

Item No. 01 & 03

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)
Original Application No. 05/2024(CZ)**

Arun Sharma Applicant(s)
Vs
State of Rajasthan & Ors. Respondent(s)

WITH

Original Application No. 07/2024(CZ)

Ashok Sharma Applicant(s)
Vs
State of Rajasthan & Ors. Respondent(s)

Date of Hearing: **07.03.2024**

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

For Applicant (s): Mr. Naveen Ahuja, Adv.
For Respondent(s): Mr. Arvind Soni, Adv.
Mr. Nishant Kesharwani, Adv.
(For Mr. Shoeb Hasan Khan, Adv.)

ORDER

1. Article 21 of the Constitution of India which provides that no person shall be deprived of his right to life or personal liberty, except according to the procedure established by law, is interpreted by the Indian courts to include in this right to life, the right to clean and decent environment. Right to decent environment, as envisaged under Article 21 of the Constitution of India also gives, by necessary implication, the right against environmental degradation. It is in the form of right to protect the environment, as by protecting environment alone can we provide a decent and clean environment to the citizenry. Right to clean

environment is a guaranteed fundamental right. Various courts, particularly the superior courts in India are vested with wide powers, especially in terms of Articles 32 and 226 of the Constitution of India to deal with issues relating to the fundamental rights of the persons. The courts, in fact, can even impose exemplary damages against the polluter. Proper and healthy environment enables people to enjoy a quality life which is the essence of the right guaranteed under Article 21. The State and the citizens are under a fundamental obligation to protect and improve the environment including forests, lakes, rivers, wild life and to have compassion for living creatures. Right to have living atmosphere congenial to human existence is a right to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. The power to issue directions and other powers should be exercised by the State to effectuate and further the goals of approved scheme, zonal plans, etc. The hazards to health and environment of not only the persons residing in illegal colonization but of the entire town as well as the provisions and schemes of the relevant Acts have to be taken into consideration. The most vital necessities, namely air, water and soil having regard to the right to life under Article 21 cannot be permitted to be misused or polluted so as to reduce the quality of life of others. Risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. Life, public health and ecology have priority over unemployment and loss of revenue. It is often said that development and protection of environment are not enemies but are two sides of the same coin. If without degrading the environment or by minimizing the adverse effects thereupon by applying stringent safeguards, it is possible to carry on developmental activities applying the principle of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for

development of industry, irrigation resources, power projects, etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. Courts have exercised the power of imposing exemplary damages against the pollutants in order to protect the environment and to restore the damage done to the environment as well. In fact, even the disturbance in the environment by undesirable sound of various kinds, amounts to noise pollution. It is a shadowy public enemy whose growing public menace has increased in the modern age of industrialization and technological advancement. Noise has become one of the major pollutants and has serious effects on human health. Consistent judicial opinion in India has recognised the right to live in freedom from noise pollution as a fundamental right also, protected under Article 21 of the Constitution. If anybody increases the volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed under Article 21. Courts have even held that Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed under Article 21 of the Constitution. Thus, the right of an individual to healthy and clean environment including air, water, soil and noise-free environment is of paramount consideration and it is impermissible to cause environmental pollution and particularly in violation of the prescribed standards. Since the different facets of environment are relatable to life and human rights and concern a person's liberty, it is necessary that resources are utilised in a planned manner. Wherever industrialization has an impact on utilisation of essential resources like air, water and soil and results in irreversible damage to environment, then it may be impermissible to utilise these resources in that fashion. In the recent times, there has been accelerated

degradation of the environment, primarily on account of lack of effective enforcement of laws and non-compliance with the statutory norms. Concentrated industrialization in some pockets has been the other reason for enhanced damage to the environment. It emerges from the desire of the people to operate from the areas where the industry presently exists.

