

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

(Through Physical Hearing with Hybrid VC Option)

(Through Physical Hearing with Hybrid VC Option)  
Original Application No.485/2022

**Mr. Gautam Sharma,**

Haji Mohammadpur Kotkadar, Tehsil Nagina,  
District Bijnor, U.P.  
Phone: 9410847576/ 8077088176

...Applicant

**VERSUS**

**1. State of Uttar Pradesh,  
Through Chief Secretary,**  
Government of Uttar Pradesh,  
101, 'B' Block, Lok Bhawan,  
U.P. Secretariat, Lucknow - 226001,  
Email Address: csup@nic.in

**2. The Director,  
Directorate of Mining and Geology, Uttar Pradesh**  
Raja, Khanij Bhawan 27/8, Ram Mohan Rai Marg,  
Lucknow, Uttar Pradesh 226001  
Email: dgmupexp@gmail.com

**3. Uttar Pradesh Pollution Control Board,**  
Building No. TC-12V  
Vibhuti Khand, Gomti Nagar  
Lucknow-226 010, U.P.  
Email Address: ms@uppcb.in

**4. District Magistrate, Bijnor**  
Collectorate, Bijnor, Uttar Pradesh  
Email: dmbij@nic.in

**Counsel for the Applicant**

None for the applicant.

**Counsel for the Respondents:**

Mr. Gi. Gi. George, Advocate for respondent no. 1 and 4.  
Mr. Mukesh Verma, Advocate for respondent no. 2. (through VC).  
Mr. Pradeep Misra, Advocate for respondent no. 3. (through VC).

**Present:**

**HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.**  
**HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.**

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Reserved on : 25.05.2023

Date of Judgment: 17.07.2023

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**Application is registered based on a complaint received by Email.**

**JUDGMENT**

1. Mr. Gautam Sharma resident of village Haji Mohammadpur Kotkadar, Tehsil Nagina, District Bijnor Uttar Pradesh has sent the present letter petition, which is treated and registered as original application, complaining that illegal mining of sand and murrum is being done in land measuring about 100 acres (instead of 15 bighas of land leased out) situated in Eco Sensitive Zone of Tiger Reserve/Elephant Zone and in the area of River Khoh, Tehsil Nagina, District Bijnor, Uttar Pradesh.

2. Vide order dated 29.08.2022, this Tribunal constituted a Joint Committee with direction to submit factual and action taken report within one month.

3. In compliance thereof the report of the Joint Committee has been filed by Mr. Vikas Mishra, Regional Officer, UPPCB vide letter dated 03.11.2022 through email dated 03.11.2022. The relevant part of the report of the Joint Committee is reproduced below:-

***“Joint Inspection Report in the matter of Gautam Sharma Vs. State of Uttar Pradesh (O.A No. 485/2022), Hon'ble NGT Order dated 29.08.2022 prepared by Joint Committee of SDM, DFO, Mining Officer and UPPCB.***

X X X X  
**2. Constitution of Joint Committee:**

*In compliance of Hon'ble NGT order dated 29/08/2022 a Joint Committee was constituted by District Magistrate, Bijnor vide its order No.-629/N-44/General-2022 dated 16-09-2022. Copy is annexed as **Annexure-1.***

*The members of the Committee are as under-*

1. Sub District Magistrate, Nagina, District-Bijnor.

2. Divisional Forest Officer, Najibabad, District-Bijnor.
3. Mining Inspector, Bijnor.
4. Regional Officer, U.P. Pollution Control Board, Bijnor.

### **3- Observations:-**

*Inspection was carried out on dated 12.10.2022 by the Joint Committee. Detailed report is as follows:-*

*i. No Objection Certificate was issued by the Divisional Forest officer, Bijnor forest division, Najibabad, vide its letter no.-1315/22-1, Najibabad dated 23.11.2020 for mining of sand, gravel, morrum and boulder from gata no.-2 / 102, area - 7.12 hectare, village - Shahalipur Kotra, Tehsil - Nagina, District - Bijnor. Copy is annexed as Annexure-2.*

*ii. Letter of intent was issued to M/s Brijwala Infra Solutions Pvt . Ltd., (Director- Shri Satyendra Singh S/o Shri Brijendra Singh and Shri Brijendra Singh S/o Shri Ramji Lal, Residence-A-7, Mangal Vihar Colony, Near Nanpla Maulvi, Aligarh, U.P.) for mining permit of River bed material (RBM) estimated mineable quantity 24,300 cubic meter available on Niji Bhumi situated on River bed (Khoh river) gata no.-2 / 102, Area - 1.215 hectare, village - Shahalipur Kotra, Tehsil - Nagina, District - Bijnor by District Magistrate, Bijnor vide office order no.-336/mineral section(consent letter)-21 dated 20.04.2021. Copy is annexed as Annexure -3.*

