“ADDITIONAL AFFIDAVIT ON BEHALF OF RESPONDENT NO. 2 IN COMPLIANCE WITH THE ORDER DATED 28.03.2025 PASSED BY THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

X

X

X

X

4. That as per the affidavit filed by the UPPCB, the period of violation with respect to non-obtainance of the consent to operate (Air/Water) is calculated to be 1034 days i.e., from 07.04.2018 to 03.02.2021 and from 13.12.2021 to 02.04.2022.

5. That after obtaining the requisite Environmental Clearance, a mining lease was executed in favour of respondent No. 2 on 07.04.2018 for a period of five years. However, by notice dated 03.02.2021, mining activities were halted due to allegations of alleged illegal mining and a demand was raised. Aggrieved by this, respondent No. 2 filed Revision No. 48(R)/SM/2021 under Rule 78 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963, which was dismissed on 09.08.2021. True copy of the notice dated 03.02.2021 is filed herewith as Annexure no. 1.

6. That thereafter, respondent No. 2 preferred Writ C No. 18966 of 2021 before the Hon'ble High Court at Allahabad, wherein interim protection was granted vide order dated 22.09.2021, directing the respondent to deposit 50% of the demanded amount and furnish security for the remaining sum. Accordingly, respondent No. 2 deposited ₹1,20,00,000/- through Challan No. AKV210012782 dated 20.11.2021 and submitted the required security before the District Magistrate, Kanpur Nagar.

7. That the above-mentioned writ was subsequently allowed vide order dated 21.08.2023 wherein the matter was remitted back to the District Magistrate, Kanpur Nagar for passing a fresh order after taking into account the contentions of the petitioner.

8. That thereafter, the District Magistrate passed a fresh order against which is an Appeal is still pending before the Commissioner, Kanpur.

9. That meanwhile, the District Magistrate granted permission to resume mining operations vide letter dated 13.12.2021 for Gata No. 2Mi (10.50 hectares), situated in Village Katari Sunaudha, Tehsil Bilhaur, District Kanpur Nagar. respondent No. 2 resumed mining on 17.12.2021, which continued until 31.05.2022.

10. That, thereafter, mining operations were again halted on inspection conducted by the District Magistrate's office, and have remained non-operational since 31.05.2022.

11. That subsequent thereto, the mining lease granted to respondent No. 2 stood expired on 06.04.2023.

12. That in light of the above, it is submitted that the penalty imposed upon respondent No. 2 for not obtaining Consent to Establish (CTE) and Consent to Operate (CTO) under the Water/Air Act is misconceived and without legal basis. The Hon'ble Tribunal in order dated 30.05.2023 passed in the present Original Application, has categorically held that it shall be mandatory for all project proponents of riverbed sand mining (except manual excavation) to obtain CTE/CTO from the concerned State Pollution Control Boards only with effect from 01.09.2023. The relevant extract is reproduced below for ready reference:

“53.....However in whichever category-red or orange-excavation of sand from the River Bed (excluding manual excavation) is so notified to fall, it shall be mandatory for all the project proponents to obtain CTE/CTO from concerned SPCB/PCC and with effect from 01.09.2023 no river sand mining will be

allowed to continue to operate in the entire India without obtaining consents from Concerned SPCB/PCC..."

True copy of the order dated 30.05.2023 is filed herewith as Annexure no. 2.

10. That in view of the above binding pronouncement, and considering the fact that:

(a) respondent No. 2's mining activities had ceased since 31.05.2022, and

(b) the lease itself expired on 06.04.2023 -both events occurring prior to the NGT-mandated cut off of 01.09.2023-the imposition of penalty on the ground of absence of CTO/CTE is wholly unsustainable in law and deserves to be set aside.

11. That the respondent No. 2 most respectfully submits that the additional affidavit filed by the Uttar Pradesh Pollution Control Board (UPPCB) mentions the use of the following formula for calculating Environmental Compensation (EC) $EC = PI \times N \times R \times S \times LF$, where:

- PI is the Pollution Index of the industrial sector,*
- N is the number of days of violation,*
- R is a monetary factor (₹),*
- S is the scale of operation, and*
- LF is the location factor.*

However, the affidavit fails to disclose the origin or legal basis for applying this formula to the respondent No. 2, nor does it establish how or why this methodology is appropriate in the facts and context of the instant case.

13. That it is respectfully submitted that this Hon'ble Tribunal in O.A. No. 593/2017, Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors., had indeed directed the Central Pollution Control Board (CPCB) to constitute a committee for developing a uniform and rational method for calculating environmental compensation and penalty for industrial violations.

14. That pursuant thereto, the committee constituted by the CPCB recommended and the above-mentioned formula and the same was considered and accepted by this Hon'ble Tribunal in its order dated 20.05.2020. True copy of the order dated 20.05.2020 is annexed herewith and marked as Annexure no. 3.

15. That subsequent to the Tribunal's acceptance of the recommendations, the CPCB issued an Office Memorandum bearing No. F.No. B-400(S)IPC- III/2019-20 dated 04.09.2019, which clearly adopted the formula in a limited context, specifically for categories "a", "b", and "c", and expressly set aside all previous methods for imposition of environmental compensation. True copy of the said office memorandum dated 04.09.2019 is filed herewith and marked as Annexure no. 4.

16. That a plain and careful reading of the said Office Memorandum and the Tribunal's order dated 20.05.2020 demonstrates that the use of the formula is restricted only to specific classes of violations, and does not apply universally to all entities.

17. The respondent No. 2 does not fall within any of the categories "a", "b", or "c" as enumerated in the CPCB's Own framework and memorandum. Therefore, the application of the said EC formula to the present matter is erroneous, arbitrary, and contrary to the binding guidelines laid down by both the CPCB and this Hon'ble Tribunal.

18. That the issue pertaining to the power of UPPCB to impose EC/Penalty and the methodology to be adopted for calculation of the same is sub judice in is WRIT-C No.- 1643 of 2023 M/S Vaishnavi Enterprises Thru. Prop. Nagendra Singh And Anr Vs. State Of Uttar Pradesh.

19. That in light of the above-mentioned facts and circumstances, it is humbly submitted that the formula adopted for calculation of EC/Penalty in the instant case is erroneously applied and therefore unsustainable in law.”

72. Order dated 30.01.2023 imposing environmental compensation of Rs.4,29,37,500/- passed by UPPCB against Respondent No.2-project proponent was challenged by Respondent No. 2-Project Proponent by filing Writ Petition No. 1643/2023, M/s. Vaishnavi Enterprises through proprietor Nagendra Singh & Anr. vs. State of UP & Ors. before Lucknow Bench of Hon'ble High Court of Adjudicature of Allahabad. The above said writ petition was allowed vide order dated 31.07.2025. The relevant part of the order reads as under:-

“ Heard learned counsel for the petitioners, learned counsel appearing for U.P. Pollution Control Board as well as learned Standing Counsel for the State.

This is a bunch of writ petitions which were instituted after reserving the judgement on an identical issue i.e. jurisdiction to impose of environment compensation by U.P. Pollution Control Board. The issue arose previously in Writ-C No.4816 of 2024, Suez India Pvt. Ltd. vs. Uttar Pradesh Pollution Control Board and Others connected with a bunch of writ petitions, wherein, an interim protection was granted in all the writ petitions awaiting the final judgement which was reserved on 11.03.2025.

An interim protection was granted in the present bunch of writ petitions so as to maintain parity of the protection as was available in the bunch of writ petitions in which the judgement was reserved.

This Court has already delivered the final judgement on 17.07.2025 allowing all the writ petitions and the operative part of the judgement in paragraph-83 reads as under:-

“(83) Accordingly, all the Writ Petitions are allowed. All the orders passed by the State Pollution Control Board imposing environmental compensation upon the petitioners, which are under challenge in the Writ Petitions, are quashed. The State Pollution Control Board

will be at liberty to file applications before the NGT for award of compensation. Costs made easy."

In these circumstances the issue raised in all these writ petitions is no more res integra.

Learned counsel for the petitioners have submitted that the main issue of imposition of environmental compensation by U.P. Pollution Control Board is in the teeth of the judgement rendered by a co-ordinate bench of this Court, therefore, the same benefit may be granted in all the writ petitions which involve essentially the same issue.

Sri. A. K. Verma, learned counsel for the U.P. Pollution Control Board as well as Sri Chandra Shekhar Pandey, learned counsel who has put in appearance on behalf of the Central Pollution Control Board and learned counsel for the State do not dispute that the issue involved in the present bunch of writ petition is squarely covered under the judgement rendered by a co-ordinate bench of this Court on 17.07.2025.

The submission proceeds with the rider that the affected parties have a choice of availing the legal remedy against the final judgement in due course of time.

Since the issue has already been decided by this Court recording exhaustive reasons and by appreciating the legal position on the subject, all the writ petitions in the present bunch, as a result thereof are allowed and the impugned orders imposing environment compensation in each of the writ petitions are set aside.

The State Pollution Control Board is at liberty to file an application before the N.G.T for award of compensation in accordance with law.

No order as to costs."

73. In Civil Appeal No(S). 757-760 OF 2013 connected with Civil Appeal No(S). 1977-2011 OF 2013 titled as Delhi Pollution Control Committee Vs. Lodhi Property Co. Ltd. etc. Hon'ble Supreme Court considered the question as to whether the SPCBs/UTPCCs can, in exercise of powers under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage. Hon'ble Supreme Court referred to powers of the

SPCBs/UTPCCs under Section 33 A of the Water (Prevention and Control of Pollution) Act, 1974 and 31 A of the Air (Prevention and Control of Pollution) Act, 1981 and held vide Judgment dated 04.08.2025 that these regulators in exercise of their powers can impose and collect, as restitutionary or compensatory damages fixed sum of monies or require furnishing bank guarantees as an ex-ante measure towards potential or actual environmental damage. However, Hon'ble Supreme Court made it clear that this power must always be guided by two overarching principles. First, that the power cannot be exercised in an arbitrary manner; and second, the process of exercising this power must be infused with transparency and issued following consequential directions:-

"39. For the reasons stated above:

X X X X
(b) we direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts.
(c) it is further directed that the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an ex-ante measure under Sections 33A and 31A of the Water and Air Acts shall be enforced only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation."

74. In view of the observations made by the Hon'ble Supreme Court UPPCB is empowered to impose environmental compensation on Respondent No.2-Project Proponent for not obtaining of CTE/CTO from UPPCB in accordance with subordinate legislation made in compliance with directions given by Hon'ble Supreme Court and in view thereof we are not inclined to impose any environmental compensation at this stage.

