

Item Nos. 02 & 03

Court No. 2

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

Original Application No. 692/2022
(I.A. No. 228/2022)

Junaid Ayubi

Applicant

Versus

State of Uttarakhand & Ors.

Respondent(s)

WITH

Original Application No. 442/2022

Junaid Ayubi

Applicant

Versus

State of Uttarakhand

Respondent

Date of hearing: 06.01.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. A. Renganath, Advocate for Mr. Ajit Sharma, Advocate

Respondent: Mr. Rahul Verma, AAG for the State of Uttarakhand
Mr. Mukesh Verma, Advocate for UKPCB

ORDER

1. Grievance in this application is against river bed mining of sand, bajri and boulder at Lot No. 21/1 at villages Dakpathar, Nawabgarh, Mandi Gangbhewa & Bhimawala, Tehsil Vikasnagar, District Dehradun, Uttarakhand which is a large site admeasuring approx. 123 hectares located on the river bed of River Yamuna. Mining is by the project

proponent (PP), Mukesh Joshi Proprietor, M/s Uttara Awas Yojna, 744 Mauja Chalan Pargana Parwadoon Dst. Dehradun, Uttarakhand.

2. According to the applicant, EC has been transferred by Garwahl Mandal Vikas Nigam without following the laid down procedure. MoU dated 01.02.2021 has been executed in favor of the PP without change of name of PP on the EC. Part of the mining area is in Himachal Pradesh where Uttarakhand Authority cannot grant permission for mining. Since mining is involved in a cluster, procedure for cluster EC is required to be followed which has not been done. EC dated 17.08.2016 has expired as more than five years have passed. Single EC has been granted for two mines which is not permissible. No joint DSR has been prepared for mining near inter-state boundary, as required.

3. Tribunal noted that a similar matter i.e. O.A. No. 442/2022, Junaid Ayubi vs. State of Uttarakhand filed by the same applicant on same issue already pending before the Tribunal. Consequently, Tribunal found it necessary to have the response of PP, Geology and Mining Department of Uttarakhand as well as Garwahl Mandal Vikas Nigam for which two months' time was granted and applicant was directed to serve papers on the said authorities and this matter was directed to be listed with O.A. No. 442/2022.

4. In O.A. No. 442/2022, we find that the matter was examined on 19.07.2022 on a letter petition and Tribunal constituted a Committee comprising Regional Office, MoEF&CC at Dehradun, SEIAA Uttarakhand, Director, Department of Geology and Mines, Government of Uttarakhand, State PCB and District Magistrate, Dehradun was constituted and State PCB was made nodal agency. The factual and action taken report was directed to be submitted within two months.

5. A report has been submitted in O.A. No. 442/2022 by the joint Committee along with the letter dated 31.08.2022.
6. The observations of the joint Committee includes reference to an A.O. No. 179/2021 which is said to be an arbitration Appeal in which an order was passed on 20.09.2021 which is reproduced in the record of the Committee. The learned Counsel appearing for State PCB however could not dispute that the issue of illegal mining and damage to environment and compensation etc. is not involved in the matter pending before High Court.
7. With regard to the issue in O.A. No. 442/2022, the report of Committee is reproduced as under:-

“शासन के उपरोक्त कार्यालय ज्ञाप दिनांक 30 नवम्बर, 2021 के क्रम में गठित समिति द्वारा शासन को उपलब्ध करायी गयी *Factual Report* के उपरान्त शासन के कार्यालय ज्ञाप संख्या 2477/ VII-A-1/2021-108ख/2016 दिनांक 06 जनवरी, 2022 के बिन्दु संख्या 8(ii) में यमुना नदी में दो राज्यों के मध्य सीमा विवाद के दृष्टिगत नदी के मध्य से 15 मीटर का बफर जोन घोषित किये करते हुए तदनुसार प्रतिबन्धित क्षेत्रफल को कम किये जाने पर 68.364 है० के स्थान पर 58.614 है० क्षेत्रफल में उपखनिज की वार्षिक मात्रा कुल 5,14,428.64 टन निर्धारित की गयी है। (संलग्नक-1)

