

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION No. 581 of 2022

IN THE MATTER OF:

VIKAS KUMAR

... APPLICANT

VERSUS

STATE OF HARYANA & ORS.

... RESPONDENTS

CONCISE SUBMISSIONS ON BEHALF OF AMICUS CURIAE

1. That M/s Yodha Mines & Minerals was granted an E.C. dated 28.01.2016 (Page 53) by MoEF&CC for sand mining with production capacity 16.0 Lakh TPA of sand (minor mineral) located at Village Jainpur, Tehsil and District – Sonipat, Haryana. The mine lease area is primarily on the riverbed of Yamuna (34.40 ha.) and partly outside the riverbed (10.0 Ha.) over a total area of 44.40 Ha. in Dist. Sonipat. The Letter of Intent was issued to the project proponent on 9th March, 2015 for 9 years. As per the mining plan, the proposed production in the riverbed is 14.40 Lakh TPA and outside the riverbed is 1.60 Lakh TPA.

2. **Method of mining and depth of mining**

That the relevant extracts of the clauses of the EC governing method and depth of mining are reproduced hereunder:-

"4. Proposed method of mining is manual opencast method in riverbed and opencast mechanized outside riverbed.

The maximum depth of mining in the riverbed will not exceed 3m from the un-mined bed level at any point of time with mining restricted to the central 3/4th width of the river. A safety margin of 2m will be maintained above the ground water table and no mining operation will be permitted below this level.

...

11 A. Specific Conditions:

...

(xi) Excavation will be carried out up to a maximum depth of 3 meters from surface of mineral deposit and not less than one meter from the water level of the River channel whichever is reached earlier.

...

B 1: Special Conditions

...

Impact Category	S. No.	Environmental Conditions
<i>Sustainable Mining Practices</i>	<i>9</i>	<i>The depth of mining in Riverbed shall not exceed one meter or water level whichever is less, provided that where the Joint Inspection Committee certifies about excessive deposit or over accumulation of mineral in certain reaches requiring channelization, it can go up to 3 meters on defined reaches of the River.</i>
	<i>19</i>	<i>Depending on the location, thickness of sand, deposition, agricultural land / Riverbed, the method of mining may be manual, semi-mechanized or mechanized; however, manual method of mining shall be preferred over any other method."</i>

- (i) That from a cogent reading of the above EC conditions, it is manifest that only manual open cast mining is permitted in the river. Further, even in areas outside the riverbed, manual method is to be preferred.
- (ii) Secondly, the depth of mines in the riverbed cannot be more than one meter unless and until, on a prior inspection by and consent of a Joint Inspection Committee, which certifies that

there are excessive deposits of sand in specified parts of the mining lease, subject to the condition that such excessive deposits of sand are required to be removed for channelization of the river. It is only in such specified areas that mining in the riverbed beyond one meter but up to 3 meters is allowed under the E.C. In the present case, no material or documents have been placed on record to demonstrate that such an exercise had been undertaken.

- (iii) Director of Mines in his reply dated 18.11.2022 (Para 6 - Page 6) has stated as under:

"6. That M/s Yodha Mines and Minerals got their EC modified from the SEIAA on 22.09.2020 for undertaking mechanical mining in the riverbed."

It is submitted that the modified EC by SEIAA nor the Minutes of Meeting of SEIAA nor the application with its supporting documents have been placed on record. SEIAA had no jurisdiction or authority to modify an EC granted by the MoEF&CC. Any change in the procedure for modification of a condition imposed by the MOEF in an EC issued by it, than such change can only be prospective, unless it is otherwise specifically provided for.

3. Construction of bridges / roads by laying Hume pipes or otherwise

- (i) The cardinal principle is that a mining activity can be carried on only in strict conformity of the conditions mandated under

the EC. In other words, any activity, which is prohibited or has not been specifically permitted by the EC cannot be undertaken in the mining lease area. This would be in consonance with the precautionary principle.

- (ii) In the present case, there is no material on record to demonstrate that the mining plan and/or the EC had considered and approved the setting up of a bridge.
- (iii) The policy dated 18/19.10.2021 (Page 159 r/w page 196) as framed by the Govt. of Haryana and the consequent approval dated 23.11.2021 to the project proponent for constructing a bridge is without authority of law and a nullity.
- (iv) Grant of permission by the Irrigation Department, State of Haryana is violative of the precautionary principle inasmuch as it is not a body which can be considered to have an expert grasp on environmental concerns.
- (v) The Environment (Protection) Act, 1986 has been enacted by the Parliament under Schedule I, Entry 13 of the Constitution. The Central Government in exercise of the power under Section 3 of Environment (Protection) Act, 1986 has notified the EIA Notification, 2006. The said notification makes it mandatory to seek prior environmental clearance before undertaking mining activity, which includes removal and

transportation of excavated minerals. In other words, the "environmental consequences" arising out of mining and all its physical related activities impacting the environment are exclusively covered by the Central Legislation and the State Government would not have the constitutional mandate to enact a policy for setting up temporary bridges for the sole purpose of mining across the river Yamuna.

- (vi) The EC (Page 59) in Para 11 (B1) (17) mandates that "*No natural water course and/or water resources are obstructed due to mining operations*". Setting up of a hume pipe bridge and the part of the road connecting the road to the bridge, admittedly blocks the minimum e-flow of the river besides causing damage to the natural ecology of the riverine system. Further, the project proponent deployed 10 Nos. of JCB Excavators and 40 Nos. of 25 tons of Tippers/Trucks (Page 201) for riverbed mining as per enclosure to the letter dated 18.11.2021 of the project proponent (Page 200) for permission to construct a bridge. Consequently, construction of a bridge for mining is in violation of the EC.

4. Impacts of construction of bridges on rivers:

- i) That construction of temporary bridges on the Yamuna River for transportation of mined material, not only damages the riverine ecology but also affects the e-flow of the river. As per this Hon'ble

Tribunal's decision in the ***Vikrant Kumar Tongad v. Delhi Tourism and Transportation Corp. & Ors.*** [2015 SCC OnLine NGT 3], by order dated 12.02.2015, this Hon'ble

Tribunal observed that:

"24. Rivers can be polluted directly or its ecology, biodiversity or flow can be adversely affected by developmental activities, thus, causing environmental hazards. Structures like bridges can cause a series of impacts both in immediate time and extended over a long duration. Impact is not only limited to the specific physical development, but, it also gives rise to several other interlinked elements which can cumulatively impact the environment which replenishes the resources in long run. These environmental hazards may result from flooding, narrowing of embankments and endangering of aquatic life. Any development project or activity upon the floodplain, river bank or across the river is bound to have some impact upon the ecology and biodiversity of the river. It is an established fact that such projects, whether part of a comprehensive developmental activity or independently, would narrow the water course or environmental flow of the river. Such activity may have adverse impacts on aquatic flora and fauna. In some cases, it may adversely affect the floodplain and may amount to affecting the terrestrial ecology."

Amicus Curiae

18th April, 2023

RAJ PANJWANI Sr. Advocate