

Amandeep vs State Of Himachal Pradesh Through Its ... on 30 July, 2021

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel

Item No. 05

(Court No. 1)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Original Application No. 57/2021

(With reports dated 07.04.2021 and 03.05.2021)

Amandeep

Applicant

Versus

State of Himachal Pradesh

Respondent

Date of hearing: 30.07.2021

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. Ajay Marwah, Advocate

Respondent: Mr. Divya Prakash Pande, Advocate for HPSPCB

ORDER

1. Grievance in this application is against illegal mining at Som Bhadra River (Swan river) in District Una of Himachal Pradesh. It is stated that the Central Government has sanctioned 922 Crores for the channelization of this River. Channelization work was done by spending huge public fund. As many as 73 Khads (Mini water channels from different catchment areas of nearby villages) were also channelised from this huge budget for the welfare of the people at large so that the agricultural land of the nearby villages of the River may be protected from the huge flow of water of this river during rainy season. 'Sand Mafia' having political shelter under the garb of a mining licence, are lifting the

sands and other material from the bed of this Swan river in an unscientific manner by using big Pokland and JCB machines, in utter violation of the norms and rules framed for the purpose under the nose and eyes of the local District Administration and government, causing constant danger to the river and to the channelization of this river.

Thousands of Trucks are being loaded beyond the required capacity and running on the roads in utter violation of the norms fixed by the Government. The Trucks-Tippers are being over loaded which are causing damage to the roads, causing pollution in the area, inconvenience to the public at large on the roads and accidents are taking untimely lives of the people at large. There is every possibility that it may cause not only loss, damage and destruction to the channalisation work of the Swan river, it may also cause damage to the bridges, leading to loss of public funds already spent for this purpose, besides loss to the water level. It may cause pollution in the area and threat to peaceful atmosphere of green State of Himachal Pradesh, apart from damage to the roads. The applicant has also relied upon media reports.

2. Vide order dated 02.03.2021, the Tribunal observed that remedial action to control illegal mining appeared to be necessary after verification of the facts. Accordingly, the Secretary, Environment, HP, the State PCB and the District Magistrate, Una were directed to verify facts based on which further remedial action could be taken as per law. The Tribunal also constituted an independent five-member Committee headed by Justice Jasbir Singh, former Judge of Punjab and Haryana High Court, and comprising Regional Officers of the CPCB, the MoEF&CC, the Central Soil and Water Conversation Research Institute, Dehradun and the Himalayan Forest Research Institute, Shimla to give its report of status on the ground.

3. Accordingly, we have for our consideration report of the District Magistrate, Una dated 07.04.2021 and report of the independent Committee headed by Justice Jasbir Singh, former Judge of Punjab and Haryana High Court dated 03.05.2021, substantially confirming extensive illegal mining with practically no effective remedial action.

4. The report of the District Magistrate finds large scale violations in the form of unscientific mechanical mining in violation of statutory Minor Mineral Concession Rules, 2015 which led to registration of (few) FIRs and cancellation of mining leases. Some (insignificant) amount has been collected by way of fine/penalty during the last two years and three mining leases were suspended due to violations. The report also mentions that mining is being done in violation of lease conditions. Overloading of trucks and tippers was taken place. 474 violators were penalized. There are road accidents resulting in deaths and injuries, damage to public infrastructure like bridges and roads, adverse impact on water quality, water table and air. Recommendations for the remedial action include geo fencing of the leased area, compulsory GPS in all JCBs and earth moving equipments. District Una has 518 registered JCBs/ Excavators/ Earth moving equipment.

5. The relevant extracts from the report are reproduced below:

"4. Findings vis- a-vis allegations:

4.1. Unscientific mechanical mining in the Swan River:

In order to ensure the sustainable harnessing of minor minerals, Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2015 were framed. As per these rules, for all the mining concessions or leases "District Survey Report" has been made essential for obtaining the environment clearance for mining in the river beds. Besides this Project Proponent has to get the mining plan approved from the competent authorities for the systematic & scientific mining. The major safeguards to ensure sustainable mining are incorporated in District Survey Report as well as mining plans.

1. The section 19(15) of Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2015 forbids the usage of mechanical mining. The mechanical mining in river/stream bed shall be allowed only with the help of tyre mounted front end loader up-to 80 Horse Power without backhoe with the permission of the Competent Authority i.e. Director. None of the mining leases in Swan river, Una district have got permission to do mechanical mining.