2. Issue raised in this application are the violation of the water (prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and The Noise Pollution (Regulation and Control) Rules, 2000 and illegal mining being carried out within the notified area of Band Baretha Wildlife Sanctuary and the other parts of Tehsil-Bayana in the District of Bharatpur, Rajasthan which is giving rise to the inhalable dust resulting in breathing problems to the villagers living in the abadi area which is just adjacent to the illegal mining area. Moreover, the illegal mining and its transportation going on in the area has created troublesome situation for the people residing in the nearby area and the travellers passing by from that area.
3. The matter was taken up by this Tribunal on 15.10.2024 and a committee was constituted consisting of Collector, Bharatpur, DFO, Bharatpur and Rajasthan State Pollution Control Board with direction to submit the factual and action taken report.
4. The members of the committee visited the site and submitted the report which is as follows:-
 - i. *Looking in to the issues, a meeting cum discussion was convened in the meeting hall of Regional Office, RSPCB, Bharatpur with the joint committee members, representatives of Department of Mines & Geology, Govt. of Rajasthan and complainant.*
 - ii. *After deliberations, it was decided then and there by the committee to inspect the entire area to assess the status of*

illegal mining activity. Subsequently, the area under question was visited by the joint committee along with complainant and representatives of Department of Mines and Geology, GoR. This report is being filed by the aforementioned Joint Committee after conducting the field visit on 21-02-2024.

iii. Circular regarding control of illegal mining in Rajasthan issued by Government of Rajasthan vide letter dt. 05-07-2021. For compliance, following directions were issued :-

a. Forest department is completely responsible for stopping illegal mining in forest areas.

b. Mining department is responsible for stopping illegal mining in non-forest areas.

c. Action against the illegal mining over khatedari land shall be done by Tehsildar.

d. Action against the illegal mining over land as industrial/other works by RIICO/UIT/other organisations shall be done by District Collector/Competent officer.

iv. Background

The area under question is forest area as Band Baretha wild Life Sanctuary located in District Bharatpur, Rajasthan. By the notification of the Government of India in the Ministry of Environment, Forest and Climate Change published in the Gazette of India vide number S.O. 6319(E), dated the 26th December 2018, the Central Government notified an Eco-sensitive Zone (ESZ) surrounding the Bandh Baretha Wildlife Sanctuary in the State of Rajasthan.

- The Bandh-Baretha Wildlife Sanctuary is spread over an area of 204.16 square kilometers and the Sanctuary is located 45 kilometres from Bharatpur (Rajasthan), 76 kilometres from Fatehpur Sikri (Utter Pradesh) and 78 kilometres from Dholpur*

District (Rajasthan); NOW THEREFORE, in exercise of the powers conferred by sub-section(1) and clauses (v) and (xiv) of subsection (2) and sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby notifies an area to an extent ranging from 25 meters to 1 kilometer around the boundary of Bandh-Baretha Wildlife Sanctuary in the State of Rajasthan as the Bandh-Baretha Wildlife Sanctuary Eco- sensitive Zone (hereinafter referred to as the Eco-sensitive Zone) details of which are as under, namely:- Extent and boundaries of Eco-sensitive Zone varies from 25 meters to 1 kilometer around the boundary of the Bandh- Baretha Wildlife Sanctuary and the area of the Eco-sensitive Zone is 173.92 square kilometres.

- *Commercial mining, stone quarrying and crushing units are prohibited activities as per the as per said notification.*
- *De-notified and Forest Diversion in reference of sand stone mining in tehsil Bayana (Bharatpur):*

Some part of the Band Baretha wild Life Sanctuary which was then de-notified by NBWL (National Board of Wild Life) in its 61th meeting dated 18.02.2021 & Gazette notification in this context has been published by the Rajasthan State Forest department dated 23.03.2021 and Eco- sensitive Zone (ESZ) area of the Band Baretha WLS has also been de-notified by MoEF & CC on 18.05.2021. (Notification dt. 18-05-2021 Attached at annexure-5). A total area measuring 646.56 hac. has been de-notified form Band Baretha WLS. Forest Diversion (Stage-I and II) was granted in favor of Department of Mines and Geology, Rajasthan in Paharpur over an area of 398.0085 Hac. by Ministry of Environment, Forest and Climate Change (Forest

Conservation Division) vide letter dt. 11.06.2021 and 11.03.2022. The purposes of forest diversion are mining, employment generation and earning of revenue generation. (Forest Diversion letters dt. 11.06.2021 and 11-03-2022 attached).

v. The area under allegation for illegal mining activity is Darbharana & Ghadi Bajna under forest area of Band Baretha wild Life Sanctuary in tehsil Bayana District Bharatpur.

vi. Factual Observations-

- Alleged area for illegal mining activity is purely comes/falls under forest area. There is no legal mining activity is carried out nearby alleged locations/sites.
- During the visit of joint committee on 21.02.2024, concerned area of forest in tehsil Bayana where illegal mining allegations were alleged were visited to ascertain the status of illegal mining. There are two locations/sites were informed by applicant/complainant for involvement in illegal mining activity as-
- 1st site/location is Darbharana block of forest area near village kot of tehsil Bayana and
- 2nd location/site is also in block Darbharana of forest area known as Ghadi Bajna nearby village is Bangarra of tehsil Bayana.