*iii. State Level Environment Impact Assessment Authority, Uttar Pradesh was issued Environmental Clearance on dated 16.12.2021 for mining of R.B.M. (Mixed form) mineable estimated quantity 24,300 cubic meter from Niji Bhumi gata no.-2 / 102, total area - 1.215 hectare, village - Shahalipur Kotra, Tehsil - Nagina, District - Bijnor. Copy is annexed as Annexure -4.*

*iv. Mining permit was issued to M/s Brijwala Infra Solutions Pvt Ltd. for mining of sand, gravel, boulder (mixed form)/RBM quantity of mineable 24300 cubic meters from gata no.-2/ 102, total area-1.215 hectares, village-Shahalipur Kotra, Tehsil-Nagina, District-Bijnor by District Magistrate, Bijnor vide office order no.-1115/Kha.Li.-permit-2022 dated 03.01.2022 for a period of 06 months (up to 30.06.2022). Copy is annexed as Annexure -5.*

*v. During inspection, it was observed that, Khoh river was flowing over the gata no.-2/102, area-1.215 hectares, village-Shahalipur Kotra, Tehsil-Nagina, District-Bijnor. Further, illegal mining of sand, morrum or River bed material (R.B.M.) was not found from gata no.-2/102, area-1.215 hectares, village-Shahalipur Kotra, Tehsil-Nagina, District-Bijnor. During inspection it was also observed that mining activity of river bed material from gata no.-2/102, area-1.215 hectares, village-Shahalipur Kotra, Tehsil-Nagina, District-Bijnor was not being done by the M/s Brijwala Infra Solutions Pvt. Ltd. during joint inspection. Photographs is annexed as Annexure -6.*

*vi No Objection Certificate was issued by the Divisional Forest officer, Bijnor forest division, Najibabad, vide its letter no.-*

1316/22-1, Najibabad on dated 23.11.2020 for mining of sand, gravel, morrum and boulder from gata no.- 70 mi, area - 1.770 hectare, village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor. Copy is annexed as Annexure -7.

vii Letter of intent was issued to M/s Jayanti Entrepreneur Pvt. Ltd., Director Shri Dilip Kumar Ojha S/o Shri Hanuman Prasad Ojha, R/o-184, N Block, Kidwai Nagar, Kanpur Nagar (U.P.) for mining permit of mining River bed material (RBM) estimated mineable quantity 26,544 cubic meter available on Niji Bhumi situated on River bed (Khoh river) gata no.- 70 mi, area - 1.264 hectare, village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor by District Magistrate, District-Bijnor vide its order no.- 255/mineral section(consent letter)-21 dated 09.04.2021. Copy is annexed as Annexure -8.

viii State Level Environment Impact Assessment Authority, Uttar Pradesh was issued Environmental Clearance on dated 29.12.2021 for mining of R.B.M. (Mixed form) mineable estimated quantity 26,544 cubic meter from Niji Bhumi gata no.- 70 mi, area - 1.264 hectare, village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor. Copy is annexed as Annexure -9.

ix Mining permit was issued to M/s Jayanti Entrepreneur Pvt. Ltd. for mining of sand, gravel, boulder (mixed form)/RBM quantity of mineable 26,544 cubic meters from gata no.- 70 mi, area - 1.264 hectare, village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor by District Magistrate, Bijnor vide its order no.-1117/Kha.Li.-permit-2022 on dated 03.01.2022 for a period of 06 months (up to 30.06.2022). Copy is annexed as Annexure -10.

x The mining of River bed material from gata no.- 70 mi, area - 1.264 hectare, village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor was done by the M/s Jayanti Entrepreneur Pvt. Ltd. as per the approved mining permit. Online portal detail of Directorate of Geology and Mining Uttar Pradesh is enclosed. Copy is annexed as Annexure -11.

xi During inspection, it was observed that Khoh river was flowing over the gata no.- 70 mi, area - 1.264 hectare, village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor and illegal mining of sand/morrum or River Bed Material (R.B.M.) was not being done from gata no.-70 mi,. area - 1.264 hectare, village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor. Further, it was also observed that mining activity of River Bed Material (R.B.M.) from gata no.- 70 mi, area - 1.264 hectare, village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor was not being done by the M/s Jayanti Entrepreneur Pvt. Ltd. Photographs is annexed as Annexure-12.