2. Besides this the section 34 (iv) of Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2015 lays down a general condition for grant of mineral concession whereby the depth of mining in the river bed shall not exceed one metre or water level whichever is less:

Provided that where the Joint Inspection Committee certifies about excessive deposition or over accumulation of minerals in certain reaches requiring channelization, it can go upto two metres on defined reaches of the river.

3. Rule 19(5) of the rules ibid says that the lessee shall at his own expense erect and at all times maintain and keep in good repair boundary marks and pillars necessary to indicate the demarcation shown in the plan annexed to the lease.

Data of violations provided by mining & police department clearly point out that mechanical mining is going on in the area and cases are being detected regularly. In the years 2019-20 and 2020-21, total 77 cases of violations were detected by Police and Mining department, where mechanical mining was being done. 1 FIR was registered by Police department against the tipper driver for overloading and driving it in rash and negligent manner, so as to deter public servant from discharging its duty (section 279, 353 & 506 of IPC, s 184 of MV act & s 21 of mining act). The lease was further recommended for the cancellation to mining department. A total compounding fine/penalty of Rs. 35,64,000 was collected. During the period of 2 years, mining activities of 03 mining lease holders were suspended due to violations in the granted area.

Sr. No	Department/ Officials	Details	No of cases		Fine/ Penalty	Remarks
			2019-20	2020-21		

collected

1.	Mining Department	Illegal mining extraction (Manual)	/ 09	02	1,10,000	- For the year pending before
		Illegal mining extraction (Mechanical)	/ 17	09	13,25,000	6 c & 4 Hon'
		Illegal Storage of Mining material	-	-	-	- Du
		Illegal Transportation	193	191	27,54,170	mini leas to v
2.	Police Department	Illegal mining extraction (Manual)	/ -	-	-	
		Illegal mining /extraction (Mechanical)	10	31	22,39,000	
		Illegal Storage of Mining material	-	-	-	
		Illegal Transportation	626	603	1,21,24,000	
3.	SDM, Una	Illegal Transportation	06	02	69,000	-
4.	SDM, Gagret	Illegal Transportation	-	-	-	-
5.	SDM, Haroli	Illegal Storage of Mining material	4	-	16,000	SDM poli maxi poli
6.	SDM, Bangana	Illegal Transportation	2	-	10,000	-
7.	SDM Amb	Illegal Transportation	-	-	-	-

Table 2: Details of cases challenged/ detected related to illegal Mining, Storage & Transportation.

a) A random google earth image from Nangran area in Swan river bed, whereby 6 JCBs/ Earth moving equipment could be visibly seen mining the area (approx. 11000 metre 2), is reproduced below. During spot visit to the area, large scale mining was found in the area but no JCBs were present on the day of inspection in river bed.

Visibly enough the depth of mining was more than 1 metres which is clear violation of rule 34(iv) of the Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2015.

b) Similarly, another random area near Kuthar Khurd, seen through Google earth (feb,2021) clearly shows one JCB and 5-6 tractors being used for mining. During one of the random spot visits to the area, 2 JCBs were found illegally plying in the area and were caught for the violations (pictures Below).

From both the random visits to the area, google earth analysis and deliberations with the committee members, following observations can be made:

1. The unscientific and illegal mechanical mining is undergoing in the river bed at large scale in violation of section 19(15) of the rules *ibid*. Based on the google images and general public perception, Mining & Police department could only catch a small fraction of it. In total, district Una have 518 number of registered JCBs/ Excavators/ Earth moving equipment.
2. The condition imposed as per section 34 (iv) of the rules *ibid*, whereby the depth of mining in the river bed shall not exceed one metre or water level whichever is less, is neither followed by the lessee nor there is any monitoring mechanism except the random visits to the area.
3. Although as per Rule 19(5) of the rules *ibid*, it's the responsibility of the lessee to erect at his own expense and at all times maintain and keep in good repair boundary marks and pillars necessary to indicate the demarcation shown in the plan annexed to the lease. But in reality, the demarcation pillar marks are an exception rather than the norm. Wherever available, the boundary pillars are neither accurate nor prominent. The shifting nature of river, especially during rainy season gives an excuse to lease holders that the demarcation pillars have been washed away. In absence of properly demarcated and visibly identifiable lease area, it's difficult to differentiate between legal and illegal mining if any.

