

Item No. 05

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 02/2021

(With report dated 06.03.2021)

Vikas Pandey

Applicant

Versus

State of Uttar Pradesh

Respondent

Date of hearing: 09.04.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Vikas Pandey, Applicant in Person

Respondent(s): Mr. Amit Tiwari, Advocate for State of UP  
Mr. Pradeep Misra, Advocate for UPPCB

**ORDER**

1. Grievance in this application is against illegal mining on Yamuna river in Fatehpur District, UP. The applicant has referred to various complaints and media reports in support of the allegation. A factual and action taken report was sought from the State PCB and District Magistrate, Fatehpur.

2. Accordingly, the State PCB has filed its report dated 06.03.2021 after inspection of the mining site. The report states that presently the mining is not continuing. However, it was found that boundary pillars were not being properly maintained, CCTV Camera was not duly set up, two machines were illegally used and effort was made to stop the flow of the river as, found in the enquiry report dated 05.12.2020. Compensation of ₹2.5 lakhs has been recovered. Thereafter, CCTV

Camera has been installed but still illegal mining was taking place by obstructing the flow of the river for which further compensation of ₹5 lakhs has been recovered on 28.12.2020.

3. We find from the report that there are repeated violations of serious nature, including the attempt to obstruct the flow of the river and undertaking illegal mining. The compensation assessed is not as per norms. The applicant has filed objections to the report on 08.04.2021 to the effect that all the violations have not been duly looked into and action taken against violations is not adequate.

4. Learned counsel for the State fairly stated that stringent action, as required has not been taken but will be now taken.

5. The Tribunal has recently dealt with the issue of remedial action by way of compensation against illegal mining vide order dated 07.04.2021 in O.A. No. 150/2019, *Sandeep Kharb v. MoEF&CC & Ors.* The operative part of the order is as follows:-

“1to6..xxx.....xxx.....xxx

7. *We may note the legal position with regard to payment of compensation on polluter pays principle. Compensation is equal to loss caused or suffered. In the context of loss caused on account of polluting/hazardous activity, the issue has been discussed in several judgements. In M. C. Mehta & Anr. v. Union of India, (1987) 1 SCC 395, ¶ 31-32, it was laid down that the person undertaking hazardous activity is liable for damage caused irrespective of negligence. Compensation has to have relation with the financial worth of the violator so as to be deterrant. In Indian Council for Enviro-Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212, ¶ 65-67, compensation to cover cost of remediation was held to be payable. In Vellore Citizens Welfare Forum v. UOI, (1996) 5 SCC 647, ¶11 to 13, it was held that the polluter pays principle is part of sustainable development and has to be treated as part of Indian law, as India is party to Stockholm and Rio conferences. Reverse burden of proof is applicable and once there is damage, liability is of the person carrying on activity to prove that his activity is benign. In (2005) 13 SCC 186, Research Foundation vs. UOI, pr 29, T.N. Godavarman Thirumulpad v. UOI & Ors. (2006) 1 SCC 1, ¶ 1, 2 and MCD v. Uphaar Tragedy Victims Association (2011) 14 SCC 481, ¶*

99, 100 same principles were applied. In *Sterlite Industries (India) Ltd. v Union of India* (2013) 4 SCC 575, ¶ 47, liability was fixed at 100 crores. In *MC Mehta (Kant Enclave) v. Union of India*, (2018) 18 SCC 397 pr 134 compensation equal to 10% of cost of the project was directed to be recovered for construction in violation of law.