#### **4. Conclusions:**

i. Khoh River was flowing over the gata no.-2/102, area-1.215 hectares, located at village-Shahalipur Kotra, Tehsil-Nagina, District-Bijnor.

ii. During inspection, it was found that mining activity of River Bed Material from gata no.-2/102, area-1.215 hectares,

*village-Shahalipur Kotra, Tehsil-Nagina, District-Bijnor was not being done by the M/s Brijwala Infra Solutions Pvt. Ltd.*

*iii. Khoh River was flowing over the gata no.- 70 mi, area - 1.264 hectare, village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor.*

*iv. During inspection, it was found that mining activity of River Bed Material (R.B.M.) from gata no.- 70 mi, area - 1.264 hectare, located at village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor was not being done by the M/s Jayanti Entrepreneur Pvt. Ltd.*

#### **5- Action taken:-**

*Earlier, the penalty of Rs.-37,59,200/- was imposed by the District Magistrate, Bijnor to M/s Brijwala Infra Solutions Pvt. Ltd. due to illegal mining of sand/sub mineral 2100 cubic meters from Khasra no.-207, Village-shahpur, Pargana-Badhapur, Tehsil-Nagina, District-Bijnor and Mining permit issued to M/s Brijwala Infra Solutions Pvt. Ltd. was also cancelled by the District Magistrate, Bijnor vide its letter no.- 1505/mineral section-22 dated-12.05.2022. Copy is annexed as Annexure -13.”*

4. Vide order dated 10.11.2022, notices were ordered to be issued to the respondents no. 1 to 4 requiring them to file their reply/response and learned counsel for the UPPCB also sought time to file its reply/response.

5. In compliance thereof Replies/response have been filed by Respondent No. 2-Director, Geology and Mining, Government of Uttar Pradesh vide email dated 21.02.2023, by Respondent No. 3-UPPCB vide email dated 16.02.2023 and by Respondent No. 4-District Magistrate, Bijnor vide email dated 21.02.2023.

6. The relevant part of the reply/response of respondent no. 2 is reproduced below:-

*“विषय: ओ०ए० सं०-485/2022 गौतम शर्मा बनाम उ०प्र० राज्य के मामले में मा० राष्ट्रीय हरित अधिकरण नई दिल्ली द्वारा पारित आदेश दिनांक 10.11.2022 के अनुपालन हेतु सूचना/आख्या उपलब्ध कराने के सम्बन्ध में ।*

*कृपया उपर्युक्त विषयक के सम्बन्ध में अवगत कराना है कि मा० राष्ट्रीय हरित अधिकरण, नई दिल्ली द्वारा ओ० ए० संख्या-485/2022 में पारित आदेश दिनांक 10.11.2022 द्वारा प्रकरण से सम्बन्धित अनुपालन आख्या उपलब्ध कराये जाने के निर्देश दिये गये हैं। मा० राष्ट्रीय हरित*

अधिकरण द्वारा पारित उक्त आदेश दिनांक 10-11-2022 के संगत प्रभावी अंश निम्नवत् हैं:-

4. In view of the averments in the application and observations in the report of the Joint Committee, we consider it appropriate to have response of (1) State of Uttar Pradesh through Chief Secretary, Government of Uttar Pradesh, (2) Director, Mining and Geology Department, State of Uttar Pradesh, (3) State PCB, and (4) District Magistrate, Bijnor, who stand impleaded as respondents No. 1 to 4. The Registry is directed to prepare and attach memo of parties to the application and issue notices to respondents No. 1,2 and 4 requiring them to file their reply/response within two months at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

5. Learned counsel for the UPPCB seek time to file reply/response on behalf of State PCB.

6. Reply / response on behalf of State PCB be filed within two months as directed above.

7. List the matter for further consideration on 23.02.2023.

इस सम्बन्ध में अवगत कराना है कि मा० राष्ट्रीय हरित अधिकरण द्वारा पारित उक्त आदेश के अनुपालन में निदेशालय के पत्र संख्या-1737/एम-एन०जी०टी०-वाद बिजनौर/2023 दिनांक 17.02.2023 द्वारा जिलाधिकारी, बिजनौर से आख्या प्राप्त करने हेतु पत्र प्रेषित किया गया। तत्क्रम में जिलाधिकारी बिजनौर के पत्र संख्या-1133/खनिज अनुभाग-23 दिनांक 21.02.2023 द्वारा उपलब्ध करायी गयी आख्या के अनुसार:-

“मा० अधिकरण के आदेश दिनांक 10.11.2022 के परिपेक्ष्य में संयुक्त समिति की रिपोर्ट पर आख्या