A. 1st location/site: Darbharana block near village kot of tehsil Bayana: -

- i. Darbharana block is having 62 sq. km area of forest.
- ii. At site, illegal mining for sand stone was observed with new and old activities.
- iii. Looking to the site conditions, it was revealed that this is an open cast mining which has been carried out by drilling and wire saw machines.

- iv. Area under illegal mining was observed about 2 sq. km and average depth of open cast mining was about 12 ft.*
- v. Looking to the site condition, it was observed that the mining activity is being carried out in forest area with the help of drilling and wire saw machines, and heavy vehicles used for transportation of sand stone blocks.*
- vi. Water used in the wire saw machines for cooling and dust suppression purposes. For providing water for cooling in mining activity, black color pipes for water carrying found spread over all illegal mining area.*
- vii. At the time of visit of joint committee, no machines and vehicles were found at site. Besides, some hand machines like sabbal, hathoda, taanki etc., were found at site which were seized by the Forest department.*
- viii. That area is clearly falls/comes under forest area as Band Baretha wild Life Sanctuary and looking to the site conditions of illegal mining activity within forest area clearly evident of violation.*

B. 2nd location/site: also in block Darbharana known as Ghadi Bajna nearby village is Bangarra of tehsil Bayana-

- i. Darbharana block is having 62 sq. km area of forest.*
- ii. At site, illegal mining for sand stone was observed with new and old activities.*
- iii. Looking to the site conditions, it was revealed that this is an open cast mining which has been carried out by drilling and wire saw machines.*
- iv. Area under illegal mining was observed about 3-4 sq. km and average depth of open cast mining was about 12 ft.*

- v. *Looking to the site condition, it was observed that the mining activity is being carried out in forest area with the help of drilling and wire saw machines, and heavy vehicles used for transportation of sand stone blocks.*
- vi. *Water used in the wire saw machines for cooling and dust suppression purposes. For providing water for cooling in mining activity, black color water carrying pipes were found spread over all illegal mining area.*
- vii. *At the time of visit of joint committee, no machines and vehicles were found at site.*
- viii. *That area is clearly falls/comes under forest area as Band Baretha wild Life Sanctuary and looking to the site conditions of illegal mining activity within forest area clearly evident of violation.*
- ix. *It is important to mention here that the Utter Pradesh (village Jagner, District Agra) border is just 150-200 meters away from the 2nd alleged site (i.e., also in block Darbharana known as Ghadi Bajna nearby village is Bangarra of tehsil Bayana).*

C. Common points for both sites-

- i. *There is no check post of the mines department and district administration at the border of Rajasthan and Utter Pradesh to check any activity which involved in illegal mining.*
- ii. *During visit, joint committee was informed that in this area this type of mining activity is operational for 20-30 years. Earlier, nearby villagers/localities carried out mining by hand machines later on the activity had been shifted over mechanized illegal mining. Villagers/localities are forcefully involved in illegal mining activity.*

