

Items No. 01-02

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 40/2020/EZ

(I.A. No. 23/2020, I.A. No. 24/2020, I.A. No. 33/2020,
I.A. No. 35/2020, I.A. No. 44/2020 & I.A. No. 45/2020)

With

Original Application No. 57/2020/EZ

(I.A. No. 40/2020, I.A. No. 41/2020,
I.A. No. 46/2020 & I.A. No. 47/2020)

Pawan Kumar

Applicant(s)

Versus

State of Bihar & Ors.

Respondent(s)

With

MD. Rizwan

Applicant(s)

Versus

Union of India

Respondent(s)

Date of hearing: 23.09.2020

Date of uploading on the website: 14.10.2020

**CORAM: HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Vanshdeep Dalmia, Advocate (in item No. 1).
Mr. Brijender Chahar, Senior Advocate alongwith Mr. Apurba Ghosh, Advocate (in item no. 2).

For Respondent(s): Mr. Atmaram NS Nadkarni, Senior Advocate a/w Mr. Keshav Mohan and Mr.

Surendra Kumar, Advocates for Respondent Nos. 1 and 4 to 6 (in item No. 1) and for Respondents No. 3, 4 &-5 (in item no. 2)

Ms. Anamika Pandey, Advocate for SEIAA.

ORDER

1. These cases are taken up together as common questions arise and can be disposed off together by this order.
2. The Applicant in O.A. No. 40/2020/EZ who is a resident of Banka District, Bihar, and a farmer by profession, has brought this application praying for safeguard of the environment particularly to ensure that sand mining is done in accordance with law and the regulatory framework including various decisions of the Tribunal, environmental laws, Notifications and Guidelines framed by the Central Government.
3. It is stated that in partial compliance of Notification dated 15.01.2016 which amended the Environment Impact Assessment (EIA) Notification, 2006 by *inter alia* introducing Clause 7 (III) (a) mandating preparation of a District Survey Report (DSR) for sand mining or riverbed mining and mining of other minerals, the Sustainable Sand Mining Management Guidelines (SSMMG), 2016

and the directions of this Tribunal in the case of *Anjani Kumar v. State of U.P.*¹, an Interim DSR for sand mining or riverbed mining and brick earth, was prepared for the Banka district in the year 2018. This according to the Applicant is an Interim DSR which has never been finalized. The Applicant states that the concluding paragraph of Interim DSR reveals 226 ha as the total area of Sand Ghat having mineable mineral potential of 12,82,451.94 MT in River Chandan/Chanan and, approximately 109 ha with 6,17,576.4 MT mineable mineral potential in Cheer river that had been identified for sand mining in consultation with the concerned authorities before obtaining Environmental Clearance (EC) or other statutory clearances.

4. It is then stated that the District Mining Officer, Banka district, Respondent No. 5, issued a Notice Inviting Tender for E-Auction (NIT) dated 25.11.2019 proposing to auction 14 Sand Ghats in the Banka district, disclosing mineable area only for 7 mines situated on river Chandan/Chanan and for the remaining 7 the area was not mentioned. The total mineable area for the 7 Sand Blocks in river Chandan/Chanan was mentioned as 946 ha which was

¹ (2017) SCC Online NGT 979

far in excess of the 226 ha referred to in the Interim DSR. According to the Applicant, this reflected arbitrariness and unreasonableness in the manner in which the NIT had been issued and also demonstrated the consequence of the lack of DSR for the district. Referring to the Enforcement and Monitoring Guidelines for Sand Mining (EMGSM), 2020, it is stated that preparation of DSR is imperative in curbing the unplanned grant of mining leases. It is contended that by judgment dated 13.09.2018 in *Satendra Pandey v. Ministry of Environment, Forest & Climate Change & Anr.*², the Tribunal *inter alia* partially quashed the Notification dated 15.01.2016 that had amended the EIA Notification, 2006 introducing DEIAA and District Expert Appraisal Committee (DEAC) as they were considered incompetent to prepare the DSR as both the bodies comprised mostly of officers/bureaucrats who lacked expertise, experience and scientific knowledge in matters of environment to do so. Thus, according to the Applicant, the Interim DSR admittedly prepared by the DEIAA was in violation of the decision of the Tribunal. Even then, the DSR itself being only interim and not the final DSR, it could not have been

² Original Application No. 186/2016 (M.A. No. 350/2016)

made the basis for granting mining leases. Otherwise also the E-auction could not be sustained due to the gross conflict in the mineable areas of the 7 Sand Ghats on river Chandan/Chanan mentioned in the Interim DSR being 226 ha and in the E-auction notice as 946 ha out of the total 14, seven being for other rivers.

5. Since in O.A. No. 57/2020/EZ identical questions have been raised, we may not delay ourselves in dealing with all the averments contained in the application except to elaborate and mention a few additional points raised therein. It is contended that the Interim DSR prepared by the State of Bihar for the Banka district is neither a final report nor has it been approved by the DEIAA which is mandatory under the MoEF&CC Notification dated 15.01.2016. DSR is required to be prepared in terms of the SSMMG-2016 and EMGSM-2020 read with the MoEF&CC Notification dated 15.01.2016. The DSR prepared and adopted by the Department of Mines and Geology, Government of Bihar, was invalid and legally not enforceable as it lacked finality having not been approved by the DEIAA and having not been published in the district office for 21 days to facilitate presentation of

objections. As such no settlement of Sand Ghats for the purpose of mining could be planned in place of DSR which is not final. The mineable area of 946 ha for the 7 Sand Ghats at serial no. 1 to 7 far exceeded the area mentioned in the DSR which was 719 ha. It is contended that the omission to disclose area of mining site for 7 Sand Ghats in the NIT was deliberate for collateral purposes. Referring to Clause 4.2 of the EMGSM-2020, it is stated that it is mandatory to disclose particulars as a part of Letter of Intent (LoI) issued in favour of a successful bidder of which the mineable area is one of the most important aspect. Besides this, no mention has been made with regard to the distance of the mining site from the forest area which is another essential requirement under the Guidelines of 2020. It is further contended that the action of the State in preparing the Interim DSR was in conflict and contrary to the stand taken by the State of Bihar in O.A. No. 62/2019³ to the effect that the DSRs for each district of the State had already been prepared and duly approved by the competent authority and, therefore, there was no difficulty in proceeding with the auction process for

³ *Pasupati Rice Mill Pvt. Ltd. v. The Union of India & Ors.*

settlement of Sand Ghats in the district which had led the Tribunal to dismiss the application *vide* order/judgment dated 12.12.2019.

6. Based on the above facts and circumstances, direction has been sought for for preparation of a complete DSR for Sand Ghats as per procedure laid down under the MoEF&CC Notifications dated 15.01.2016 and 25.07.2018 as well as the SSMMG-2016 and the EMGSM-2020 along other consequential reliefs.
7. Replies have been filed by the State Respondents in both the cases stating that the DSR for the Banka district was duly carried out and uploaded on the website of the Mining Department, Government of Bihar, taking into consideration the dynamic nature of the rivers, variable factor and the fresh deposit of sand created after every monsoon. The District Level Committee identified fresh sand bearing Ghats in the Banka district *vide* letter dated 19.09.2019. In order to prevent illegal mining, the new sand deposit areas had been approved by the District Magistrate of the district which was then communicated to the Department *vide* letter dated 24.09.2019. After obtaining approval, the freshly created Sand Ghats were

annexed in the existing DSR during the period of November, 2019 - March, 2020, based on the Departmental Notification dated 14.08.2019 by which the Bihar Sand Mining Policy was published.

8. Denying that the procedure for preparation of DSR had been violated, it is stated that the settlement of Sand Ghats and mining of sand are done as per the provisions of the new Bihar Sand Mining Policy, 2019, the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 and the SSMMG-2016. Bihar Sand Mining Policy, 2019 was framed for the purpose of settlement of Sand Ghats of different districts which were earlier being done under the Bihar Minor Minerals Concession Rule, 1972 and the Bihar Minor Minerals Concession (Amendment) Rules, 2014 owing to the difficulties faced in settlement of Sand Ghats during 2015-2019 and also to streamline and systematize the mining activity for an environment friendly and sustainable mining.
9. It is further stated that the State Government had prepared DSRs of each district including replenishment study of Sand Ghats for both the pre-monsoon and post-

monsoon periods of the districts as per the Guidelines prescribed under the Ministry of Environment, Forest & Climate Change (MoEF&CC) Notification dated 15.01.2016. The DSR thus prepared had been uploaded in the Departmental website and circulated amongst the State Environment Impact Assessment Authority (SEIAA) and all District Collectors. All procedures necessary in preparing a DSR had been scrupulously followed.

10. In view of the findings of the survey of each district and a subsequent report, the Bihar Sand Mining Policy, 2019 was formulated whereby every river in a district is considered as a different reach and major sand reaches like Sone, Kiul, Falgu, Morhar and Chandan/Chanan have been divided into sustainable contiguous blocks, keeping in mind the topography of the land for settlement. Considering the nature of the rivers in the State which are stated to be at old stages of its life, the Bihar Sand Mining Policy, 2019 was taken as the prime criteria for consideration for sustainable sand mining in the State.
11. It is submitted that till now 342 Sand Ghats have been successfully E-auctioned in 24 districts for ₹2,752 crores

including the Banka district. Out of the E-auction amount of ₹2,752 crores, settlee of 342 Sand Ghats has already deposited ₹227.45 crores in the government account as earnest money. Further, the Mining Plans of various Sand Ghats have been approved by inter-departmental technical committee and the approved Mining Plans have been uploaded in MoEF&CC/SEIAA's PARIVESH portal for issuance of EC. These new settlees will deposit the balance amount once the EC is granted and the work order is issued.

12. According to the respondents, while preparing the DSR, MoEF&CC Notification dated 15.01.2016 requiring preparation of DSR for the purpose of identifying potential sand mining area in the respective districts was required to be uploaded and the SSMMG-2016 have to be followed. That apart, it has to be governed by the decision of the Tribunal in *Anjani Kumar* (supra) and *Satendra Pandey* (supra). It has been emphasised that in *Anjani Kumar* (supra), DSR was considered to be pre-requisite for grant of any mining lease(s) and by the decision in *Satendra Pandey* (supra), Notifications dated 15.01.2016 and 20.01.2016 had been quashed insofar as the constitution

of the DEIAA and DEAC are concerned. The Tribunal had held that the DEIAA and DEAC comprised mostly of officers/bureaucrats who lacked expertise, experience and scientific knowledge in matters of environment and were incapable of assessing the potential impact on the environment, which the Tribunal considered to be a serious dilution of the environmental standards.

13. Although in *Satendra Pandey* case (supra), the SEIAA of the respective States have been directed to assume responsibilities of the DEIAA/DEAC, the Respondents contend that no clear cut instructions have been issued by the MoEF&CC as to which the authority would prepare the DSR and take other steps in relation thereto.
14. In view of the fresh sand deposit areas created every monsoon and in order to avoid illegal mining in such areas, District Level Committee had identified the fresh sand deposit areas in the Banka district that was approved by the District Magistrate and communicated to the Department. The freshly created Sand Ghats have further been annexed to the existing DSR for November, 2019-March, 2020 and displayed in the Departmental website and later published with the NIT. As per the

respondents, the need for identifying the fresh Sand bearing areas arose as the DSR was earlier prepared in the year 2018 and during the intervening period, the nature of the Sand Ghats had changed due to the dynamics of the rivers. The new Sand Block/Ghats included in the existing DSR measured up to 719 ha for the Banka district.

15. It is stated that by an amendment to the EIA Notification, 2006 *vide* Notification dated 15.01.2006, Clause 7 (iii) (a) was introduced for preparation of DSR for sand mining or riverbed mining or mining of other minor minerals providing its procedure in Appendix X. The amendment further made provision for constitution of the District Level Impact Assessment Authority (DEIAA), according to which the District Collector or the District Magistrate of the respective Districts were to be the Chairperson of the DEIAA. Constitution of the DEIAA was thereafter notified *vide* Notification dated 20.01.2016 issued by the MoEF&CC to that effect. In *Satendra Pandey* (supra), the Tribunal held that MoEF&CC Notification dated 15.01.2016 was not consistent with the decision of the Hon'ble Supreme Court in the case of *Deepak Kumar &*

*Ors. v. State of Haryana & Ors.*⁴ It further directed the MoEF&CC to take appropriate steps to revise the procedure laid down in the impugned notification dated 15.01.2016 in terms of the direction passed by the Tribunal in the said judgment and by order dated 13.09.2018, the Tribunal partly quashed the Notification dated 15.01.2016 in relation to the constitution of the DEIAA.

