

Item No.04

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPALBENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 337/2021

Shokeen Ali & Anr.

Applicant(s)

Versus

State of Haryana & Ors.

Respondent(s)

Date of hearing: 12.05.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Ajit Sharma, Advocate

Respondent(s): Mr. Balendu Shekhar, Advocate for CPCB
Mr. Rahul Khurana, Advocate for HSPCB

ORDER

1. Grievance in this application is against inaction of the State PCB in enforcing environmental norms against Respondent Nos. 4 to 9 – Kawaljeet Singh Batra, Gurpreet Singh Bagga, Smt. Gurmeet Kaur, Indrajit Singh Bagga@ Twinkle Bagga, Prabhjeet Singh Bagga and Deepak Choudhary who were engaged in illegal mining at Galauri Block/YNR B-39 of District Yamuna Nagar, Haryana.

2. It is stated that violations have been established against them as per orders of the Director General, Mines and Geology, Haryana dated 30.06.2021 and 15.07.2021 (Annexures A-5 and A-6).

3. Though penalty has been levied for loss of royalty under the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals, and Prevention of Illegal Mining Rules, 2012, no action has been taken for violation of environmental norms in the course of such illegal mining, as required in terms of judgments of the Hon'ble Supreme Court in *M.C. Mehta vs UOI*, (2004) 12 SCC 118, *Goa Foundation v. Union of India & Ors.*, (2014) 6 SCC 590 and *Common Cause Vs. UoI & Ors.*, (2017) 9 SCC 499.

4. Vide order dated 22.12.2021, the Tribunal sought a factual and action taken report from a joint Committee of CPCB, State PCB, SEIAA, Haryana and District Magistrate, Yamuna Nagar.

5. In pursuance of above, joint report has been filed by the State PCB on 10.05.2022. The joint Committee scrutinized the relevant documents and found that there were no boundary pillars and weigh bridge in the mining area. Mining was undertaken beyond the lease area. The Mining Department had taken action by way of show cause notice. An enquiry report was submitted on 30.06.2021 against which appellate order was passed by the Principal Secretary Mining on 24.02.2022. Illegal mining was found to have taken place for which further enquiry in pursuance of order of the appellate authority was pending. Apart from liability for illegal mining, the lessee was also held liable to pay compensation for damage to the environment.

6. Relevant extract from the report are reproduced below:-

“6. That the team has scrutinized the documents submitted alongwith original application and found that on receipt of a complaint regarding illegal mining being carried out in village Galauri of District Yamuna Nagar, the area was got inspected by the Mining Department through Sh. R.S. Thakran, Mining Engineer (Head Quarter), along with Senior Surveyor and Assistant Mining Engineer, Yamuna

Nagar on 09.03.2021. The team while inspection of the said mining firm found that no boundary pillars were found installed on the corner points of the contracted area and also no weigh bridge was installed. In the absence of boundary pillars (as were not found installed), the contracted area was checked with the help of Differential Global Positioning System (DGPS). The inspecting team found that though mining contract was in favour of M/s Kawaljeet Singh Batra but granted only over an area of 24.00 hectares, but they have undertaken illegal mining over an area of 28.50 hectares as per details given below:-

- a) 6.40 hectares area has been mined/excavated within the contracted area but up to the depth of 10 meters as against the permissible depth of 09 meters;
- b) 11.00 hectares area has been mined outside contracted area which is nearby to boundary of contracted mining lease area and mined up to a depth of 10 to 12 meter. Out of said area of 11.00 hectares, an area of 1.20 hectares was situated in revenue estate of village Dera District Ambala and remaining 9.80 hectares in the revenue estate of village Galauri Yamuna Nagar.
- c) Another area of 11.10 hectares area was found mined illegally outside the contracted mining lease area which was adjoining to boundary of contracted mining lease area.