8. In the context of compensation for illegal mining the Tribunal has dealt with the matter in a recent order dated 26.02.2021 in O.A. No. 360/2015, *NGT Bar Association v. Virender Singh (State of Gujarat)* and other connected matters as follows:-

“1to7...xxx.....xxx.....xxx

8. Another issue bearing on the enforcement mechanism is the action against the vehicles used in illegal sand mining. Seizure of such vehicles is required and release of seized vehicles lightly defeats the purpose of the coercive measures. Since the vehicles are in a way weapon of offence, the same cannot be dealt with in the manner disputed property is dealt with under section 451 Cr.PC. by releasing the same in favour of the ostensible owner by taking an entrustment/indemnity bond/sapurdginama. In *Sujit Kumar Rana*, (2004) 4 SCC 129 and order dated 26.03.2019 in Cr. A. 524/2019, *State of Madhya Pradesh v. Uday Singh*, it was held that special procedure for seizure and release of such vehicles prevails over the procedure under Section 451 Cr.P.C. This Tribunal earlier directed, in the case of illegal mining in Meghalaya that such vehicles should be released only on the payment of 50% of the showroom value. The same was affirmed by the Hon'ble Supreme Court in 2019 (8) SCC 177. Similar order was passed by the Tribunal on 10.01.2019 in O.A. No. 670/2018, *Atul Chouhan v. State of U.P.*, which stands affirmed by the Hon'ble Supreme Court vide order dated 07.05.2019 in C.A. No. 1590/2019. **Thus, the procedure under Cr.P.C. for release of vehicles on superdari without stringent conditions would not apply in respect of action taken for enforcement of Sustainable Guidelines issued under the Environment (Protection) Act, 1986 (EP Act) and for enforcement of orders of this Tribunal under Section 15 of the National Green Tribunal Act, 2010 (NGT Act).** However, having regard to the difficulty expressed by the State that requirement to pay 50% of the showroom value of the vehicle was resulting in vehicles not being released at all, the earlier order was modified on 19.02.2020 to the effect that following scale of amount be recovered for release of the seized vehicles:-

Sr. No.	Category of Vehicle	Penalty Amount
1	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.	Rs. 4 lacs
2	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years	Rs. 3 lacs

	<i>old.</i>	
3	<i>For the remaining Vehicles older than 10 years/Equipments/ Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.</i>	<i>Rs. 2 lacs</i>
<p><b>Note – I:</b> <i>On repetition of the offence by the same vehicle/ equipment, Order dated 05.04.2019 will be applicable.</i></p> <p><b>Note – II:</b> <i>The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.</i></p>		

9. Following further directions were issued :-

**“6. The State may issue an appropriate Office Order/Rule to the above effect and publish the same. Needless to say that any private contract between a financier and a debtor cannot affect the States’ sovereign power to protect the environment and take incidental coercive measure for enforcement of rule of law. Lien of the State will override any private interest. The above compensation regime will be over and above any existing Rules or provisions. The amount collected may be remitted to the State PCBs/PCCs for being utilized for restoration of the environment.**

7. *The above course of action will be permissible to all the States at their option.”*

10. *Vide order dated 17.08.2020, the Tribunal considered the CPCB report dated 30.01.2020, in pursuance of earlier orders on scale of compensation to be recovered for violation of norms for mining on polluter pays principle and the matter was deferred for further consideration of such scale and further orders in the light of the EMGSM 2020. On the issue of scale of compensation for violations, the Tribunal held that the same has to be calculated having regard to the polluter pays principle and not mere loss of royalty. This requires taking into account value of the illegally mined material and cost of restoration of the environment. CPCB did the exercise by constituting an expert Committee. The Tribunal considered the report as follows:-*

“8. The Committee considered two approaches:

- (I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.**
- (II) Approach 2: Computing a Simplified NPV for ecological damages.**

9. *In the first approach, the criteria adopted is:*

- *Exceedance Factor (EF).*
- *Risk Factor (RF).*
- *Deterrence Factor (DF).*

10. Approach 1 is demonstrated by Table 1 as follows:

“

<b>Table No. 01: Approach 1</b>				
<b>Permitted Quantity (in MT or m<sup>3</sup>)</b>	<b>Total Extraction (in MT or m<sup>3</sup>)</b>	<b>Excess Extraction (in MT or m<sup>3</sup>)</b>	<b>Exceedance in Extraction:</b>	<b>Compensation Charge (in Rs.)</b>
X	Y	Z = Y-X	Z/ X	D * (1+RF + DF) Where D = Z x Market Value-of-the-material-per-MT-or-m <sup>3</sup>
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50, 0.75, 1.00 (as per table 2)

