

Item No. 03 & 04

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 140/2021

(With report dated 31.03.2022)

Raj Kumar

Applicant

Versus

State of U.P. & Ors.

Respondent(s)

**WITH**

Original Application No. 141/2021

Ramkaran Karn

Applicant

Versus

State of U.P. & Ors.

Respondent(s)

Date of hearing: 06.05.2022

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

Applicant: Mr. Vanshdeep Dalmia, Advocate

Respondent: Dr. Roshan Jacob, Secretary, Geology & Mining with Mr. Pradeep Misra,  
Advocate for the State of Uttar Pradesh & UPPCB

**ORDER**

1. Grievance in these two identical applications is against illegal mining. In O.A. No. 140/2021, mining is in the submerged water area at Gata No. 28 (Part) and 29, Khand No. 1, village Kanwara, District Banda, UP by M/s Durge Trading Company and in O.A. No. 141/2021 it is in the submerged water area at Gata No. 2/4, 2/23, 2/24 and 2/28, Khand No. -4, village-Bendakhadar, District Banda, UP by Ashish Kumar Gautam,

S/o Suresh Kumar Gautam. Common stand in both the matters is that the mining is in violation of Sustainable Sand Mining Management Guidelines (SSMMG), 2016 and Enforcement and Monitoring Guidelines for Sand Mining (EMGSM), 2020 and binding orders of this Tribunal, including order dated 30.05.2017 in O.A. No. 78/2015 (CZ) reported in 2017 SCC OnLine NGT 1097, holding as follows: -

***“In the light of the above, we answer the question that has been referred to us that no river sand mining is permitted in the submerged area in accordance with the Sustainable Sand Mining Guidelines 2016 alternatively in so far as the issue whether it can be permitted in the submergence areas is concerned our answer to the same is that in submergence area which may be a wider area than the one actually submerged as a submergence area would encompass the full reservoir level of the river or the high flood level of the river recorded by in any case where the mineral is exposed and not in stream such sand mining in accordance with the Sand Mining Guidelines 2016 and the conditions imposed in the environmental clearance may be carried out.”***

2. Further order of this Tribunal relied upon by the applicants is order dated 26.02.2021 in O.A. No. 360/2015, *NGT Bar Association v. Virender Singh (State of Gujarat) and other connected matters*. Therein, on exhaustive review of the issues relating to sand mining, this Tribunal has issued directions, including the mechanism for enforcement of environmental norms, inter-alia as follows:-

*“1to26...xxx.....xxx.....xxx*

***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 atleast once in a year by the Secretary, Environment in coordination with the Secretaries Mining and Jalshakti Ministries the CPCB.”**

3. It is submitted that no steps are being taken by the State of UP for compliance of directions of this Tribunal.

4. Vide order dated 02.07.2021 on consideration of the matter, the Tribunal directed Additional Chief Secretary, Mining, UP to furnish a report about the compliance status including the status of DSR and replenishment studies for Banda District and also in-stream mining in submerged water and monitoring mechanism.

5. The matter was last considered on 08.03.2022 and finding that no response was being filed by the Additional Chief Secretary, Mining, Uttar Pradesh, the Tribunal directed personal appearance of the ACS, Mining by V.C. and also directed the District Magistrate and State PCB to file a factual report. If anything, adverse was noticed, the PP was to be put to notice of these proceedings.

6. In pursuance of above, the ACS, Mining, UP is present in person by V.C. and report has been filed by the District Officer, Banda on 31.03.2022 as follows:

“xxx .....xxx.....xxx  
10. *That for Environmental impact assessment (E.I.A.) study ministry of environment and forest and climate change (MoEF&CC) has propounded Sustainable sand mining management guidelines 2016 and enforcement and monitoring guidelines for sand mining 2020. In compliance of this Guidelines Government of Uttar Pradesh has issued a Government order no 790(1)/86-2020 dated 01.06.2020. As per this Government order, Government of Uttar Pradesh has constituted a team of officials of Department of Geology and Mining, Revenue Department, Forest Department and Irrigation Department, who give recommendation for any new area to be included or any change in D.S.R.(District survey report). Till November 2022 a total of 296 areas has been added in District survey report (D.S.R.) in different districts of Uttar Pradesh.*

*That in district Banda after proper study of replacement of Sand/Morrum on the areas the District Survey Report' (herein after referred as DSR) was prepared and loaded on District Administration Portal and objection of the public domain were also invited and after considering the objection the DSR finalised by the committee constituted by the Government of Uttar Pradesh on 23.11.2017.*

11. *That in Compliance of Hon'ble NGT order dated 02.07.2021 OA no. 140/2021 Raj Kumar Versus State of UP and OA no. 141/2021 Ram Karan karn Versus State of UP, D.M Banda has authorised C.M.P.D.I (Central mine planing and Design Institute limited), a public sector enterprise of Government of India to do the replenishment study of rivers flowing in district Banda on dated 28.10.2021 C.M.P.D.I has started the replenishment study of rivers of banda district and the work is on progress. Its report will be soon provided to the hon'ble NGT.*

*The copy of the order of D.M Banda dated 11.10.2021 and consent letter of C.M.P.D.I dated 19.10.2021 being annexed herewith as Annexure No.1, to this compliance report.*