Considering the above findings, **the Mining Department had issued the show caused notice dated 17.05.2021 (Annexure-R3) to the mining contractor for illegal extraction (mining) of boulder/gravel/sand of 37,57000 MT. The Mining Contractor replied the show cause notice on dated 24.05.2021 and refuted the allegation of illegal mining and non-installation of weigh bridge and boundary pillars and requested for re-inspection which was considered by the mining department and a re-inspection was carried out on dated 28.05.2021 and reported there was no discrepancy in the previous inspection report carried out on dated 09.03.2021. Only additional reporting during re-inspection on dated 28.05.2021 was that weighbridge was found operational at a distance of 400 meter away from the contracted area and out of 04 boundary pillars required 03 were found installed. Thereafter, the mining contractor was also afforded an opportunity of hearing on dated 23.06.2021 by the mining department.**

The mining department concluded the enquiry vide orders dated 30.06.2021 (Annexure-R4), wherein the conclusive remarks on illegal mining reported were as per Para 19, 20 & 21 reproduced as under:-

“19. In case of mining beyond contracted area, it was found that it is to an extent of 22.10 hectares out of which 11.20 hectares area (pits marked as EP 1 EP 2, EP 3 and EP 8 in the report) is just adjoining to the lease boundary. It can be decided beyond doubt that the said area has been mined by the contractor firm. In the remaining part of 11.00 hectares, it is difficult to arrive at a conclusion that the firm was mining illegally in the area but logically **it cannot be ruled out that any other person indulging in such huge operations will directly impact the operations/business of the contractor and they would not have allowed it to happen without a tacit understanding (pits marked as EP 4, EP 5, EP 6 in the report).** In the case of mining which was done at a distance of 150-500 meters away from their boundary of contracted area it would be in interest of justice that a fresh detailed enquiry be conducted to establish whether the contractor was involved in said illegal mining. In case it is proved that this area was also mined by the same contractor, they will be liable to pay penalty as per policy.

20. In the light of above said facts which have been brought out on the basis of an enquiry, field visit of the officials of Mining Department and attended formally by the representatives of the mining contractor. I am of the considered view that **M/s Kawaljeet Singh Batra is liable to pay penalty (price and royalty) for 18,70,000 MT of Boulder Gravel and Sand/ minor mineral excavated illegally from said area of 11.20 hectares falling tinder area adjacent to their mining area/boundary but outside contracted area and also for extraction of 1,28,000 MT from beyond permissible out of 6.40 hectares (pit/area marked as WP 1 in report) mined within contracted area. The royalty of mineral for boulder and gravel is Rs. 50 as per State Rules, 2012. As regards price to be considered as per the official records imposed in earlier cases based on average sale price of leaseholders it comes out to be Rs. 56 per MT.**

21. Hence, **I hereby order that the contractor is liable to pay amount of Rs. 21,49,36,438 the amount as penalty as interim measure subject to final decision on account of following:-**

a) **Royalty and price of Rs. 19,82,20,000 taking the price @ Rs 56 per MT and royalty @ Rs. 50 per MT for illegal excavation of 18,70,000 MT of Boulder Gravel and Sand from area of 11.20 hectares;**

b) Royalty and price of Rs. 1,35,68,000 taking the price @ Rs. 56 per MT and royalty @ Rs. 50 per MT for 1,28,000 MT of mineral excavated from depth beyond permissible from the contracted area of 6.60 hectares.

c) An amount of Rs. 31,48,438 equals to 50% of the security deposit as fine for undertaking mining in violation of the terms of grant.”

7. That the contractor firm, had filed the appeal against the orders dated 30.06.2021 before the Appellate Authority-cum-Principal Secretary to Govt. Haryana, Mines & Geology Department and the Appellate Authority vide orders dated 24.02.2022 (Annexure-R5) passed the orders as per para 12.1 as under:-

“12 Keeping in view of detailed facts of the case and records made available it is ordered that:

12.1 The enquiry being conducted by the Department for part area cut of alleged area illegally mined to establish involvement of the appellant firm in illegal mining, the said enquiry shall be carried out for the entire area for which action was initiated against the appellant firm. Accordingly, the orders dated 30.06.2021 read with orders dated 15.07.2021 and 14.10.2021 are modified to the extent that the fresh enquiry be carried out for all of the mining area illegally mined in and around the contracted area of appellant firm as found mention in the inspection report.

a) The Enquiry shall be carried out by Sh. Ashutosh Rajan, HCS, Joint Director Mines and Geology. Sh. Deepak Hooda, State Geologist assisted by Sh. Suresh Sharma, Sr. Surveyor.

b) The team shall also associate a technical person from HARSAC and procure satellite images to examine as to whether mining pits (details along with GPS coordinates are available) found to be near the contracted area were existing even prior to commencement of mining or were created during which period;

c) The Satellite imageries in case are not available with HARSAC, the same may be procured on payment basis without any delay from department funds available under R & R Fund or any other fund;

d) The areas for which FIRSs have been filed as claimed by the appellant firm be also got verified by the team to ascertain as to whether for said areas appellant firm has been directed to pay penalty for illegal mining or said area are other

than that of the pits/areas for which notice was issued to them.