- iii. *ACF, Forest Wild Life, Bharatpur informed that the alleged block Darbharana is having 62sq. km area. They are having only 10 beat guards for controlling the illegal mining activity those are not sufficient to effectively controlling the illegal mining activity. They are required one beat guard over one sq. km area adequately.*
- iv. *Boundary wall was not found all along the forest area as wild life sanctuary which provided partially and also found damaged at many places. In this regard ACF, Wild life Bharatpur informed that construction of boundary wall all along the sanctuary area is not possible to construct due to shortage of fund.*
- v. *SDM, Bharatpur, District Bharatpur informed that they have not received any matter regarding illegal mining and revenue department is not having jurisdiction for taking action against illegal mining activity under the forest area.*
- vi. *AME, Mining Department Rupbas, Tehsil-Rupbas, District Bharatpur informed that there is no mining activity under jurisdiction of mining department nearby area of the alleged area/sites where illegal mining activity is being carried out and they have no jurisdiction for taking action against illegal mining activity under the forest area.*
- vii. *Adverse effect over environment viz; air pollution, effect over flora and fauna cannot be denied due to illegal mining activity in sanctuary area.*
- viii. *During visit at site marks of heavy vehicles tyres were found which must have been used for transportation of sandstone blocks.*
- ix. *As per the locals some goons are involved in this illegal mining activities in the Darbharana block (Darbharana and Ghadi bajna villages) of Bandh Baretha wild life sanctuary of tehsil Bayana in district Bharatpur with the support of forest department and local administration and villagers are not ready to reveal the names as it is going from last so many years and it is creating employment to*

them. It was informed that local village people are dependent on this mining activities.

vii. Details of illegal mining activity and action taken-

As per direction of Joint committee, letters have been written by RSPCB Bharatpur to Forest Department, Bharatpur, Mining Department, (Bharatpur), SDM, Bayana (Bharatpur) on 21.02.2024 for providing data of illegal mining in this area and actions taken thereon.

- It was informed by DCF wild life, Forest Department Bharatpur that 25 cases of illegal mining activities were identified and necessary action was taken details of which have been forwarded vide letter dt. 22-02-2024 details are as under-

Total cases (April 2023 to January 2024)	Illegal mining Activity	Illegal mining transportation activity	Amount of fine imposed
25	06	19	Rs. 12.32 lacs

- It was informed by SDM, Bayana (Bharatpur) vide their letter dt. 26-02-2024 that no matter/complaint has been received and Bandh Baretha Wild life sanctuary comes under forest department in which they have no jurisdiction for taking action, so no action has been taken against illegal mining activities in Bandh Baretha Wild life sanctuary by revenue department.
- It was informed by AME, Roopwas, district Bharatpur that 89 cases of illegal mining activities were identified and necessary action was taken by the SIT committee constituted at district level, sub-division level and their own level details of which have been forwarded vide letter dt. 29-02-2024 details are as under-

Total cases (1st April 2023 to 28th February 2024), 2021-2023	Illegal mining activity	Illegal mining transportation activity	No. of FIR	Amount of fine imposed
90	01	89	04	Rs. 79.99 lacs.

viii. *Conclusion and Recommendations-*

The concerned officials of Forest, Mining and Revenue departments who are posted at Bharatpur should take proactive steps to stop the illegal sand stone mining which is going on from many years within the boundary of notified Bandh Baretha Wildlife Sanctuary. Though it is illegal mining but it is operating as a professional way by construction of road inside sanctuary by breaking boundary wall & cutting trees, using DG set for power supply, water supplied through temporary pipe for mining, heavy machines/cranes using for lifting the mined material, using huge number of trucks for transporting the stone blocks and involving lot of manpower for mining activities. Therefore, looking at the seriousness of the issue the joint committee has suggested the following:

1. The forest department is responsible for protection and conservation of Darbharana block (Darbharana and Ghadi bajna villages) of Bandh Baretha wild life sanctuary of tehsil Bayana in district Bharatpur because as per the circular vide letter dated 5th July 2021 issued by Government of Rajasthan that Forest department is completely responsible for stopping illegal mining in forest areas.

2. The mining department shall be directed to assess the quantity of illegal mining done in the Darbharana block (Darbharana and Ghadi bajna area) of Bandh Baretha wild life sanctuary of tehsil Bayana in district Bharatpur and submit the report to District Collector for assessing the environmental damage occurred due to illegal mining and for preparing the remediation/restoration plan.

3. As per the ESZ notification (S.O. 6319(E) dated 26.12.2018) of Bandh-Baretha Wildlife Sanctuary, Central Government has constituted a Monitoring Committee, for effective monitoring of the Eco-sensitive Zone.

Which states that:

“The Monitoring Committee shall monitor the compliance of the provisions of this notification.”

“This Monitoring Committee is to submit the annual action taken report of its activities as on the 31st March of every year to the Chief Wildlife Warden in the State.”

4. Forest department and district administration shall seize machines and make challans/fine accordingly to ensure strictest possible action against illegal mining.