12. *That if the bid found to be highest and satisfactory per cubic metre then a letter of intent is issued in favour of such bidder and thereafter, the applicant should obtain approval on its mining plan and environmental clearance from the competent authority and thereafter the mining lease is executed in his favour.*
13. *That in the lease deed, the following terms are specifically mentioned:-*
  - i. *The mining operations are to be carried only up to the depth of 3 metres, or up to the water level, whichever is less;*
  - ii. *The safety zone should be worked out;*
  - iii. *The mining operations will be done in accordance with the scheme mentioned in the Mining Plan;*
  - iv. *The lessee will be bound to obey the terms and conditions of the environmental clearance;*
  - v. *The mining will be done after sun-rise till sun-set;*
  - vi. *In the monsoon season, no mining will be done;*
  - vii. *Heavy machinery and Suction Machines will not be used for excavation of the mineral;*
  - viii. *No temporary bridge or hinderance will be created in the flow of river water during the lease period;*
  - ix. *That the Central Government framed Sustainable Sand Mining Management Guidelines 2016 with object of managing un-controlled sand mining in India.*
14. *That the Ministry of Environment, Forests & Climate Change, Government of India also framed Enforcement and monitoring Guidelines for Sand Mining in January 2020.*
15. *That list of mining leases, granted in District Banda for excavation of sand & morrum, at present, is being annexed herewith as Annexure No.2, to this compliance report.*
16. *That at the time, total 17 mining leases are in operation in Banda district and they have proper environmental clearances, as well as the consent issued by UPPB Lucknow under the provisions of "Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention Control of Pollution) Act, 1981."*
17. *That in compliance of the order dated 26.02.2021, passed by this Hon'ble Tribunal in O.A. No.360 of 2015 (National Green Tribunal Bar Associations. Veerendra Singh (State of Gujarat & others), 5 members Committee has been constituted by the District Officer, Banda, vide office order No.2892/Khanij-30 Banda, dated 14.12.2021. In the said Monitoring Committee, the members as under:*

1. *Divisional Forest Officer, Banda Chairman*
2. *Mines Officer/Mines Inspector/ Surveyor, Mines Department, Banda Member*
3. *Executive Engineer, Irrigation & Water Resources department, Banda- Member*
4. *Concerned Tehsildar Member*
5. *Regional Officer, Pollution Control Board, Banda Member Secretary.*

*A copy of the said office order dated 14.12.2021 issued by the District Officer, Banda, is being annexed herewith as Annexure No.3, to this compliance report.*

18. *That the said Enforcement Committee is regularly watching the mining activities of 17 areas and if any lessee is found to violate the above mentioned terms and conditions, then after issuing the notice, necessary proceedings are initiated against him.*
- 19 *That in the Headquarters, Lucknow, as well as in the districts, Surveillance Systems have also been installed for prevention of over-loading of minerals, as well as without transit passes, and due to this so many electronic challans are automatically created and served on the lessees for recovery of Government dues of such mineral.*
20. *That this Hon'ble Tribunal has also directed for submission of the status report of the following sand, morrum areas*

<b>S. No.</b>	<b>Area</b>	<b>Status</b>
a)	<i>Khand No.1 Village Kanwara, Banda M/s Durga Trading Co.</i>	<i>mining activities are not being done by the lessee due to preparation of approach road</i>
b)	<i>Khand No.4 Village Banda Khadar, District Banda Ashish Kumar Gautam, S/o Shri Suresh Kumar Gautam</i>	<i>matter is pending before the Hon'ble Supreme court. (Ravi kumar vs State of U.P. Dairy No. 3177/2022) No mining activities are being done.</i>

7. A report has also been filed on 06.04.2022 by the Geology and Mining Department, UP which is by and large similar to the report of the District Officer, Banda referred to above.

8. We have heard learned Counsel for the Applicants and interacted with the ACS present in person by VC.

9. We find that replenishment study as required under the SSMG-2016 and EMGSM-2020 has not been undertaken prior to the auction in terms of para 5.1 of the 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.”*

10. With regard to the allegation of instream mining in submerged water, it has been orally stated by the ACS that no such instream mining is permitted. However, in the reports filed before this Tribunal, no such statement has been made on behalf of the State.

11. Accordingly, the ACS, Mining, UP has fairly stated that replenishment study will be conducted prior to auctions in future and with regard to the current leases, ongoing replenishment study will be expedited. In the light thereof, the leases will be renewed, if necessary. Such studies for all Districts in UP will be completed by December 31, 2022 and for Banda by June 30, 2022. She has further stated that the allegation of instream mining will be verified and if found true, the same will be discontinued.

12. In view of above, let the Replenishment studies be completed by credible institutions, following due procedure, in accordance with para 5 of EMSG, 2020. Further, no mining be permitted till replenishment studies are completed beyond the schedule laid down above. The State may ensure that the Regulatory authorities are adequately equipped and capable to assess quantities of mined material. With regard to instream mining, it may be ensured that the machineries permitted or used otherwise comply with "Semi mechanised" mining operations in true sense. In all mining potential districts, environmental damage assessment be carried out and annual assessment reports placed in public domain on the websites of the Mining Department as well as the PCB. Compliance of SSMG, 2016 and EMGSM, 2020 and earlier directions of this Tribunal may be ensured by an effective monitoring mechanism.



The applications are disposed of accordingly.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

May 06, 2022  
Original Application No. 140/2021  
Original Application No. 141/2021  
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