1. यह कि गाटा सं०-2/102 रकबा 1.215 है० स्थित ग्राम शाहअलीपुर कोटरा, तहसील नगीना, जिला बिजनौर पर 06 माह की अवधि के लिये ई०-टेण्डर के माध्यम से परमिट मे० ब्रजवाला इन्फ्राटेक लि० को समयावधि दिनांक 03.01.2022 से दिनांक 30.06.2022 तक स्वीकृत किया गया था।

2. यह कि परमिट शर्तों एवं पर्यावरणीय स्वच्छता प्रमाण पत्र की शर्तों-अनुबन्धों का भंग साबित पाये जाने पर नियमानुसार कार्यवही करते हुये उक्त आवंटन आदेश 03.01.2022 को अपने आदेश दिनांक 12.05.2022 द्वारा निरस्त कर दिया गया एवं मेसर्स ब्रजवाला इन्फ्राटेक लि० पर जुर्माने की धनराशि रूपये 37,59,200 अधिरोपित कर देयता निर्धारित करते हुये अवशेष धनराशि अंकन 27,14,061 रूपये के लिये आदेश दिनांकित 12.05.2022 (संलग्नक-1) के परिपेक्ष्य में वसूली प्रमाण पत्र निर्गत किया गया।

3. यह कि गाटा संख्या-70 मि० रकबा 1.264 है० स्थित ग्राम अबुल फजलपुर पहाणा, तहसील नगीना, जिला बिजनौर पर 06 माह की अवधि के लिये ई०-टेण्डर के माध्यम से परमिट मेसर्स जयंत इन्फ्राटेक लि०

को समयावधि दिनांक 03.01.2022 से दिनांक 30.06.2022 तक स्वीकृत किया गया था।

4. यह कि इस आवंटन की समयावधि दिनांक 30.06.2022 को समाप्त हो चुकी है।

5. यह कि संयुक्त जाँच कमेटी के निरीक्षण के समय क्षेत्र में अवैध खनन होता प्राप्त नहीं हुआ।

6. यह कि गाटा संख्या-2/102 स्थित ग्राम शाहअलीपुर कोटरा एवं गाटा संख्या-70 मि० स्थित ग्राम अबुफजलपुर पहाणा का संयुक्त टीम उपजिलाधिकारी, नगीना, क्षेत्राधिकारी पुलिस नगीना एवं खान निरीक्षक बिजनौर द्वारा दिनांक 20.02.2023 को स्थलीय निरीक्षण किया गया, जिसमें कोई गतिविधियां होनी नहीं पायी गयी जिसके फोटोग्राफ मय जियो कार्डिनेट (संलग्नक-2)।”

अतः अनुरोध है कि उक्त वर्णित स्थिति से मा० राष्ट्रीय हरित अधिकरण, नई दिल्ली को अवगत कराने का कष्ट करें। ”

7. The relevant part of the reply/response of respondent no. 3 is reproduced below:-

**“Response on behalf of Uttar Pradesh Pollution Control Board in compliance of Hon'ble NGT order dated 10-11-2022 in OA 485/2022 Gautam Sharma vs. State of Uttar Pradesh.**

**Background:-**

1- That Hon'ble NGT in OA no. 485/2022 has considered the letter petition as original application, complaining that illegal mining of sand and murram is being done in land measuring about 100 acres (instead of 15 bighas of land leased out) situated in Eco Sensitive Zone of Tiger Reserve/ Elephant Zone and in the area of River Khoh, Tehsil Nagina, District Bijnor, Uttar Pradesh.

2- That in compliance of directions passed by Hon'ble NGT vide order dated 29-08-2022 joint committee comprising of District Administration Amroha, DFO Amroha, Mining Officer, Amroha and UPPCB conducted joint inspection on 12-10-2022 and joint inspection report submitted in Hon'ble NGT on 03-11-2022. In the joint inspection it was found that mining activity on the river bed from Gata No. 2/102 at village Shahalipur Kotara, Tehsil-Nagina, District-Bijnore was not being done by M/s Brijwala Infra Solution Pvt. Ltd.

3- That during joint inspection dated 12-10-2022 it was found that mining activity on the river bed from Gata No. 70MI at Village-Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnore was not being done by M/s Jayanti Entrepreneur Pvt. Ltd.

4- That District Magistrate, Bijnore vide letter dated 12-05-2022 has cancelled the mining permit of M/s Brijwala Infra Solution Pvt. Ltd. and has imposed penalty of Rs. 37,59,200/- against the unit.