16. In Execution Application No. 55/2018, arising out of Original Application No. 520/2016 in the matter of *Vikrant Tongad v. Union of India*, the Tribunal *vide* order dated 11.12.2018 clarified that any direction to the effect that notification dated 15.01.2016 should still be acted upon was clearly illegal and in violation of the judgment dated 13.09.2018 in *Satendra Pandey* case (supra) and it was reiterated that Notification dated 15.01.2016 will stand suspended till a fresh Notification is issued by the MoEF&CC. The MoEF&CC was further directed to comply with the order dated 13.09.2016 and until a fresh Notification was issued by the MoEF&CC, Notification dated 15.01.2016 will not be acted upon. Therefore, by

⁴ (2012) 4 SCC 629

virtue of these orders, the DEIAA along with the DEAC ceased to exist.

17. Referring to the Guidelines issued by the MoEF&CC, it is stated that:

- (i) In the year 2016, the Ministry issued the SSMMG-2016. One of the key objectives of the said guidelines was the preparation of the DSR and it contained a structure of the District Survey Report @ Pg. 24 of the guidelines. There existed deficit of guidelines for the procedure of formulating the District Survey Report and the same was duly considered by the Hon'ble High Court of Jharkhand in the order dated 11.04.2018 passed in the case of *Court on its own motion* (supra).
- (ii) Thereafter, in compliance of the Directions passed by the Hon'ble High Court of Jharkhand, the MoEF&CC amended the Appendix X to the EIA, 2006 dated 14.09.2006 and incorporated the procedure for the formulation of the DSR vide notification dated 25.07.2018.

- (iii) Thereafter, as already noted above, *vide* the orders dated 13.09.2018 in *Satender Pandey* (supra) and the order dated 11.12.2018 in *Vikrant Tongad* (supra), this Tribunal directed the MoEF&CC, the Respondent No. 1, to formulate a fresh procedure for the formulation of the DSR in the light of the fact that the constitution of the DEIAA (the body which was constituted for the formulation of the DSR) had been quashed.
- (iv) In view of the aforesaid judgments passed by the Tribunal and the Hon'ble High Court of Jharkhand with respect to the failure in existing mechanism and procedures for the formulation of DSR, the Respondent No. 1, i.e., the MoEF&CC in January, 2020 issued the EMGSM-2020. The said guidelines of 2020 provides for the procedure for preparation of DSR after due consideration of the various judgments passed by the Tribunal. The said Guidelines, 2020 makes it clear that the District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of mining lease/Letter of Intent (LOI) by the Mining

Department or the department dealing with the mining activity in the respective states.

- (v) Between the period after the passing of the judgment dated 13.09.2018 in the case of *Satender Pandey* (supra) and the coming into force of the Guidelines, 2020 in January, 2020, there were no effective guidelines in place for the preparation of DSR and no clarity with respect to the body/committee which would prepare the DSR under the applicable rules/ regulations.

18. It is further contended that settlement of Sand Ghats and mining of sand in the State of Bihar is done as per the provisions of the new Bihar Sand Mining Policy, 2019 and the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 and the SSMMG-2016. Prior to the year 2019, Sand Ghats were settled as per provisions of Bihar Mine and Minerals Concession (BMMC) Rules, 1972 and the BMMC (amendment) Rules, 2014 but was later replaced by the Bihar Sand Mining Policy, 2019 which was issued with the object to improve and streamline the system of mining activity for a environment friendly and sustainable

mining. The Bihar Sand Mining Policy, 2019 was prepared after proper consideration of relevant factors, environmental concerns and the need of regulating minor minerals suitable to local needs as well as the principle of Sustainable Development. The object of the Sand Mining Policy, 2019 is (i), to ensure that sand mining is done in an environmentally sustainable manner; (ii) to ensure availability of adequate quantity of sand for construction at a reasonable price and, (iii) to increase the number of settlees to ensure generation of employment.

19. This policy which was challenged in O.A. No. 62/2019 before the Tribunal and *vide* order dated 12.12.2019, the Tribunal held the policy to be legal and valid. This order of the Tribunal had been upheld by the Hon'ble Supreme Court *vide* order dated 24.01.2020.
20. It is, thus, contended that issue of non-preparation of DSR in the present case was ill founded and also amounted to reopening a question already settled both by the Tribunal and the Hon'ble Supreme Court. Rule 5 of the Bihar Sand Mining Policy, 2019 vests the Collector with the overall responsibility of the implementation of the provisions of the Act and the Rules as well as to

exercise the powers of the Mining Officer under the Rules. It is stated that the DSR dated 19.09.2019 for the Banka District was duly formulated by the District Collector and the impugned Notice for E-auction dated 25.11.2019 has been issued only after the preparation of the DSR by competent and duly qualified persons under the DEIAA for the period and uploaded in the departmental portal in the year 2018 which is available and accessible by the general public. In the case of Banka District also, the DSR was uploaded in the district portal in 2018. However, since the aforesaid DSR was prepared for the year 2017-18 and a period of approximately two years had already passed since then, need was felt to update the DSR as the rivers are dynamic in nature and the deposition of sand is a variable factor resulting in creation of fresh sand deposit areas every monsoon.

21. Further, when the DSR for existing sand bearing rivers was prepared by the District Level Committee vide its Report dated 19.09.2019 there was no standard and or specific procedure/guidelines for preparation of DSR. Therefore, during the intervening period, the DSR was

prepared by the District Level Committee under the supervision of the District Magistrate only.

22. In order to avoid illegal mining in new sand deposit areas, district level committee vide its report dated 19.09.2019 identified the 14 new Sand Ghats admeasuring 946 hectares for the District of Banka. Reiterating the earlier contentions, it is stated that the E- Auction notice dated 25.11.2019 has been issued after the preparation of the DSR/District Level Committee Report dated 19.09.2019 which, according to the State, is in conformity with the SSMMG-2016, the relevant guidelines, regulations, existing in law and the various directions passed by this Tribunal as well as the Hon'ble Supreme Court.
23. As regards the non-disclosure of mineable area in respect of 7 out of the 14 such areas, it is stated that the settlement of Sand Ghats has been done as per the provisions of the Bihar Sand Mining Policy, 2019. As per the provision 5(i) of the Policy, 2019 only river Chandan/Chanan can be divided into sustainable contiguous bocks by leading to the creation of 7 mineable blocks in the river with mineable area calculated and notified in the DSR dated 19.09.2019. The other 7 fall

under provision 5(ii) of the Policy, 2019 by which minor rivers/tributaries that carry less amount of sand have been settled river-wise as separate units. Resultantly, only each of the blocks of river Chandan/Chanan have been mentioned in the auction notice leaving the minor river areas undefined though they are well bounded by proper coordinates.

24. For aforesaid reasons, it is contended that there is no merit in the application. It may be observed that the MoEF&CC has chosen not to file response in this case, i.e., O.A. No. 57/2020.
25. In its counter affidavit, the MoEF&CC has contended that order dated 11.12.2018 passed in Execution Application No. 55/2018 arising out of O.A. No. 520/2016⁵, directing suspension of Notification dated 15.01.2016 till a fresh Notification was issued by the MoEF&CC, has been challenged before the Hon'ble Supreme court by way of Civil Appeal No. 3799/2019, in the matter of *Union of India v. Rajeev Suri*, which is presently *sub-judice*. In compliance of the direction passed by the Tribunal in its

⁵ *Vikran Tongad v. Union of India*

order dated 04.09.2018 in O.A. No. 173/2018⁶, the Ministry has formulated the EMGSM-2020, supplemental to the SSMMG-2016 with focus on the effective monitoring of sand mining from the stage of identification of sand mineral resources to its dispatch and end use by consumers and the general public. The document is stated to serve as a guideline. According to the Ministry the objective of the guidelines *inter alia* include Identification and Quantification of Mineral Resources and its Optimal Utilization; Use of IT enabled services and the latest technologies for surveillance of the sand mining at each step, setting up the procedure for Replenishment Study of sand; post EC Monitoring and procedure for environmental audit.

26. It is further stated that the Respondent Ministry, while emphasizing on DSR and also relying on the Judgments passed by Tribunal & Hon'ble High Court of Jharkhand with respect to DSR, has formulated a total of 16 (sixteen) guidelines in Para 4.1.1 of the EMGSM-2020 for the preparation of comprehensive DSR for sand

⁶ *SudarsanDas v. State of West Bengal & Ors.*

mining which inter-alia includes the following key points:

- "a) District Survey Report for sand mining shall be prepared before the auction/e-auction/ grant of the mining lease/Letter of Intent (LoI) by Mining department or department dealing the mining activity in respective states.**
- b)thus, it is proposed that for preparation of district survey report, the auditing of rivers needs to be carried out.**
- c) District Survey Report is to be prepared in such a way that it not only identifies the mineral-bearing area but also define the mining and no mining zones considering various environmental and social factors.**
- d) The final area selected for the mining should be then divided into mining lease as per the requirement of State Government. It is suggested the mining lease area should be so selected as to cover the entire deposition area..."**

27. It is then contended that the EMGSM-2020 and SSMMG-2016 shall be read and implemented in sync with each other and that in case of any ambiguity or variation between the provisions of these documents, the provision made of the "EMGSM-2020" shall prevail. Further, it is submitted that this Tribunal in O.A No. 08/2018/CZ in the case of *Suraj Pagare and Anr. v. State of M.P.*, vide order dated 11.06.2020, directed the

Principal Secretary, Mines; Director, Mines and State of Madhya Pradesh to follow EMGSM-2020.

28. The 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 (MMDR Act) and is entrusted with the enforcement and regulation of mining operations in a State including illegal mining and the Ministry has no role to play in this regard. Further, the State Government is empowered under Section 23 C of the Mines and Minerals (Development and Regulation) Act 1957(MMDR Act) to make rules for prevention of illegal mining, transportation and storage of minerals and the State Department of Mines and Geology is the nodal authority in the state for dealing with the allotment of mining leases under the MMDR Act and is entrusted with the enforcement and regulation of mining operations in a State.
29. In his oral arguments, Mr. Vanshdeep Dalmia, learned Counsel for the Applicant in O.A. No. 40/2020/EZ, reiterating the facts contained in the original application,

submitted that NIT dated 25.11.2019, wherein 14 Sand Blocks in Banka district is being auctioned is bereft of DSR in violation of the MoEF&CC Notification dated 15.01.2016, the SSMMG-2016 and the EMGSM-2020 and is, therefore, illegal rendering the entire process of e-auction a nullity. It is contended that the aforesaid guidelines prescribes for mandatory requirement of preparation of DSR at Appendix X of EIA Notification, 2006 identifying the potential mining area in the respective districts before initiating the process of e-auction. Referring to Clause 8.1 of the EMGSM-2020, it was stated that as per this provision no mining can be allowed in an area which has not been identified in the Comprehensive Plan of the District. Reference was also made to the case of *Anjani Kumar v. State of U.P.* (supra), in which *vide* order dated 08.12.2017, the importance and relevance of the DSR has been highlighted and has held that it was mandatory for the State Government to start the process of granting mining leases only after preparation of a DSR and that, a DSR is an integral and essential part which is not only fundamental but a condition precedent for grant of mining leases and further, that its absence would be in conflict with the

Environmental laws, public trust doctrine and would impinge Article 48 of the Constitution of India. It is further contended as follows:

- (a) That any grant of potential mining lease without a DSR would seriously and irreversibly degrade the environment as a whole and ostensibly will be against the spirit of the EMGSM-2020 notified in furtherance of the orders passed by this Court in the case of *Sudarsan Das v. State of W.B.*⁷;
- (b) the State of Bihar had issued an Interim DSR in December, 2018 however the same was never finalized and thus cannot be relied upon. Even otherwise, the interim DSR is invalid in law having been prepared by the District Environmental Impact Assessment Authority (DEIAA) which was abolished *vide* Judgment dated 13.09.2018 in the case of *Satender Pandey v UOI*. Accordingly it is submitted that only a Final DSR prepared by the SEIAA in consonance with the MOEF Notification dated 15.01.2016, the SSMMG-2016 and EMGSM-2020 would be valid in law;

⁷ O.A. No. 173/2018

- (c) Even otherwise the areas categorized for the mining leases as per the Notice Inviting E-tender dated 25.11.2019 are in gross variance with the '*total potential mining areas*' determined in the interim DSR, according to which the total mineable area in the entire Banka District is 335 ha (226 ha on river Chandan/Chanan and 109 ha on river Cheer whereas the E-Tender notice seeks to auction mineable area of over 946 ha on river Chandan/Chanan (for 7 Blocks) alone;
- (d) Further, the NIT dated 25.11.2019 discloses the Mineable Area and mineable potential quantity only for 7 Ghats, which been not disclosed for the remaining 7 Ghats. This is a material irregularity and a fundamental defect which even considered in isolation is violative of the Environmental law.