मा० राष्ट्रीय हरित अधिकरण में आदेश दिनांक 19.07.2022 के निम्नवत् अंश *The applicant has submitted that mining rights for mining in Revenue areas of Garhwal were exclusive given to Garhwal Mandal Vikas Nigam (GMVN). State Government issued LOI dated 23.01.2013 to GMVN for getting Environment Impact Assessment of 83 lots, including lot no. 21/3 (10.350 Hect) falling in Yamuna River, in District Dehradun conducted. Subsequently, lot no. 21/3 was modified on 10.04.2016 as per survey dated 14.09.2012 which was found it for mining. Thereafter, in the year 2013 application for environment clearance was submitted. On 03.03.2015 mining plan of lot no. 21/3 comprising Khasra No. 1, 2K and 618 in Village Dhakrani and Khasra No.-1 in village Mandi Gangbhewa measuring 68.364 Hectares was approved. The same was consented to by MoEF&CC on 07.09.2016. When longitudes and latitudes mentioned in the consent was marked on google earth one point was falling in Khasra No.-971 of Vill-Dhakrani in Uttarakhand and other point was falling in village Manwar Dewra in Himanchal Pradesh with 20 percent area falling in Uttarakhand and 80 percent area falling in Himanchal Pradesh* के क्रम में तथा निम्नानुसार है

पर्यावरणीय स्वीकृति में वर्णित *latitude* व *longitude* राजस्व लॉट क्षेत्रफल यमुना नदी में 30°27'14.17"N to 30°26'43.02" N व 77°42'1.06" E to 77°40'57.88 E जो कि *Survey of India* की *Toposheet No. 53F 11* व *GPS location google earth* पर इंगित करने पर उपरोक्त *Latitude* व *Longitude* उत्तराखण्ड के परिक्षेत्र के 200 मीटर अन्दर पाये गये। (संलग्नक - 2)

निरीक्षण दिनांक को खनन क्षेत्र के अधिकांश भाग में नदी के प्रवाह होने के कारण खनन क्षेत्र लगभग समतल पाया गया, जिसके स्थल फोटोग्राफ संलग्न है। (संलग्नक - 3)

शिकायतकर्ता द्वारा 971 में अवैध खनन किये जाने सम्बन्धी शिकायत के क्रम में राजस्व विभाग द्वारा बताया गया कि जी०एम०वी०एन० को स्वीकृत खनन लॉट के खसरा संख्या नं०-1 व 2 व खसरा नं०-618 उक्त खनन लॉट संख्या-618 से लगता हुआ खसरा संख्या-936, जो कि नदी से लगता हुआ है उक्त खसरों की लम्बाई 1400 मीटर

से (लगभग) व उक्त खसरा संख्या नम्बर से लगता हुआ खसरा नम्बर- 971, जिसकी लम्बाई राजस्व खसरे के अनुसार 600 मीटर लगभग में है। (संलग्नक - 4)

अवैध खनन पर नियंत्रण हेतु राजस्व एवं खनन विभाग द्वारा नियमित रूप से कार्यवाहियों की जाती है तथा दिनांक 01.10.2021 से दिनांक 31.08.2022 तक तहसील विकासनगर क्षेत्रान्तर्गत अवैध खनिजों के परिवहन के सम्बन्ध में की गयी कार्यवाही एवं अवैध खनन परिवहन के प्रकरणों में अधिरोपित / वसूली की गयी धनराशि का विवरण उपजिलाधिकारी विकासनगर के कार्यालय से प्राप्त सूचना के अनुसार निम्नवत्त है : (संलग्नक-5)

क्र.स.	अवैध खनन परिवहन से सम्बंधित प्रकरणों की कुल संख्या	राजस्व प्राप्ति (रु. में)
01	338	1,05,83,296.00

पर्यावरणीय अनुमति की शर्तों की अनुपालन आख्या सम्बन्धी रिपोर्ट गढ़वाल मण्डल विकास निगम द्वारा क्षेत्रीय कार्यालय पर्यावरण वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार को खनन कार्य प्रारम्भ होने के उपरान्त जमा की गयी है। सम्बन्धित कार्यालय द्वारा शर्तों की अनुपालन में ईगित कमियों का निराकरण किये जाने सम्बन्धी पत्र गढ़वाल मण्डल विकास निगम को प्रेषित किया गया है (संलग्नक—6)

गढ़वाल मण्डल विकास निगम लि0 74 / 1 राजपुर रोड देहरादून के कार्यादेश पत्रांक संख्या 784 / दस / चार-यमुना 21 / 3 (2020-25) दिनांक 02 फरवरी, 2021 द्वारा तहसील विकासनगर क्षेत्रान्तर्गत राजस्व लॉट यमुना 21 / 3 खसरा संख्या 2 क, 618, 1 कुल क्षेत्रफल 68. 364 है0 वार्षिक निविदित मात्रा 600000 टन पर ई-निविदा के माध्यम से सफल बोलीदाता / उच्च बोलीदाता श्री विनोद नेगी निवासी ग्राम मयाली पो० मयाली जनपद रूद्रप्रयाग को आवंटित किया, गया।