5- That Hon'ble NGT vide order dated 10-11-2022 has issued directions to filled response of State of U.P. through Chief Secretary and response of State Pollution Control Board. The operative part of order dated 10-11-2022 is reproduced as below:-

“.....4. In view of the averments in the application and observations in the report of the Joint Committee, we consider it appropriate to have response of (1) State of Uttar Pradesh through Chief Secretary, Government of Uttar Pradesh, (2) Director, Mining and Geology Department, State of Uttar Pradesh, (3) State PCB, and (4) District Magistrate, Bijnor, who stand impleaded as respondents No. 1 to 4. The Registry is directed to prepare and attach memo of parties to the application and issue notices to respondents No. 1.2 and 4 requiring them to file their reply/response within two months at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF....”

**Response:-**

1- That in compliance of directions issued by Hon'ble NGT on 10-11-2022 officials of Regional Office Uttar Pradesh Pollution Control Board, Bijnore inspected the site on 11-02-2023.

2- That during inspection dated 11-02-2023 no mining activity was carried out by M/s Brijwala Infra Solution Pvt. Ltd on the river bed from Gata No. 2/102, area-1.215 hectare, Village-Shahalipur Kotra, Tehsil-Nagina, District-Bijnore.

3- That during inspection dated 11-02-2023 no mining activity was carried out by M/s Jayanti Entrepreneur Pvt. Ltd. on the river bed from Gata No. 70MI, area-1.264 hectare, village Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnore. The inspection report dated 11-02-2023 with Geo tagged Photographs is attached as Annexure-1.

**Annexure-1**

**Inspection report, In the Matter of O.A. NO.-485/2022 Gautam Sharma V/S State of Uttar Pradesh.**

In the Matter of O.A. NO.-485/2022 Gautam Sharma V/S State of Uttar Pradesh, Earlier, inspection was carried out on dated 12.10.2022 by the Joint Committee and report filed in the Hon'ble NGT on dated 03.11.2022 through E-mail by UPPCB. Latest inspection was carried out on 11.02.2023 by UPPCB. At the time of inspection mining activity of river bed material from gata no.-2/ 102; area-1.215 hectares, village-Shahalipur Kotra, Tehsli-Nagina, District-Bijnor was not being done by the M/s Brijwala Infra Solutions Pvt. Ltd., Photographs is annexed as Annexure-1. Mining activity of River Bed Material (R.B.M.) from gata no.- 70 mi, area - 1.264 hectare, village - Abulfazalpur Pahara, Tehsil-Nagina, District-Bijnor was not being done by



*the M/s Jayanti Entrepreneur Pvt. Ltd., Photographs is annexed as Annexure-2.”*

8. The relevant part of the reply/response of respondent no. 4 is reproduced below:-

“मा० अधिकरण के आदेश दिनांकित 10.11.2022 के परिप्रेक्ष्य में संयुक्त समिति की रिपोर्ट पर आख्या :

01. यह कि गाटा संख्या 2/102 रकबई 1.215 हे० स्थित ग्राम शाहअलीपुर कोटरा तहसील नगीना जिला बिजनौर पर 6 माह की अवधि के लिए ई० टेण्डर के माध्यम से परमिट मै० ब्रजबाला इन्फ्राटेक लि० को समयावधि दिनांक 3.1.2022 से दिनांक 30. 6.2022 तक स्वीकृत किया गया था।

02. यह कि परमिट शर्तों एवं पर्यावरणीय स्वच्छता प्रमाण पत्र की शर्तों/अनुबन्धों का भंग साबित पाये जाने पर नियमानुसार कार्यवाही करते हुए उक्त आंबटन आदेश 3.1.2022 को अपने आदेश दिनांक 12.5.2022 द्वारा निरस्त कर दिया गया एवं मै० ब्रजबाला इन्फ्राटेक पर जुर्माने की धनराशि रू. 37,59,200 अधिरोपित कर देयता निर्धारित करते हुए अवशेष धनराशि अंकन 27,14,061 रू के लिए आदेश दिनांकित 12.5.2022 के परिप्रेक्ष्य में वसूली प्रमाण पत्र निर्गत किया गया। आदेश दिनांकित 12.5.2022 की प्रति संलग्न-1 है।

03. यह कि गाटा संख्या 70 मि० रकबई 1.264 हे० स्थित ग्राम अबुल फजलपुर पहाणा तहसील नगीना जिला बिजनौर पर 6 माह की अवधि के लिए ई०टेण्डर के माध्यम से परमिट मै० जयन्त इन्फ्राटेक लि० को समयावधि दिनांक 3.1.2022 से दिनांक 30.6.2022 तक स्वीकृत किया गया था।

