

Item No. 01

Court No. 1

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

(BY HYBRID MODE)

Original Application No. 268/2021

(With report dated 07.04.2023)

Jahangir

Applicant

Versus

State of Haryana

Respondent

Date of hearing: 08.05.2023

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

Respondent(s): Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocates for UPPCB
Mr. Rahul Khurana, Advocate for State of Haryana & HSPCB
Mr. Mukesh Verma, Advocate for Mining Department, State of UP
Ms. Priyanka Swami, Advocate for SEIAA, UP
Mr. Vanshdeep Dalmia & Ms. Anisha Jain, Advocates for M/s Star Mines

ORDER

The Issue

1. Grievance in this application is against unscientific and illegal mining by M/s Star Mines, Saharanpur, obstructing the flow of Yamuna River in Village Belgarh, U.P (it was later stated by the parties that the said village falls on the side of Haryana on the bank of Yamuna river). It is stated that fifteen Pokland machines are working day and night causing damage to the environment, including air pollution. Though lease for mining for the area in Saharanpur District in UP, the lessee is undertaking illegal mining in Village Belgarh in Haryana also.

Procedural History

2. Vide order dated 27.10.2021, a factual and action taken report was sought from a joint Committee of Haryana State PCB, UPPCB, SEIAA, UP, SEIAA, Haryana, District Magistrate, Yamuna Nagar and District Magistrate, Saharanpur, U.P. The joint Committee gave its report dated 26.05.2022 inter-alia to the effect that boundary of the State was not clearly demarcated so as to identify the site of illegal mining. Vide order dated 12.08.2022, the report was held to be unsatisfactory and incomplete. The Tribunal directed the Chief Secretaries of Haryana and UP to take remedial action, including action against erring officers in failing to give complete information and also to provide complete information. Notice was also issued notice to the Project Proponent (PP) - M/s Star Mines, Saharanpur.

3. In pursuance of above, response was filed by the PP and States of UP and Haryana. The applicant filed email dated 12.10.2022 reiterating the allegation of illegal mining. The Tribunal considered the matter vide order dated 25.1.2023. Stand of the parties was noted as follows:

“Stand of PP

4. The stand of PP is that it has not done any illegal mining and in any case action has already been taken against it in pursuance of earlier orders. Matter is also pending in appeals against orders of this Tribunal. Thus, present application is not maintainable. In any case, there is no violation for which any further order may be called for.

Stand of State of UP

5. Stand of State of UP in its report dated 12.9.2022 is that since consents have not been taken by the PP, there is no illegal mining

on UP side of Yamuna for which mining lease has been granted. Illegal mining is being reportedly done in Haryana. Relevant part of the report is reproduced below:-

“4- Pursuant to directions of Hon’ble Tribunal, District Magistrate Saharanpur conducted enquiry and submitted a fresh report to the Government in this matter and as per this report, the facts of the matter are following:-

- 1- The lease deed of five year mining was approved for mining of sand, gravel, boulder (in mixed condition) in Gata No.-1 area-36.00 hectare of M/s Star Mines Village-Bartha Korsi on 01.04.2021.*
- 2- In compliance with the order dated 28.10.2021 of Hon'ble National Green Authority, the mining on the said plot remained unoperational till 10.01.2022.*
- 3- The mining lease was unoperational till 09.01.2022 in compliance with the order dated 28.10.2021 of Hon'ble National Green Tribunal due to non-receipt of water/air consent from the UP Pollution Control Board.*
- 4- After the above date, Mining is being done by the lessee M/s Star Mines, Saharanpur within the limits of approved area of lease in U.P.*
- 5- Executive Engineer, Irrigation Construction Division, Saharanpur has been directed by letter dated 31.08.2022 to make available the inquiry report regarding the change in the flow of Yamuna river within a week.*
- 6- As per the report of the Tehsildar Chhachhrauli, Yamuna Nagar, Haryana. It seems that the Illegal mining seems to be taking place in the village Belgarh which is located in the State of Haryana. Village Belgarh and Village Koliwala, which are adjacent to the border of Haryana and Uttar Pradesh, currently have mining leases in operation and many stone crushers have been established in the said area. But no mining work has been done by M/s Star Mines outside its sanctioned area towards Belgarh. Belgarh falls in west direction and village Bartha Korsi falls in east direction.*
- 7- As far as the change in the flow of the river is concerned, no change in the flow of the river has been found during the on-site inspection, as per the individual report submitted by the team members consisting of officers of Uttar Pradesh. It was also informed by the local people that the river has been flowing at this place since many years.*

Therefore, in view of the above, illegal mining in the area adjoining the border in the Uttar Pradesh has not been found nor has any fact been found that the district officials of the district Saharanpur are guilty for the same. This Action taken report is submitting after approval of Chief Secretary, Government of Uttar Pradesh.”