निदेशक भूतत्व एवं खनिकर्म इकाई उद्योग निदेशालय उत्तराखण्ड भोपालपानी देहरादून के कार्यालय जाप संख्या 2677 दिनांक 19 जनवरी, 2021, कार्यालय जिलाधिकारी देहरादून के कार्यालय पत्र संख्या 73/खनिज- अनु0 / 21 दिनांक 03 फरवरी, 2021 एवं गढ़वाल मण्डल विकास निगम लि0 के पत्रांक संख्या 790 / दस / चार-यमुना 21/3 (2020-25) दिनांक 03 फरवरी, 2021 के क्रम में खनन लॉट का ई- रवन्ना पोर्टल पर दिनांक 03.02.2021 को खनिजों के परिवहन हेतु पंजीकरण किया गया।

ई - रवन्ना पोर्टल पर खनिजों के परिवहन हेतु निगम के पक्ष में तहसील विकासनगर क ग्राम - ढकरानी मण्डी गंगभेवा क्षेत्रान्तर्गत स्वीकृत राजस्व लॉट संख्या-21 / 3 पंजीकरण किये जाने के उपरान्त पट्टाधारक द्वारा ई-रखन्ना पोर्टल के अनुसार वर्ष 2020-21 एवं 2021-22 में स्वीकृत मात्रा के सापेक्ष निकासी की गयी उपखनिज की मात्रा विवरण निम्नवत्त है :- (संलग्नक-7)

क्र. स.	वर्ष	ई-रवन्ना पोर्टल पर खनिजों के परिवहन हेतु पंजीकरण किये जाने के उपरान्त स्वीकृत मात्रा के सापेक्ष निकासी की गयी उपखनिज की मात्रा (टन में)
01	2020-21 (03.02.2021 से 02.02.2022)	73,190
02	2021-22 (03.02.2021 से 26.08.2022) (निरीक्षण दिनांक तक)	85,335

English Translation by Tribunal

“The Committee formed in order of the above office memorandum dated November 30, 2021, point No.8(ii) of factual report 2477/ VII-A-1 / 2021 108/2010 dated January 06, 2022, the Government by declaring a buffer zone of 15 meters from the middle of the river in view of the border dispute between the two states in Yamuna river, accordingly reducing the restricted area from 68.364 ha instead of

58.614 hector, the total annual amount of minerals in the area is 5, 14,428.64 tones has been fixed. (Annexure-1)

The following extracts from the order dated 19.07.2022 in Hon'ble National Green Tribunal, the applicant has submitted that mining rights for mining in Revenue areas of Garhwal were exclusive given to Garhwal Mandal Vikas Nigam (GMVN). State Government issued LOI dated 23.01.2013 to GMVN for getting Environment Impact Assessment of 83 lots, including lot no. 21/3 (10.350 Hect) falling in Yamuna River, in District Dehradun conducted. Subsequently, lot no. 21/3 was modified on 10.04.2016 as per survey dated 14.09.2012 which was found it for mining. Thereafter, in the year 2013 application for environment clearance was submitted. On 03.03.2015 mining plan of lot no. 21/3 comprising Khasra No. 1, 2K and 618 in Village Dhakrani and Khasra No.-1 in village Mandi Gangbhewa measuring 68.364 Hectares was approved. The same was consented to by MoEF&CC on 07.09.2016. When longitudes and latitudes mentioned in the consent was marked on google earth one point was falling in Khasra No.-971 of Vill-Dhakrani in Uttarakhand and other point was falling in village Manwar Dewra in Himanchal Pradesh with 20 percent area falling in Uttarakhand and 80 percent area falling in Himanchal Pradesh in order of and as follows:-

Latitude and Longitude Revenue Lot Area mentioned in Environmental Approval 30°27'14.17 N to 30°26'43.02"N and 77°42'1.06 E to 77°40'57.88"E of Survey of India's Toposheet No. 53F 11 and 11 on pointing the GPS location on google earth, the above Latitude and Longitude were found within 200 meters of the area of Uttarakhand (Annexure - 2).