Overall ambiguity of land boundaries and the availability of private agricultural land in the Swan river bed, further complicates the problem.

Via the notification dated 30.04.2011, 39 categories of officers/officials were authorized to make complaints in writing in the court of competent jurisdiction in respect of any offence punishable under the Mines and Minerals (Development & Regulation) Act, 1957 (Act No. 67 of 1957). For aerial surveillance of illegal mining prone areas, one Drone was also provided to Police Department.

The major problem is that the leaseholders take clearance for sand mining along with duly approved mining plans but they do not follow the conditions scrupulously, on the basis of which clearance was given. Conditions, like avoiding the use of machines or doing sand mining till a particular depth, are

being rarely followed. Onus for following the mining plans is majorly on the lease holder. Lack of regular monitoring mechanism and paucity of resources with mining & police department, makes it difficult to monitor the vast length & expanse (63 Km) of Swan river for unsustainable mining practices.

Although during the period of 2 years, mining activities of the 03 mining lease holders were suspended due to violations in the granted area. Departments also have collected a fine of approx. Rs 1.86 crore on account of illegal mining and Rs. 42.16 lakh on overloading within 2 years (2019-20 to 2020-21). But all these punitive actions are not able to deter the unscientific and illegal mining.

4.2. Impact of mining on Channelization:

As per the report received from Superintending engineer, Swan River Flood Management Project circle, Una district, at present there is no instance of channelization assets /infrastructure being damaged due to mining.

One of the general recommendations of "District Survey Plan" mentions that "No River/Stream bed mining shall be allowed within 75 meters from the periphery of soil conservation works, nursery plantation, check dams or within the distance as recommended by the Sub-Divisional Committee, whichever is more".

The Superintending engineer, Swan River Flood Management Project circle, Una district has communicated (24/3/21) a list of 27 sites where the recommendations of "District Survey Plan" are violated. The list is being enquired by the mining department for identifying the violators and the action will be taken as per law.

Besides this Flood protection division, Gagret, District Una has taken several steps to discourage the un-scientific mining in main Swan River & its tributaries/Khads by destroying ramps at mining sites. Joint inspections have been carried out with mining authorities. One FIR (No. 348/19, dated 10/10/2019) was also registered against the Mining lease holder besides the regular notices being issued.

Sr. N o 1.	Department/ Officials	Details	No. of cases	
			2019-20	2020-21
	Jal Shakti Vibhag/ Flood Protection Division, Gagret, Distt. Una, (H.P)	Damage to Swan river channelization assets/ infrastructure due to mining	Nil	Nil
		Violations from recommendations/ conditions of District Survey Report	27 No. of sites different stretches main	27 No. of sites at different stretches in main Swan River & its

River & its
tributaries/
Khadstributaries
Khads

Table 3: Details of violations leading to damage to Swan River Channelization.

Although there is no instance of channelization assets /infrastructure being damaged due to mining at present. But due to excessive un-scientific mining, the bed level of Swan river & its tributaries/ Khads might go down year by year. This can lead to excessive launching of aprons of the embankments at some reaches.

4.3. Overloading of Trucks-Tippers and related issues:

The issue of overloaded vehicles being plied on the roads are being penalised as per Motor Vehicles(MV) act. Overloading not only increases the possibility of accidents, but also damages our road infrastructure - especially in a country where most of our roads lack quality. During past 2 years, 474 violators were penalized for overloading and an amount of Rs. 42.16 lakh was collected as penalty. As per the HPPWD's report, two roads namely Una-Ajouli road and Bharolian Badehar Charatgarh road were damaged due to overloading with approx. damage amounting to Rs. 23 lakh.

Sr. No.	Department/ officials	Details	No of Cases 2019-20 2020-21	Fine/ Penalty Collected	Remarks
1.	Police Department	Overloading	10	17 4,70,000	-
2.	Transport Department	Overloading	52	395 37,46,500	Details of overloa types of materials Bajri, Boulders et *Included in illeg at table 2.
3.	Mining Department	Overloading	-	- -	
4.	HPPWD	Damage to Public Road infrastructure due to overloaded vehicles	-	- -	Slippage cracking i (Km. 8/00 damage rs Pot Holes cracking i Badehar Ch 0/00 to 4/ Damage rs.