75. However, we are constrained to observe that respective stands taken by Director, Geology & Mining, Uttar Pradesh and UPPCB disputing mandatory requirement of obtaining of CTE and CTO by river sand mining

lease holders, which was reiterated even before this Tribunal by filing of affidavits by the Director, Geology & Mining, Uttar Pradesh and the Member Secretary, UPPCB resulted into utter confusion leading to contradictory practices in the State of Uttar Pradesh regarding enforcement of the regime of environmental norms and also mandatory requirement of obtaining of CTE/CTO from UPPCB. The UPPCB indulged in contradictory practices. On the one hand UPPCB claimed that there is no mandatory requirement of CTE/CTO from UPPCB for river bed sand mining and on the other hand UPPCB issued show cause notices and passed orders for imposition of environmental compensation for not obtaining CTE/CTO from UPPCB. In his written submissions dated 01.02.2023 Respondent No. 2 has submitted that neither the District Magistrate Kanpur Nagar nor UPPCB ever intimated or asked the Respondent no. 2 to take Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 prior to the commencement of the mining operation. We are of the considered view that UPPCB, which disputed mandatory requirement of obtaining of CTE and CTO by river sand mining lease holders and despite knowledge of environmental clearance and mining lease granted to Respondent No.2, did not give any notice to Respondent No.2 immediately on commencement of mining to show cause why Respondent No.2 commenced mining without obtaining CTE/CTO from UPPCB, was estopped from imposing EC on Respondent No.2 on the ground that Respondent No.2 did not obtain CTE/CTO from UPPCB. In the facts and circumstances of the case we are of the considered view that there was clear cut dereliction of duties on the part of Director, Geology & Mining, Uttar Pradesh and Member Secretary, UPPCB in disputing mandatory requirement of obtaining of CTE and CTO by river sand mining lease holders without due application of mind and without assessment of environmental impact of non-application of environmental norms to the activities of river

sand mining. It may also be observed here (i) that the Director, Geology & Mining, Uttar Pradesh and Member Secretary, UPPCB disputed and submitted before this Tribunal by way of affidavit that there was no requirement of obtaining CTE/CTO from UPPCB by riverbed sand mining lessee; (ii) that no notice requiring taking of CTE/CTO from UPPCB before commencement of mining was given by Director, Geology & Mining, Uttar Pradesh and Member Secretary, UPPCB to Respondent No. 2 before or immediately after commencement of mining and (iii) that vide order dated 30.05.2023 this Tribunal directed that it shall be mandatory for all the Project Proponents to obtain CTE/CTOs from concerned SPCB/PCC and with effect from 01.09.2023 no river sand mining will be allowed to continue to operate in the entire India without obtaining consents from concerned SPCB/PCC and all the concerned Directors, Geology and Mining Department, the District Magistrates and the Commissioners/ Superintendents of Police of the concerned Districts shall ensure that no such mining is continued/operative without obtaining CTE/CTO from concerned SPCB/PCC and these facts may also be taken into consideration by UPPCB at the time of imposition of environmental compensation on Respondent no. 2-Project Proponent as the case may be.

(iii) Whether Respondent No.2-Nagendra Singh illegally carried out river sand mining in violation of environmental norms by constructing bridge over river Ganga?

76. The Applicant raised the grievances that Respondent No.2 had built an illegal bridge in river Ganga thereby dividing it into two streams which has become hazardous to the nearby villages and the people and can be catastrophic for the region and that villages Sunaudi, Bandi Mata, Bara Heen Purva, Fatehpur, Birhi Purva in Kanpur as well several other villages in Unnao are thereby adversely affected.

77. This Tribunal constituted a Joint Committee which submitted report vide email dated 10.08.2022. In its report the Joint Committee mentioned that during inspection no such temporary bridge was observed. According to Google Earth Timeline Map dated 25.03.2018 and 18.04.2019 no such temporary bridge was observed. However, the Joint Committee mentioned that during inspection approach road was found at the mining lease site in the main stream area of river, which obstructed the flow of the river.

78. Respondent no. 6- Director, Geology & Mining, Uttar Pradesh filed reply vide email dated 06.09.2022 pleading entitlement to file its reply only on those parameters which are concerned with the Mining Department and regarding allegation with respect to the construction of temporary bridge and illegal mining, submitted that the Joint committee in its report submitted that no such temporary bridge was found at that place and no illegal mining has been found. According to Google earth time line map dated 25.03.2018 and 18.04.2019, no such temporary bridge was observed. Since no temporary bridge was found, therefore Mining Department has not to take any action. Regarding the allegation that approach road was found at the mining site in the main stream area of river which obstructed the flow of river, respondent no. 6-Director, Directorate of Geology and Mining, Government of Uttar Pradesh has submitted that as per the report of District Mines Officer, Kanpur Nagar, the approach road is within the lease boundary three hundred meters away from the active channel of the river.

79. This Tribunal considered reply filed vide email dated 06.09.2022 by Respondent no. 6- Director, Geology & Mining, Uttar Pradesh on 17.03.2023 and observed that the report of District Mines Officer, Kanpur Nagar referred to in the reply of the Director, Geology & Mining, Uttar Pradesh that **"the approach road is within the lease boundary. That approach road is**

three hundred meters away from the active channel of the river." is contradictory to the report of the Joint Committee that ***"During inspection approach road was found at the mining lease site in the main stream area of River, which obstruct the flow of the River."***

80. In reply dated 31.01.2023 Respondent no. 2-Project Proponent has pleaded the allegations made by the applicant regarding the construction of a bridge in river Ganga dividing it into two streams to be false and baseless and submitted that even in the report of the Joint Committee dated 10.08.2022, the findings clearly state that according to Google Earth Timeline map of dated 25.03.2018 and 18.04.2019, no such temporary bridge was observed. The mining lease area of the Respondent no. 2 is situated at a distance of 900 meters from the river Ganga and the same could be ascertained from the previous inspection report dated 06.12.2020 and the question of carrying mining activity in "Eco Sensitive and Prohibited Zone" did not arise.

81. It may be observed here that in para no.16 of Written Submissions dated 01.02.2023 to the report of the Joint Committee filed vide email dated 10.08.2022 Respondent no. 2 submitted that Respondent No.2 did not construct a bridge dividing the river Ganga into two streams as alleged by the applicant and that the resident farmers of the Village Katari Sunaudha constructed a small tent like structure near the riverbank of river Ganga so as to prevent the water from reaching their crops. Respondent No.2 annexed true Copy of the images clicked by the Respondent no. 2 via GPS Map Camera of the said construction herewith as Annexure No.2 with the written submissions.

82. However, in para no. 30 of Written Submissions dated 01.02.2023 Respondent No.2 submitted that no bridge was ever constructed by the

Respondent No. 2 at the mining site and that the approach road has been paved by the Respondent No. 2 in his own lease area and the same was done after obtaining a written permission from the Gram Pradhan. Furthermore, for the construction of the same no environmental pollution or degradation is caused.

83. However, the Stand taken by Respondent No.2 in para No.16 and para no. 30 of Written Submissions dated 01.02.2023 is also patently contradictory and does not in any manner disprove or create any doubt regarding veracity and creditworthiness of the above referred observations made in the report of the Joint Committee filed vide email dated 10.08.2022.

84. On the other hand admission of Respondent No.2 regarding paving of approach road by the Respondent No. 2 in his own lease area supports the observations made by the Joint Committee in its report which deserve to be accepted and relied upon.

85. No, doubt the averments regarding illegal construction of temporary bridge on river Ganga by Respondent No.2 dividing river Ganga in two streams are not substantiated in literal terms but by the report of the Joint Committee constituted by this Tribunal, which is supported by photographs filed by the Applicant and also photographs filed by the Joint Committee and admission of Respondent No.2, graver misconduct of illegal construction of temporary road in the stream of river Ganga dividing the stream and obstructing the flow of river Ganga is proved which had, due to obstruction of flow of river, far more serious adverse environmental impact than any temporary bridge, as any temporary bridge would not have obstructed the flow of river stream in such manner and would have allowed flow of river stream.

86. We find that Respondent no. 6- Director, Geology & Mining, Uttar

Pradesh and District Mining Officer, Kanpur Nagar were completely insensitive to the issue and culpably ignored the same by treating the approach road to have been made within mining lease boundary. We hasten to add here that natural river channels can be destroyed and dried up by spending small amounts of money but cannot be created even with huge amount of money and other infrastructural resources.

87. The Director, Geology and Mining, Uttar Pradesh and the Member Secretary, UPPCB are directed to maintain a data base on the basis of satellite imagery of the mining area leased out to enable easy detection of unlawful activities like construction of temporary bridge/road/passage and to ensure that no temporary bridge or road is constructed across river streams/channels for carrying out mining and allied activities and mining across river streams/channels may be permitted only if so mentioned in form I, EIA report and mining plan and specifically stipulated for in EC and mining lease and the mode of access and transportation of the minor mineral provided for in the same.

(iv) Whether Respondent No.2-Nagendra Singh illegally carried out river sand mining in violation of/without complying with EC/CTO conditions/environmental norms?

88. The Joint Committee constituted by this Tribunal mentioned in its report filed vide email dated 10.08.2022 that "**Project proponent has not taken any significant measures for environmental safeguard and also not made any efforts/initiatives for conducting activities under CSR.**" and that "**Compliance of conditions of Environmental Clearance issued by SEIAA are not found**" and recommended that "**the lease holder may be directed to comply the conditions of Environmental Clearance and mining deed**".

89. Respondent no. 6- Director, Geology & Mining, Uttar Pradesh filed reply vide email dated 06.09.2022 regarding the observations in the report that the project proponent has not taken any significant measures for Environmental safeguard and has also not made any efforts/initiatives for conducting activities under CSR and Respondent no. 6- Director, Geology & Mining, Uttar Pradesh submitted that **vide Letter dated 29.06.2022 District Mines Officer, Kanpur Nagar has issued notice to the proponent in this regard.**

90. **However, what further action was taken on said notice is not mentioned in further replies filed by the Director, Geology & Mining, Uttar Pradesh.**

91. It is also pertinent to observe that in the present case conditions imposed in the EC issued in favour of the Respondent No.2-Project Proponent assigned important role to UPPCB and envisaged monitoring by UPPCB for ensuring compliance by the Project Proponent of the conditions and environmental laws/norms and the same may be (at the cost of repetition) reproduced as under:-

" X X X X

7. *It shall be ensured that standards related to ambient air quality/effluent as prescribed by the Ministry of Environment & Forests are strictly complied with. Water sprinklers and other dust control majors should be applied to take-care of dust generated during mining operation. Sprinkling of water on haul roads to control dust will be ensured by the project proponent.*

8. **All necessary statutory clearances shall be obtained before start of mining operations. If this condition is violated, the clearance shall be automatically deemed to have been cancelled.**

X X X X

14. *It shall be ensured that there is no fauna dependant on the river bed or areas close to mining for its nesting. **A report on the same, vetted by the***

competent authority shall be submitted to the RO, PCB and SEIAA within 02 months.

15. Primary survey of flora and fauna shall be carried out and data shall be submitted to the RO, PCB and SEIAA within six months.

16. Hydro-geological study shall be carried out by a reputed organization/institute within six months and establish that mining in the said area will not adversely affect the ground water regime. The report shall be submitted to the RO, PCB and SEIAA within six months. In case adverse impact is observed /anticipated, mining shall not be carried out.

17. Adequate protection against dust and other environmental pollution due to mining shall be made so that the habitations (if any) close by the lease area are not adversely affected. The status of implementation of measures taken shall be reported to the RO, UPPCB and SEIAA and this activity should be completed before the start of sand mining.

X X X X
22. An Environmental Audit should be annually carried out during the operational phase and submitted to the SEIAA.

X X X X
24. The project proponent shall submit six monthly reports on the status of compliance of the stipulated environmental clearance conditions including results of monitored data (both in hard & soft copies) to the SEIAA, the District Officer and the respective Regional Office of the State Pollution Control Board by 1st June and 1st December every year.

X X X X
27. Waste water, from temporary habitation campus be property collected & treated before discharging into water bodies the treated effluent should conform to the standards prescribed by MoEF/CPCB.

X X X X
29. Special Measures shall be adopted to protect the nearby settlements from the impacts of mining activities. Maintenance of village roads through which transportation of minor minerals is to be undertaken, shall be carried-out by the project proponent regularly at his own expenses.

X X X X
32. Under corporate social responsibility a sum of 5% of the total project cost or total income whichever is higher is to be earmarked for total lease period. Its budget is to be separately maintained. CSR component shall be prepared based on need of local habitant. Income generating measures which can help in upliftment of poor section of society, consistent with the traditional

skills of the people shall be identified. The programme can include activities such as development of fodder farm, fruit bearing orchards, free distribution of smokeless Chula etc.