30. Referring to the counter affidavit of the MoEF&CC, it is stated that the Ministry has also emphasized the need for preparation of a comprehensive DSR identifying the mineral bearing areas before the auction/grant of mining lease. Adverting to the stand of the State of Bihar in its

affidavit, it is contended that while it has not disputed that the DSR is a mandatory requirement before auction of Sand Ghats, at the time the State has sought to rely on the Interim DSR dated 10.12.2018 prepared by the DEIAA portraying it as a final DSR. It is further contended that the Interim DSR dated 10.12.2018 was prepared by a defunct DEIAA, as the DEIAA stood abolished *vide* judgment dated 13.09.2018 in the case of *Satendra Pandey* (Supra). Therefore, it is urged that as the final DSR which is a mandatory pre-requisite before grant of any mining lease/or issuance of E-tender notice has not been prepared the said E-Auction notice is legally unsustainable, illegal and a nullity.

31. On the question of the non-disclosure of 7 blocks in the Notice Inviting E-Auction, it is contended that such non-disclosure is in violation of Clause 4.0(vi) of the EMGSM-2020 which mandates *inter alia* that mining should be carried out within the mining lease area as per the approved Mining Plan or Mining Plan concurred by other regulatory authorities. It is further stated that compliance of Clause 4.3 of the EMGSM-2020 stipulating

19 parameters while approving the Mining Plan, would be impossible without the mining area being disclosed.

32. It is contended that in *Satendra Pandey* (supra), it was directed that the SEIAA would assume the responsibilities of the DEIAA/DEAC. Although, this decision is under challenge before the Hon'ble Supreme Court in Civil Appeal No. 3799/2019⁸, no order of stay has been granted making the judgment dated 13.09.2018 in *Satendra Pandey* (supra) still operative in law.
33. Order dated 11.12.2018 passed by the Tribunal in *Vikrant Tongad* (supra), where it is clarified that “*the DEAC comprised with officers having no experience or scientific knowledge to assess environmental implications. Permitting DEAC to make assessment was also not consistent with SSMMG-2016...*”, was challenged before the Hon'ble Supreme Court in Civil Appeal (Dairy) No. 48120/2018 & 48118/2018 but, the same having been dismissed the said order has attained finality. The Applicant submits that these positions have been conceded by the State in its reply. It is further contended that preparation of the Interim DSR by the District Level

⁸ *Union of India v. Rajiv Suri*

Committee headed by the District Magistrate would frustrate the order of the Tribunal quashing the DEIAA holding that the District Magistrate and other Officers have no expertise and scientific knowledge of the Environmental laws. In support of this contention, decisions in *Taylor v. Taylor* and *Nazir Ahmad v. King Emperor*⁹ have been referred to.

34. It is then stated that the NIT mentions the area for Sand Ghat number 7 as having mineable area of 190 ha, whereas the letter dated 02.03.2020 states it to be of 97 ha. Further, terms of reference (ToR) have been issued for first 11 Sand Ghats out of the 14 mentioning the mining area for Sand Ghats number 8, 9, 10 and 11, as 76.8 ha, 280 ha, 290 ha and 41.36 ha respectively, which totals to 1,541 ha.
35. Finally, it is submitted that admitted auctioning of the Sand Ghats before being included in the DSR is in violation of the MoEF&CC Notification dated 15.01.2016, the SSMM, 2016 and the EMGSM-2020, that requires preparation of the DSR before the auction process. The

⁹ (1875) 1 Ch D 426 and (1936) SCC Online PC 41: AIR 1936 PC 253

learned Counsel has thus summarized his submissions as follows:-

- “1. A DSR is a pre-requisite, mandatory conditional precedent that is required to be prepared before any mining leases are auctioned. Any Auction notice without following the procedure under the MOEF Notification dated 15.01.2016 read with the SSMMG-2016, EMSMG, 2020 is flawed, arbitrary, illegal and unsustainable in law.***
- 2. No Final DSR has admittedly been prepared for the District Banka, Bihar.***
- 3. The Mining area and the potential mining quantity for Sand Ghats 814 as per the Notice Inviting E-Tender is not disclosed.***
- 4. The Interim DSR published in December, 2018 is void and cannot be relied upon since (a) it is prepared by the defunct/abolished DEIAA (b) Interim and not Final DSR (c) the potential mining area in the district as disclosed in the interim DSR published in December, 2018 was 226 ha on river Chandan whereas the Mining Area of the Sand Ghats 1-7 alone sought to be auctioned is 946 ha.***
- 5. It is the own stand of the State of Bihar that the 14 Sand Blocks admittedly were not part of the interim DSR at the time of issuance of the Notice Inviting E-Tender and have been sought to be included only in March, 2020 and such process of ex post facto inclusion/ subsequent ratification is impermissible in law as the DSR ought to be prepared before the Auction/ Tender.”***

[Underlining supplied]

36. Mr. Brijender Chahar, learned Senior Counsel, appearing for the Applicant in O.A. No. 57/2020/EZ has preferred to rely upon the submissions of the learned counsel for the Applicant in O.A. No. 40/2020/EZ but has briefly

touched upon those with certain elaborations that have been set out in his written submission which we may reproduce below:

- “2. The DSR uploaded on the web on 10.12.2018 was only an Interim Report prepared by a consultant under the alleged guidance of DEIAA, which had become defunct on 13.09.18 vide Satendra Pandey judgment. It is admitted by the State that this DSR was never approved by anyone. Thus it cannot be treated as final no sand ghats can be auctioned making this DSR as the basis. This DSR ought to have been approved by SEIAA like in other States e.g. Orissa, Uttarakhand etc. (In Reply of State in OA 59140/2020/EZ ‘Pawan Kumar v State of Bihar & Ors.’)**
- 3. Even if we presume the DSR dated 10.12.2018 as final, what must be noted at page 671 is that this report has concluded that for the whole of district Banka for 5 years, the sand ghats of total area identified where sand mining can be done is 719 hectares and the quantity of sand that can be allowed to be mined is 35,36,236 Metric Tonnes.**
- 4. On 25.11.19 the State issued Notice inviting e-auction of 14 sand ghats in Banka District for 5 years w.e.f. 2020. In this Notice nothing was mentioned about the quantity of sand that would be allowed to be extracted/mined i.e. unlimited quantities. As regards the area, it was specified only for 1-7 sand ghats which itself totalled 946 hectare, way above the 719 Ha limit specified in DSR dated 10.12.2018.**

The sand ghats at serial no. 8-14 reflected neither the quantities allowed to be extracted nor the area over which sand mining would be allowed. On 13.12.19, 11 out of 14 sand ghats were auctioned and on 18.01.2020, letters of intent were issued and the process of issuing ECs is proceeding fast.

5. **From the websites of SEIAA and MoEF, where the status of applications for ECs are provided, it came to notice that the auction for 11 sand ghats was for a total of 1541.66 Hectares, more than double the limit of 719 Ha set in the DSR dated 10.12.2018.**

From the EC applications on MoEF website, some glaring facts have surfaced. In some applications no area has been given and in others no quantities have been given. Where quantities have been given, the total is mind boggling and many folds more than the 35.36 Lakh MT quantified in the DSR dated 10.12.2018.

6. **The Sand ghats have been auctioned on 13.12.2019 and were given on 18.01.2020 even before these Ghats were sought to be included in the DSR.**

On 02.3.2020, the Mineral Development Officer wrote to the Special Secretary Mine and Geology Department of Bihar requesting to include these newly created 14 sand ghats in the DSR for Banka district, Thus, till 02.3.2020 these 14 Ghats were not part of DSR and could not have been auctioned.

7. **Another example to prove that the State does not have correct, updated and authentic data is the sand ghat no. 7. On page 438 (notice inviting e-auction) the area to be auctioned is 190 Ha. People must have bid for 190 Ha on 13.12.2019. On 15.01.2020 State writes to the successful bidder that please read 190 Ha as 109 Ha. Yet again on 02.3.2020 the State again writes to the successful bidder that ignore 190 Ha and 109 Ha but treat it as 97 Ha. The EC application (Chart @pg 646) is for 190 Ha.**

8. **The Enforcement and Monitoring Guidelines for Sand Mining, January 2020 clearly stipulate that the LOI-Letter 234 of Intent, when issued as per the procedure laid down in the Minor Mineral Concession Rules, must be based on the Final DSR and the LOI must have complete details of**

Mining lease i.e. distance from forest land, distance from protected area, distance from other sites of archaeological importance etc. etc.

But the LOI issued on 18.01.2020 is bereft of any details, not even the area nor quantity.

The 2020 Guidelines also stipulate that no mining shall be allowed in the area which has not been identified in the comprehensive Mining Plan of the District and DSR.

9. ***The State also contends that these fresh 14 Sand Ghats were identified by the District Level Committee (DLC) (constituted by the DM) vide its Report dated 19.09.2019 and this Report was approved by the DM on 24.09.19. This Hon'ble Tribunal deprecated the practice of having non-experts in DEIAA and DEAC in Satender Pandey judgment, yet the DM now constitutes a DLC and himself approves the report of DLC, making the whole exercise a farce."***

[Underlining supplied]

37. The substance of the submission is that the Interim DSR is invalid having been prepared by DEIAA which has been quashed *vide* judgment in *Satendra Pandey* (supra). The Interim DSR had never been approved and, therefore, cannot be treated as final. There is variance in the mineable areas mentioned in the Interim DSR dated 10.12.2018 and the Notice Inviting E-Auction dated 25.11.2019 in as much as it is mentioned as 719 ha with quantity of mineable sand with 35,36,236 MT and, 946 ha without specifying the quantity respectively. Again,

the status of applications for EC provided in the websites of SEIAA and MoEF&CC mentions auction for 7 Sand Ghats for a total area of 1541.66 ha, which is more than double to 719 ha mentioned in the DSR. There are also discrepancies in respect of the quantities of mineable sand in the application for EC submitted to the MoEF&CC as the information is either not given or in respect of those given, the quantities of mineable mineral mentioned are far in excess of 35.36 Lakh MT quantified in the Interim DSR dated 10.12.2018. Further, 02.03.2020, the 14 Sand Ghats for which tender had been issued, were not part of the DSR as revealed in the letter dated 02.03.2020 of the Mineral Development Officer addressed to the Special Secretary, Mine and Geology Department, Government of Bihar. There are also contradictions and gross variations in respect of the individual 7 Sand Ghats. E-auction is also in violation of the EMGSM-2020, as the procedure laid down therein has not been followed since the information regarding the details of the mining lease from forest land, distance from protected area, distance from other sites of archaeological importance, etc.

38. That apart, it also violates the provisions of the 2020 Guidelines prohibiting mining in an area not identified in the Comprehensive Mining Plan of the district and the DSR.
39. Appearing on behalf of the State, Mr. Atmaram N.S. Nadkarni, learned Senior Advocate, would submit that the applications are misconceived as the inference drawn from the prayers made in the application is that auction and DSR for sand mining should be carried out in terms of Notification dated 15.01.2016 and 25.07.2018, which would run counter to the decisions of the Tribunal in *Satendra Pandey* (supra) and *Vikrant Tongad* (supra). He has by and large reiterated the statements contained in the counter affidavits filed by the State in both the cases under consideration. Rebutting the submission made in respect of the discrepancies with regard to the mineable areas highlighted on behalf of the Applicants, it is contended that as the report filed by the Applicants as the DSR for 2018 is incorrect, whereas the DSR for the Banka district was uploaded in the district portal on 10.12.2018, one prepared for the years 2017-18 as per which the Sand Ghats in the Banka district is 719 ha with

approximate mineable potential in 6 different rivers namely, Chandan/Chanan, Cheer, Badua, Ribani, Dakai and Kuda river had been identified.