e) The team of officers shall also make an assessment as to whether the area used for mining within contracted area is commensurate with the reported production by the appellant firm and in case it is not shall give clear recommendation for enabling DGMG to take action, if any.

f) The team enquiring the matter shall also assess as to whether mineral sold during the period of operation and quantity of mineral produced gives any idea about alleged illegal mining. The team must complete its enquiry within a period of two months and submit report to the DGMG with a copy to undersigned;

g) The DGMG shall take fresh decision based on the same within 15 days of the receipt of the report by affording opportunity of hearing in case any decision adverse to the interest of appellant firm are to be taken.

h) In case the illegally mined pits are found to have been created after the mining contract was granted to the appellant firm, they shall be imposed penalty as per law.

i) The appellant firm shall deposit a lump sum amount of Rs. 5 Crore as advance penalty which may be adjusted towards amount they may have to pay after detailed enquiry report is submitted and decided by the DGMG."

8. That the representative of contracted mining lease of M/s Kanwaljeet Singh Batra, village Galauri, submitted their representation (Annexure-R2) to the inspecting team (constituted by Hon'ble NGT in present matter). In representation the contractor denied the allegations /charges of illegal mining leveled against them by the Mines and Geology Department mainly on the following grounds (stated by contractor):

- i. Date of issuance of Letter of Intent (L01): 20.10.2016
Date of issuance of Environment Clearance: 20.05.2017
Date of issuance of CTE: 12.07.2017
Date of issuance of CTO: 08.08.2017
Date of commencement of mining operation: 08.08.2017

ii. The illegal mining in the area was going on even prior of grant of mining contract to the contractor and also during contract period by antisocial elements in connivance with land owners in the area, adjoining to the contracted area. The contractor supported their claim with the complaints given by them to Mining Office from time

to time and even before commencement of mining.
The details of such complaints submitted as under:-

<i>Sr. No.</i>	<i>Date</i>	<i>Type of Complaint</i>	<i>Summary</i>
1	22.12.2016	Illegal mining	Regarding illegal mining nearby the contract area 2of Galauri B-39.
2	17.02.2017	Illegal mining	R3egarding illegal mining ne4arby the contract area of Gal5auri B-39 and no action has 6been taken of previous complaint also.
3	25.09.2017	Illegal mining	Regarding illegal mining near Pammuvala river and other nearby places
4	16.07.2018	Illegal mining	Regarding Illegal mining close to contract area against which we have complained earlier also but no action is being taken.
5	05.12.2019	Illegal mining	Regarding Illegal mining close to contract area. We have posted multiple complaints regarding same before as well.
6	13.08.2020	Illegal mining	Illegal mining adjacent to contract area. Earlier also many complaints in writing and verbally intimated to your office. We have no link with the illegal mining near to contract area.
7	08.08.2020	Illegal mining	Illegal mining adjacent to contract area. Earlier also many complaints in writing and verbally intimated to your office. We have no link with the illegal mining near to contract area.

The contractor further submitted, no action has been taken by Mining Office on their above complaints.

The contractor also submitted details of FIRs of illegal mining/transportation in Village Galauri and nearby area filed by Mining Office (to prove illegal mining happening in the area with the involvement of land lords and mining mafia without their

involvement). The details of some of such FIRs is submitted as under:-

Sr. No.	Date	Place	Nature of FIR	Description
1	09.05.2018	Village Asgarpur	Illegal Mining - Land	Illegal mining found of size 100*100*5 cubic feet.
2	22.05.2018	Village Asgarpur	Illegal Mining - Land	Illegal mining found of size 100*90*6 cubic feet.
3	27.12.2019	Village Galauri	Illegal Mining - Land	Illegal mining found of size of 3 acre and 20 feet
4	11.01.2020	Village Asgarpur	Illegal Mining - Land	Fresh marks of illegal mining was found.
5	02.07.2020	Jhanda, Bilaspur	Illegal Mining - Land	Illegal mining found of size 1.5 acre and 8 feet
6	25.02.2021	Galauri	Illegal Mining - Land	Illegal Mining found of size 100*200*9 cubic feet.
7	25.02.2021	Galauri	Illegal Mining - Land	Illegal mining found of size 120*80*12 cubic feet.
8	25.02.2021	Galauri	Illegal Mining - Land	Illegal mining found of size 250*250*18 cubic feet.
9	25.02.2021	Galauri	Illegal Mining - Land	Illegal mining found of size 400*200*18 cubic feet.
10	25.02.2021	Galauri	Illegal Mining - Land	Illegal mining found of size 200*20*18 cubic feet.
11	25.02.2021	Galauri	Illegal Mining - Land	Illegal mining found of size 500*100*18 cubic feet.
12	25.02.2021	Galauri	Illegal Mining - Land	Illegal mining found of size 70*30*25 cubic feet
13	25.02.2021	Galauri	Illegal Mining - Land	Illegal mining found of size 1 acre and 6 feet pit