04. यह कि इस आंबटन की समयावधि दिनांक 30.6.2022 को समाप्त हो चुकी है।

05. यह कि संयुक्त जाँच कमेटी को निरीक्षण के समय क्षेत्र में अवैध खनन होता प्राप्त नहीं हुआ है।

06. यह कि गाटा संख्या 2/102 स्थित ग्राम शाहअलीपुर कोटरा एवं गाटा संख्या 70 मि० स्थित ग्राम अबुल फजलपुर पहाडा का संयुक्त टीम उपजिलाधिकारी नगीना, क्षेत्राधिकारी पुलिस नगीना एवं खान निरीक्षक बिजनौर द्वारा दिनांक 20-2-2023 को स्थलीय निरीक्षण किया गया, जिसमें कोई खनन गतिविधियां होनी नहीं पायी गयी जिसके फोटोग्राफ मय जियो कोर्डिनेट संलग्न-2 है।

आख्या सादर प्रस्तुत ।

दिनांक 21.02.2023

निरीक्षण आख्या:- मा० राष्ट्रीय हरित प्राधिकरण, नई दिल्ली में योजित ओ०ए० नं० 485/2022 गौतम शर्मा बनाम उ०प्र० सरकार के सम्बन्ध में

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मा० राष्ट्रीय हरित प्राधिकरण, नई दिल्ली में योजित ओ०ए० नं० 485/2022 गौतम शर्मा बनाम उ०प्र० सरकार के मामले में पहला निरीक्षण संयुक्त समिति द्वारा दिनांक 12.10.2022 को किया गया था और संयुक्त आख्या मा० अधिकरण में उत्तर प्रदेश प्रदूषण नियन्त्रण बोर्ड द्वारा ई-मेल के माध्यम से दिनांक 03.11.2022 को दाखिल की गयी थी। मा० राष्ट्रीय हरित प्राधिकरण, नई दिल्ली में योजित ओ०ए० नं० 485/2022 में पारित आदेश दिनांक 10.11.2022 के अनुपालन में कार्यालय पत्रांक 1125/खनिज अनुभाग-23 दिनांक 17.02.2023 के क्रम में दिनांक 20.02.2023 को तहसील नगीना के ग्राम शाहअलीपुर कोटरा के गाटा सं० 2/102 क्षेत्र 1.215 हे० व ग्राम अबुलफजलपुर पहाड़ा के गाटा सं० 70 मि क्षेत्र 1.264 हे० भूमि पर खनन की गतिविधियों के सम्बन्ध में पुनः संयुक्त निरीक्षण किया गया। निरीक्षण के समय उक्त स्थलो पर खनन कार्य बन्द पाया गया। स्थलीय निरीक्षण/मौके के जियो-कोर्डिनेट्स के साथ फोटोग्राफ संलग्न है।”

9. We have gone through the replies/response filed on behalf of Respondents No. 2 to 4. There is no mention in the replies/response filed by Respondents No. 2 to 4 as to whether CTE/CTO was obtained by the mining lease holders. Further, penalty of ₹37,59,200/- is stated to have been imposed on mining lease holder-M/s. Brajwala Infratech Ltd., out of which recovery of ₹27,14,061/- is stated to be pending but no details regarding status of the recovery proceedings have been given in the reply.

10. Vide order dated 23.02.2023 Respondent No. 3-UPPCB was directed to file additional reply mentioning requisite details regarding obtaining of CTE/CTO by the mining lease holders from the UPPCB and Respondent No. 4-District Magistrate, Bijnor, was also directed to file additional reply with requisite details regarding status of recovery proceedings along with copies of relevant documents.

11. In compliance thereof report has been filed by Respondent No. 4-District Magistrate, Bijnor vide email dated 23.05.2023. Additional reply has been filed by Respondent No. 3-UPPCB vide email dated 23.05.2023. Response has also been filed by Respondent No. 3- Director, Geology and Mining, Government of Uttar Pradesh vide email dated 24.05.2023.