Stand of State of Haryana

6. Mines and Geology Department, Haryana has filed its reply dated 21.01.2023 to the effect that due to excessive flow of the river, facts could not be verified. Illegal mining was reported at the border of Haryana and U.P. in the middle of river Yamuna. FIR for theft has been lodged. Action has been initiated against the IO for failing to take remedial actions. Relevant part of the report is reproduced below:-

“5. That the Deputy Commissioner, Yamuna Nagar submitted his report dated 07 October 2022 wherein he has stated that fresh inspection of Khasra No. 19//20 and 20//13 was jointly conducted on 30 September 2022 by the Mining Department and the Revenue Department but due to excessive flow of water, the team could not reach the site in question as same was across the river. He has further stated that an FIR No. 163 dated 03 June 2021 was registered under section 379 of IPC and section 21(4) (A) of the Mines and Mineral Development & Regulations Act, 1957 at Police Station, Partap Nagar, Yamuna Nagar.

6. That the Department of Mines and Geology has informed that Khasra No. 19//20 and 20//13 where illegal mining was reported is just at the border of Haryana and U.P. and is in the middle of river Yamuna. On account of illegal mining identified in Khasra No. 19//20 and 20//13 of village Bailgarh, action was taken by registering an FIR No. 163 dated 03 June 2021 under section 379 of IPC and section 21(4) (A) of Mines and Mineral Development & Regulations Act, 1957 at Police Station Partap Nagar, Yamuna Nagar. The matter in said FIR is under investigation. Copy of FIR No. 163 dated 03 June 2021 is enclosed herewith as Annexure R/1.

The area of these Khasra numbers is adjacent to the contract/leased area of the contractor

of Uttar Pradesh State, i.e., M/s Star Minerals. The google image showing distance between illegal mined site in question (Khasra No.19//20 and 20//13) and the contract area of M/s Star Minerals is 300 mtr. In the latest report dated 11 October 2022, the Deputy Commissioner, Yamuna Nagar, has reported that as per report dated 10 October 2022 of Superintendent of Police, Yamuna Nagar, an inquiry was conducted by DSP, Bilaspur regarding the said FIR No. 163 dated 03 June 2021. As per report of DSP, Bilaspur's (report No. 1090 dated 07 October 2022) disciplinary action has been recommended against the Investigation Officer of the case namely ASI Sh. Shamsher Singh No. 410, Yamuna Nagar for lapse in conducting due and proper investigation in the matter. Accordingly, a departmental inquiry has been marked to DSP, Radaur against the said ASI, Sh. Shamsher Singh No. 410. In addition, to expedite the investigation, a Special Investigation Team (SIT) comprising of DSP, Bilaspur and SHO, Pratap Nagar has been now constituted by the Superintendent of Police, Yamuna Nagar on 10.10.2022 (copy enclosed). The direction has been issued for expeditious investigation and taking the action to its logical & legal end.

7. *That further as per report received from HSPCB vide letter dated 17 January 2023, no complaint had been received in the past regarding illegal mining in respect of Khasra No. 19//20 and 20//13 (where the illegal mining had happened as per the complaint) by M/s Star Minerals. It has also been reported that HSPCB had not granted CTE/CTO to any unit for doing mining in Khasra No. 19//20 and 20//13 situated at Village — Bailgarh, District - Yamuna Nagar. M/s Star Minerals has been allotted the mining quarry by the Mining Department of Government of Uttar Pradesh. **Illegal mining has been confirmed in Para No.3 of the Report of Joint Committee but it is also mentioned that due to the flow of water in the River, the quantum of mining undertaken could not be ascertained. Thus, it is difficult to assess the Environmental Compensation in the absence of quantum of mining.***

To summarise, investigation in FIR No. 163 dated 03 June 2021 should have been taken to its logical end but it could not be done. On account of this lapse, a departmental inquiry is being conducted against the Inquiry Officer of the case, i.e., ASI, Sh. Shamsher Singh No. 410. Further, to expedite the investigation in the case, a Special Investigation Team (SIT) of DSP, Bilaspur and SHO, Pratap Nagar has been constituted

by the Superintendent of Police, Yamuna Nagar. The direction has been issued for expeditious investigation and taking the action to its logical end.”