On the date of inspection due to flow of river in most of the mining area, the mining area was found to be almost flat, the site photograph of which is attached. (Annexure-3)

Regarding the illegal mining done by the complainant in 971, it was told by the Revenue Department that G.M.V.N approved mining lot Khasra No. 0-1 and 2 and Khasra No.-618, the said mining lot number 618 is adjacent Khasra No. 936, which is adjacent to the river, the length of the said khasra is 1400 meters (approximately) and the khasra number-971 adjacent to the said khasra number, whose length according to the revenue measles is 600 meters approximately (Annexure -4)

Actions are taken regularly by the Revenue and Mining Department to control illegal mining and from 01.10:2021 to 31.08.2022 action taken in connection with transportation of illegal minerals under Tehsil Vikas Nagar area and the details of the recovered amount imposed in cases of illegal mining transport, as per the information received from the office of Deputy Collector, Vikas Nagar, are as follows (Annexure-5)

Sr. No	Cases related to illegal mining transportation	Revenue Receipt (in Rs.)
01	338	1,05,83,296.00

The report regarding the compliance of the conditions of environmental permission has been submitted by the Garhwal Mandal Vikas Nigam to the regional office of the Ministry of Environment, Forest and Climate Change, Government of India, after the start of the mining work. A letter has been sent to the Garhwal Mandal Vikas Nigam regarding the redressal of the shortcomings pointed out by the concerned office in compliance with the conditions (No-6)

Garhwal Mandal Vikas Nigam Ltd. 74/1 Rajpur Road, Dehradun by work order letter number 784/10/4-Yamuna 21/3 (2020-25) dated February 02, 2021 Revenue Lot Yamuna 21/3 Khasra No. 2k, 618 1 The total area of 68.364 hactor was allotted to the successful bidder / high bidder Mr. Vinod Negi, resident of Village Mayali Po.Mayali District Rudraprayag through e-tender at the annual tendered quantity of 600000 tonnes.

Office of Director Geology and Mining Unit Directorate of Industries Uttarakhand Bhopalpani Dehradun 's Memorandum No. 2677 dated January 19, 2021 Office of the District Magistrate Dehradun Office letter no. 73/ Mineral-Sr. / 21 dated February 03, 2021 and Garhwal Mandal Vikas Nigam Ltd.'s letter no. 790 / ten / four-Yamuna 21/3 (2020-25) dated February 03, 2021 regarding mining lot Registration for transportation of minerals was done on 03.02.2021 on e-Ravanna portal.

According to the e-Ravanna portal, after registering the approved revenue lot number-21/3 under Tehsil Vikasnagar village-Ukrani Mandi Gangbheva area in favor of the Corporation for transportation of minerals on e-Ravanna portal, according to the e-Ravanna portal for the years 2020-21 and 2021-22 the details of the quantity of sub minerals extracted in relation to the quantity in it are as follows (Annexure-7).

Sr. No	Year	After registering for transportation of minerals on E-Ravana portal, the quantity of minor minerals removed in relation to the approved quantity
01	2020-21 (03.02.2021 to 02.02.2022)	73,190
02	2021-22 (03.02.20222 to 26.08.2022 up to inspection date)	85,335

8. The amount of Rs. 1,05,83,296 claim to have been recovered by the Revenue Department does not reflect the cost of the entire mineral illegally mined by the Proponent and there is nothing on record to show that for illegal mining and damage caused to the environment, any action has been taken by the State PCB with regard to assessment of Environment Compensation, lodging of FIR for committing crime by the Proponent and other steps.

9. Further, no response has been received from Garwahl Mandal Vikas Nigam, Geology and Mining Department, Uttarakhand and Project Proponent in the present case.

10. We find that version of Proponent is necessary to be obtained for the purpose of deciding this matter.

11. Pursuant to this Tribunal's order dated 27.09.2022, an affidavit of service has been filed by the Proponent on 17.10.2022. The affidavit verified on 14.10.2022 states that the papers of the O.A. have been sent to PP, Geology and Mining Department, Uttarakhand and Garwahl Mandal Vikas Nigam by speed-post but tracking record or service of notices upon the said authorities is not on record.

12. In the circumstances, we find it appropriate to issue notice along with copy of the petition by e-mail to Respondent Nos. 2, 5 and 6 who may file their response within one week to the Original Application as also objections, if any, to the report filed in connected O.A. No. 442/2022.

13. List for further consideration on 12.01.2023.

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

January 06, 2023
Original Application No. 692/2022
(I.A. No. 228/2022)
SN