The contractor submitted that they have permitted quantity of 4,40,000 MT per Annum and issued e-rawana/rawana for this extent only. Further contractor hypothetically submitted even if it assumed that illegal mining to the extent as claiming by Mining Office, carried out them, even with day one of mining commencement i.e. 08.08.2017 and up to 09.03.2021 (the date of visit of Mining Team when such illegal mining reported) and 300 working days in year, on an average 3500 MT of minerals extracted and for that movements of 200 trucks (capacity 18MT) required on daily basis. He further claimed that how such a huge nos. of trucks can ply on road without e-

rawana and without detecting by various statutory mining teams appointed to stop such illegal mining and movement of trucks.

9. That the team has visited all the sites of illegal mining pits as mentioned in the orders dated 30.06.2021, issued by the Mines and Geology, Haryana and as desired by Hon'ble NGT, the factual and action taken report is submitted as under:-
- a) **Illegal mining pits of area 22.10 Hectare exist adjacent/nearby to the contracted mining lease M/s Kawaljeet Singh Batra, Village Galauri, Sadhaura, Block 39, District Yamuna Nagar and out of this 11.20 Hectare of mining pits (illegal mineral extraction of 18,70,000 MT) found adjoining to the contracted mine lease of M/s Kawaljeet Singh Batra and rest of illegal mining pits of 11 Hectare (illegal mineral extraction of 17,59,000 MT) were also in the near vicinity of contracted mining lease of M/s Kawaljeet Singh Batra.**
 - b) **The illegal mining in respect of beyond permissible depth found within the contracted lease of M/s Kawaljeet Singh Batra. The such area was 6.40 Hectare (illegal mineral extraction of 1,28,000 MT) wherein the mineral extraction was up to 10 mtrs. of depth than permissible ultimate depth of 9 mtrs. as per environment clearance.**
 - c) **The illegal mining pits as per report/orders dated 30.06.2021 of Mines and Geology were existing at site, however exact measurement of these pits could not be ascertained but the same seem near to area estimations as calculated/measured by Mines and Geology using Differential Global Positioning System (DGPS). Photographs attached as per Annexure-R6.**
 - d) **The team has found the 03 boundary pillars intact at the right locations and 4th boundary pillar was not intact and was lying uprooted at site but the location of the pillar was right as per GPS location. Photographs attached as per Annexure-R7.**
 - e) **At site some of the mined area within the contracted mining lease area and outside contracted mining lease area of M/s Kawaljeet Singh Batra, found replenished/restored with sand /earth. Photographs attached as per Annexure-R8.**
 - f) **The total mining minerals illegally extracted calculated by the Mines and Geology for the 28.10 Hectare of land (detailed as above) was 37,57,000 MT. However for not having proof of direct indulgence in illegal mining in the area of 11 Hectare of land which is not adjoining to the contracted mining lease and with requirement of**

fresh enquiry for this, the penalty (including price of mineral @ Rs50/MT and Royalty of mineral@Rs56/MT) of Rs. 21,17,88000 vide orders dated 30.06.2021 of Mines and Geology was imposed on the unit. Apart from this an amount of Rs31,48,438 equals to 50% of the security deposit as fine imposed vide said orders dated 30.06.2021 of Mines and Geology.