40. The DSR 2018 filed as Annexure A-9 by the Applicant in O.A. No. 40/2020/EZ as an Interim DSR is undated. Whereas it has been categorically pleaded in its reply by the State that in the case of Banka district, the DSR was uploaded in the district portal on 10.12.2018 which was the one prepared for the year 2017-18, according to which the total area of Sand Ghats identified in the district is around 719 ha with mineable potential in 6 different rivers namely, Chandan/Chanan, Cheer, Badua, Ribani, Dakai and Kuda. Therefore, according to the State, the Interim Survey Report filed as Annexure A-9, was not the DSR of 2018. Furthermore, the DSR uploaded in December, 2018 was only in respect of Chandan/Chanan river and not others. Reiterating what had been stated in the reply, it is submitted that new sand deposits were created in the year 2018-19 which were identified by the DLC vide DSR dated 19.09.2019. It is submitted that after the DSR 2018 was prepared which identified the mineable area of 719 ha, two years had

passed till the date of the tender notice dated 25.11.2019. As large number of new Sand Ghats with substantial sand deposits had been formed due to very good monsoon in the year 2018-19, a District Level Committee (DLC) headed by the District Magistrate identified the fresh Sand Blocks to be put up to auction through the Mining Department. The report of the DLC dated 19.09.2019 after the survey reported identification of 946 ha of mineable area. It is stated that the exercise was undertaken to prevent illegal sand mining and thereby loss to the public exchequer as per Clause 5 of the Bihar Sand Mining Policy, 2019 which had been upheld by the Tribunal *vide* order dated 12.12.2019 in O.A. No. 62/2019/EZ. While upholding the Notification, the action of the State in sub-dividing 5 major rivers namely, Sone, Kiul, Falgu, Morhar and Chandan/Chanan under Clause 5(i) of the Policy, 2019 was held to be valid. It is stated that since the order dated 12.12.2019 in *Pasupati Rice Mill Pvt. Ltd.* (supra) had been even upheld by the Hon'ble Supreme Court, any question in relation thereto would be untenable. It is contended that the 7 mineable areas had been identified in the river Chandan/Chanan under Clause (i) of the Policy, 2019. These are the ones

referred to at Sl. No. 1 to 7 of the 14 Sand Blocks referred to by the Applicants. The remaining 7 Sand Blocks under Sl. No. 8 to 14 pertain to minor/tributaries carrying very less amount of sand and, therefore, had been settled river-wise as separate units in exercise of the powers vested under Clause 5(ii) of the Bihar Sand Mining Policy, 2019. The reason for this, according to the State, is that these rivers are very small and sporadic and the sand bearing areas in these rivers can only be defined when their Mining Plan is prepared. Therefore, according to the learned Senior Counsel, auction notice dated 25.11.2019 mentions each block of river Chandan/Chanan only whereas, areas/blocks in respect of other minor rivers have not been defined although they are well bounded by proper co-ordinates. He further goes on to explain that of the 7 minor rivers referred to in Sl. No. 8 to 14, only 4 units have been settled in the auction Mining Plans which have been prepared on the basis of the following identified mining areas:

1. Sukhania river (Sl. No. 8 of auction notice)-76.80 hectares.

2. Cheer river (Sl. No. 9 of auction notice)-280.30 hectares.

3. Badua-1 (Sl. No. 14 of auction notice)-290.80 hectares.

4. Kurar river (Sl. No.138 of auction notice)-41.36 hectares.

41. It is further contended that as per the old Bihar Minor Mineral Rules, a person was allotted the entire stretch of a river in the district but this position has altered after publication of the new Bihar Sand Mining Policy, 2019 by which the major rivers have been divided into different mining blocks for allotment during auction. In view of the new Sand Block units which were identified by the Committee headed by the District Magistrate, the mineable area has increased from 226 ha to 946 ha on the river Chandan/Chanan alone as per report dated 19.09.2019 of the Committee.
42. It is then urged that when the exercise was being undertaken, there was a vacuum in the procedure to be followed for the preparation of DSR as the competence of the DEIAA/DEAC to undertake such studies had been held to be invalid in the case of *Satendra Pandey* (supra)

and *Vikrant Tongad* (supra). The entire exercise was, therefore, undertaken in terms of the Bihar Sand Mining Policy and the Rules, by the District Magistrate and the Mining Department. It is contended that even the EMGSM-2020 issued in January, 2020 and the DSR is required to be prepared by the Mining Department although the identification of areas in the present case was done in the year 2019. To explain the controversy with regard to the area pertaining to Chandan/Chanan Block 7 having been mentioned as 190 ha in the auction notice and 97 ha in the DSR of Banka block, it is submitted that the reduction in the area was the result of the studies undertaken based on the geographical coordinates which showed it as 97 ha and was accordingly corrected.

43. Mr. Nadkarni, went on to submit that under the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019, under Rule 5 thereof, the Collector has been made competent to exercise the powers of the Mining Officer and would *inter alia* exercise direct control and superintendence over all the Mining Officers of the district. It is urged that the

action taken by the District Magistrate who is also the Collector of the district was in consonance with this provision, therefore, cannot be said to be illegal.

44. It was further argued that the State could not be left helpless to deal with the matter to protect the interest of the public exchequer and preventing illegal mining which would have taken place if the fresh sand deposits were not identified and assessed for being put to auction.
45. We have heard the learned Counsel for the parties and have examined the pleadings and the documents filed in the case as well as the written submissions filed by the parties.
46. The question that falls for consideration in the present cases is as to whether there was a valid DSR for the Banka district before the Sand Ghats/Blocks were put on tender. The next question is as to whether the DSR, 2018 prepared for the district by incorporating 14 fresh Sand Ghats is valid and, if so, whether the same had been followed by the Respondents in NIT dated 25.11.2019.
47. The case of the State Respondents is that initially DSR of various districts were prepared by the competent and

duly qualified persons as per the guidelines laid down in Appendix X of the MoEF&CC Notification dated 15.01.2016 and uploaded in the district portal on 10.12.2018. The said DSR pertain to the year 2017-18 after which about two years had passed during which a large number of new Sand Ghats with substantial sand deposits had been formed in the rivers as a consequence of the dynamic nature of the rivers.

48. As per the MoEF&CC Notification dated 15.01.2016, DEIAA had been constituted pursuant to the directions of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) for consideration of the EC. Though the DEIAA/DEAC was created for the purpose of grant of EC to B2 category projects pertaining to mining of minor minerals of lease area \geq (less than equal to) 5 ha, by order dated 13.09.2018 in the case of *Satendra Pandey* (supra), the DEIAA was held to be incompetent to deal with the EC and accordingly MoEF&CC Notification dated 15.01.2016 was partially held to be invalid. Although the responsibilities of the DEIAA/DEAC were directed to be discharged by the SEIAA/SEAC, no clear cut instruction was issued by the MoEF&CC as to who will prepare DSR

or modify the existing DSR as dynamic nature of rivers in the State keep on changing sand deposition after every monsoon.

49. Thus, on and from order dated 13.09.2018, i.e., the date on which the order in *Satendra Pandey* (supra) was passed, a vacuum arose as no authority or procedure were prescribed or clarified by the MoEF&CC in dealing with matters relating to preparation of DSR.

50. Under these circumstances, it is stated that the District Magistrate (DM) had undertaken the exercise to identify the fresh sand bearing Ghats through the DLC comprising of the District Mining Officer as per provision of Rule 5 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019. This was approved by the DM concerned and communicated to the Department *vide* letter dated 24.09.2019. The freshly created Sand Ghats were then annexed to the existing DSR during November, 2019-March, 2020 and displayed in the departmental website which then was published with the NIT for E-Auction. As per the State, the DSR containing the new Sand Ghats

identified by the DLC can be considered as a new DSR ('DSR 2019' for short).

51. It is argued on behalf of the State that the DLC headed by the District Magistrate included the District Mining Officer and an Engineer of the Irrigation Department, who are well conversant with the knowledge and scale for preparation of DSR and, therefore, it cannot be said that the DSR 2019 has been prepared by persons who are incompetent. However, this statement was not supported by any document which would demonstrate constitution of the DLC.
52. Having heard the learned Counsel for the parties, we may now examine some of the relevant provisions governing preparation of DSR. As already observed in the case of *Deepak Kumar* (supra) the Hon'ble Supreme Court had expressed the necessity to have a strict regulatory regime in relation to sand mining considering the adverse impact of such activity on the riverine ecology in the absence of such a regime. The SSMMG-2016 was thus framed by the MoEF&CC. Contrary to the common notion that SSMMG-20016 stands superseded after the EMGSM-2020 was published, the latter Guideline most

categorically without any ambiguity provides that it has to be read in sync with the SSMMG-2016. It is only where there is a conflict between the two provisions that the EMGSM-2020 shall prevail.

53. In this backdrop, it may be observed that the process for preparation of DSR prescribed in the SSMMG-2016 would be relevant which reads as follows:

“The broad principle on which any sustainable sand mining Guidelines/policy can be based is that river/ natural resources must be utilized for the benefit of the present and future generation, so river resources should be prudently managed and developed. The preparation of District Survey Report is an important initial step.”

The Processes under the Guidelines:

- (a) Identification of areas of aggradation/ deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited. Use of satellite imagery for identifying areas of sand deposit and quantity be done.***
- (b) Calculation of annual rate of replenishment and allowing time for replenishment after mining in area.***
- (c) Identifying ways of scientific and systematic mining.***
- (d) Identifying measures for protection of environment and ecology.***
- (e) Determining measures for protection of bank erosion.***
- (f) A bench mark (BM) with respect to mean sea level (MSL) should be made essential to in-***

mining channel reaches (MCR). Below which no mining shall be allowed.

(g) Identifying steps for conservation of mineral.

(h) Permanent gauging facilities (for discharge and sediment both) should be made compulsory for the sites having excessive mining in consultation with Central Water Commission or any competent State Agency.

(i) Implementing safeguards for checking illegal and indiscrete mining.

Following the above processes, to begin with it is important to prepare a survey document mapping the status of sand sources in a district. This survey should be conducted and report be prepared for each district. Though it is an acceptable fact that rivers cut across districts and States and every river is an ecosystem in itself. But, keeping in view the fact that the district is the most established unit of administration at which this kind of survey, planning and monitoring can be ensured effectively, it is proposed that every district will prepare this document taking the river stretch in that district as an ecological unit and inventorising other sources of sand in the district.

Besides, the production of aggregate in a particular area is a function of availability of natural resources, the size of the population, the economy of the area and various developmental and infrastructural works being undertaken in the area.

The natural resources must be utilized in environment friendly manner in scientific and systematic way and with the objective of sustainable development the policy on the subject should have provisions for protection of environment & ecology. These factors can be accounted for in a most efficient manner at district level.

The sustainable Mining Plan needs to be dynamic. A survey should be carried out by the District Environment Impact Assessment Authority (DEIAA) with the assistance of Geology Department, Irrigation Department, Forest

Department, Public Works Department, Ground Water Boards, Remote Sensing Department and Mining Department etc. in the district at regular intervals.

The survey shall contain:

- 1. District wise detail of river or stream and other sand source.***
- 2. District wise availability of sand or gravel or aggregate resources.***
- 3. District wise detail of existing mining leases of sand and aggregates.***

Based on this survey document, the action plan shall divide the river/ stream/ other sources of the District into the following categories:

- 1. River/Stream beds sections/other sources suitable for extraction of sand and aggregates.***
- 2. River/Stream beds sections/other sources prohibited for extraction of sand and aggregates.***

The river/ streams/ other sources of sand and aggregate are studied on following parameters:

a) Geomorphological studies

- i) Place of origin***
- ii) Catchment area.***
- iii) General profile of river stream.***
- iv) Annual deposition factor.***
- v) Replenishment.***
- vi) Total potential of minor mineral in the river bed.***

b) Geological studies

- i) Lithology of catchment area.***
- ii) Tectonics and structural behavior of rocks.***

c) Climatic Factors

- i) Intensity of rainfall.***
- ii) Climate Zone.***
- iii) Temperature variation***

The following points to be considered while selecting the river / stream for mining besides the above parameters:

- i) A stable river is able to constantly transport the flow of sediments produced by watershed such that its dimensions (width and depth) pattern and vertical profile are maintained without aggrading (building up) or degrading (scouring down).**
- ii) The amount of boulders, cobbles, pebbles, and sand deposited in river bed equals to the amount delivered to the river from catchment area and from bank erosion minus amount transported downstream each year.**
- iii) It is compulsive nature of river to meander in their beds and therefore they will have to be provided with adequate corridor for meandering without hindrance. Any attempt to diminish the width of the corridor (floodway) and curb the freedom to meander would prove counterproductive.**
- iv) Erosion and deposition is law of nature. The river stream has to complete its geomorphological cycles from youth, mature to old age.**
- v) River capturing is unavoidable.**
- vi) Fundamentally the lowest point of any stream is fixed by sea level.**

This survey document should be prepared in the district based on direct and indirect benefits of mining and identification of the potential threats to the river / stream beds in the district.