7. The Tribunal held that since mining was on inter state border, procedure laid down under Enforcing & Monitoring Guidelines for Sand Mining (EMGSM) issued by MoEF&CC in January, 2020 was required to be followed which had not been followed. The Tribunal constituted a ten Member joint Committee headed by an Officer of the rank of Joint Secretary, nominated by Secretary, Ministry of Jal Shakti, GoI, with four nominees each of Haryana and UP Governments - representing Irrigation Departments, Revenue Departments nominated by the District Magistrates Saharanpur and Yamunanagar, Member Secretaries of HSPCB and UPPCB and SEIAAs of two States and one nominee of IIT, Roorkee. The Committee was to undertake “visit to the site, get the area demarcated to ascertain the area where mining is allowed and where it is actually taking place and give a report within one month. Demarcation may specify the inter-state Borders. The Committee may also give its opinion whether and to what extent mining in the area is desirable without damage to the environment and if so, subject to what conditions. In this connection, the Committee may also consider Section 32 of the Water (Prevention and Control of Pollution) Act, 1974 and the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016. It may also be examined whether drone mapping and CCTV cameras can be helpful tools for monitoring and whether there should be State level Surveillance/monitoring team in view of difficulties faced by local level teams in such matters. The Committee will be at liberty to take assistance from any other Expert/Institution/Department/individual and interact with stakeholders in the area.”

Consideration today and further order

8. In pursuance of above, Committee has filed its report dated 07.04.2023 after undertaking visit to the site. **The Committee has found that as per Replenishment Study, quantity for mining could be 700626 m³ with 1.95 meter height and expected life of mine could be 1.35 years. In fact, mining has already been done up to a depth of 3 meters for annual production of 756000 cubic meters and maximum period of 1.35 years is over. Thus, no further mining can be done without fresh appraisal as per law.** Relevant extracts from the report of the Committee are as follows:-

“6.2 In the instant case, relevant facts are as below:-

*(i) Replenishment Study of District Saharanpur was conducted, in the year 2022 as per provisions of Enforcement & Monitoring Guidelines for Sand Mining-2020. Pre monsoon and post monsoon Replenishment Study approved by District Level Committee was submitted to Mining Department, U.P. The said study also covered the mining area allotted to M/s Star Mines, village Bartha Korsi, Gata No.1, Behat, Saharanpur. **As per Replenishment Study report pre monsoon reserve quantity of RBM is 173732 m³ and post monsoon reserve is 874358 m³, hence replenishment quantity is 700626 m³, 1.95 meter height and expected life of mine 1.35 years has been assessed (Annexure A-14).***

*(ii) **M/s Star Mines, Gata No.1, Yamuna River, Village Bartha Korsi, Tehsil Behat, District Saharanpur, was permitted mining up to a depth of 3 meters for annual production of 756000 cubic meters.***

6.3 Other measures being enforced to minimise environmental impact due to mining activities are as under:-

(i) As per Haryana Government Notification Dated 20th June, 2012 the maximum depth of mining in the river-bed shall not exceed three meters measured from the un-mined bed level at any point in time with proper bench formation.

(ii) As per the River Ganga (Rejuvenation protection and Management) Authorities Order, 2016, in River Yamuna

*minimum 10 cumecs of Ecological flow is being discharged for Hathnikund Barrage throughout the year and monitored strictly by the Irrigation & Water Resources Department, Govt of Haryana (**Annexure A-15**).*

- (iii) Demarcation of boundaries for regulating grant of sand mining lease*
- (a) There are provisions for notifying the geo-coordinates of all boundary pillars of the mining.*
- (b) In this area, UP Minor Mineral Regulations are being followed. As result of practice, now the mining areas are firstly demarcated and e-tenders are published with details of boundary pillars geo-coordinates.*
- (iv) Environmental Compensation imposed on leasing of minor minerals in any area to cover the restoration cost of environment and to compensate the victims*

There is a provision for execution of mining lease deed only after demarcation under rule-17 of the Mining lease Approval Rules, 1963. Compensations are imposed on observed faults as per provisions of UP Minor Minerals (Concession) Rules, 2021.