- g) The mining contractor M/s Kanwaljeet Singh Batra, challenged the orders dated 30.06.2021 before the Appellate Authority to Government Haryana, Mines & Geology Department and Ld. Appellate Authority vide orders dated 24.02.2022, orders the enquiry in the matter by Sh. Ashutosh Rajan, HCS, Joint Director Mines and Geology, Sh. Deepak Hooda, State Geologist assisted by Sh. Sudesh Sharma, Sr. Surveyor. And also asked the team shall also associate a technical person from HARSAC and procure satellite images to examine as to whether mining pits were existing even prior to the commencement of the contacted mining lease or time/period of creation of mining pits.**
- h) The mining contractor M/s Kanwaljeet Singh Batra, submitted a representation before the team (constituted by Hon'ble NGT in present matter) based on complaints on various occasions even before commencement of mining and during mining operation regarding illegal mining in nearby areas of the contracted lease. The contractor also quoted the various FIRs showing the illegal mining happening in the Village Galauri and nearby areas by mining mafia in connivance with the land owners.**
- i) In various representations and even in the representation before the team, the contractor has not submitted any excuse/denial of not carrying out illegal mining in the area of 6.4 Hectare in the legitimate mining lease to the depth of 10 meters against the permissible ultimate depth of 9 meters as permissible under environment clearance granted to the mining unit. The such illegal mining have no excuse and statutory authorities need to take action as per law and apart from recovery of price/royalty/penalty , the environmental compensation need to be imposed as per the orders of Hon'ble NGT vide dated 26.02.2021 in OA No. 360/2015 titled as National Green Tribunal Bar Association vs. Virender Singh (State of Gujarat). The Environmental Compensation is calculated as under:-**

<i>Violation:-</i>	<i>Illegal Extraction of Boulder/Gravel/Sand upto 10 meters depth beyond permissible limit of 9 meter depth with in contracted lease area</i>
<i>Total illegal Mineral Extraction (Z)</i>	<i>1.28 Lac MT</i>
<i>Market value of illegally mined material (per MT)</i>	<i>As per Mining Department Report. Rs. 106 per MT (including price @ Rs. 56 MT and royalty @ Rs. 50 per Metric Ton)</i>
<i>Market value of illegally mined material (D)in Rs.</i>	<i>Zx(market value/MT) =128000x106 =13556800</i>
<i>Severity</i>	<i>Moderate</i>
<i>Risk Level</i>	<i>2</i>
<i>Risk Factor</i>	<i>0.50</i>
<i>Discount(r)</i>	<i>7%</i>
<i>Annual Value of Foregone Ecological Values (Rs.)</i>	<i>=DxRF =13556800x0.50 =6784000</i>
<i>Present Value of Foregone Ecological Value @ 7% discount rate and over 5 years (Rs.)</i>	$PV = \sum_{t=1}^5 \left(\frac{6784000}{(1+0.07)^t} \right)$ $PV=27815739$ $PV = \sum_{t=1}^5 \left(\frac{DxRF}{(1+r)^t} \right)$
<i>Net Present Value (after netting out market value of illegally mined material i.e. Total Compensation.</i>	$NPV = PV - D$ $= 27815739 - 13556800$ $= 1,42,47,739 \text{ (Rs.)}$

j) Besides the illegal/unauthorized mining, the contractor has almost totally ignored the conditions laid down in the Environment Clearance. Out of the stipulated plantation of 3450 trees over a 5-year span, only about 625 recently planted poplar plants were found in a nearby area. The Haryana State Pollution Control Board (HSPCB), issued the show cause notice of 15 days to the mining unit M/s Kawaljeet Singh Batra, Village Galauri (Annexure-R9) to deposit the above calculated environmental compensation. The HSPCB also issued the show cause notice for closure under Water Act and Air Act and Show Cause Notice for prosecution under Environment (Protection) Act 1986 to the mining unit for

violating the conditions of Environment Clearance and CTE/CTO.

- k) *The Mines and Geology Department is the statutory department responsible for regulating the mining in the area. They used to lodge FIR against the land owners and machinery owners involved in the illegal mining and also compound the machinery and transport vehicles involved in the illegal mining. They used to carry out regular and surprise inspections in the area to check illegal mining activities and legitimate mines for checking mining operation as per mining plan. **The mining unit M/s Kanwaljeet Singh Batra commenced the mining operation on 08.08.2017 and it's only the inspection dated 09.03.2021 when the Mines and Geology Department reported illegal mining in large area of 22.10 Hectare adjoining and in the nearby area of mining unit M/s Kanwaljeet Singh Batra and the same up to depth of 10-11 meters (extraction of minerals to the extent of 36,29,000 MT) . This situation is dubious as how for such a long period such a huge illegal mining and mineral extraction remain unnoticed and non-reported by the Mines and Geology Department when the department is doing regular inspection of the mining unit and nearby area and also filed many FIRs of illegal mining in the nearby area and also the mining contractor filed complaints of illegal mining on many occasions.***
- l) *As per orders dated 24.02.2022 of Appellate Authority of the Mines and Geology Department, re-inquiry in the matter w.r.t. timings of mining pits reported for illegal mining with the technical help from HARSAC and satellite images, is being conducted, to ascertain the role of mining contractor M/s Kanwaljeet Singh Batra(B-39) in the illegal mining.*
- m) ***It is re-iterated that the environmental damage has been caused to the extent of 28.5 ha area whereas above computation of the environmental compensation is only for the non-permissible excavation beyond permissible depth in the 6.4 ha lease area.***
- n) ***The Mines and Geology Department, Haryana, may be directed to expeditiously complete the enquiry as ordered by the Appellate Authority-cum-Principal Secretary to Govt. Haryana, vide orders dated 24.02.2022."***