X X X X
34. The funds earmarked for environmental protection measures should be kept in separate account and should not be diverted for other purpose. Year wise expenditure should be **reported to the Ministry of Environment and Forests and its Regional Office located at Lucknow, SEIAA, U.P and UPPCB.**

35. Action plan with respect to suggestion/improvement and recommendations made and agreed during Public Hearing shall be **submitted to the District mines Officer, concern Regional Officer of UPPCB and SEIAA within 02 months.**

X X X X
40. Appropriate mitigative measures shall be taken to prevent pollution of the river **in consultation with the State Pollution Control Board.** It shall be ensured that there is no leakage of oil and grease in the river from the vehicles used for transportation.

X X X X
45. **The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of environmental clearance conditions and shall also be sent to the Regional Office of the Ministry of Environment and Forests, Lucknow by e-mail.**

46. The green cover development/tree plantation is to be done in an area equivalent to 20 % of the total leased area either on river bank or along road side (Avenue Plantation).

X X X X

Specific Condition

X X X X
14. **Total Project Cost has been submitted as Rs. 81.0 lac. A CSR plan with minimum 5% work to be executed with installation of five hand pumps for drinking water, solar light in villages of streets, construction of two numbers of toilets at the primary school with name displayed and address and details of beneficiary and gram pradhan along with phone number, photographs should be submitted to Directorate as well as to the District magistrate / Chief Development officers, Kanpur nagar, U.P.**

X X X X
 26. The mining work will be open-cast and manual/semi mechanized (subject to order of Hon'ble NGT/Hon'ble Courts (s)). No drilling/blasting should be involved at any stage.

X X X X
 29. The project proponent shall adhere to mining in conformity to plan submitted for the mine lease conditions and the Rules prescribed in this regard clearly showing the no work zone in the mine lease i.e. the distance from the bank of river to be left un-worked (Non mining area), distance from the bridges etc. It shall be ensured that no mining shall be carried out during the monsoon season.

X X X X
 32. The critical parameters such as PM10, PM2.5, SO₂ and NO_x in the ambient air within the impact zone shall be monitored periodically. Further, quality of discharged water if any shall also be monitored HMS, DO, pH, Fecal Coliform and Total Suspended Solids (TSS).

X X X X
 40. Green area/belt to be developed along haulage road in consultation of Gram Sabha/Panchayat.

X X X X
 42. Digital processing of the entire lease area in the district using remote sensing technique should be done regularly once in three years for monitoring the change of river course by Directorate of Geology and Mining, Govt of Uttar Pradesh. **The record of such study to be maintained and report be submitted to Regional office of MoEF, SEIAA, U.P. and UPPCB.**

X X X X
 44. **State Pollution Control Board shall display a copy of the clearance letter at the Regional office, District Industry Centre and Collectors office/Tehsildar's Office for 30 days.**

45. The project authorities shall advertise at least in two local newspapers widely circulated, one of which shall be in the vernacular language of the locality concerned, within 7 days of the issue of the clearance letter informing that the project has been accorded environmental clearance and a copy of the clearance letter is available with the State Pollution Control Board and also at web site of the SEIAA at <http://www.seiaaup.in> and **a copy of the same shall be forwarded to the Regional Office of the Ministry located in Lucknow, CPCB, State PCB."**

(Emphasis added)

92. These conditions envisaged proper consultation by the Project

Proponent with UPPCB before commencement and during continuance of sand mining and periodical monitoring by UPPCB. For this purpose sending of copy of lease deed by the concerned District Magistrate to UPPCB was essentially required.

93. Vide Order dated 29.09.2022, this Tribunal directed the Director, Geology & Mining, Uttar Pradesh to file reply specifically mentioning as to whether copy of environmental clearance/ mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent. By the above said order the Member Secretary, UPPCB was directed to file reply specifically mentioning as to whether copy of environmental clearance/ mining lease agreement was sent to UPPCB, if yes when and if no, whether any reference was made for obtaining the same.

94. In compliance of order dated 29.09.2022 affidavit dated 30.01.2023 (Pages No. 82-94 of the paper book) was filed by the Mines Officer, Kanpur Nagar vide email dated 30.01.2023 that the copy of environmental clearance certificate issued in favour of project proponent /lease holder was sent to Member Secretary, U.P. Pollution Control Board, Environment Bhawan, Vibhuti Khand, Lucknow from State Environment Impact Assessment Authority (SEIAA). It is an established Practice of SEIAA to send the copy of environmental clearance certificate to member secretary U.P. Pollution Control Board.

95. Short affidavit dated 01.02.2023 (Pages No. 280-293 of the paper book) was filed by the Environmental Engineer, Regional Office, UPPCB, Kanpur Nagar vide email dated 08.02.2023 that Regional Office, UPPCB, Kanpur Nagar was not given a copy of the Environment Clearance/Mining Lease Agreement; that no information was furnished to Regional Office, UPPCB, Kanpur Nagar about the Environmental Clearance granted in favour

of the Project Proponent either by the Mining Department or by Project Proponent; that the Regional Office, UPPCB, Kanpur Nagar is not informed about the grant of ECs in favour of any of the Project Proponent either by the Authority (UPSEIAA) or the Project Proponent unless the Project Proponent submits an application for Consent to Operate and that Regional Office, UPPCB, Kanpur Nagar came to know about the mining when this Tribunal directed constitution of Committee and report was submitted.

96. Vide order dated 17.03.2023 the Director, Geology & Mining, Uttar Pradesh and the Member Secretary, UPPCB were directed to file affidavits personally in terms of order dated 29.09.2022.

97. In compliance of order dated 17.03.2023, affidavit dated 21.04.2023 (Pages No. 294-309 of the paper book) was filed by the Director, Geology and Mining Department, U.P. The relevant part of the affidavit filed by the Director, Geology and Mining Department, U.P. is reproduced as under:-

“AFFIDAVIT OF COMPLIANCE

X X X X

4. Point no. (i) - Whether copy of environmental clearance / mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent?

With reference to above point, it is submitted that the copy of environmental clearance certificate issued by State Environment Impact Assessment Authority (SEIAA) in favor of project proponent/lease holder vide letter no.174/environment/SEAC/4026/2017 dated 12.02.2018 was forwarded to 07 persons/authorities, in which through S.No. 04 same was forwarded to Member Secretary, U.P. Pollution Control Board, Environment Bhawan, Vibhuti Khand, Lucknow. **It is also pertinent to mention that a copy of environmental clearance certificate is available on Parivesh Portal which is in public domain. After issuance of environmental clearance certificate, it is considered that the lease deed will be executed and mining operation will start. Therefore, sending a copy of lease deed separately to UPPCB will be duplication of the same.**

Considering this, it is not customary to send the copy of deed to UPPCB.”

(Emphasis Added)

98. Affidavit dated 21.04.2023 (Pages No. 310-673 of the paper book) was filed by the Member Secretary, UPPCB vide email dated 18.05.2023. However, despite directions by this Tribunal vide order dated 17.03.2023 to file affidavit in terms of order dated 29.09.2022, the Member Secretary, UPPCB did not did not submit the relevant information in affidavit dated 21.04.2023 and did not file separate affidavit in this regard.

99. In the present case copy of the environmental clearance was sent to the Member Secretary, UPPCB but the Environmental Engineer, Regional Office, UPPCB, Kanpur Nagar vide email dated 08.02.2023 has submitted that copy of EC or mining lease deed was not sent to the Regional Office, UPPCB, Kanpur Nagar and the Regional Office, UPPCB, Kanpur Nagar was not informed about the grant of ECs in favour of any of the Project Proponent either by the Mining Department or the Project Proponent or UPPCB and came to know about the same when the Project Proponent submitted application for Consent to Operate and that Regional Office, UPPCB, Kanpur Nagar came to know about the mining lease in the present case when this Tribunal directed constitution of Committee and report was submitted.

100. This is a serious flaw in enforcement of environmental laws/norms and serious lapse on the part of the Director, Geology & Mining, Uttar Pradesh and Member UPPCB which requires immediate remedial /correctional action.

101. The Director, Geology & Mining, Uttar Pradesh is directed to ensure that copies of EC are sent to UPPCB and the concerned District Magistrate and the District Mining Officer are directed to ensure that copies of mining lease deed is sent to UPPCB and concerned UPPCB Regional Office and the Member Secretary, UPPCB is directed to ensure

that copies of EC and mining lease deed are sent to concerned UPPCB Regional Office.

102. The Chief Secretary, Government of Uttar Pradesh is also directed to issue appropriate instructions to all the District Magistrates in the State of Uttar Pradesh that copy of mining lease is sent to the Member Secretary, UPPCB and UPPCB Regional Office immediately on its execution for information and further necessary action for compliance with the EC conditions and also ensuring compliance with mandatory requirement of obtaining of CTE and CTO from UPPCB by the mining lease holders before commencement of the mining.

103. In its report the Joint Committee made observations regarding non-compliance of EC conditions by Respondent No.2 Project Proponent as given below:-

- *The proponent was to establish ambient air quality monitoring stations to monitor the ambient air during the mining operations. The proponent was also to submit monitoring reports of ambient air quality/water & waste water/flora & fauna, six monthly compliance report, annual environmental statement and detailed replenishment study report to SEIAA/PCB/district administration.*
- *No such data/compliance reports are submitted by the project proponent.*
- *The proponent was to carry out various Corporate Social Responsibility (CSR) activities including community development & income generating programs, maintenance of village road, free distribution of smoke less chulha, etc.*
- *No such data/compliance reports are submitted by the project proponent.*
- *The project proponent has to develop green cover belt in an area equivalent to 20% of the total leased area either on river bank or along road side.*
- *No such efforts are been made by the proponent.*

104. The Joint Committee observed that Respondent No.2 Project Proponent has not taken any significant measures for environmental safeguard and also not made any efforts/initiatives for conducting activities under CSR Compliance of conditions of Environmental Clearance issued by SEIAA are

not found. The Joint Committee recommended that the lease holder may be directed to comply the conditions of Environmental Clearance and mining deed. Environmental compensation may be imposed for violation of various Norms and degradation of surrounding environment.

105. In written submissions to the report of the Joint Committee, Respondent no. 2 has submitted that Respondent No. 2 had undertaken various Corporate Social Responsibility Activities such as organizing free eye care camps and distribution of various amenities amongst the locals and has further submitted the six monthly compliance report for the period of January to June 2022 was filed before the Joint Director, Ministry of Environment, Forest & Climate Change, Lucknow (U.P.) vide letter dated 16.09.2022. Copy of the letter dated 16.09.2022 along with the Six Monthly compliance report and the photographs have been annexed with the written submissions as Annexure No. 3. However, details of the expenses incurred have not been mentioned and copies of the purchase bills/receipts have not been enclosed with the same.

106. The Member Secretary, UPPCB is directed to verify the CSR activities conducted by Respondent No. 2-Project Proponent and the amount spent on the same and to point out the deficiencies to Respondent No. 2-Project Proponent within three months.

107. Respondent No. 2-Project Proponent is directed to remedy the deficiencies and carry out CSR activities with the remainder of the amount as the case may be in accordance with the directions of the District Environment Committee/District Magistrate, Kanpur within next three months.

108. However, Respondent No.2 has not submitted any details regarding development of green belt in an area equivalent to 20% of the total leased

area either on river bank or along road side.

109. The Divisional Forest Officer, Kanpur Nagar is directed to verify the factual position and submit report as to whether respondent No. 2 Project Proponent has carried out plantation over 20 % of total lease area or along road sides as mandated by EC conditions and to submit report within three months specifying the deficiencies of plantation in terms of area, location, number and nature of species of trees and suggesting measures required to be taken by respondent no. 2 Project Proponent for remedying deficiencies of plantation and the budget amount required for the same.