5. The mining department / forest department should establish a check post at the border area of Rajasthan and U.P., entrance & exit points of the Bandh Baretha wild life sanctuary to stop the illegal transporting of mining material through trucks, tractors etc.

6. Government of Rajasthan shall provide and increase the no. of beat guards and deploy unit of Rajasthan Armed Constabulary in this area adequately for effective control of the illegal mining activity in forest area.

7. The forest department shall complete the Boundary wall and district administration shall look after in the matter of finance approval for construction of boundary wall.

8. Forest department shall keep strict vigil over the illegal mining activity in alleged area to protect and to avoid adverse effects over environment. For effective surveillance in faraway arca, drone/PTZ camera and other electronic gadgets may be used.

9. The forest department shall make efforts for afforestation in the its/area/sites/locations where illegal mining activity is being carried out as possible.

10. Illegal mining in Forest and Revenue lands are being attended by State Forest Department and DMG, GoR respectively. Strict vigilance is to be ensured by the State Government in this regard.”

5. The Hon'ble Supreme Court, vide judgment in Deepak Kumar Vs State of Haryana &Ors. (2012) 4 SCC 629, directed that leases of minor minerals, including their renewal, even for an area of less than 5 hectares (ha) be granted only after environmental clearance from the Ministry of Environment and Forest and Climate Change (MoEF & CC). This direction was held to be necessary in view of degradation of environment on account of illegal and unrestricted upstream, instream and flood plain sand mining activities. Under the existing guidelines, no environmental clearance was required for minor leases of less than 5 hectare area. The result was that there was no regulation of such mining which resulted in environmental degradation. Even bigger cluster was split up in less than 5 ha units to avoid law. The Hon'ble Supreme Court observed that absence of regulation of such mining was not justified as it was threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird species, increase saline water in the rivers.
6. The Hon'ble Supreme Court observed that such mining has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand.

7. The Hon'ble Supreme Court noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and ground waters. A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3 meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. It was noted that in-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.
8. The grievance before the Tribunal is that the mining was taking place at several locations in violation of judgment of the Hon'ble Supreme Court either without any valid lease or under leases given without following the strict regulatory regime in terms of judgment of the Hon'ble Supreme Court or in violation of lease conditions. Despite this, the menace of illegal sand mining in India continues unabated.
9. Natural resources are 'public goods' and the Doctrine of Equality must guide the State in determining the actual mechanism for distribution of natural resources. It takes into account the rights and obligations of the State vis-a-vis its people and the demands that the people be granted equitable access to natural resources and they are adequately compensated for the transfer of these resources for public domain and regulation of rights and obligations of the State vis-à-vis private parties seeking to acquire the resources which demands that the procedure adopted and distribution is just and transparent.

10. Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, water and forest have great importance to public as a whole and it is wholly unjustified to make them a subject of private ownership. The public trust doctrine enjoins upon the Governments to protect the resources for enjoyment of general public rather than to permit the use for private ownership of commercial purposes.
11. When the State holds a resource that is freely available for the use of public, it provides for a high degree of judicial scrutiny on any action of the State in dealing with the subject in a prudent manner. It is the duty of the State to provide complete protection to the natural resources as a trustee of the public at large. Moreover, a policy to give free sand must be justified as a welfare measure but even this consideration cannot justify unregulated and unscientific mining unmindful of impact on environment. If in the course of mining, damage is caused, cost of the same must be recovered from such violators. In any case, the authorities cannot avoid their duty under the environmental law to prevent and restore the damage which is an inalienable duty of the State.
12. The authorities confirmed that illegal mining was taking place at large scale without any Environmental Clearance under the Environment (Protection) Act, 1986 or Consent under the Water (Prevention and Control of Pollution) Act, 1974 or the Air (Prevention and Control of Pollution) Act, 1981. Sustainable Sand Mining and Management Guidelines, 2016 were also not being followed. There was adverse impact on the ecology. No Management Plan was prepared for replenishment of preventive steps.
13. The Management Plan as per the guidelines is to require system of replenishment as well as preventive steps during the sand mining. Replenishment and reclamation of rivers and are the integral part. Guidelines also deal with the issue of depth of mining and strict regulatory regime. The management of mining clusters should have a separate approach. Management of sand deposited after the floods should be treated

as separate for mining. Monitoring system proposed includes safeguards during transport as well as checking of condition of mining.