- (v) Mining in all blocks is under taken as per provisions of the EIA Notification, 2006, and the Sustainable Sand Mining Management Guidelines, 2016*

As per Rule 35(4) of the UP Minor Minerals (Concession) Rules, 1963 and the ETA Notification, 2006, mining activity can be started only after obtaining Environment Clearance. According to the Sustainable Sand Mining Management Guidelines, 2016 issued by MOEF&CC, riverine mining is restricted during the monsoon season. Thus, mining work is not permitted in the State during July-September of each year.

- (vi) No sand mining is permitted without due compliance of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as regulations governing clearances by the State Ground Water Authority*

Rule- 42(h)(1) of the UPMPCR, 1963 envisages that no mining in the river bed is permitted beyond a depth of 3 m or water level whichever is less. The conditions stipulated in the Environmental Clearances certificate issued by SEIAA, UP along with the permissions granted under the Air Act & the Water Act, and Ground Water NOC from State Ground Water Authority, are monitored regularly for strict compliance.

- 6.4 The Joint Committee finds the present mechanism robust for grant of Environmental Clearances to mining projects/activities by the concerned regulatory authorities notified by MoEF&CC from time to time followed by permissions under the Air Act, 1981 and the*

Water Act, 1974 by the respective SPCBs, which collectively acknowledges all environmental concerns including the extent of mining to be allowed in the area. The Committee is of the view to continue with the same, subject to strict adherence to the Enforcement & Monitoring Guidelines for Sand Mining-2020 published by MoEF&CC, and also to reinforce the compliance monitoring of EC conditions.

6.5 As a general principle, mining of the material, which has been recently brought by the flowing river water and which is replenished every year; can only be permitted so that the hydrological regimes are maintained. The present practice is to identify such areas and permit mining as per the prevailing notifications.

7. Whether drone mapping and CCTV cameras can be helpful tools for monitoring and whether there should be state level surveillance, monitoring team in view of difficulties faced by local level teams in such matters

7.1 Present monitoring mechanism in the State of Haryana

(i) Presently, seven check posts have been installed throughout the major routes of district Yamuna Nagar to strictly monitor the transportation of illegally mined minerals. Officials of mining and police department check the e-way bill of each vehicle. Since September 2022, 255 (till Feb 28, 2023) Number of vehicles involved in illegal transportation and illegal mining have been caught in District Yamuna Nagar.

(ii) Further, independent teams of mining and police department also keep regular check on illegal mining through surprise visits either during day or night time. Regular monthly meeting of District Level Task force Committee headed by chairman cum Deputy Commissioner, Yamuna Nagar, is held to review the status of legal mines and illegal mining in district Yamuna Nagar. Last such meeting was held on 14.02.2023. The proceeding of the meeting are forwarded to the Director Mines & Geology, Haryana which are later reviewed in State Level Task Force Committee (SLTF) meeting held under the Chairmanship of Chief Secretary, Government of Haryana **(Annexure A-16)**.

7.2 Present monitoring mechanism in the State of UP

(i) Status of CCTV Cameras installation at mining points to verify the amount of sand extracted and materials transported

(a) Rule-36(2) of Uttar Pradesh Minor Mineral Regulations, 1963 provides that the mining lease holder whose mining lease area is more than 5 hectares, shall construct check-post/gate and install 4 CCTV cameras capable of recording at 360° visibility at his own expense for monitoring under the supervision of the D.M.

(b) *The same is also controlled by Central Command Surveillance Centre located in Head Quarters, Lucknow.*

(ii) *Status of regular patrolling by the Police to inspect mining operations*

For effective control over illegal mining and transportation of minerals, local task force comprising of District Revenue Department, District Mining Department and Police level officers act as task force and constantly monitored.

(iii) *Setting up of dedicated institutional mechanism for monitoring of conditions of Environmental Clearance as granted under EIA Notification, 2006 in respect of sand and gravel mining*

Under the supervision of the DMs, the conditions of the Environmental Clearance Certificate are complied with by the PCBs/ Departmental officers.