110. Respondent no. 2-Project Proponent is directed to ensure that such deficiencies of plantation so mentioned in the report of the Divisional Forest Officer, Kanpur are remedied during monsoon 2026 and requisite plantation is carried out on panchayat land/designated government land/roadsides and to file compliance report in this regard within next four months.

111. Vide order dated 26.02.2021 passed in O.A. no.360/2015 titled as National Green Tribunal Bar Association Vs. Virendra Singh (State of Gujarat &Ors.) this Tribunal directed periodic inspection of mining sites and (at the cost of repetition) the relevant part of the order reads as follows:-

"....28. We further direct that periodic inspection be conducted by a five members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC regional office is available, its Regional officer will be included in the Committee. Where neither CPCB nor MoEF&CC regional office exists, Chairman, SEIAA will tie up within the nearest institution of repute such as IIT to nominate an expert for being included in the Committee. Such inspection must be conducted at least thrice for each lease i.e. after

expiry of 25% the lease period, then after 50% of the period and finally six months before expiry of the lease period for midway correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on website of the SEIAA. Every lessee, undertaking mining, must have an environmental professional to facilitate sustainable mining in terms of the mining plan and environmental norms. This be overseen by the SEIAA. Environment Departments may also develop an appropriate mobile app for receiving and redressing the grievances against the sand mining, including connivance of the authorities and also mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of U.P. quoted earlier may be duly taken into account..."

112. Vide orders dated 29.09.2022 and 17.03.2023 this Tribunal directed the Director, Geology and Mining, Uttar Pradesh and the Member Secretary, UPPCB to file their affidavits giving detailed information whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by designated third party/departmental agency regarding compliance with environmental clearance and consent to operate conditions and environmental norms by the project proponent, if yes produce copies of the same if not the reasons for the same and whether any notice for non-compliance with environmental clearance/consent to operate /environmental norms was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof?

113. In compliance of order dated 29.09.2022 affidavit dated 30.01.2023 (Pages No. 82-94 of the paper book) was filed by the Mines Officer, Kanpur Nagar vide email dated 30.01.2023 and in compliance of order dated 17.03.2023 the Director, Geology and Mining, Uttar Pradesh filed affidavit dated 21.04.2023 (Pages No. 294-309 of the paper book) mentioning that neither the lease holder /project proponent has not filed any periodical returns nor in compliance of conditions of environment clearance and conditions of C.T.O. the project proponent

has got done any audit /periodical inspection from third party /departmental agency.

114. In his affidavit dated 30.01.2023 the Mines Officer, Kanpur Nagar also submitted that in Environment clearance Certificate issued in favour of project proponent it is mentioned that the responsibility to get the compliance of environment clearance and operating conditions and environmental conditions was on the part of Regional Officer U.P. Pollution Control Board, Kanpur Nagar and Mines Officer, Kanpur Nagar, which has not been got done by them and nor in compliance of these conditions deponent has been informed about the mandatory requirement for inquiry.

115. In affidavit dated 30.01.2023 (Pages No. 82-94 of the paper book) filed by the Mines Officer, Kanpur Nagar mentioning about inspections done, notices issued and action taken against Respondent No.2 the project proponent on the basis thereof. Affidavit dated 21.04.2023 (Pages No. 294-309 of the paper book) similarly mentioning about inspections done, notices issued and action taken against Respondent No.2 the project proponent on the basis thereof was filed by the Director, Geology and Mining, Uttar Pradesh. The relevant part of affidavit dated 30.01.2023 (Pages No. 82-94 of the paper book) filed by the Mines Officer, Kanpur Nagar is reproduced as under:-

“It is pertinent to mention here that site has been inspected from time to time for getting the compliance of conditions of lease deed and above regulation 2021 by the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh for the normal sand mining area village KatariSunadha Plot no.2m rakba 10.50 hectare of Tehsil DANA Billaour, Due to not installing CCTV Camera of 360 degree in 19718 mining area, due to violation of Rule 59(3) notice no.1434/30 Sub Mineral /2019 was issued on 8.5.2019 and penalty of Rs.25,000.00 has been imposed. On 7.12.2020 the Revenue Department and Sub Divisional Magistrate Billaour inspected the site, in which it was found that in distance of about 700 mtr from

approved mining area in west side the plain impact of sand, height of which was equal to water level, the same was got removed and first information report has been got registered in concerned police station against the unknown persons. By letter no.446/ST-Misc/20 dated 12.12.2020 of Sub Divisional Magistrate, Billaur it has been informed that the above lease holder has done mining and transportation of normal sand illegally of about 54219 cubic mtr from plot no.01m rakba 5.4219 hectare outside the approved mining area. With reference to above illegal mining-

(a) notice was issued by office letter no.385/30 sub mineral /2020 dated 22.12.2020 and direction was given to place its case within 15 days.

(b) The team of Directorate of Geology and Mining, Khanij Bhawan, Lucknow did surprise inspection of above lease area on 11.1.2021. By inspection report no.1911/M Enforcement Kanpur Nagar/2020 dated 12.1.2021 the inquiry team was constituted for getting done correct demarcation of coordinate of boundary pillar of mining area and for detailed survey of the mined quantity.

(c) on the basis of joint committee report dated 13.01.2021 which was forwarded by Director Geology & Mining by latter no 1921/M-Enforcement kanpur nagar dated 14.01.2021 it was instructed to take action.

(d) In pursuance of above enclosed report, notice by office letter no.443/30-Sub Mineral/2021 dated 3.2.2021 was issued to the lease holder M/s Vashnavi Enterprises Proprietor Nagendra Singh and he was directed to deposit total amount of Rs.2,39,06,360.00 in Govt. Treasury within 15 days due to illegal mining and transportation of normal sand of about 54219 cubic mtr. from plot no.01m, rakba 5.4219 hectare beyond the approved mining area and due to catch holding two overload trucks of normal sand during inspection dated 11.1.2021 and if, the amount is not deposited, mining work will be banned.

Against above notice the lease holder filed Revision No.48(R)/SM/2021 to the Government which was dismissed by the revisional Authority by deciding the same on 9.8.2021. Thereafter, the lease holder filed Writ Petition No.18966/2021 M/s Vashnavi Enterprises through proprietor Nagendra Singh Vs. State of U.P. &Ors. in Hon'ble High Court of Allahabad Lucknow Bench. In compliance of order dated 22.9.2021 of Hon'ble High Court of Allahabad Lucknow Bench after completing all formalities vide office order no.1067/30-sub mineral/2021 dated 13.12.2021 permission was given to lease holder for mining and transportation of normal sand. Again in pursuance of joint inspection report dated 5.12.2021 by office notice no.1058/30-sub mineral/2021 dated 9.12.2021 fine of Rs.72,500.00 was imposed on lease holder due to constructing passage /road without permission and was directed to deposit the same within three day. In inspection dated 31.5.2022 of Distt. Magistrate due to non-installation of PTZ Camera on lease site and in pursuance of report dated 21.6.2022 of inspection team constituted in compliance of questioner dated 10.6.2022 of Distt.

Magistrate, notice by office letter no. 1532/30-sub mineral/2022-23 dated 10.8.2022 was issued to the lease holder for depositing total amount of Rs.11,55,837.00 and in pursuance of letter no.1243/S-218/22 dated 5.12.2022 of Regional Officer U.P. Pollution Control Board Kanpur Nagar due to not getting permission (CTO) of operating by project proponent/lease holder, the operation of mining lease was again banned by office letter no. 1690/30-sub mineral/2022 dated 13.12.2022. Thus, proceeding according to rule has been constantly done against lease holder due to violating the provisions of Rules 2021 and conditions of lease deed.”

116. However, despite directions by this Tribunal vide order dated 17.03.2023 to file affidavit in terms of order dated 29.09.2022, the Member Secretary, UPPCB did not submit the relevant information in affidavit dated 21.04.2023 and did not file separate affidavit in this regard.

117. Vide order dated 30.05.2023 UPPCB was also directed to take appropriate action against Respondent No. 2 – the Project Proponent for violation of SSMG, 2016, EMGSM, 2020 and environmental clearance conditions and to file status report regarding action taken against the Project Proponent.

118. Action taken report dated 14.10.2023 (Pages No. 803-982 of the paper book) was filed by the Member Secretary, UPPCB vide email dated 14.10.2023 giving information regarding imposition of EC.

119. Vide order dated 30.05.2023 the Director, Geology and Mining, Uttar Pradesh was directed to take appropriate action against Respondent No. 2 – the Project Proponent for violation of SSMG, 2016, EMGSM, 2020 and environmental clearance conditions and to file status report regarding action taken against the Project Proponent.

120. In compliance thereof report was filed by the Director, Geology and Mining, Uttar Pradesh by way of letter dated 07.12.2023 (Pages no. 994-995 of the paper book).

121. Vide order dated 12.12.2023 this Tribunal directed the Director, Geology and Mining, Uttar Pradesh to file report by way of own affidavit.

122. In compliance thereof affidavit dated 12.01.2024 (Pages No.2806-2809 of the paper book) was filed by the Director, Geology and Mining, Uttar Pradesh vide email dated 12.01.2024. The relevant part of the affidavit is reproduced below:-

“3. That in compliance of the above direction of this Hon'ble Tribunal Director, Geology and Mining, Uttar Pradesh vide letter no.1796/M-NGT Vaad/2022 dated 29.12.2023 sought comment from District Magistrate, Kanpur Nagar regarding action taken against respondent no. 2 (Project Proponent). The District Magistrate, Kanpur Nagar vide its letter no. 13/tees-Upkhanij/2024 dated 10.01.2024 sent the report regarding action taken against respondent no. 2 (Project Proponent).

4. That as per the report District Magistrate, Kanpur Nagar,
*(i) SDM Bilhaur along with tehsildar Bilhaur and concerned Lekhpal and Revenue Inspector Inspected the site of lease executed in favor of M/S Vaishnavi Enterprises Proprieter Shri Nagendra Singh on 07.12.2020 and found that **700 meter to the west of Patta site in revenue Village Katri Atwa, Tehsil Bilhaur, District Kanpur Nagar, there was a flat bandha, due to which flow of water in a branch of river Ganga had stopped.** The flat bandha was removed and tehsildar reported the matter of obstruction of flow of water in the branch of Ganga river by means of flat bandha to Police Station Chaubepur for legal action against unknown persons.*

*(ii) That on the basis of the inquiry report dated 13.01.2021 of joint team constituted by Directorate of Geology and Mining, U.P., in which **illegal mining/transportation of 54219 cubic meter sand was reported and 02 overloaded vehicles were handed over to Police Station Bithoor,** a total penalty amount Rs. 2,39,06,360/- was imposed on the lessee and until deposit of the said amount, mining was prohibited.*

*(iii) Mining inspector and Tehsildar Bilhaur in their joint inspection report dated 05.12.2021 found that **the lessee had made a 10x145x1 cubic meter road along side the river.** In view of the above, penalty of Rs. 72,500/ was imposed on the lessee, which the lessee deposited on 09.12.2021.*

*(iv) Mining Officer, ARTO, Tehsildar Bilhaur in their inspection dated 31.05.2022 found that **PTZ Camera had not been installed** at the patta site. Mines Officer, Kanpur Nagar,*

*Tehsildar, Junior Engineer Irrigation in their inquiry report dated 21.06.2022 **reported additional mining of 769 cubic meter.** Thus, a **notice dated 10.08.2022 in respect of depositing Rs. 11,55,837/** was issued. **Revision against this notice has been filed** by the lessee which is under consideration at the level of State Government.*

*(v) **As CTO had not been obtained by the lessee, mining operation was prohibited vide order dated 13.12.2022.***

(vi) Lease period ended on 06.04.2023.