Besides, calculating the carrying capacity of the river/ stream beds/other sources to find out maximum quantity available to be allowed for removal each year from the sources, it should also provide various measures to regulate sand and aggregate mining in a systemic way.

It has to provide for environmentally safe depth of mining and safeguards of banks by prescribing safe distance from banks. It is required that there should be a Sub-Divisional Committee which should visit each site and make recommendation.

The Committee should comprise of Sub-Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.”¹⁰

[Underlining supplied]

54. The procedure laid down in the MoEF&CC Notification dated 15.01.2016 is somewhat similar as would appear under Appendix-X of the said Notification which provides as follows:

“

APPENDIX - X
[See paragraph 7 (iii) (a)]
PROCEDURE FOR PREPARATION OF DISTRICT SURVEY REPORT

The main objective of the preparation of District Survey Report (as per the Sustainable Sand Mining Guideline) is to ensure the following: Identification of areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area. The report shall have the following structure:

- 1. Introduction***
- 2. Overview of Mining Activity in the District***
- 3. The List of Mining Leases in the District with location, area and period of validity***
- 4. Details of Royalty or Revenue received in last three years***
- 5. Detail of Production of Sand or Bajari or minor mineral in last three years***
- 6. Process of Deposition of Sediments in the rivers of the District***
- 7. General Profile of the District***

¹⁰ Pages 21-23 of the Sustainable Sand Mining Management Guidelines-2016

8. ***Land Utilization Pattern in the district: Forest, Agriculture, Horticulture, Mining etc.***
 9. ***Physiography of the District***
 10. ***Rainfall: month-wise***
 11. ***Geology and Mineral Wealth***
- In addition to the above, the report shall contain the following:***
- (a) ***District wise detail of river or stream and other sand source.***
 - (b) ***District wise availability of sand or gravel or aggregate resources.***
 - (c) ***District wise detail of existing mining leases of sand and aggregates.***

A survey shall be carried out by the DEIAA with the assistance of Geology Department or Irrigation Department or Forest Department or Public Works Department or Ground Water Boards or Remote Sensing Department or Mining Department etc. in the district.”

55. According to the State, the action taken in preparing DSR 2019 was a studied scientific approach and, therefore, legal and valid.
56. This submission, in our considered opinion, clearly appears to be a fallacious and a bald assertion. As would be apparent from the process for preparation of a DSR, there are multiple factors that require to be gone into with an approach attended by scientific temper. The exercise is aimed not only at exploitation of mineral solely with the economic objective but also to ensure sustainable mining so that natural resources can be utilized in an environment friendly manner in a scientific and

systematic way for protection of the environment and ecology by following the principle of Sustainable Development. In the present case, we find that exercise undertaken by the DLC was only to access the quantum of the fresh sand deposits accumulated during the monsoons. Related to this, is the claim of the State that the report of the DLC is the 2019 DSR. We find it difficult to accept this for the following reasons:

- a) According to the State, the DSR published on 10.12.2018 is not an Interim DSR as claimed by the Applicants but a final one. This was expanded by inclusion of 14 Sand Ghats based on the report dated 19.09.2019 submitted by the DLC. We have closely examined the report of the DLC dated 19.09.2019 in hindi filed as Annexure A-1 by the State in its Counter Affidavit in O.A. No. 40/2020/EZ and find that far from being a DSR, it has been prepared only “for assessment of plot and security deposits for settlement of Sand Blocks of rivers situated in Banka district w.e.f. F.Y. 2020 to F.Y. 2024 and to complete other procedures”. For

convenience we may reproduce the translated version of the DLC report below:

“Report of committee constituted by the Collector under the chairmanship of Additional Collector, Banka for assessment of plot and security deposit for settlement of Sand Blocks of rivers situated in district-Banka w.e.f. next financial year 2020 to financial year 2024 and to complete other procedures.

In the light of Sand Mining Policy, 2019 promulgated vide Notification no. 02/M.M. (Ba)-227/18-2650/M, Patna dated 14.08.2019 of the Mines & geology Department, Bihar , Patna, today on 19.09.19, the meeting of committee constituted vide Memo No. 1132/Go., Banka dated 08.09.19 of Collector, Banka for assessment of security deposit after earmarking the plots for settlement of Sand Ghats situated in District - Banka for the period of five years w.e.f. next financial year 2020, was called, wherein, all the members of committee viz. Additional Collector (Chairman), Sub-Divisional Officer, Banka (Member), Land Reforms Deputy Collector, Banka (Member), Executive Engineer, Rural Works Department, Works Division, Banka-1 (Member) and Mineral Development Officer-cum-Incharge, mining Director, Banka (Convener) were present.

In the light of aforesaid notification and departmental letters, the discussion for earmarking the Sand Blocks in the sand deposit rivers situated in District - Banka and for assessment of security deposit rivers situated in District - Banka and for assessment of security deposit for settlement of sand ghats for a period of 05 years w.e.f. next financial year 2020, took place amongst all the members of committee. During the discussion, this fact came into the light that:

- (01) The Consolidated settlement amount of Sand Ghat of District-Banka for the current financial year 2019, is Rs. 45,49,06,368/- (Rupees Forty Five Crores, Forty Nine Lakhs Six Thousand Three Hundred & Sixty Eight Only).***
- (02) In the light of Departmental Letter no, 2681/M, Patna, dated 16.08.19 the assessment of security deposit for the settlement of sand Ghats of District-Banka for the year 2020 to 2024, has to be done by increasing 20% settlement amount of Rs. 45,49,06,368/- (Rupees Forty Five Crores, Forty Nine Lakhs Six Thousand Three Hundred & Sixty Eight Only) of current financial year 2019. Meaning thereby is that, the minimum consolidation security***

deposit of Rs. 54,58,87,642.00 (Rupees Fifty Four Crores Fifty Eighty Seven Thousand Six Hundred & Forty Two Only) has to be assessed for all the proposed blocks of Banka District for the settlement of the financial year 2020 to 2024.

- (03) During the Settlement of Sand Ghats for the year 2015 to 2019, the sand area of Chanan River from Ghogha Bear (Sub-Division Amarpur) upto the limits of Bhagalpur in downstream, was restricted for settlement due to irrigation problems of farmers, due to which, it's settlement was not done. Similarly, the settlement of sand areas of Gerual River was also not done by treating the same as restricted area.**

By maintaining the status quo of both these sand areas, and by dividing, the sand areas of Chanan River in the light of para 5(i) and (iii) of Departmental Letter No. 2681/M, dated 16.8.19 and Departmental notification no. 02/M.MM. (Ba.)-227/18-2650/M, Patna dated 14.8.19, the consideration was made by the committee on making Sand Blocks. In this continuation, it was discussed to keep Block-1 alongwith Block-1, and Block-5 alongwith Block-4, but, on doing so, according to para-6 of the Departmental Notification i.e. procedure of settlement of sand ghats - "(a) Any person/registered copy/ Partnership Society government agency shall be entitled for auction of maximum two Sand Blocks or 200 hect. Area, whichever is lesser", according t which, the consolidated Rakba of Block-1 and Block-2 of Chandan/Chanan River becomes 252 hect., and similarly consolidated Rakba of Block-4 and Block-5 becomes 275.8 hectares, which goes contrary to the condition mentioned in the aforesaid paragraph. In this situation, in view of the departmental letter no. 3161/M, Patna dated 16.9.19, it was unanimously decided by the committee to make 7 Sand Blocks of sand areas of Chanan River.

- (04) Similarly, it was also unanimously decided by the committee to make Sand Blocks by dividing Badula river in two blocks, i.e. one-one blocks in Up Stream and Down Stream for the Dam, due to having Hanuman Dam and Reservoir in Badua River, and to make Sand Blocks by treating the other sand deposit rivers of district as single stretch. In this manner, it was decided by the committee to make total 14 Sand Blocks in district - banka, whose' details are as under:-**

Sr.	Block/	Area	Co-ordinate	Security
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No.	Unit Name	(HA.)			Deposit (In Crores)
1	2	3	4		5
1	Chanan Block 1	163.1	A	24°58'10.81"N 86°55'25.07"E	4,50,00,000.00
			B	24°58'15.75"N 86°55'35.97"E	
			C	24°55'47.66"N 86°55'13.57"E	
			D	24°55'48.71"N 86°55'0.57"E	
2	Chanan Block-2	88.9	A	24°55'48.71"N 86°55'0.57"E	4,00,000,00.00
			B	24°55'47.66"N 86°55'13.57"E	
			C	24°54'29.77"N 86°55'4.47"E	
			D	24°54'25.23"N 86°54'56.00"E	
3	Chanan Block-3	41.0	A	24°54'7.40"N 86°55'11.73"E	2,00,000,00.00
			B	24°54'16.44"N 86°55'17.23"E	
			C	24°53'41.97"N 86°56'14.24"E	
			D	24°53'38.17"N 86°56'5.20"E	
4	Chanan Block-4	180.7	A	24°53'22.58"N 86°56'4.47"E	9,00,000,00.00
			B	24°53'18.53"N 86°56'15.82"E	
			C	24°50'26.15"N 86°56'16.14"E	
			D	24°50'24.91"N 86°56'2.98"E	
5	Chanan Block-5	95.1	A	24°50'24.91"N 86°56'2.98"E	7,00,000,00.00
			B	24°50'26.15"N 86°56'16.14"E	
			C	24°49'21.68"N 86°55'48.37"E	
			D	24°49'30.10"N 86°55'38.57"E	
6	Chanan Block-6	187.2	A	24°48'50.28"N 86°55'39.35"E	10,00,000,00.00
			B	24°48'50.43"N 86°55'47.91"E	
			C	24°46'24.72"N 86°54'19.90"E	
			D	24°49'24.72"N 86°54'6.47"E	
7	Chanan Block-7	190.00	A	24°36'32.06"N 86°54'30.48"E	2,01,00,000.00
			B	24°36'29.52"N 86°44'27.62"E	
			C	24°35'50.10"N 86°38'17.21"E	
			D	24°35'51.50"N 86°38'15.75"E	
8	Sukhaniya River		A	24°49'54.21"N 87°3'26.05"E	2,00,000,00.00
			B	24°49'48.80"N 87°3'29.36"E	
			C	24°43'56.89"N 86°59'20.84"E	
			D	24°43'57.74"N 86°59'16.80"E	
9	Cheer River		A	24°54'16.82"N 87°8'40.23"E	5,32,000,00.00
			B	24°54'15.30"N 87°8'44.89"E	
			C	24°46'57.10"N 87°4'34.68"E	
			D	24°46'52.78"N 87°4'19.80"E	

10	Badua River-2		A	24°50'19.62"N 86°37'32.79"E	1,52,000,00.00 50,000,00.00
			B	24°50'21.08"N 86°37'37.09"E	
			C	24°41'53.52"N 86°34'4.64"E	
			D	24°41'53.52"N 86°34'1.32"E	
11	Odhni River		A	24°54'37.79"N 86°54'44.71"E	
			B	24°54'37.17"N 86°54'45.91"E	
			C	24°49'55.99"N 86°51'29.53"E	
			D	24°49'55.99"N 86°51'27.70"E	
12	Dar Bashan		A	24°41'45.08"N 86°50'14.07"E	2,00,000,00.00
			B	24°41'43.50"N 86°50'14.65"E	
			C	24°43'57.04"N 86°44'58.56"E	
			D	24°43'57.04"N 86°45'0.53"E	
13	Kurar River		A	24°46'19.27"N 86°54'0.89"E	2,25,000,00.00
			B	24°46'19.27"N 86°54'0.89"E	
			C	24°46'19.27"N 86°54'0.89"E	
			D	24°46'19.27"N 86°54'0.89"E	
14	Badua River-I		A	25°1'45.69"N 86°39'23.76E	2,50,000,00.00
			B	25°1'42.25"N 86°39'23.39E	
			C	24°53'50.15"N 86°38'42.03E	
			D	24°53'50.15"N 86°38'40.37E	

It was unanimously decided by the Committee to send proposal to the Collector, Banka for making of Sand Blocks River Units and according to assess the proposed security deposit."