14. The right to development itself cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. It encompasses much more than economic well-being and includes within its definition the guarantee of fundamental human rights. It includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of people's wellbeing and realisation of their full potential. It is an integral part of human rights. Of course, development is the essence of any pragmatic and progressive society. But essentially, development besides being inter-generational, must be balanced to its ecology and environment. Sustainable development means that the richness of the earth's bio-diversity would be conserved for future generations by greatly slowing or if possible halting extinctions, habitat and ecosystem destruction, and also by not risking significant alterations of the global environment that might-by an increase in sea level or changing rainfall and vegetation patterns or increasing ultraviolet radiation-alter the opportunities available for future generations. Sustainable development has been defined in many ways but the most frequently quoted definition is from the Brundtland Report which states as follows:

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- *The concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and*
- *The idea of limitations imposed by the state of technology and social organisation on the environment's ability to meet present and future needs.”*

15. The development should be such as can be sustained by ecology. Sustainable development would be the development which can be maintained indefinitely without having adverse impact on the environment and ecology. Thus, there should not be development at the cost of causing irretrievable or irreversible damage to the ecology or the environment. They must find a common path and objectivity in achieving the goal of sustainable development.

16. This Tribunal in OA No. 07/2018 (WZ) vide order dated 14.10.2020 has already issued direction as follows :-

- i. If any material or machinery is found at the place at the site where there is illegal mining, State Pollution Control Board is at liberty to seize and confiscate and proceed in accordance with law.
- ii. The mines were in operational before two years and now at the time of inspection were reported to be closed. The State PCB shall proceed to calculate the environmental compensation and proceed to realise the environmental compensation in accordance with law.
- iii. The Licensee must use minimum number of poclains and it should not be more than two in the project site.
- iv. The District Administration should assess the site for Environmental impact at the end of first year to permit the continuation of the operation.
- v. The Annual replenishment report certified by the authorised agency must be submitted to the prescribed authority. In case, the replenishment is low, the mining activity/production levels shall accordingly be

decreased/stopped.

- vi. There shall be no quarrying of sand in any river bed or adjoining area or any other area which is located within 500 m (or within the parameters as fixed by CPCB) radial distances from the location of any bridge, water supply system, infiltration well or pumping installation.
- vii. The ultimate working depth shall be 1 m from the present natural river bed level and the thickness of the sand available shall be more than 3 m in the proposed quarry site.
- viii. The sand quarrying shall not be carried out below the ground water table under any circumstances. In case, the ground water table occurs within the permitted depth at 1 meter, quarrying operation shall be stopped immediately.
- ix. The sand mining should not disturb in any way the turbidity, velocity and flow pattern of the river water.
- x. The mining activity shall be monitored by the Taluk level Force once in a month by conducting physical verification.
- xi. After closure of the mining, the licensee shall immediately remove all the sheds put up in the quarry and all the equipments used for operation of sand quarry. The roads/pathways shall be levelled to let the river resume its normal course without any artificial obstruction to the extent possible.

xii. The mined out pits to be backfilled where warranted and area should be suitably landscaped to prevent environmental degradation.

17. The Learned Counsel appearing for the Ministry of Environment, Forest and Climate Change (MoEF&CC) has argued that the respondent-Ministry has formulated the new guidelines i.e. “Enforcement & Monitoring Guidelines for Sand Mining” (EMGSM 2020) supplemental to the existing guidelines i.e. Sustainable Sand Management Guidelines 2016, which focus on the effective monitoring of the sand mining, the identification of sand mineral sources, its dispatch and end-use by consumers and the general public. Further, this document will serve as a guideline for collection of critical information of enforcement of the regulatory provision(s) and also highlights the essential infrastructural requirements necessary for effective monitoring for sustainable sand mining.

18. Learned Counsel appearing for the MoEF&CC has submitted that the Monitoring Guidelines as issued by the Ministry is required to be followed. It is to be noted that enforcement of Monitoring Guidelines for Sand Mining was issued in January, 2020 by the Ministry of Environment and Forest. The relevant paras are quoted below:

a) Parts of the river reach that experience deposition or aggradation shall be identified. The Leaseholder/ Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.

b) The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.