12. The relevant report of the Respondent No. 4-District Magistrate, Bijnor is reproduced below:-

“मा० अधिकरण के आदेश दिनांकित 23.02.2023 के परिप्रेक्ष्य में पूरक आख्या :-

01. यह कि प्रकरण में पूर्व प्रेषित आख्या दिनांकित 21.02.2023 में उल्लिखित संलग्नक-1 आदेश दिनांकित 12.05.2022 के परिप्रेक्ष्य में कुल धनराशि अंकन 27,14,061/- रु० की देयता मै० ब्रजवाला इन्फ्राटेक लि० पर निर्धारित की गयी।

02. यह कि उक्त वर्णित देयता अंकन 27,14,061/- रु० में से उक्त फर्म द्वारा उ०प्र० जिला खनिज फाउण्डेशन न्यास बिजनौर के खाते में दिनांक 11.05.2022 को धनराशि अंकन 18,85,680.00 रु० जमा किये जाने सम्बन्धी साक्ष्य, बैंक स्लिप प्रस्तुत की गयी, जिसकी प्रति संलग्न-अ है, उक्त फर्म द्वारा टी०सी०एस० अंकन 1,16,536.00 दिनांक 12.05.2022 को भुगतान किये जाने सम्बन्धी भी साक्ष्य, प्रस्तुत की गयी इस भुगतान के लिए चालान की प्रति संलग्न:-ब है।

03. यह कि संलग्न:-अ संलग्न-ब में वर्णित धनराशि  $18,85,680 + 1,16,536 = 20,02,216$  रु० कुल देयता 27,14,061 के सापेक्ष प्राप्त हुई। शेष धनराशि अंकन 7,11,845 रु की वसूली हेतु वसूली प्रमाण पत्र दिनांकित 16.06.2022 संलग्न-स सम्बन्धित जिलाधिकारी अलीगढ़ को निर्गत किया गया।

04. यह कि वसूली प्रमाण पत्र संलग्न-स पर वसूली करते हुए कार्यालय तहसीलदार, तहसील कोल जिला अलीगढ़ (कार्यालय जिलाधिकारी अलीगढ़) से पत्र दिनांकित 28.07.2022 के माध्यम से बैंक अंकन 1,00,000 जिलाधिकारी बिजनौर को प्राप्त कराया गया, उक्त पत्र दिनांकित 28.07.2022 की प्रति मय बैंक संलग्न-द है। उक्त क्रम में कार्यालय तहसीलदार, तहसील कोल जिला अलीगढ़ (कार्यालय जिलाधिकारी अलीगढ़) से पत्र दिनांकित 10.03.2023 के साथ बैंक अंकन 1,00,000 रु जिलाधिकारी बिजनौर को प्राप्त कराया गया, जिसकी प्रति मय बैंक संलग्न-य है। अग्रेत्तर कार्यालय तहसीलदार, तहसील कोल जिला अलीगढ़ (कार्यालय जिलाधिकारी अलीगढ़) से पत्र दिनांकित 31.03.2023 के माध्यम से बैंक अंकन 1,00,000 रु प्राप्त कराया गया, जिसकी प्रति मय बैंक संलग्न-र है, उक्त क्रम में कार्यालय तहसीलदार, तहसील कोल जिला अलीगढ़ (कार्यालय जिलाधिकारी अलीगढ़) से एक अन्य पत्र दिनांकित 31.03.2023 के माध्यम से बैंक अंकन 50,000 रु भी जिलाधिकारी बिजनौर को प्राप्त कराया गया, जिसकी प्रति मय बैंक संलग्न:-ल है।

05. यह कि इस प्रकार संलग्न-1 पूर्व आख्या दिनांक 21.02.2023 में वर्णित कुल देयता 27,14,061 रु के सापेक्ष  $18,85,680 + 1,16,536 + 1,00,000 + 1,00,000 + 1,00,000 + 50,000 = 23,52,216$  वसूल की जा चुकी है। अंकन 3,61,845 रु ही वसूली

से शेष है इस विषयक पूर्ण वसूली हेतु सम्बन्धित जिलाधिकारी अलीगढ़ को पत्राचार किया गया है, उक्त पत्रों की प्रति संलग्न व है।

आख्या सादर प्रस्तुत।”

13. The relevant additional reply of the Respondent No. 3-UPPCB is reproduced below:-

**“Additional reply on behalf of UPPCB compliance to directions issued by Hon'ble NGT vide order dated 23.02.2023 in the matter of Gautam Sharma Vs State of U.P. & Ors. in O.A. No. 485/2022-**

X X X X

*In compliance of the above directions passed by Hon'ble NGT, additional reply regarding obtaining CTE/CTO from UPPCB by Mining lease holders is as below: -*

1- M/s Brijwala Infra Solutions Pvt. Ltd., (Mining lease holder) Gata no. 2/102 village Shahalipur Kotra, Near Khoh river, Tehsil Nagina, District Bijnor —