[Underlining supplied]

57. Therefore, the manner of identifying the Sand Ghats/ Blocks cannot be accepted as being environmentally sound which is the object of the SSMMG-2016 being the only guideline applicable at that time. This position is further strengthened when, even according to the State, the entire exercise for identifying the Sand Ghats was undertaken in terms of the Bihar Sand Mining Policy, 2019 which primarily deals with the procedures for

identification of Sand Ghats after its physical identification under sub-clauses (i) and (ii) of Clause 5 of the said Policy and also matters relating to its bidding. The exercise also violates the very object of preparing a DSR as decided by the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra). In that case, the Hon'ble Supreme Court was dealing with auction notices in respect of auction proposed by the Government of Haryana in respect of the extraction of minor minerals, boulders, gravel and sand quarries for an area not exceeding 4.5 ha in each case in the districts of Panchkula, Ambala and Yamuna Nagar and quarrying of minor minerals above 5 ha in Bhiwani district and stone and sand mines in the district of Mohindergarh, etc., by circumventing the EIA Notification 14.09.2006 in breaking the homogeneous area into pieces of less than 5 ha against which no EIA was required to be undertaken. The Hon'ble Supreme Court noted that there was no material to conclude that such mining would not cause environmental degradation or threat to the biodiversity or destroy riverine sites of the river. It was further noted as under:

“.....

9. 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.

.....

26. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a river bed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 kilometre, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.”

[Underlining supplied]

58. A Core Group was constituted by the MoEF&CC to look into the environmental aspects associated with the minor minerals *vide* its order dated 24.03.2009. In its report, the Core Group indicated unambiguously that operation

of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals and ought to be permitted only under an *approved framework of mining plan*, which should provide for *reclamation and rehabilitation* of mined out areas. Taking into consideration *location of any eco-fragile zone(s)* within the *impact zone* of the proposed mining area, the related rules/notifications governing such zones as well as judicial pronouncements, if any. The Hon'ble Supreme Court further observed as follows:

“25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. In-stream 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.

26. 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 bio-diversity 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.”

[Underlining supplied]

59. It is significant to note that SSMMG-2016 was framed pursuant to the decision in *Deepak Kumar* (supra), in addition to MoEF&CC Notification dated 15.01.2016 prescribing the procedure for Environment Impact Studies in respect of areas less than 5 ha by constitution of DEIAA in the States.
60. While the SSMMG-2016 is relevant for the purpose of DSR and issues cognate thereto, MoEF&CC Notification dated 15.01.2016 deals with EIA process in respect of various categories of mines by amending the schedule thereto. Appendix X of the said Notification prescribes that the DEIAA is also the authority for preparing the DSR. On a conjoint reading of the decision in the case of *Deepak Kumar* (supra) and the SSMMG-2016, it will be apparent that the exercise undertaken by the DLC as reflected in its report dated 19.09.2019 to prepare the

DSR 2019, as claimed by the State, cannot be considered as a valid exercise for preparation of DSR since the requisite studies have obviously not been carried out. The exercise is lacking in the process prescribed in the SSMMG-2016 (supra) and the structure of the DSR set out therein. Merely quantifying mineable minerals cannot be considered as complete studies for preparation of DSR as there are other critical and crucial environmental factors which require to be gone into as would appear from the process prescribed under SSMMG-2016 reproduced earlier¹¹ and the decision of the Hon'ble Supreme Court in *Deepak Kumar* (supra).

61. We find resonance of this even in the EMGSM-2020 referred to by the MoEF&CC in its reply as one of the key points for preparation of a comprehensive DSR for sand mining includes preparation of DSR, auditing of rivers and the necessity to prepare a DSR in such a way that it not only identifies the mineral bearing area but also defines the mining and no mining zones considering various environmental and social factors.

¹¹ Paragraph 53 of this order; Pages 21-23 of the Sustainable Sand Mining Management Guidelines-2016

62. Next is the issue pertaining to the difference in lease areas and the quantum of mineable mineral in the DSR and the NIT, we find the explanation given by the State in this regard also to be quite unsatisfactory. This also requires to be considered in the light of the stand of the State that the DSR filed by the Applicant in O.A. No. 40/2020/EZ as being undated and, therefore, not reliable. We find that a copy of a DSR has also been filed by the State as Annexure A-6 to its reply. Upon examination of the two DSRs, we find that in both the cases the last sentence in the conclusion reads as follows:

Conclusion of the DSR filed by the Applicant in O.A. No. 40/2020/EZ:

“Since it is an interim report, it is proposed to identify such potential areas at certain interval and get the data bank of DSR to be updated.”

Conclusion of the DSR filed by the State Respondents in O.A. No. 40/2020/EZ:

“Since it is an interim report, it is proposed to identify such potential areas at certain interval and get the data bank of DSR to be updated.”

[Underlining supplied]

63. Both the DSRs are undated and are stated to have been prepared under para 7(iii) of S.O. 141(E) dated 15th January 2016, as amended on S.O.3611(E), dated 25th July 2018 of Ministry of Environment, Forest and Climate

Change Notification. The only difference is that in the first part of the conclusion in the one filed by the Applicant, the total Sand Ghat area in the Chandan/Chanan river has been mentioned as 226 ha with mineable mineral potential of 12,82,451.94 MT and 109 ha of area with 6,17,576.4 MT mineable mineral potential for Cheer river where the sand mining can be done. In the DSR filed by the State on the other hand, the total area for Sand Ghat has been mentioned as 719 ha with approximate mineable mineral potential of 35,36,236.94 MT in Chandan/Chanan, Cheer, Badua, Ribani, Dakai and Kudar river. The DSR filed by the State thus indicates that the total mineable area is 719 ha for 5 years in respect of the 6 rivers, i.e., Chandan/Chanan, Cheer, Badua, Ribani, Dakai and Kudar.

64. However, in the NIT we find mention of four other rivers namely, Sukhania, Odhni, Darbashan and Kurar river which do not figure in the DSR of the State and the mineable area. According to the Respondents, increase in the area to about 946 ha was on account of inclusion of the 7 remaining rivers mentioned in the auction at Sl. No.

8-14 which had been auctioned river-wise in terms of Clause 5(ii) of the Policy, 2019 being minor rivers and tributaries and not stretch-wise under Clause 5(i) of the said Policy providing for major rivers including Chandan/Chanan. The mining leases in river Chandan/Chanan at Sl. No. 1-7 was 719 ha but, the area had increased to 946 ha in the NIT due to inclusion of the minor river stretches of which those mentioned at Sl. No. 8-14 are some of them.

65. This explanation also does not appear to be satisfactory as we find that as per the DSR referred to by the State, with total mineable area has been shown as 719 ha, also includes other rivers besides Cheer and Chandan/Chanan, namely, Badua, Ribani, Dakai and Kudar rivers.
66. Again, in the NIT, except for river Chandan/Chanan, the other rivers mentioned therein are quite different from those referred to in the conclusion part of the DSR 2019.
67. For sake of clarity and convenience, we may reproduce below the complete conclusion part of the DSR 2019 and the list of Sand Blocks mentioned in the NIT:

The conclusion part of the DSR filed by the State Respondents:

“Conclusion:

Sand ghat of total area around 719 Hectare with mineable potential of 3536236.94 MT in Chandan, Cheer, Badua, Ribani, Dakai and Kudar river has been identified where sand mining can be done with consultation of concerned authorities before opting for E.C. The KML file is attached for ready reference.

Since it is an interim report, it is proposed to identify such potential areas at certain interval and get the data bank of DSR to be updated.”

[underlining supplied]

List of Sand Blocks mentioned in the NIT:

S. No.	Auction description of work	Auction sub item	Area (Ha)	Co-ordinates	
1	2	3	4	5	
1	Settlement of Sand Ghats Chanan Block - 1	Sand	163.4	A	24 58 10.81 N 86 55 25.7 E
				B	24 58 15.75 N 86 55 35.97 E
				C	24 55 47.66 N 86 55 13.57 E
				D	24 55 48.71 N 86 55 057 E
2	Settlement of Sand Ghats Chanan Block - 2	Sand	88.9	A	24 58 48.71 N 86 55 0.57 E
				B	24 55 47.66 N 86 55 13.57 E
				C	24 54 29.77 N 86 55 4.47 E
				D	24 54 25.23 N 86 54 56.00 E
3	Settlement of Sand Ghats Chanan Block 3	Sand	41	A	24 54 7.40 N 86 55 11.73 E
				B	24 54 16.44 N 86 55 17.23 E
				C	24 53 41.97 N 86 56 14.34 E
				D	24 53 38.17 N 86 56 5.20 E
4	Settlement of Sand Ghats Chanan Block 4	Sand	180.7	A	24 53 22.58 N 86 56 4.47 E
				B	24 53 18.53 N 86 56 15.82 E
				C	24 50 26.15 N 86 56 16.14 E
				D	24 50 24.91 N 86 56 2.98 E
5	Settlement of Sand Ghats Chanan Block 5	Sand	95.1	A	24 50 24.91 N 86 56 2.98 E
				B	24 50 26.15 N 86 56 16.14 E

				C	24 49 21.68 N 86 55 48.37 E
				D	24 49 30.10 N 86 55 38.57 E
6	Settlement of Sand Ghats Chanan Block 6	Sand	187.2	A	24 48 50.24 N 86 55 39.35 E
				B	24 48 50.48 N 86 55 47.91 E
				C	24 46 14.27 N 86 54 19.90 E
				D	24 46 24.72 N 76 54 6.47 E
7	Settlement of Sand Ghats Chanan Block 7	Sand	190	A	24 38 32.06 N 86 44 30.48 E
				B	24 36 29.52 N 86 44 27.62 E
				C	24 35 50.10 N 86 38 17.21 E
				D	24 49 54.21 N 86 38 15.75 E
8	Settlement of Sand Ghats Sukhaniya River	Sand		A	24 49 54.21 N 87 3 26.05 E
				B	24 49 48.80 N 87 3 29.36 E
				C	24 43 56.89 N 86 59 20.84 E
				D	24 43 57.74 N 86 59 16.80 E
9	Settlement of Sand Ghats Cheer River	Sand		A	24 54 16.82 N
				B	24 54 15.30 N 87 4 44.89 E
				C	24 46 97.10 N 87 4 34.68 E
				D	24 46 32.78 N 86 4 19.80 E
10	Settlement of Sand Ghats Badua River-2	Sand		A	24 50 19.62 N 86 37 32.79 E
				B	24 50 21.08 N 86 37 37.09 E
				C	24 41 54.13 N 86 34 4.64 E
				D	24 41 53.52 N 86 34 1.32 E
11	Settlement of Sand Ghats Odhni River	Sand		A	24 54 37.79 N 86 54 44.71 E
				B	24 54 37.17 N 86 54 45.91 E
				C	24 49 55.29 N 86 51 29.59 E
				D	24 49 55.99 N 86 51 27.90 E
12	Settlement of Sand Ghats Darbashan River	Sand		A	24 41 45.08 N 86 50 14.07 E
				B	24 41 43.50 N 86 50 14.65 E
				C	24 43 34.03 N 86 44 58.56 E
				D	24 43 54.04 N 86 45 0.53 E
13	Settlement of Sand Ghats Kumar River	Sand		A	24 46 19.27 N 86 54 0.89 E
				B	24 46 7.91 N 86 54 14.33 E
				C	24 44 30.01 N 86 51 44.68 E
				D	24 44 34.94 N 86 51 43.32 E

14	Settlement of Sand Ghats Badua River-1	Sand		A	24 1 45.69 N 86 39 23.76 E
				B	24 1 42.25 N 86 39 26.39 E
				C	24 53 42.25 N 86 38 42.03 E
				D	24 53 40.19 N 86 38 40.37 E

68. The above manifests gross contradictions and inconsistencies in the version of the State with regard to the exercise undertaken by them for preparation of DSR 2019 in the manner adumbrated above. Such contradictions and inconsistencies unmistakably demonstrate want of the nature of studies implicit in the preparation of a DSR. The action of the State is apparently unguided, whimsical and arbitrary. The Sand Blocks appear to have been identified merely on the basis of visual assessment with the revenue of the State as the sole criteria as the report of DLC would reveal.
69. The aforesaid position gets further compounded against the State when we carefully examine the DSR 2018 filed by the State. We find that the said DSR contains three different categories of Sand Ghats-under the head "List of Mining Lease in the District" in Ch. No. 3. Ch. No. 3.3 contains (i) "List of Existing Sand Ghats as per Departmental Record" and (ii) "Proposed Sand Ghats (Potential Area)" under which there is also a separate

head for “Potential Sand Ghats awaiting Statutory Clearances” which is the third one.