- c) Sand and gravel may be extracted across the entire active channel during the dry season.
- d) Abandoned stream channels on the terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. The stream should not be diverted to form the inactive channel.
- e) Layers of sand and gravel which could be removed from the river bed shall depend on the width of the river and replenishment rate of the river.
- f) Sand and gravel shall not be allowed to be extracted where erosion may occur, such as at the concave bank.
- g) Segments of the braided river system should be used preferably falling within the lateral migration area of the river regime that enhances the feasibility of sediment replenishment.
- h) Sand and gravel shall not be extracted up to a distance of 1 kilometre (1 km) from major bridges and highways on both sides, or five times (5x) of the span (x) of a bridge/public civil structure (including water intake points) on up-stream side and ten times (10x) the span of such bridge on down-stream side, subjected to a minimum of 250 meters on the upstream side and 500 meters on the downstream side.
- i) The sediment sampling should include the bed material and bed material load before, during and after the extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross-section. Using the historical or gauged flow rating curve, determine the suitable period of high flow that can replenish the extracted volume. Calculate the extraction volume based on the sediment rating curve and high flow period after determining

the allowable mining depth.

- j) Sand and gravel could be extracted from the downstream of the sand bar at river bends. Retaining the upstream one to two-thirds of the bar and riparian vegetation is accepted as a method to promote channel stability.
- k) The flood discharge capacity of the river could be maintained in areas where there is a significant flood hazard to existing structures or infrastructure. Sand and gravel mining may be allowed to maintain the natural flow capacity based on surveyed cross-section history. Alternatively, off-channel or floodplain extraction is recommended to allow rivers to replenish the quantity taken out during mining.
- l) The Piedmont Zone (Bhabhar area) particularly in the Himalayan foothills, where riverbed material is mined, this sandy-gravelly track constitutes excellent conduits and holds the greater potential for groundwater recharge. Mining in such areas should be preferred in locations selected away from the channel bank stretches.
- m) Mining depth should be restricted to 3 meters and distance from the bank should be $\frac{1}{4}$ th of river width and should not be less than 7.5 meters
- n) The borrow area should preferably be located on the riverside of the proposed embankment because they get silted in the course of time. For low embankment, less than 6 m in height, borrow area should not be selected within 25 m from the toe/heel of the embankment. In the case of the higher embankment, the distance should not be less than 50 m. in order to obviate the development of flow parallels to the embankment, crossbars of width eight times the depth of borrow pits spaced 50 to 60 meter center-to-center should

be left in the borrow pits.

- o) Demarcation of mining area with pillars and geo-referencing should be done prior to the start of mining.
- p) A buffer distance /un-mined block of 50 meters after every block of 1000 meters over which mining is undertaken or at such distance as may be the directed/prescribed by the regulatory authority shall be maintained.
- q) A buffer distance /unmined block of 50 meters after every block of 1000 meters over which mining is undertaken or at such distance as may be the directed/prescribed by the regulatory authority shall be maintained.
- r) River bed sand mining shall be restricted within the central 3/4th width of the river/rivulet or 7.5 meters (inward) from river banks but up to 10% of the width of the river, as the case may be and decided by regulatory authority while granting environmental clearance in consultation with irrigation department. Regulating authority while regulating the zone of river bed mining shall ensure that the objective to minimize the effects of riverbank erosion and consequential channel migration are achieved to the extent possible. In general, the area for removal of minerals shall not exceed 60% of the mine lease area, and any deviation or relaxation in this regard shall be adequately supported by the scientific report.
- s) Mining Plan for the mining leases (non-government) on agricultural fields/Patta land shall only be approved if there is a possibility of replenishment of the mineral or when there is no riverbed mining possibility within 5 KM of the Patta land/Khatedari land. For government projects mining could be allowed on Patta land/Khatedari land but the mining should only be done by the Government agency and material

should not be used for sale in the open market.”