- *The unit had applied for Consent to Establish (CTE) on 03.01.2022 under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 which was refused by U.P. Pollution Control Board vide ref. no. 147467 /UPPCB /Bijnor(UPPCBR0) /CTE /Bijnor /2022 dated 24.03.2022.*

- *It is submitted that earlier Central Pollution Control Board (CPCB) has issued a letter dated 02-02-2017 regarding mechanism to be followed for granting Consent to Operate (CTO) under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, for certain category of industries. As per the letter the projects which has obtained Environmental Clearance (EC) from SEIAA and installed requisite pollution control system, may be issued Consent to Operate (CTO) directly. (The letter of CPCB dated 02-02-2017 is enclosed herewith and annexed as Annexure No.-1)*

- *It is submitted that the unit has not applied for obtaining Consent to Operate (CTO) from UP Pollution Control Board under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air*

*(Prevention and Control of Pollution) Act, 1981 till date.*

*2- M/s Jayanti Entrepreneur Pvt. Ltd.,(Mining lease holder)  
Gata no. 70mi, village Abulfazalpur, Pahara, Near Khoh  
river, Tehsil Nagina, District Bijnor-*

*It is submitted that M/s Jayanti Entrepreneur Pvt. Ltd. for mining of River Bed Material (RBM) on river bed of river Khoh at gata no. 70mi, village Abulfazalpur, Pahara, Tehsil Nagina, District Bijnor has not applied for obtaining Consent to Operate (CTO) from UP Pollution Control Board under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 till date.”*

14. The relevant response of the Respondent No. 3- Director, Geology and Mining, Government of Uttar Pradesh is reproduced below:-

**“Subject: Filing of response in O.A.No.485/2022 Gautam Sharma vs. State of U.P. and others.**

X X X X

*As per comments received from District Magistrate, Bijnour dated 22.05.2023 it is hereby submitted that Rs. 18,85,680/- was deposited by the firm (M/S Brijwala Infra solution) on 11.05.2022 and Rs. 1,16,536/- was deposited by the firm on 12.05.2022. Further, on 28.07.2022 Rs. 1,00,000/-; on 10.03.2023 Rs.1,00,000/-; on 31.03.2023 Rs. 1,00,000/-; on 31.03.2023 Rs. 50,000/- has been recovered. Thus, out of Rs. 27,14,061/-a sum of Rs. 23,52,216/-has been recovered and Rs. 3,61,845/- is yet to be recovered for which proceeding is going on and is expected to be recovered soon.”*

15. We have heard learned Counsel for the respondents no. 1 to 4 and we have gone through the averments made in the application, observations made by the joint Committee and report/replies/responses filed by the respondents.

16. In the present case mining permit for six months with validity upto 30.06.2022 were issued by the District Magistrate, Bijnor. In compliance of order dated 29.08.2022 passed by this Tribunal, the Joint Committee carried out the inspection of the mining sites on 12.10.2022. The Joint Committee has reported that at the time of inspection by the Joint

Committee no mining was being done by any of the mining permit holders. The Joint Committee has not reported about illegal mining by any other person. Therefore, so far as the grievance regarding illegal mining on 100 acres of land is concerned, no further action is required to be taken on the present application.

17. It may be observed that in the present case the mining permit holders were required to apply to UPPCB for CTE and CTO under the Water Act and Air Act. In its reply/response UPPCB has submitted that application for CTE filed by M/s Birijwala Infra Solutions Pvt. Ltd. was refused by UPPCB vide ref. no. 147467/UPPCB/Bijnor (UPPCBRO)/CTE/Bijnor/2022 dated 24.03.2022 and that both the mining permit holders did not apply to UPPCB for grant of CTO till date.

18. It may also be observed that mining permit holder M/s Birijwala Infra Solutions Pvt. Ltd. committed breach of the terms and conditions thereof on which the permit was cancelled and penalty of Rs. 37,59,200/- was imposed on M/s Birijwala Infra Solutions Pvt. Ltd. out of which amount of Rs. 3,61,845/- is yet to be recovered.

19. However, in the present case UPPCB has not taken any action for imposition of environmental compensation on the mining permit holders for not obtaining CTE/CTO from UPPCB. UPPCB is directed to take appropriate environmental compensation on the mining permit holders on realization of EC, the amount shall be utilized for remediation of environmental damage caused by breach of the terms and conditions thereof by implementing environmental amelioration measures in the area like plantation programme through DFO, Bijnor.

20. The application is disposed of accordingly with directions as mentioned above.

21. A copy of this order be sent to the District Magistrate, Bijnor and DFO, Bijnor, applicant and the respondents for information and requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

July 17, 2023  
AG