70. On a close examination, these lists belie the submission of the State that the minor rivers were being auctioned stream-wise, as we find that different blocks have been identified even in the minor rivers namely, Cheer, Badua, Odhni and Sukhaniya. Under the head “Proposed Sand Ghats (Potential Area)”, we find that minor rivers namely, Kudar, Cheer and Dakai also have different Sand Blocks. In fact, river Cheer has as many as 9 Sand Blocks with varying mineable areas. Under the head “Potential Sand Ghats awaiting Statutory Clearance” we also find reference of different Sand Ghats in such rivers. For instance Badua has as many as 6 Sand Ghats, Odhni 2, Sukhania 4, Cheer 7, Kurar 2 and Darbashan 4 Sand Blocks with varying mineable areas in each of the Sand Ghats.
71. Thus, these undeniably repel the contention of the State that the 7 Sand Ghats/Blocks at Sl. No. 8-14 had been auctioned stream-wise.

72. Apart from the above, we also notice another serious discrepancy with regard to the area of the Sand Ghats said to have been identified. As per the specific pleadings of the State at paragraph 22 of their reply affidavit in O.A. No. 40/2020/EZ, it has been stated that the Sand Ghats created at the district level approved by the District Magistrate, had been included in the existing DSR, i.e. DSR dated 10.12.2018, filed by the State taking the total sand mining area upto 719 ha for the Banka district. The conclusion part of the DSR, 2019 filed by the State also indicates the total area of the Sand Ghat to be 719 ha with approximate mineable mineral potential of 35,36,236.94 MT for 5 years commencing from 2020 having regard to the fact that the new Sand Ghats/Blocks had been notified by the Mining Department on 14.08.2019. This according to the said DSR, pertains to the Sand Ghats at Chandan/Chanan, Cheer, Badua, Ribani, Dakai and Kudar rivers. However, we also find a chart prepared by the Applicant based on the documents found on the website of SEIAA, Bihar and the tender documents which indicates otherwise. The chart filed as Annexure A-16 to I.A. No. 46/2020 in the O.A. shows the

difference in the lease hold areas. For convenience, we may reproduce the said chart below:

Sl. No.	BLOCK / UNIT NAME	AREA AS PER NIT DOCUMENT (HA.)	AREA AS PER TOR PROPOSAL (HA)	MOEF & SEIAA PROPOSAL N.
1	CHANAN BLOCK-01	163.1	163.1	IA/BR/MIN/145616/2020
2	CHANAN BLOCK-02	88.9	88.9	SIA/BR/MIN/51864/2020
3	CHANAN BLOCK-03	41	41	SIA/BR/MIN/51868/2020
4	CHANAN BLOCK-04	180.7	180.7	IA/BR/MIN/146698/2020
5	CHANAN BLOCK-05	95.1	95.1	SIA/BR/MIN/51873/2020
6	CHANAN BLOCK-06	187.2	187.2	IA/BR/MIN/146713/2020
7	CHANAN BLOCK-07	190	97	SIA/BR/MIN/52675/2020
8	SUKHNIYA RIVER	N.A.	76.8	SIA/BR/MIN/52159/2020
9	CHIR RIVER	N.A.	280.3	IA/BR/MIN/151624/2020
10	BADUA RIVER-01	N.A.	290.3	IA/BR/MIN/150188/2020
11	KURAR RIVER	N.A.	41.36	SIA/BR/MIN/52104/2020
12	BADUA RIVER-02	N.A.	<i>Pending for Auction</i>	
13	ODHANI	N.A.		
14	DARBASHAN RIVER	N.A.		
	Total Area in ha.	946	1541.66	

73. As will be evident from the above, the total mineable area for 14 Sand Ghats is shown as 946 ha out of which 11 have been auctioned. However, the total area of the 11 Sand Ghats measures 1541.66 ha and auction in respect of the rest of the three at Sl. No. 12, 13 and 14, is yet to take place. Thus the area of the 11 Sand Blocks auctioned far exceeds the limit of 719 ha for 5 years provided in the DSR filed by the State notwithstanding

that even 946 ha mentioned in the NIT was already in excess of 719 ha permitted under DSR 2019.

74. We may summarise the figures appearing in the DSR 2018 prepared on 10.12.2018, the DSR 2019 incorporating the 14 Sand Ghats, the Sand Ghats mentioned in the NIT document and the area as per the ToR proposal in a tabulated manner as follows:

Sl. No.	Document	River(s)	Area (in Ha)	Mineable Mineral Potential (in MT)
1	DSR 2018	Chandan	226	12,82,451.94
		Chir	109	6,17,576.40
		Total	335	19,00,028.34
2	DSR 2019	Chandan	719	35,36,236.00
		Chir		
		Badua		
		Ribani		
		Dakai		
		Kudar		
3	NIT	Chanan Block - 1	163.4	-
		Chanan Block - 2	88.9	
		Chanan Block - 3	41	
		Chanan Block - 4	180.7	
		Chanan Block - 5	95.1	
		Chanan Block - 6	187.2	
		Chanan Block - 7	190	
		Sukhaniya River	-	
		Chir River	-	
		Badua River-2	-	
		Odhni River	-	
		Darbashan River	-	
		Kudar River	-	
		Badua River-1	-	
		Total	946.3	
4	ToR Proposal	Chanan Block - 1	163.1	
		Chanan Block - 2	88.9	
		Chanan Block - 3	41	

	Chanan Block - 4	180.7	-
	Chanan Block - 5	95.1	
	Chanan Block - 6	187.1	
	Chanan Block - 7	97	
	Sukhaniya River	76.8	
	Chir River	280.3	
	Badua River-1	290.3	
	Kudar River	41.36	
	Odhni River	Pending for auction	
	Darbashan River		
	Badua River-2		
	Total	1,541.66	

75. Above table clearly demonstrates the discrepancies and the inconsistencies as regards the areas of Sand Ghats referred to on behalf of the State which are said to have been put on auction in accordance with DSR 2018. It is of pertinence to note that according to DSR 2019 the mineable area could not have been increased from 719 ha which is a total area identified for the 6 rivers mentioned therein with mineable mineral potential of 35,36,236 MT for 5 years. This is notwithstanding the fact that according to DSR 2018 for river Chandan/Chanan and Cheer, the area was 335 ha for 5 years with the total mineable mineral potential of 19,00,028.34 MT (12,82,451.94+6,17,576.40, respectively). As per the NIT which involves the 14 Sand Ghats only for the 7 blocks of river Chandan/Chanan, it is 946 ha. For the rest of the 7 rivers no area has been mentioned. Again in both the

cases no mineable mineral potential has been mentioned. Finally, as per the auction, the total mineable area for the 7 blocks of river Chandan/Chanan and 4 other rivers that successfully auctioned, is stated to be 1,541.66 ha. Auction in respect of the Sand Blocks in 3 other rivers is yet to be completed.

76. Thus from the above, it can be seen that the mineable area has increased from 335 ha in DSR 2018 to 719 ha in respect of 6 rivers including the river Chandan/Chanan with mineable mineral potential quantified at 35,36,236 MT. Whereas as per ToR of 11 rivers out of 14 which had been auctioned, the total mineable area measures 1,541.66 ha. The other discrepancy which we noticed is that some of the rivers mentioned in the NIT are different from those in the DSR 2019 namely, rivers Odhni, Darbashan and Sukhaniya. River Dakai mentioned in DSR 2019 is missing in the NIT. For river Badua two Sand Ghats have been mentioned as Badua-1 and Badua-2 in the ToR proposal (successfully auctioned).
77. These, therefore, completely displaces the stand of the State that the 14 Sand Ghats had been put on auction in terms of DSR 2019. It rather demonstrates the arbitrary

manner in which the entire exercise had been undertaken.

78. The other serious discrepancy is that no quantum of the mineable mineral has been prescribed thereby providing unlimited access for mining.
79. The facts and circumstances set out above clearly indicate that firstly the permissible area for mining has grossly exceeded even going by the DSR 2019 filed by the State. Secondly, the mineable mineral has not been quantified in the NIT leaving it in the realm of speculation. We have already rejected the explanation of the State on the increase of the mineable area earlier and, therefore, need not delay ourselves on this except to observe that the stand of the Respondents has been inconsistent, contradictory and lacking in clarity.
80. Connected with the above is the question as to whether the 14 Sand Ghats was part of the Interim DSR, i.e., the DSR 2018 (filed by the Applicants), before the NIT was issued on 25.11.2019. It is pertinent to note in this regard that the DSR prepared for the Banka district on 10.12.2018 was for the year 2017-18 as per the State.

The 14 Sand Ghats in the Banka district were identified by the DLC on 19.09.2019. This list was approved by the District Magistrate on 24.09.2019. The NIT was issued on 25.11.2019 and auctioned on 13.12.2019. The successful bidders were issued with the Letters of Intent on 18.01.2020. In other words, the entire exercise relating to the NIT had been completed on 18.01.2020. However, the newly created Sand Ghats of district Banka appear clearly to have been included in the list of DSR only after 02.03.2020 which would be apparent from letter dated 02.03.2020 written by the Mineral Development Officer-cum-Incharge Mine Inspector, Banka to the Special Secretary-cum-Director, Mine and Geology Department, Government of Bihar. For the sake of convenience, we may reproduce the translated version of the said letter which reads as under:

“ ***District Mining Office, Banka***

No. 348/M

Dated: 02.03.2020

From,

***Mineral Development Officer
-Cum-
Incharge Mine Inspector,
Banka***

To,

***Special Secretary-cum-Director
Mine & Geology Department,***

Bihar, Patna

Sub: Regarding inclusion of new Sand Ghats created in District Survey Report (DSR) of District Banka.

Sir,

It is to submit on the above-mentioned subject that District Survey Report (DSR) of District Banka was prepared in the year 2017-18 and that time Sand Ghats as per Sand Deposit Rivers were shown in it. Time of more than two years has elapsed after the preparation of District Survey Report (DSR) and during this period due to in flow of water in rivers sand deposit place and nature has changed considerably. In view of this and in compliance with the order contained in departmental Notification No. 2650 dated 14.08.2019 sand ghats of District have been earmarked again and Sand Ghats/Sand Blocks of Sand deposit have been created, details of which are enclosed with the letter.

In view of above, newly created Sand Ghats of District Banka may please be included in the District Survey Report (DSR) available on departmental website.

Submitted for kind information.

Encl. List of Sand Ghats

Yours faithfully,

Sd/-

**Mineral Development Officer
-cum-Incharge Mine Inspector
Banka”**

[Underlining supplied]

81. Thus, the facts and circumstances would unmistakably imply that the Sand Ghats had been auctioned even before being included in the DSR as claimed by the State rendering the stand of the State seriously questionable.

82. The lapse of a period of approximately two years after the DSR 2018 had been prepared and emergence of new sand deposits during the passage of time *due to the dynamics of the river* as contended by the State, would amount to compelling circumstances for the State to have undertaken a fresh exercise for preparation of DSR in terms of the SSMMG-2016 reproduced earlier, the portion of which reads as under:¹²

“The sustainable Mining Plan needs to be dynamic. A survey should be carried out by the District Environment Impact Assessment Authority (DEIAA) with the assistance of Geology Department, Irrigation Department, Forest Department, Public Works Department, Ground Water Boards, Remote Sensing Department and Mining Department etc. in the district at regular intervals.”