(vii) In compliance of the order dated 21.08.2023 passed by Hon'ble High Court Allahabad, Lucknow bench, Lucknow in Civil miscellaneous writ petition no. 18966/2021 M/S Vaishnavi Enterprises Proprieter Shri Nagendra Singh Versus State of U.P. and others, an opportunity of hearing has been provided to the lessee by the District Magistrate. The lessee has submitted his reply on 29.09.2023. Based on examination of the reply, decision is to be taken in the matter at the level of District magistrate, Kanpur Nagar."

(Emphasis added)

123. Vide order dated 12.01.2024 the Director, Geology and Mining, Uttar Pradesh was directed to take appropriate action against Respondent No. 2 – the Project Proponent for violation of SSMG, 2016, EMGSM, 2020 and environmental clearance conditions and to file status report regarding action taken against the Project Proponent.

124. This Tribunal considered the affidavit on 21.03.2024 and observed as under:--

"4. The affidavit filed by the Director, Geology and Mining, Uttar Pradesh is materially deficient as complete details regarding compliance of EC conditions and action taken for violation of environmental norms have not been given therein.

5. In the present case a flat bandha was observed by SDM, Bilhaur on visit during 07.12.2020 regarding which complaint was made to the Police. Further details regarding action taken by the Police have not been submitted. The Mining Inspector and Tehsildar, Bilhaur mentioned in their Joint Inspection Report dated 05.12.2021 that the Project Proponent had made 10x145x1 cubic meter road alongside the river. Penalty of Rs. 72,500/- was imposed on the lessee which was deposited on 09.12.2021. Copies of the report and receipt have not been filed. The Project Proponent carried out illegal mining/transportation of 54219 cubic meter sand regarding which penalty of Rs. 2,39,06,360/- was imposed on the lessee but there is no mention as to what is the status of recovery thereof. The lessee was

found to have carried out additional (illegal) mining of 769 cubic meters regarding which show cause notice for penalty of Rs. 11,55,837/- was issued regarding which revision is stated to be pending. In compliance of order dated 21.08.2023 passed by Hon'ble Allahabad High Court in W.P No. 18966/2021 the lessee is stated to have filed reply on 29.09.2023. The District Magistrate, Kanpur Nagar was directed by the above said order to pass fresh order expeditiously say within a period of six weeks from the date of submission of reply by the Petitioner in accordance with law but it seems that no further order has been passed by the District Magistrate, Kanpur Nagar as present status of the proceedings is not mentioned. In the present case the lessee was alleged to have constructed temporary bridge in the mining lease area and the Joint Committee found that the lessee had not constructed any temporary bridge on the other hand the lessee had constructed approach road at the mining lease site in the main stream of the river which obstructed the flow of the river. The Director, Geology and Mining, Uttar Pradesh filed response dated 13.09.2022 that the approach road was within lease boundary 300 meters away from the active channel of the river which stand was contrary to the report of the Joint Committee and was evidently false. In said response Mine Officer, Kanpur Nagar was stated to have issued notice dated 29.06.2022 to the lessee but what further action was taken on said notice has not been mentioned. The lessee did not install 360 degree CCTV camera in mining area for which penalty of Rs. 25,000/- was imposed on the lessee but there is no mention as to whether penalty was deposited and CCTV camera was installed subsequently. Present status of the recovery certificate sent by UPPCB for recovery of amount of Rs. 4,29,37,500/- has also not been mentioned.

6. *This case is a classic example to show how the authorities entrusted with the task of ensuring compliance with environmental norms collude and fail to take appropriate action for remediation of environmental violations.*

7. *In the facts and circumstances of the case the Director, Geology and Mining, Uttar Pradesh and the District Magistrate, Kanpur Nagar are directed to file additional affidavits with complete details at least one week before the next date of hearing hereby fixed and produce the complete original record pertaining to mining lease in favour of the Project Proponent before this Tribunal on the next date of hearing hereby fixed.*

8. *In the present case this Tribunal had vide order dated 17.10.2023 directed the Director Geology and Mining Department, Uttar Pradesh, the District Magistrates and the Superintendents of Police in the State of Uttar Pradesh to ensure that no mining is allowed to commence or continue without obtaining of CTE/CTO from UPPCB as the case may be which fact was to be verified by them with reference to the information uploaded by UPPCB on its website from time to time.*

9. *In the course of interaction, Member Secretary, UPPCB has stated that all the mining lease holders have not yet obtained CTO from UPPCB.*

10. The directions issued vide order dated 17.10.2023 are reiterated and it is clarified that if in any case it is found that commencement and/or continuance of mining without obtaining of CTO from UPPCB, the concerned District Mining, Officer, District Magistrate and the Superintendent of Police shall be liable to be prosecuted under Section 26 of the National Green Tribunal Act, 2010.

11. Further, the Director, Geology and Mining, Uttar Pradesh is also directed to personally look into and take appropriate action for cancellation of the mining lease in all the cases in which the respective mining lease holder has not obtained CTO from UPPCB despite expiry of reasonable time and to file action taken report by way of separate affidavit within two months at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

125. In compliance thereof Affidavit dated 08.07.2024 has been filed by DM Kanpur Nagar vide email dated 08.07.2024. Relevant part of the report reads as under:-

“3- That in compliance of the above direction of This Hon'ble Tribunal the detail of the matter concerned are as below:

(a) As per the terms and conditions of the Government order No 1875/86-2017-57(5a) T.C.I dated 14.08.2017 advertisement was issued on 03.11.2017 for the settlement of lease under chapter-4 of minor mineral Concession Rules 1963 Currently 2021 through e-auction/e-tender in respect of area village Katri Sunaudha, Tehsil Bilhaur, District- Kanpur Nagar. The project proponent M/s Vaishnavi Enterprises Proprieter Sri Nagendra Singh was declared as highest bidder (his bid Rs. 92/- Per Cub. Meter) and therefore vide letter No. 36/Tees-upkhaniz/2018 dated 18-01-2018 letter of Intent(LOI) was issued in his favour.

(b) Environment clearance Certificate No. 174 dated 18-02-2016 which was issued in favour of lease holder M/s Vaishnavi Enterprises proprietor Nagendra singh was produced before the District Magistrate office. In Pursuance of it, lease was executed for a period of 5 Years W.E.F 07-04-2018 to 06-04-2023 in favour of M/s Vaisnavi Enterprises Prop. Nagendra singh R/o Mig 2 Mahabalipuram Kanpur Nagar for the area village Katri Sunaudha Tehsil Bilhaur gata no. 02 Mi Area 10.5 Hector. Now the lease period has been expired.

District Village Katri sunaudha, Tehsil Bilhaur, Gata No. 02 Mi Area 10.5 hectare. Now the lease period has been expired.

*Dated C) **As per the report of S.D.M. Bilhaur dated 07-12-2020 a flat bandha was found 700 metre to the west of***

lease area i.e. Village Katri Sunaudha Tehsil-Bilhaur, Gata No. 02 Mi Rakba 10.5 hectare in revenue village Katri Atwa Tehsil Bilhaur. In respect of the above, against unknown persons, FIR Criminal Case Number. 0338 08-12-2020 (Annexure-1) was lodged in Police Station Chaubeypur, Tehsil-Bilhaur in which charge sheet dated 21.06.2021 was submitted before Hon'ble ACJM-I court, Mati, Kanpur Dehat. The lessee was also made accused in the charge sheet dated 21.06.2021 [Annexure-2]

(d) In the joint inspection report of the then Mines Inspector and Tehsildar, Bilhaur dated 05.12.2021 (Annexure-3) it was found that **in the lease area the lessee constructed the Hall road (unmettalled road for the transportation of vehicles) measuring (10m x 145m x 1ft) along side the river by cutting the upper soil by machine.** In pursuance of the above joint inspection report dated 05.12.2021 a notice No. 1058/30-upkhanij Dated 09-12-2021 was given (Annexure-4) to the lessee for the construction of road without taking permission and a penalty of Rs. 72,500/- was imposed and the lessee was directed either to deposit the penalty amount within 03 days or to submit his explanation/reply. The Lessee deposited the said amount through challan No. akv 210014180 dated 09.12.2021 (Annexure-5)

(e) **As per the inspection report of SDM Bilhaur dated 12-12-2020, lessee was found to have done illegal mining of 54219 cub. Meter in Gata No. 1 Mi Rakba 5.4219 Hectare which was out- Side the allotted lease area, against which a total Rs 2,11,45,410 amount as penalty was imposed upon the Lessee.** A part from it during The inspection of Director, Geology and mining Lucknow on 11.01.2021, 02 overloaded vehicles were apprehended/ caught at the lease area and thus as per the provisions of Rule 59(6) of the 1963 Rule RS 50,000/- was imposed upon the lessee. Thus, a total amount of Rs. 2,39, 06, 360/- became due upon the lessee. Therefore, vide letter No. 443/30-upkhaniz/2021 dated 03.02.2021 the mining operation was suspended and the lessee was instructed to deposit the said penalty.

Due to non-deposition of the Rs. 2,39,06,360/- which was imposed upon the lessee vide letter No. 443/30-upkhaniz/2021 dated 03.02.2021 [Annexure-6], the recovery certificate was issued vide Letter No. 584/30-upkhaniz/2021 dated 05.04.2021 [Anexuer-7]

(f) Against The Notice /letter dated 03.02.2021, the lessee filed revision before the state Government (Revision no. 48(R)SM/2021). The Revisional Authority vide order dated 09.08.2021 dismissed the revision and upheld the order dated 03-02-2021 passed by the District magistrate.

(g) The lessee filed a writ petition (miscellaneous single 18966/2021) before Hon'ble High court, Lucknow Bench

against the order dated 09-08-2021 passed by the revisional Authority and notice dated 03.02.2021 passed by The District Magistrate. The Hon'ble High Court on 22.09.2021 (Annexure-8) passed an interim order that is:-

"As a matter of interim protection, it is provided that in case if the petitioner deposits 50% of the amount and furnish a security for the remaining 50% before the District Magistrate, Kanpur Nagar within a period of three weeks, the impugned orders shall remain stayed."

(h) The lessee in pursuance of order passed by the Hon'ble High court dated 22.09.2021 deposited 50%, amount of the imposed penalty Rs. 2,39,06,360/- i.e Rs. 1,19,53,180/- through challan No. AKV 210012782 Dated 20-11-2021 [Annexure- 9] and furnished security of Rs 1,19,53,180/- After it vide order no. 1067/30-upkhaniz/2021 dated 13.12.2021 [Annexure 10] the lessee was allowed to resume the mining operation.

i) The lessee did not obtained CTO inspite of direction given by Regional officer, UPPCB, Kanpur, vide letter No 1243/sa.-218/22 dated 05.12.2022 [Annexure-11]. Therefore, the District magistrate vide letter No 1690/30 upkhaniz /2022 dated 13-12-2022[Annexure-12] suspended the mining operation.

(1) The Hon'ble High Court Lucknow Bench in Civil Missc writ petition No. 18966/2021 Vaishnavi Enterprises Vs State of U.P. and others again passed an order on 21.08.2023 [Annexure-13], whose operative portion are as below:-

15. This Court has perused the order of the Prescribed Authority from which it is evident that one of the materials for imposing the penalty upon the petitioner is the inspection report dated 13.1.2021. Even in the impugned order there is no averment that copy of the report dated 13.1.2021 was ever supplied and consequently there is no reason to disbelieve the stand of the petitioner. This ground was raised by the petitioner in the revision preferred before the State Government but despite raising this issue no finding has been returned by the revisional court nor the said ground has been considered.