(iv) *Control of Mines and Transportation using latest technology*

(a) *The Department has established a Command Centre at the Directorate of Geology and Mines at Lucknow from where they operate the Integrated Mines Surveillance System for the entire State.*

(b) *Artificial Intelligence based Software and taking the help of Drones and Cloud Services for monitoring mining activity in the State are used for control of illegal acts by violators.*

(c) *Drone Video-graphy/coverage are done in sensitive districts.*

(d) *CCTV Cameras and check-gates and RED tags are used to monitor the movement of vehicles.*

(v) *Punishment of illegal Acts*

(a) *State has made a provision in the Rules to blacklist a person for up to 2 years if found guilty of illegal mining/illegal transportation.*

(b) *The Rules have been amended to allow storage of minerals only beyond 5 km radius from the river bed in order to prevent illegal mining from river bed under the excuse/name of storage.*

(c) *Vehicle Tracking System to check the misuse of Transport Pass and Overloading has been introduced and under full scale implementation.*

(d) *Any new areas identified are based on survey conducted according to Sustainable Mining Guidelines, Mineral Exploration and then included in the DSR.*

- (e) *Instead of Physical Mineral Dispatch Permits, electronic permits (called MM11) with security features have been introduced which are controlled by OTP validation from online servers.*
- (f) *In District Saharanpur i.e. Biharigarh, Shahjahanpur and Deoband Presently three Check Gates have been implemented to control illegal transportation. ISTP (Inter State transport Permits) have been implemented to validate the legality of cross border transportation.*
- (g) *From April, 2022 to 13th March, 2023, 410 vehicles involved in illegal transportation have been caught through UP mines digital support system electronic check gates and revenue collected from seized vehicle is 1,41,18,820/-*

S. No.	No: of vehicle seized Other than DSS electronic check gates	Revenue Collected from Vehicle seized other than DSS electronic check gates	Complaint/FIR
1.	477	2,88,87,000/-	17

- (h) *For control of illegal mining and transportation, District Task Force has been constituted comprising District Magistrate, SSP, DFO, SDM, C.O., RTO and Mines Officers (Annexure*
- (i) *Under the supervision of SDM, Behat and Circle Officer, Police, Behat, Saharanpur continuous monitoring of the illegal mining and regular action is being taken Four check post has been installed in Tehsil Behat and 01 Section PAC, Civil Police and Revenue officials are deputed on these check posts (Annexure A-18).*

7.3 Monitoring through drones having high resolution cameras can definitely help in surveillance/monitoring. Registration Numbers of machinery/vehicles involved in illegal mining/illegal transportation of mineral can be easily traced by high resolution cameras along with the site. This activity can further be productive by installation of CCTV's in highly sensitive areas which are prone to illegal mining. The Drones and CCTV's are not only helpful to the mining department but would also be fruitful to the revenue department as well as police department & irrigation department."

9. There are two aspects of the report. First is mining by the PP individually as per replenishment potential. Second is with regard to

measures to be followed for monitoring mining and vehicles for transportation.

10. We have heard learned Counsel for the appearing parties. There is no objection from any party to act upon the report. Accordingly, we accept the same.

11. We notice that as per mining lease dated 26.03.2021, mining was permitted for five years at the rate of quantity beyond replenishable material and without replenishable study against the Sand Mining Guidelines. As per EC the sanctioned lease area is 36 hectares, without any study whether mining could be allowed in area to that extent, having regard to the potential of replenishment of such area. Since the joint Committee has found that in excess of replenishable potential for mining, mining has already been completed, accepting the report, we prohibit further mining, without fresh appraisal as per law. Thus, further mining has to be discontinued. We have noted from the report that vide letter dated 14.11.2022, State PCB has levied compensation for the past violations for the period 04.04.2021 to 30.06.2021 for 84 days. This order will not prevent fixing accountability of the PP for past illegal mining, in accordance with law.

12. Second aspect is measures to be adopted for monitoring the vehicles and the mining. Recommendations in the report are accepted. The same be duly followed.

The application stand disposed of accordingly.

A copy of this order be forwarded to Secretary, Ministry of Jal Shakti, GoI, Chief Secretaries, Haryana and UP Governments, Member Secretaries of HSPCB and UPPCB, SEIAAs of Haryana and UP, IIT, Roorkee and

District Magistrates and SSPs, Saharanpur and Yamunanagar by e-mail
for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

May 8, 2023
Original Application No. 268/2021
SN