[Underlining supplied]

83. Amongst the processes prescribed in the SSMMG-2016 is the calculation of annual rate of replenishment and allowing time for replenishment after mining in area. In the present case, although such a replenishment study has not been referred to in the reply of the State, one relating to a few of the rivers was filed with the response to certain questions put by the Tribunal after the arguments were closed. Though not fair to take

¹² Page 22 of the Sustainable Sand Mining Management Guidelines-2016

cognizance of this without the other side having been put on notice, a perusal of the so called replenishment study shows that it lacks the requisite studies necessary for the process.

84. As noted above, the manner in which the Sand Ghats have been identified and the gross inconsistencies in the stand of the State Government, we are of the firm opinion that the process for DSR was still on and was yet to finalized as would be confirmed by the words "*Interim report*" at the end of the very DSR filed by the State.
85. The deliberations with regard to the discrepancies alluded to above is aimed at examining as to whether the State had undertaken the studies with regard to the Sand Blocks scientifically to assure ourselves of the reliability of the DSR, filed by the State. The facts and circumstances clearly indicate that the exercise undertaken for the purpose is grossly inadequate rendering the DSR 2019 to be unscientific and thus unreliable.
86. Issue with regard to the preparation of the DSR is not a mere technical one. It involves intricate study of riverine

ecosystem and ecology which is undertaken in consonance with the Precautionary Principle and Principle of Sustainable Development which are considered to be part of Article 21 of the Constitution of India. Therefore, it cannot be taken lightly and as a mere formality.

87. It was strongly emphasised on behalf of the State that requisite final DSR had already been prepared which is the one filed with the response in respect of which we have already dealt with earlier. We have already held that from the very words appearing in the conclusion of the report that it is only an "*Interim report*". This stands fortified by the fact that 14 new Sand Ghats/Blocks were identified and annexed to the DSR after identification by the DLC as stated by the State. This would unmistakably infer that even the first process under the SSMMG-2016 for preparation of DSR *inter alia* requiring identification of areas of aggradation/deposition where mining can be allowed, had not been completed. We may refer to the processes under the Guidelines reproduced at paragraph 53 above which unambiguously lays down that the mine processes including identification of areas of

aggradations/deposition are important initial steps necessary for preparation of a survey document mapping the status of sand sources in a district.

88. Further, the Guidelines also prescribe that the Sustainable Mining Plan needs to dynamic and, survey should be carried out in the district “*at regular intervals*” which includes calculating of carrying capacity of the river, stream beds, etc., as would appear from the relevant extract of the Guidelines which reads as follows:

“Besides, calculating the carrying capacity of the river/stream beds/other sources to find out maximum quantity available to be allowed for removal each year from the sources, it should also provide various measures to regulate sand and aggregate mining in a systemic way.”

That apart:

“It has to provide for environmentally safe depth of mining and safeguards of banks by prescribing safe distance from banks. It is required that there should be a Sub-Divisional Committee which should visit each site and make recommendation. The Committee should comprise of Sub-Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.”¹³

[Underlining supplied]

¹³ Page 23 of the Sustainable Sand Mining Management Guidelines-2016

89. What follows from the above is that there is also a need to calculate the carrying capacity of the river/stream beds/ other sources to find out maximum quantity available to be allowed for removal each year. This requirement has also obviously not been taken care of while preparing the DSR 2019.
90. There is another aspect which negates the stand of the State that the DSR 2018 is the final DSR. When we scrutinize the records and the documents carefully, the position does not appear to be so. Pertinently, DSR 2018 was also referred to and relied upon on behalf of the Applicants which they claimed to be an Interim DSR. We have already observed that in the conclusion part of both the DSRs, i.e., the one filed by the Applicant and the other by the State, it is mentioned as being "*Interim DSR*", as would be evident from the extracts of the conclusions at paragraph 62 above.
91. A bare reading of the conclusions of the two DSRs show that both are *Interim reports* which would imply that further studies would be required for the DSR to attain its finality. The only difference between the two DSRs is that in the DSR filed by the Applicant (i.e., DSR 2018), the

mineable area has been shown as 226 ha in respect of river Chandan/Chanan and 109 ha in respect of river Cheer. Whereas the one filed by the State (DSR 2019), the area has been shown as 719 ha against river Chandan/ Chanan and namely Cheer as well as Badua, Ribani, Dakai and Kudar.

92. Thus, it would by implication mean that the Interim DSR was subject to the DSR being finalized after completion of the entire process. Instead, we find mineable areas having been added and Sand Blocks are created without following the due process with an objective of revenue maximization.
93. The significance of the DSR has been considered in the light of the judgment of the Hon'ble Supreme Court in *Deepak Kumar* (supra) which has graphically set out the width of studies required for the purpose. The SSMMG-2016 framed pursuant to the said judgement, lays down the procedure, components and parameters of which we have been reproduced earlier. In *Anjani Kumar* (supra), the Tribunal had emphasised that a DSR is a pre-requisite and condition precedent before the grant of a mining lease of sand and bajri and the process prescribed

for preparing survey documents mapping the status of the sand sources in a district is not only an integral but an essential part. That every river is an eco-system in itself and the absence of factual DSR will be in conflict of the Environmental Laws. The object of the guidelines is to ensure sustainable sand mining, maintain the ecology of the river and other sand sources, which would be rendered a nugatory if due regard is not given.

94. We may also note that in the present cases, we are not concerned with the validity of the tenders invited by the State Government under its mining policy but only to ascertain as to whether the State was acting in terms of its obligation to ensure that sand mining is not being permitted in a manner opposed to the Doctrine of Public Trust, the Principal of Sustainable Development, Precautionary Principal having regard to the Principal of Intergenerational Equity. While dealing with this question in the case of *Anjani Kumar* (supra), it was held as under:

“...Stricto senso we are not concerned with the tenders invited by the State Government under its mining policy which does not fall within the scope of jurisdiction of this Tribunal. However, the State in terms of its constitutional obligations contained in Article 48(A) read with the Principle of Sustainable Sand Mining, the

very foundation of the Sand Mining Policy, 2017 of the State and the Judgment of the Tribunal, is obliged to provide due protection and safeguards for the environment protection before it can generate revenue by utilization of its natural resources. The State Government holds these assets in public interest. The Doctrine of Public Trust 66 requires the State Government to ensure that the natural resources including sand mining is not permitted to be wasted opposed to the Principle of intergenerational equity. The mining policy does have deficiencies and does not incorporate all the provisions of Environmental protection as contemplated in the minor mineral rules of the State of UP. We are not concerned whether the State ought or ought not have invited tenders on the basis of so called surveys conducted under the mining rules but we are certainly concerned with that no environmental degradation is permitted as a result of indiscriminate unregulated mining without compliance to the laws enforce. Obtaining prior Environmental Clearance is not optional therefore, all other laws in other fields than environment must tilt in favour of the environmental laws and non should be permitted to carry on the activity of extraction of minor minerals including sand unless the requirement of environmental laws are fully satisfied.”

95. In the present case, a DSR prepared in the year 2018 is sought to be amended by incorporating additional 14 Sand Ghats based upon a report submitted by a Committee constituted by the DM of the Banka district. As already noted, the report does not indicate any studies having been undertaken but only sets out assessment of plot and security deposits for settlement for Sand Blocks for the financial year 2020 to financial year 2024 and to complete the other proceedings. Thus, the DSR 2019 is confined only to these aspects which primarily pertain to

generation of State revenues and, therefore, is only revenue and mining centric and shows no concern for environment. No studies have been carried out in accordance with the prescribed procedures for the State to claim the amended DSR as the DSR 2019.

96. We fail to understand as to why the State was in such tearing hurry to put the Sand Ghats on auction based on an obviously perfunctory report of the DLC when the SSMMG-2016 unambiguously prescribes that a survey should be carried out in the district at regular intervals as obtained in paragraph 82 of this order.¹⁴
97. The DSR itself is riddled with contradictions and discrepancies which is worse confounded by the manner in which the Sand Blocks had been put on tender. The inconsistencies pertaining to the area of Sand Blocks and quantum of mineable minerals reflected in the DSR 2019 and the NIT obviously has arisen as a result of a proper DSR not having been prepared. Except for the one undertaken for the DSR 2018, no replenishment studies have been carried out in respect of the DSR 2019. The explanation attempted to be given by the State tend to be

¹⁴ Page 22 of the Sustainable Sand Mining Management Guidelines-2016

misleading and not convincing at all. Reference to the decision in the case of *Pasupati Rice Mill Pvt. Ltd.* (supra) made by the State in support of their case is clearly misplaced in as much as by order dated 12.12.2019, we had upheld the Bihar Sand Mining Policy, 2019 which was under challenge in that case. The DSR which was sought to be placed before us by the learned Counsel for the State during the time of his arguments, had been mentioned in the passing to opine that such exercise also appear to have been undertaken but, its validity had not been examined being not a subject matter of that case.

98. As noted by us, the stand of the MoEF&CC, while acknowledging that the Tribunal had held the DEIAA to be incompetent to deal with matters relating to EC and preparation of DSR, has stated in its affidavit that although an Appeal has been preferred before the Hon'ble Supreme Court against order dated 11.12.2018 passed in Execution Application No. 55/2018 arising out of O.A. No. 520/2016, directing suspension of Notification dated 15.01.2016 till a fresh Notification issued by the MoEF&CC, the Ministry in compliance to the direction of the Tribunal in order dated 04.09.2018 in O.A. No.

173/2018, as formulated the EMGSM-2020 supplemental to the SSMMG-2016. What perplexes us is the lack of initiative on the part of the Ministry in issuing alternate Guidelines and the authority to deal with matters relating to preparation of the DSR. Even the respondent State did not approach the Ministry at all for a clarification in this regard. Instead of doing so, it has resorted to a measure which is in conflict with the decision of the Tribunal in *Satendra Pandey* (supra) in as much as the District Magistrate has been made the authority to take up the exercise albeit through a DLC regarding which we have already expressed our opinion.

99. Finally, it is also pertinent to note that the DSR 2018 which was published on 10.12.2018 appear to have been prepared by the DEIAA in violation of the order dated 13.09.2018 passed by the Tribunal in the case of *Satendra Pandey* (supra). This fact also contradicts the stand of the State that no action had been taken for identification of fresh Sand Ghats in the absence of any clarification from the MoEF&CC regarding the authority to deal with such matters. This is another circumstance which severely erodes the case of the State Respondents.

100. So far as the applicability of EMGSM-2020 to the present case is concerned, it is quite apparent that the so called DSR 2019 was prepared in the year 2019 whereas EMGSM-2020 is of the year 2020 and, therefore, would not have been applicable at the material time. Thus, reliance on this by either of the parties is of no consequence. It would be relevant only to the extent that the EMGSM-2020 re-emphasises the importance of preparation of DSR.
101. For all the reasons aforesaid, we are of the firm view that the DSR 2019 and the other related exercise undertaken by the State fail to pass the muster of the Environmental Laws and the procedures laid down therefor.
102. In the result, we allow the applications and hold that:
- (a) DSR 2018 cannot be considered as a final DSR and is only an *Interim* report.
 - (b) The DSR 2019 incorporating the 14 Sand Ghats also cannot be considered as a final DSR and is hereby quashed.

- (c) All actions taken pursuant to DSR 2018 and DSR 2019 referred to in (a) and (b) above are hereby held to be void and a nullity.

103. In the light of the above findings, we direct as follows:

- (i) Having regard to the findings at (a), (b) and (c) above, we direct the State to undertake further exercise for preparation of a fresh DSR for the Banka district.
- (ii) As the DEIAA is not functioning as a consequence of the decision of the Tribunal in *Satendra Pandey* (supra), the DSR shall be prepared through a consultant(s) accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India in terms of O.M. of MoEF&CC dated 16.03.2010.
- (iii) The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the parameters prescribed in the SSMMG-

2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regard to the fact that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements.

- (iv) While preparing the DSR, the MoEF&CC Accredited Agency/Consultant shall scrupulously follow the procedure and the parameters laid down under the SSMMG-2016 and EMGSM-2020 read in sync with each other.

104. As a consequence of the above, both the O.As alongwith all connected I.As shall stand disposed off.

S.P. Wangdi, JM

Dr. Nagin Nanda, EM

14th October, 2020

O.A. No. 40/2020/EZ and O.A. No. 57/2020/EZ

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