Finding and directions

7. From the above, it is clear that large scale illegal mining took place for which action taken is inadequate and not expeditious. In spite of finding in the enquiry report dated 30.06.2021 (almost one year back) and appellate order dated 24.02.2022, even the amount of interim penalty of Rs. 5 Crores has not been recovered, though the enquiry officer had found the liability of the lessee to be more than 40 Crores towards royalty price and penalty, which may now increase, with addition of liability for the violation of environmental norms.

8. It is, thus, necessary that coercive measures are taken for recovery of the assessed amount and the pending re-enquiry is completed in shortest possible time, to be overseen by the higher-level Authorities in the Department. Apart from coercive measures for recovery, measures like black listing and expeditious conclusion of criminal proceedings need to be taken. It is also seen that seized vehicles are released on soft terms as orders of this Tribunal are not brought to the notice of the concerned Magistrates.

9. In the light of experience of the present case and the frequent violations noticed, there is need to review the existing monitoring mechanism against illegal mining.

10. Accordingly, we direct the Chief Secretary, Haryana to review the monitoring mechanism to prevent illegal mining for effective action against any violations at different levels. This aspect has also been dealt with earlier also vide order of this Tribunal dated 26.02.2021 in *O.A. No. 360/2015, NGT Bar Association v. Virender Singh (State of Gujarat) and other connected matters*, wherein the Tribunal inter alia issued the following directions:-

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

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

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

Similarly, at National level, such review needs to be conducted at least once in a year by the Secretary, Environment in coordination with the Secretaries Mining and Jalshakti Ministries the CPCB.”

11. By a recent order dated 06.05.2022 in O.A. No. 140-2021, *Raj Kumar v. State of U.P. & Ors.*, the Tribunal reiterated the mandate of para 5.1 of EMGSM, 2020 which is reproduced below:-

“5.0 REPLENISHMENT STUDY

The need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due to excessing sand extraction. Mining within or near riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on instream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore, to minimize the adverse impact arising out of sand mining in a given river stretch, it is imperative to have a study of replenishment of material during the defined period.

5.1 Generic Structure of Replenishment Study

Initially replenishment study requires four surveys. The first survey needs to be carried out in the month of April for recording the level of mining lease before the monsoon. The second survey is at the time of closing of mines for monsoon season. This survey will provide the quantity of the material excavated before the offset of monsoon. The third survey needs to be carried out after the monsoon to know the quantum of material deposited/replenished in the mining lease. The fourth survey at the end of March to know the quantity of material excavated during the financial year. For the subsequent years, there will be a requirement of only three surveys. The results of year-wise surveys help the state government to establish the replenishment rate of the river.

Based on the replenishment rate future auction may be planned.

The replenishment period may vary on nature of the channel and season of deposition arising due to variation in the flow. Such period and season may vary on the geographical and precipitation characteristic of the region and requires to be defined by the local agencies preferable with the help of the Central Water Commission and Indian Meteorological Department. The excavation will, therefore, be limited to estimated replenishment estimated with consideration of other regulatory provisions.”

12. Pending directions of the Chief Secretary, in the light of above observations and review of existing mechanism, the Principal Secretary, Mining may personally monitor further action in the present case, including coordination with the investigation of the criminal case. Pending proceedings may be concluded within three months. The State PCB may also conclude its pending action expeditiously. Compensation for damage to environment be used for restoration of environment, particularly rehabilitation of damaged area.

The application is disposed of.

A copy of this order be forwarded to the Chief Secretary, Haryana and the State PCB by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

May 12, 2022
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A