16. In light of the above, both the impugned orders are set aside. The matter is remitted back to the District Magistrate, Kanpur Nagar to pass fresh order after taking into account the reply submitted by the petitioner including the reply dated 3.2.2021 before passing any final order Copy of the inspection report dated 13.1.2021 should be handed over to the petitioner expeditiously say within one week from the date a certified copy of this order is produced before him. The petitioner shall have two weeks thereafter to file reply to the said inspection report and the District Magistrate is further direction to pass fresh order expeditiously say within a period of six weeks from the date of submission of reply by the petitioner in accordance with law.

17. In light of the above, the petition stand allowed.

(K) In pursuance of order dated 21.08.2023 passed by Hon'ble High court, the lessee submitted his representation on 27.08.2023 and he requested to provide the inspection report dated 13.01.2021. Vide letter No. 224/30-upkhaniz/2023 dated 12.09.2023 [Annexure-14] The inspection report dated 13.01.2021 and 12.12 2020 was provided to the lessee. After that the lessee again presented his representation dated 18.09.2023 and requested The District Magistrate to pass a fresh order.

In compliance of the order Dated 21.08-2023 passed by Hon'ble High Court for passing fresh order, the lessee was given an opportunity of hearing. Hearing was done on 27-04-2024, 12-06-2024 and on 03-07-2024 and in order to pass a fresh order, the procedure is under process.

(L) The inspection report dated 02.04.2022 regarding the concerned lease area, was sent vide Letter No. 325/sa-106/22 dated 09.06.2022 [Annexure-15] by Regional office, UPPCB, Kanpur for necessary action to the District magistrate. The Mining Officer, Kanpur Nagar vide letter No. 1464/30-upkhaniz dated 29.06.2022 [Annexure-16] issued notice to the lessee to submit his reply regarding the shortcomings which were mentioned in the inspection report dated 02.04.2022 of UPPCB, Kanpur. Lessee didn't submitted his reply. It is also pertinent to mention here That in pursuance of the inspection report dated 02.04.2022 Regional officer, UPPCB, Kanpur vide letter No. H-80639 dated 02.09.2022 [Annexure-17] imposed environmental compensation of RS. 4,29,37,500/-

(M) In violation of the provisions of Rule 59(3) of Minor Mineral concession Rules, 1963 regarding installation of 360° CCTV Camera in the Lease area, vide notice No. 1434/30-upkhaniz dated 08.05.2019 (Annexure-18) penalty of Rs 25,000/- was imposed upon the lessee, which the lessee deposited through chalan No. E-813231 dated 08.05.2019 (Annexure-19)

(N) In pursuance of the joint inspection report dated 21-06-2022, for the additional mining of 769 cub meter done by the lessee vide letter 1532/30-upkhaniz/2022-23 dated 10-08-2022[Annexure-20] District magistrate issued the Notice to the lessee to deposit a sum of Rs.11,55,837/- The lessee filed revision [95/R/SM/2022) before the state Govt against the notice dated 10.08.2022), which is under consideration.

(O) As per the inspection report of SDM Bilhaur dated 07.12.2020 (Annexure-21), it was not found that the lessee has done mining by Constructing a dam in the main stream of River Ganga in the allotted lease area.

(p) The lease which was executed in favour of M/s vaishanavi Enterprises prop. Nagendra singh Resident of MIG-2, mahabalipuram, Kanpur Nagar-has been expired on 06-04-2023.”

(Emphasis added)

126. Additional affidavit dated 10.07.2024 has been filed by Director, Geology and Mining, Uttar Pradesh. The relevant part of the report reads as under:-

“3. That in compliance of the above direction the Director, Geology and Mining sought report from District Magistrate, Kanpur Nagar. District Magistrate, Kanpur Nagar vide letter no. 357/Tees-upkhaniz/2024 dated 05.07.2024 [Annexure-1] has provided his report. On the basis of report submitted by District Magistrate, Kanpur Nagar, in continuation of affidavit filled in January, 2024 in this matter, further submission is made as below:-

(a) Sand mining lease was executed for a period of 05 years w.e.f 07.04.2018 to 06.04.2023 in favor of m/s Vaishnavi Enterprises proprietor Shri Nagendra Singh, Resident of MIG-2, Mahabalipuram, Kanpur Nagar for the area Village Katri Sunaudha, Tehsil Bilhaur, Gata No. 02 Mi area 10.5 hectare. Thus, the lease expired on 06.04.2023.

(b) As per the report of S.D.M Bilhaur dated 07.12.2020 a flat bandha was found in village Katra atwa located 700 metre to the west of the above lease area. Therefore, F.I.R. crime case no. 0338 dated 08.12.2020 [Annexure-2] was registered at Police station Chaubepur, Tehsil Bilhaur in which charge- sheet dated 21.06.2021 [Annexure-3] has been filed before Hon'ble ACJM-I court, Mati, Kanpur Dehat against the lessee.

(c) In the joint inspection report of the then Mines Inspector and Tehsildar, Bilhaur dated 05.12.2021 [Annexure-4] it was found that in the lease area the lessee had constructed an unmettled road measuring 10m.X 145m.XL. for the movement of vehicles and by digging earth (soil) to a depth of 1 ft. using machine as med (मेट) was made alongside the river. In view of the above joint inspection report dated 05.12.2021 notice No. 1058/tees-upkhaniz/2021 dated 09.12.2021 [Annexure-5] was issued to the lessee levying a penalty of Rupees 72,500 and the lessee was directed to either deposit the penalty amount within 03 days or to submit his reply. The Lessee deposited the said amount through challan No AKV 210014180 dated 09.12.2021 [Annexure-6].

(d) As per the inspection Report of SDM Bilhaur dated 12.12.2020, lessee was found to have illegally mined 54,219 cub. mtr. in Gata No. 01 Mi area 5.4219 hectare (outside the lease area), in respect of which a demand of total Rs. 2,11,45,410 was imposed upon the lessee. Further, in consequence of inspection by Director, Geology and mining, Lucknow on 11.01.2021, 02 overloaded vehicle were caught in the lease area and thus as per the provisions of Rule 59(6) of

the Rules a demand of Rs. 50,000/- was imposed upon the lessee. Thus, a total amount of Rs. 2,39,06,360/- became due upon the lessee. Therefore, vide order No. 443/Tees-upkhaniz/2021 dated 03.02.2021 the mining operation was suspended and the lessee was instructed to deposit the said amount.

On non deposit of the imposed amount of Rs. 2,39,06,360/- by the lessee the recovery certificate was issued vide Letter No. 584/tees-upkhaniz/2021 dated 05.04.2021 [Annexure-7].

(e) Against the Notice / letter dated 03.02.2021, the lessee filed revision before the state Government [Revision No. 48(R)/SM/2021]. The Revisional Authority vide order dated 09.08.2021 dismissed the revision and upheld the order dated 03.02.2021 of the District magistrate.

(f) The lessee filed a writ petition (miscellaneous single 18966/2021) before Hon'ble High court, Lucknow Bench against the order dated 09.08.2021 passed by the Revisional Authority and notice dated 03.02.2021 passed by the District magistrate. The Hon'ble High Court on 22.09.2021 [Annexure-8] passed an interim order, the operative portion of which is as under:-

"As a matter of interim protection, it is provided that in case if the petitioner deposits 50% of the amount and furnish a security for the remaining 50% before the District Magistrate, Kanpur Nagar within a period of three weeks, the impugned orders shall remain stayed."

(g) The lessee, in pursuance of order passed by the Hon'ble High court dated 22.09.2021, deposited 50% amount of the imposed amount, which is 50% of Rs. 2,39,06,360/ i.e. Rs. 1,19,53,180/- through challan No. AKV 210012782 [Annexure-9] and furnished security of Rs. 1,19,53,180/-. Thereafter, vide order no. 1067/Tees-upkhaniz/2021 dated 13.12.2021 [Annexure-10], the lessee was allowed to resume the mining operation.

(h) The lessee did not obtained C.T.O. despite direction given by Regional officer, UPPCB, Kanpur Nagar, vide letter No. 1243/SA-218/22 dated 05.12.2022 [Annexure-11]. Therefore, the District magistrate vide letter No. 1690/Tees-upkhaniz/2022 dated 13.12.2022 [Annexure-12] suspended the mining operation.

(i) The Hon'ble High Court, Lucknow Bench in civil Misc. writ petition No. 18966/2021 Vaishnavi Enterprises Vs state of U.P. and others passed an order on 21.08.2023 [Annexure-13], whose operative portion is as below:-

"..... 15. This Court has perused the order of the Prescribed Authority from which it is evident that one of the materials for imposing the penalty upon the petitioner is the inspection report dated 13.1.2021. Even in the impugned order there is no averment that copy of the report dated 13.1.2021 was ever supplied and consequently there is no reason to disbelieve the

stand of the petitioner. This ground was raised by the petitioner in the revision preferred before the State Government but despite raising this issue no finding has been returned by the revisional court nor the said ground has been considered.

16. In light of the above, both the impugned orders are set aside. The matter is remitted back to the District Magistrate, Kanpur Nagar to pass fresh order after taking into account the reply submitted by the petitioner including the reply dated 3.2.2021 before passing any final order Copy of the inspection report dated 13.1.2021 should be handed over to the petitioner expeditiously say within one week from the date a certified copy of this order is produced before him. The petitioner shall have two weeks thereafter to file reply to the said inspection report and the District Magistrate is further direction to pass fresh order expeditiously say within a period of six weeks from the date of submission of reply by the petitioner in accordance with law.

17. In light of the above, the petition stand allowed."

(j) In pursuance of order dated 21.08.2023 passed by Hon'ble High court, the lessee submitted his representation on 27.08.2023 and requested a copy of the inspection report dated 13.01.2021. Vide letter No. 224/Tees-upkhaniz/2023 dated 12.09.2023 [Annexure-14] the inspection reports dated 13.01.2021 and 12.12.2020 were provided to the lessee. The lessee then submitted his representation dated 18.09.2023 and requested The District Magistrate to pass a fresh order.

In compliance of the order Hon'ble High Court's order dated 21.08.2023, the lessee was given the opportunity for presenting his case. Hearing has been done on 27.04.2024, 12.06.2024 and on 03.07.2024 and order is to be passed by District Magistrate, Kanpur Nagar.

(k) For violation of Rule 59(3) of Minor Mineral concession Rules, (regarding installation of 360° CCTV Camera in the lease area), notice No. 1434/Tees-upkhaniz/2019 dated 08.05.2019 [Annexure-15] was issued imposing a penalty of Rs. 25,000/- was imposed upon the lessee, which the lessee deposited through challan No. E813231 dated 08.05.2019 [Annexure- 16]. The lease expired on 06.04.2023.

(l) In pursuance of the joint inspection report dated 21.06.2022, for illegal mining of 769 cub.mtr. by the lessee, notice letter No. 1532/Tees-upkhaniz/2022-23 dated 10-08-2022 [Annexure-17] was issued by the District Magistrate demanding a sum of Rs. 11,55,837/-. The lessee has filed a revision case [95(R)/SM/2022] before the state Govt. against the notice dated 10.08.2022, which is under consideration.

(m) As per the inspection report of SDM Bilhaur dated 07.12.2020 [Annexure-18], no evidence of constructing a dam in the main stream of River Ganga in the allotted lease area was found.

4. That This Hon'ble Tribunal vide its order dated 21.03.2024 has also directed that: "11. Further, the Director, Geology and Mining, Uttar Pradesh is also directed to personally look into and take appropriate action for cancellation of the mining lease in all the cases in which the respective mining lease holder has not obtained A CTO from UPPCB despite expiry of reasonable time and to file action taken report by way of separate affidavit within two months at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF."

In this regard, it is submitted that vide letter no. 1274/M.-NGT Vaad/2022 dated 10.11.2023 [Annexure-19] all the District Magistrates of Uttar Pradesh has been directed to ensure strict compliance of orders of Hon'ble N.G.T dated 30.05.2023 and 17.10.2023."