”

11. Approach 2 is demonstrated by following formula:

“Till such time as data and information for a comprehensive NPV is worked out in a site specific manner to account for all (or atleast the major) ecological damages, a simplified NPV, proxied on the market value of the illegally extracted amount may be computed. In this case the NPV approach would imply that **the total benefits from the activity of sand mining (as represented by the market value of the extracted amount) be deducted from the total ecological costs imposed by the activity.** In the absence of data on benefits and costs separately, we recommend a modification of the formula as shown below:

Total Benefits(B) = Market Value of illegal extraction : D  
(refer Table 1)

Total Ecological Costs = Market Value Adjusted for risk factor: D \* RF (refer Table 1).

For present purposes, it is assumed that the Benefits would accrue only in the first year (in which the extraction of the illegally mined material takes place), while the ecological costs would continue to be felt over a period of time. NPV is to be calculated for a period of 5 years on the net value,  $\Sigma (C-B)$ , at a discount rate ranging from 8%-5%, varying in inverse with the risk factor. Thus, where the highest risk factor (say 1) is applicable, the discount rate applicable would be the lowest (say 5% in this case).”

12. Final recommendation is as follows:

“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe

ecological damage risk zone. The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years. The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. **However, till data on site-specific assessments becomes available, this approach may be adopted in the interim.** In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:

<b>Severity</b>	Mild	Moderate	Significant	Severe
<b>Risk Level</b>	1	2	3	4
<b>Risk Factor</b>	0.25	0.50	0.75	1.0
<b>Discount Rate</b>	8%	7%	6%	5%

11. Annexure-A appended to the report gives the calculation as follows:

**“Compensation Charge (Scenario II - explicit accounting of NPV)**

$$\text{Market Value of Illegally Mined Material (D)} \quad 5000 \times 400 \quad = \\ 2000000/-$$

$$\text{Annual Value of Foregone Ecological Values} \quad D \times RF = 2000000/-$$

- **Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)**

$$PV = \sum_{t=1}^5 \frac{(D+RT)}{(1+r)^t}$$

$$= \frac{(2000000)}{(1+0.05)^1} + \frac{(2000000)}{(1+0.05)^2} + \frac{(2000000)}{(1+0.05)^3} + \frac{(2000000)}{(1+0.05)^4} + \frac{2000000}{(1+0.05)^5}$$

$$= \text{Rs. } 86,58,953/-$$

- Net Present Value (after netting out market value of illegally mined material) - i.e., Total Compensation to be levied

$$= NPV = PV - D$$

$$= \text{Rs. } 66,58,953/-$$

Compensation Charge in above case:

<b>Approach 1 (no explicit accounting of NPV)</b>	<b>Approach 2 (explicit accounting of NPV)</b>
<b>D*(1+RF+DF)</b>	<b>@ 5% discount rate and over 5 years</b>
Rs. 46,00,000/-	Rs. 66,58,953/-

12. *The Tribunal directed undertaking of scenario analysis, as suggested on behalf of the applicant and to furnish a further report accordingly. Further report dated 12.10.2020 has been filed by the CPCB reiterating its earlier report. **We propose to approve approach-2 in the report.** Apart from the above, a report dated 15.01.2021 has been filed by the Oversight Committee for the State of UP<sup>1</sup> to which reference will be made later.”*

6. Accordingly, the compensation needs to be revisited by a joint Committee comprising CPCB, State PCB and District Magistrate, Fatehpur which may be done within three months. The Committee may also recommend further remedial action to prevent violations of the EC conditions. On such recommendations, the District Magistrate, Fatehpur and the State PCB may take further appropriate action, following due process of law.

The application is disposed of.

A copy of this order be forwarded to the CPCB, State PCB and District Magistrate, Fatehpur by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

April 9, 2021  
Original Application No. 02/2021  
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<sup>1</sup> Constituted by this Tribunal to oversee compliance of environmental issues, on suggestions of the State Government.