19. We have also perused and examined the photographs with GPS location taken by the joint committee which clearly depicts and shows that there are rampant illegal mining in violation of environmental rules without any permission and authority of the State. The observation of the committee is that the area falls under forest area and that there are illegal minings for sandstones and site conditions reveals that an open cost mining has been carried out by drilling and wire saw machines up to the depth of 12 feet and in Darbharana block near village Kot of Thasil – Bayana it is in the area of approximately 2 square km. For transportation of the sand mines heavy vehicles were used and there are black colour pipes for water carrying found spread over all illegal mining area for providing water for cooling in mining activity, there are sabal, hathawda, Tanki etc. in the forest area as Bandh Baretha Wildlife Sanctuary and everything was done in violation of environmental rules and the matter was within the knowledge of the officers concerned.
20. Second site which is known as Gadi Bajna, nearby villages is Bangara of Tehsil – Bayana the forest is located about 62 square kilometer and within the area of three to four square kilometer the illegal mining was done up to the depth of 12 feet and serious and great damage to the forest area Bandh Baretha Wildlife Sanctuary. It was observed by the villagers that the mining activity was in operation for more than 20 to 30 years that too within the knowledge of officers concerned, the boundary wall of the forest was damaged and there are allegations and factual position as narrated by the member of the committee including representative of the District Magistrate and ACF of forest Bharatpur that this was done by local goons with the help and support of forest department and local administration though the villagers were not ready to reveal the names as it is going from last so many years.

21. The area of Bharatpur and Mathura is located at the border of Rajasthan and Uttar Pradesh and there are no control at the point of entrance and exit points of Bandh Baretha Wildlife Sanctuary to stop the illegal transportation of the mineral through trucks and tractors. There are provisions in Bandh Baretha Wildlife Sanctuary as notified by the Central Government known as Monitoring Committee for effectively monitoring the eco-sensitive zone but we think that the committee failed to exercise their duty sincerely and fairly and there are illegal mining causing damage to the environment and loss to the state exchequer that too with the connivance of the local officers. The word with connivance of the local officers is not independently used by this Tribunal but it is based on the recommendation of the Joint Committee consisting the Collector and the ACF, Forest Department which requires the attention of the Chief Secretary of the State to monitor it and to take effective steps.
22. The State Pollution Control Board of the State of Rajasthan and the State of Uttar Pradesh also failed to take care of its duties to control the illegal mining or to take action according to rules. The committee has further recommended that the Forest Department and the Mining Department should establish a check post at the border area of Rajasthan and UP at the entrance and exit points and increase the number of beat guards and deploy unit of Rajasthan Army Constabulary to look into the matter which is required to be considered by the Chief Secretary of the State.
23. Accordingly, we direct that the copy of the order be forwarded to the Chief Secretary and Principal Chief Conservator of Forest of Rajasthan and Uttar Pradesh, who will independently inquire the matter with regard to the connivance of the local officers in illegal mining and transportation of illegal mining in the Bandh Baretha Wildlife Sanctuary which is located at the 45 km from the Bharatpur Rajasthan and 76 km from the Fatehpur Sikari, Uttar Pradesh, causing great damage to the environment as well as the loss of the State exchequer damaging the road inside the sanctuary,

breaking the boundary wall, cutting of trees and using DG set for power supply within the prohibited, regulated area, use of heavy machines, cranes for lifting of the mines operated and huge number of trucks for transportation of the stone blocks.

24. It is desirable that the Chief Secretary and the Principal Chief Conservator of Forest should nominate two independent departmental higher officers to investigate the matter and to take action against the defaulting officials and to check and control the illegal mining and to realize the loss which was caused by the mining operators to the State Exchequer. Penalty as provided in the Mines and Minerals (Development and Regulation) Act, 1957 and the environmental compensation as provided by the CPCB must be assessed and realised from the defaulting units.
25. The vehicles which were used or which are being used for the transportation of the illegal mining must be confiscated, seized in accordance with law and should only be released after payment of penalty / environmental compensation decided by the CPCB or this Tribunal in different cases. Registry of this Tribunal is directed to send the copy of this order to Chief Secretary, Rajasthan, Chief Secretary Uttar Pradesh, Principal Chief Conservator of Forest of Rajasthan and Uttar Pradesh and Member Secretary, Pollution Control Board, Rajasthan and Uttar Pradesh for taking necessary actions according to rules. The further Action Taken Report be filed within four weeks.

List it on **22nd April, 2024.**

Sheo Kumar Singh, JM

Dr. A. Senthil Vel, EM

07th March, 2024
O.A No. 05/2024 (CZ)
O.A No. 07/2024 (CZ)
PN