127. In reply dated 31.01.2023 Respondent No.2 submitted that no charge of illegal mining has ever been established against the Respondent no. 2.

128. It may be observed that in the present case there are serious violations of the SSMG 2016 and EMGSM 2020 and EC conditions by the Project Proponent and also by the Director, Geology and Mining, Uttar Pradesh and UPPCB some of which are highlighted below:-

- (i) In the affidavit of the Director, Geology and Mining, Uttar Pradesh it is admitted that the lease holder /project proponent has not filed any periodical returns and the project proponent has not got any audit /periodical inspection done from any third party /departmental agency.
- (ii) Flat bandha was found in village Katra atwa located 700 metre to the west of the above lease area. FIR was registered and chargesheet has been filed against accused including lessee.
- (iii) The Project Proponent did not install CCTV Camera in mining area for which merely penalty of Rs.25,000/-was imposed but there is no

material to show due verification of the factual position as to whether CCTV camera was subsequently installed.

- (iv) The Project Proponent is alleged to have indulged in illegal mining and transported ordinary sand about 54219 cubic mtrs. from plot no.01m of area 5.4219 hectare outside the approved mining area. Vide order No. 443/30--upkhaniz/2021 dated 03.02.2021 the mining operation was suspended and the lessee was instructed to deposit amount of Rs. 2,39,06,360/-. Respondent No.2 filed Revision Petition No. 48(R)/SM/2021 which was dismissed on 09.08.2021. Respondent No.2 filed Writ Petition No. 18966/2021 which was allowed by Hon'ble Allahabad High Court vide order dated whereby both the impugned orders were set aside and the matter was remitted back to the District Magistrate, Kanpur Nagar to pass fresh order after taking into account the reply submitted by the petitioner including the reply dated 03.02.2021. Before passing any final order copy of the inspection report dated 13.01.2021 was to be handed over to Respondent No.2 expeditiously say within one week from the date a certified copy of the order was produced before him and Respondent No.2 was to be given two weeks thereafter to file reply to the said inspection report. The District Magistrate was directed to pass fresh order expeditiously say within a period of six weeks from the date of submission of reply by the petitioner in accordance with law. In pursuance of order dated 21.08.2023 passed by Hon'ble High court, the lessee submitted his representation on 27.08.2023 and he requested to provide the inspection report dated 13.01.2021. Vide letter No. 224/30-upkhaniz/2023 dated 12.09.2023 inspection reports dated 13.01.2021 and 12.12 2020 were provided to the lessee. After that the lessee again presented his representation dated 18.09.2023 and requested the

District Magistrate, Kanpur Nagar to pass a fresh order. In compliance of order dated 21.08-2023 passed by Hon'ble Allahabad High Court for passing fresh order, the lessee was given an opportunity of hearing. Hearing was done on 27.04.2024, 12.06.2024 and on 03.07.2024. **The matter of passing of fresh order was stated to be in process.**

- (v) As per joint inspection report dated 21.06.2022, illegal mining of 769 cub. mtr. was done by the lessee. Notice letter No. 1532/30-upkhaniz/2022-23 dated 10.08.2022 [Annexure-17] was issued by the District Magistrate demanding a sum of Rs. 11,55,837/-. The lessee filed revision case [95(R)/SM/2022] before the State Government against notice dated 10.08.2022, which was stated to be under consideration.

129. In the present case, no material has been placed before this Tribunal as to passing of fresh order by the District Magistrate, Kanpur as directed by Hon'ble High Court of Allahabad vide order dated 21.08.2023 in Civil Miscellaneous Writ Petition No. 18966 of 2021 Vaishnavi Enterprises Vs. State of Uttar Pradesh.

130. The District Magistrate, Kanpur is directed to pass fresh order as directed by Hon'ble High Court of Allahabad vide order dated 21.08.2023 in Civil Miscellaneous Writ Petition No. 18966 of 2021 Vaishnavi Enterprises Vs. State of Uttar Pradesh within one month from the date of receipt of a copy of this order, if such fresh order has not been passed so far.

131. In the present case, no material has been placed before this Tribunal that the State Authority has disposed of the Revision No. 95/R/SM/2022.

132. The State Authority is directed to disposed of the Revision No.

95/R/SM/2022 expeditiously preferably within three months from the date of receipt of a copy of this order, if the above said Revision has not been disposed of so far.

133. Efforts have been made to project incidents of illegal mining as incidents of wrong demarcation but there is no cogent material to substantiate the claim. **Action regarding such illegal mining was not taken as per SSMG 2016 and EMGSM 2020 and directions of this Tribunal in OA 360 of 2015 titled as National Green Tribunal Bar Association Vs. Virender Singh (State of Gujarat).** The facts and circumstances of the present case reveal serious violations of environmental laws/norms by the Respondent no. 2-project proponent and serious derelictions of duties by concerned officers of the Mining Department, Government of Uttar Pradesh and UPPCB.

Illegal Mining has to be dealt with sternly by visiting the persons involved with all stipulated consequences without any leniency.

134. It may be observed that strict action is required to be taken against all persons involved in illegal mining in accordance with law.

135. Section 21(1) of the MMDR Act provides that whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area. Section 21 (6) of the MMDR Act empowers the police to investigate offence punishable under Section 21 of the MMDR Act by providing that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.

136. In **Lalita Kumari vs. Govt. of U.P. (SC) : 2013(4) R.C.R.(Criminal) 979 : 399 :2014(2) SCC 1** Hon'ble Supreme Court held that registration of

FIR is mandatory under Section 154 of the Code of Criminal Procedure, 1973, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation and if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

137. In **State of NCT of Delhi vs. Sanjay, (2014) 9 SCC 772**, Hon'ble Supreme Court considered the question whether the provisions contained in Sections 21, 22 and other sections of MMDR Act, 1957 operate as bar against prosecution of a person who has been charged with allegations which constitute offences under Section 379/114 and other provisions of the Indian Penal Code, 1860 (the IPC). In other words, whether the provisions of MMDR Act explicitly or impliedly excludes the provisions of the IPC when the act of an accused is an offence both under the IPC and under the provisions of the MMDR Act. Since conflicting views had been taken by Gujarat High Court, Delhi High Court, Kerala High Court, Calcutta High Court, Madras High Court and Jharkhand High Court, Hon'ble Supreme Court proceeded to settle the question and on detailed analysis of the relevant statutory provisions and judicial precedents, Hon'ble Supreme Court observed as under:-

"69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

71. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

72. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, I.P.C., it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in section 190 (1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-a-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled....."

138. In **Jayant vs. State of Madhya Pradesh(SC) : Law Finder Doc Id #**

1776867 Hon'ble Supreme Court observed as under :-

"After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis a vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the concerned Incharge/ SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned Incharge/ SHO of the

police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned Incharge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering subsection 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under subsection 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.”

139. The settled position of law which emerges is that in a case where there is a theft of sand and gravels from the river bed, the police can register a case, investigate the same and submit a final report under Section 173 of the Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in section 190 (1)(d) of the Cr.P.C. It may be observed here that the Parliament has made offence punishable under Section 21 of the MMDR Act cognizable only for the purpose to enable the Police to register FIR and investigate the same. Arrest and custodial interrogation of the offenders may be mandatorily required in cases of illegal mining and/or illegal transportation of illegally mined minor mineral for ascertaining the place of illegal mining, seizure of the mined mineral, tools, equipment, vehicles used and other persons involved in the commission of the offences. No doubt the Mining Officer is authorized to file complaint under Section 22 of the MMDR Act but due to having no power to arrest and interrogate the

offenders, the Mining Officer may not be able to collect the factual information and legal evidence to fasten criminal liability to the accused complained against. For the commission of offence punishable under Section 379 of the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act. For the commission of offence under Section 21 of the MMDR Act the Magistrate having jurisdiction can take cognizance of the said offence on the basis of complaint that may be filed by the authorized officer in respect of violation of various provisions of the MMDR Act along with the report under Section 173 (2) of the Cr.P.C. filed by the Police.

140. In EMGSM 2020 detailed guidelines have been incorporated for effectively dealing with cases of illegal mining and guidance has been provided for taking action against illegal excavation and transport. The relevant of the same reads as under:-

"9.6 Actions against illegal excavation and transport

Solapur district administration in Maharashtra had adopted a multi-pronged strategy to penalize the persons involved in illegal excavation and transport which resulted in a significant increase in revenue earned by the state. Following rules and procedures as mentioned in these guidelines will add to the costs of PP. Those involved in illegal activities are not required to bear these costs and this will make their supply in the market cheaper (though illegal). This will put the players running their business by following rules and procedures laid down by the government to disadvantage as far as the selling price is considered. Therefore, it is necessary to come down heavily on those involved in illegal excavation/transport, so that there is no incentive for players to abide by the rules.

The following action may be taken to achieve this deterrence against illegal business:

1. *The action should be taken under all legal options available simultaneously. Thus, after identifying the case of illegal excavation, storage and/or transport of minor minerals (including sand), fine should be levied as per the land revenue*

laws/code(s) of the state. In addition, FIR should be lodged in the police station under relevant sections of law including sec 379 IPC. In addition, action under the Motor Vehicle Act, 1989 and relevant rules should initiate to cancel/suspend the driving license of the driver and permit of the vehicle. Further, action should be initiated under provisions in the Income Tax Act, 1961 for unaccounted income and under the Central Goods and Services Act, 2017 for non- payment of GST. (Earlier this was done under the state act pertaining to Value Added Tax/Sales Tax). Habitual offenders should also be taken up under local state laws for externment and/or preventive action. It is clarified that as per law, it is possible to take all actions under various laws simultaneously for one offence. What is prohibited in law is an action under the same law for the same act more than once.

2. The action should be taken against all persons responsible. Often, there is a tendency to penalize only the drivers of the vehicles. The mafia of illegal mining and transport is much bigger and drivers are only one part of the system. It is necessary to identify all those involved in the offence. It is usually not possible to reach the place of excavation without creating a motorable pathway up to the same through land which may be private land. Such role of such landowners needs to be looked into for each offence and proceeded against simultaneously. Further, the role of vehicle owners needs to be probed. Role of the person who allowed his land to be used for illegal excavation and storage should also be examined. Lastly, the person who purchases such sand should also be probed. The legal proceedings stated above needs to be initiated against all of these together. An attempt should be made to fix the financial responsibility in joint and several ways so that recovery is easier.

3. There may be discretion available in law about the extent of the penalty to be levied. If such discretion is very wide, then it is advisable that guidelines may be laid down to reduce such discretion in law for levying penalties. For example, in Maharashtra, Land Revenue Code, fine of any amount of penalty up to thrice the value of the sand can be levied. Solapur district administration had instructed Tahsildars and SDMs not to use discretion and levy the fine of three times the value. Availability of discretion makes junior level functionaries susceptible to pressures and it may also lead to corrupt practices.

4. It is emphasized that actions, as stated above, are most important to ensure that the IT-based system works. If these exemplary actions are not taken against everyone, it shall create a strong disincentive to those involved in legal excavation and transportation. For IT-based (or any other) legal system to work, it is necessary to ensure that illegal system stops working altogether."

Association Vs. Virender Singh (State of Gujarat) this Tribunal in its order dated 26.02.2021 emphasized the measures to deal with the menace of illegal mining. The closing paragraphs containing the directions are reproduced below:-

"Enforcement of Monitoring Mechanism and review by the Chief Secretary at State level and Secretary MoEF&CC at National level

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

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

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

Similarly, at National level, such review needs to be conducted atleast once in a year by the Secretary, Environment in

*coordination with the Secretaries Mining and Jalshakti Ministries the CPCB.
Publication of Annual Reports*

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

Interaction at National Level

30. We direct the Secretary MoEF to convene a meeting in coordination with the CPCB and Mining and Jalshakti Ministries of Central Government and such other experts/individuals at National level and representatives of States within three months for interaction on the subject which may be followed by such meetings being convened by the Chief Secretaries in all States in next three months. Holding of such meetings will provide clarity on enforcement strategies and help protection of environment."

141. The Director, Geology and Mining, Uttar Pradesh and the Member Secretary, UPPCB are directed to periodically inspect the mining lease sites in the State of Uttar Pradesh and monitor mining activities for verifying status regarding compliance with statutory provisions, SSMG-2016, EMGSM-2020, EC and CTO conditions and directions given by Hon'ble Supreme Court and this Tribunal and take appropriate preventive, punitive and remedial action in accordance with law.

142. The Director, Geology and Mining, Uttar Pradesh and the Member Secretary, UPPCB are also directed to ensure that the directions given by this Tribunal vide order dated 26.02.2021 passed in O.A. No. 360/2015 titled National Green Tribunal vs. Virendra Singh and other connected cases are strictly followed and inspection is also carried out by the Expert Committee at least thrice for each lease i.e. after expiry

of 25 % the lease period, then after 50 % of the period and finally six months before expiry of the lease period for correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on the website of the SEIAA.

143. All the District Magistrates and the Commissioners /Superintendents of Police of the concerned District are directed to periodically make surprise visits in the mining lease sites in the District for preventing illegal mining and to take all requisite measures to ensure that no illegal mining and illegal transportation of mined minor minerals takes place in the District.

Failure to comply with award, order, decision of this Tribunal constitutes an offence.

144. Section 25 of the National Green Tribunal Act, 2010 provides that an award or order or decision of the Tribunal under the above said act shall be executable by this Tribunal as a decree of a civil court and for this purpose this Tribunal shall have all the powers of a civil court. Sections 37 to 40 and Order 21 and Rules 37 to 40 of the Code of Civil Procedure, 1908 empowers the Civil Court to execute its decree by arrest and detention of the Judgment debtor in the civil prison. This Tribunal is also empowered by these statutory provisions to execute its award/order/decision by arrest and detention of the defaulters in civil prison besides other coercive methods.

145. Section 26 of the National Green Tribunal Act, 2010 visits the failure to comply with orders of this Tribunal with penal consequences and the same reads as under: -

“26 Penalty for failure to comply with orders of Tribunal. - (1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten

crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention: Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code”

146. It may also be observed here that the Parliament while enacting the National Green Tribunal Act, 2010 contemplated the situations where the failure to comply with any order/award/decision of this Tribunal may be by a Department of the Government and in such an eventuality made provision in Section 28 of the National Green Tribunal Act, 2010 for punishment of the Head of the Department which reads as under:-

“28 Offences by Government Department. - (1) *Where any Department of the Government fails to comply with any order or award or decision of the Tribunal under this Act, the Head of the Department shall be deemed to be guilty of such failure and shall be liable to be proceeded against for having committed an offence under this Act and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.*

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

147. However, the offence punishable under Section 26 of the National Green Tribunal Act, 2010 has been made non-cognizable and Section 30 of

the National Green Tribunal Act, 2010 which provides for cognizance of offences reads as under:-

“30 Cognizance of offences. - (1) No court shall take cognizance of any offence under this Act except on a complaint made by-

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or

(b) any person who has given notice of not less than sixty days in such manner as may be prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

(2) No court inferior to that of a Metropolitan Magistrate or, a Judicial Magistrate of the first class shall try any offence punishable under this Act.”

148. On a cursory reading of the provisions of Section 30 of the National Green Tribunal Act, 2010 one may gather the impression that in cases where this Tribunal passes order/award/decision by taking cognizance suo motu without there being any complainant the matter of prosecution of defaulters has been left entirely to the Central Government or authority/officers authorised by the Central Government but even in such cases this Tribunal can order prosecution of the defaulters and on an analogy to clause (b) of Section 30 of the National Green Tribunal Act, 2010, copy of order served on the concerned Authority/Officers authorised by the Central Government shall be liable to be treated as notice for filing of such complaint and in case of failure to file complaint against the defaulters within sixty days, the Registrar of this Tribunal will be entitled to file such complaints against the defaulters in view of clause (b) of Section 30 of the National Green Tribunal Act, 2010.

149. Admittedly in the present case the directions given by this Tribunal vide order dated 26.02.2021 passed in OA 360 of 2015 titled as National Green Tribunal Bar Association Vs. Virender Singh (State of Gujarat) have

not been complied with by the Director, Geology and Mining, Uttar Pradesh and Member Secretary, UPPCB. Even though the serious violations revealed by the material on record in the present case warrant an order for their prosecution for non-compliance with the order passed by this Tribunal, but we consider it appropriate to take a lenient view and do not direct the prosecution of Director, Geology and Mining, Uttar Pradesh and Member Secretary, UPPCB but we forewarn Director, Geology and Mining, Uttar Pradesh and Member Secretary, UPPCB that in case of any future non-compliance we may be constrained to order the prosecution of Director, Geology and Mining, Uttar Pradesh and Member Secretary, UPPCB for such non-compliance without any further leniency.

(v) Whether this Tribunal is required to issue any directions in the Case and if so to what effect?

150. In view of the above discussed facts and circumstances of the case and relevant statutory provisions and environmental norms and also the fact that the mining lease in question has already expired on 06.04.2023, the present original application is disposed of with the following directions:-

- i. The Director, Geology & Mining, Uttar Pradesh is directed to ensure that copies of EC are sent to UPPCB and the concerned District Magistrate and the District Mining Officer are directed to ensure that copies of mining lease deed is sent to UPPCB and concerned UPPCB Regional Office and the Member Secretary, UPPCB is directed to ensure that copies of EC and mining lease deed are sent to concerned UPPCB Regional Office.
- ii. The Chief Secretary, Government of Uttar Pradesh is also directed to issue appropriate instructions to all the District Magistrates in the State of Uttar Pradesh that copy of mining lease is sent to the Member

Secretary, UPPCB and UPPCB Regional Office immediately on its execution for information and further necessary action for compliance with the EC conditions and also ensuring compliance with mandatory requirement of obtaining of CTE and CTO from UPPCB by the mining lease holders before commencement of the mining.

- iii. The Director, Geology and Mining, Uttar Pradesh is directed to ensure that complete information with respect to all mining leases/permits granted in the State, whatever be the term thereof, is uploaded on the website of Directorate of Geology and Mining, Government of Uttar Pradesh. All the District Magistrates in the State of Uttar Pradesh are also directed to ensure that complete information with respect to all mining leases/permits granted in the District, whatever be the term thereof, are uploaded on the website of District Administration.
- iv. The Director, Geology and Mining, Uttar Pradesh and the Member Secretary, UPPCB are directed to periodically inspect the mining lease sites in the State of Uttar Pradesh and monitor mining activities for verifying status regarding compliance with statutory provisions, SSMG-2016, EMGSM-2020, EC and CTO conditions and directions given by Hon'ble Supreme Court and this Tribunal and take appropriate preventive, punitive and remedial action in accordance with law.
- v. The UPPCB is directed to upload and regularly update the information on its website regarding the mining lease holders who have applied for CTE/CTO, who have been granted CTE/CTO, the period of validity of CTE/CTO, whose applications for CTE/CTO are pending and whose applications for CTE/CTO have been rejected and UPPCB is also directed to take appropriate action including issuance of closure order

and imposition of environmental compensation from mining lease holders who commenced/carried out mining without obtaining CTE/CTO.

- vi. The Director, Geology and Mining Department, Uttar Pradesh, the District Magistrates and the Superintendent of Police in the State of Uttar Pradesh are directed to ensure that no mining is allowed to commence or continue by any of the mining lease holders without obtaining of CTE/CTO from UPPCB as the case may be which fact has to be verified by them with reference to the information uploaded by UPPCB on its website from time to time.
- vii. The Director, Geology and Mining, Uttar Pradesh and the Member Secretary, UPPCB are directed to maintain a data base on the basis of satellite imagery of the mining area leased out to enable easy detection of unlawful activities like construction of temporary bridge/road/passage and to ensure that no temporary bridge or road is constructed across river streams/channels for carrying out mining and allied activities and mining across river streams/channels may be permitted only if so mentioned in form I, EIA report and mining plan and specifically stipulated for in EC and mining lease and the mode of access and transportation of the minor mineral provided for in the same.
- viii. The Director, Geology and Mining, Uttar Pradesh and the Member Secretary, UPPCB are directed to ensure that the directions given by this Tribunal vide order dated 26.02.2021 passed in O.A. No. 360/2015 titled National Green Tribunal vs. Virendra Singh and other connected cases are strictly followed and inspection is carried out by the Expert Committee at least thrice for each lease i.e. after expiry of

25 % the lease period, then after 50 % of the period and finally six months before expiry of the lease period for correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on the website of the SEIAA.

- ix. All the District Magistrates and the Commissioners/Superintendents of Police of the concerned District are directed to periodically make surprise visits in the mining lease sites in the District for preventing illegal mining and to take all requisite measures to ensure that no illegal mining and illegal transportation of mined minor minerals takes place in the District.
- x. The Divisional Forest Officer, Kanpur Nagar is directed to verify the factual position and submit report as to whether respondent No. 2 Project Proponent has carried out plantation over 20 % of total lease area or along road sides as mandated by EC conditions and to submit report within three months specifying the deficiencies of plantation in terms of area, location, number and nature of species of trees and suggesting measures required to be taken by respondent no. 2 Project Proponent for remedying deficiencies of plantation and the budget amount required for the same.
- xi. Respondent no. 2-Project Proponent is directed to ensure that such deficiencies of plantation so mentioned in the report of the Divisional Forest Officer, Kanpur are remedied during monsoon 2026 and requisite plantation is carried out on panchayat land/designated government land/roadsides and to file compliance report in this regard within next four months.
- xii. The District Magistrate, Kanpur Nagar is directed to pass fresh order as directed by Hon'ble High Court of Allahabad vide order dated

21.08.2023 in Civil Miscellaneous Writ Petition No. 18966 of 2021 Vaishnavi Enterprises Vs. State of Uttar Pradesh within one month from the date of receipt of a copy of this order, if such fresh order has not been passed so far.

- xiii. The State Authority is directed to dispose of the Revision No. 95/R/SM/2022 expeditiously preferably within three months from the date of receipt of a copy of this order, if the above said Revision has not been disposed of so far.
- xiv. The Member Secretary, UPPCB is directed to verify the CSR activities conducted by Respondent No. 2-Project Proponent and the amount spent on the same and to point out the deficiencies to Respondent No. 2-Project Proponent within three months.
- xv. Respondent No. 2-Project Proponent is directed to remedy the deficiencies and carry out CSR activities with the remainder of the amount as the case may be in accordance with the directions of the District Environment Committee/District Magistrate, Kanpur Nagar within next three months.
- xvi. CPCB is directed to verify whether Daman and Diu PCC and Goa SPCB have also adopted and implemented the classification and file further action and file further report in this regard within three months.

151. Reports as directed above may be filed within the specified period before the Ld. Registrar General, National Green Tribunal, Principal Bench, New Delhi who shall be at liberty to list the matter before the Bench for further directions if further orders are considered to be necessary.

152. A copy of this order may be sent to the Chief Secretary, Government of Uttar Pradesh, the Director, Mining and Geology, Uttar Pradesh, Member

Secretary, UPSEIAA, Member Secretary, UPPCB, the District Magistrate, Kanpur Nagar, the Divisional Forest Officer, Kanpur Nagar and Respondent no. 2-Project Proponent by e-mail for requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

January, 16th 2026
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