Table 4: Details of violations detected for Overloading and the damage to roads owing to it.

In order to check overloading and illegal transportation of the minerals from district Una, the 05 nos of Mining Check Posts (MCPs) along with the weigh bridge have been established on dated 15/03/2021 which will be helpful in controlling the transportation of the minerals in violation of Himachal Pradesh Minor Minerals (Concession) and Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2015 and MV Act, 1988.

It is generally seen that the tipper/truck owners, mostly from out of the state, modify/extend the bodies to increase the capacity in violation of the MV act. The new Motor Vehicles Act, amendments are approved by the state government but are pending for notification. As soon as the new provisions are applicable in the state, the heavy fines will discourage the overloading violations.

4.4. Roads accidents due to mining:

Sr. No. Department/ Details No of Cases Fine/Penalty Remarks officials Collected
2019-20 2020-21- 1 Police Road Accidents-involving 2 1 - -

Department mining related Trucks/Tractors/ Tippers Road Accidents casualties- 3
person died 1person died -

mining related Trucks/ Tractors/ Tippers (all reasons) casualties (all reasons) Table 6: Road accident details related to mining trucks etc. In total 3 accidents involving mining related trucks/ Tractors/ Tippers happened over two years (2019-20 & 2020-21) in which 4 persons died. For the period from 2019-21, 429 total number of accidents happened in district Una, which led to the 199 accident casualties. Out of total accidents and casualties happened in district Una due to road accidents (2019-20 & 2020-21), the mining related accidents comprise only 0.6 % and casualties comprise 2%. Thus the mining related trucks/ tippers/ tractors are not the major cause for road accidents and related deaths in district Una.

4.5. Mining causing damage to Public infrastructure likes bridges, roads etc. Sr. Department/ Details No. of cases Approx Remarks No. Officials 2019-20 2020-21 damage

1. HPPWD Damage to Public Road - - - -

infrastructure due to mining			
Damage to Public Road	-	-	18,00,00
infrastructure due to			
overloaded vehicles	-	-	5,00,00

Table 7: Report of HPPWD related to any damage to public infrastructure due to mining in Swan river.

As per the report received from HPPWD, no damage to any public infrastructure (Road, Bridges etc.) was reported due to mining in the area till now except the damage to 2 roads mainly due to overloading.

4.6. Impact of mining on water quality, water table and pollution (Air & Water) level:

As per the report received from Environmental Engineer H.P. State Pollution Control Board and S.E (I& PH) at present, no adverse impact on air quality, water quality and water level due to mining were found. The data related to water (MPN/100 ml) and air quality (RPSM- monthly average) remained within the prescribed limits. Further the mining officer, Una was directed by Chairman of District Environment Plan committee, Una during the 1st meeting (held on 24/07/2020) to ensure that no vehicle carrying minor minerals should ply on road without proper covering.

S. No Department/ Details No. of cases Remarks Officials 2019-20 2020-21

1. I&PH Any adverse impact on water - - No adverse impact on water Department quality/ water table due to quality /water table has been noticed mining during 2019-20 & 2020-21, however excessive instream sand and gravel mining may cause the degradation of the river. Impacts include bed degradation, bed coarsening, lowered water table near the stream bed and channel instability. Short term turbidity at the mining site due to re-suspension of sediments, sedimentation due to stock piling and dumping of excess mining materials.

2. HP-PCB Data related to any damage - - The results of Ambient air Department to river Swan from Mining quality of Una & Ind. Area Pollution increase data due to - - Mehatpur (2019-20 & 2020- 21) mining are within prescribed limits.

Table 5: Report from I&PH department & Pollution Control Department for water quality/ water table, pollution impacts of Swan river mining

5. Challenges:

5.1 Una district has in total 1 National Highway, 3 State Highway, 2 Major District Roads and 2 other interstate exit routes out of the state to Punjab. Besides this plain topography of the area makes ingress & exit through Swan river possible from any

point. Therefore, plain topography complemented with a porous, multi exit border enables surreptitious transport of minerals through the escape routes.

5.2 The shifting nature of river, especially during rainy season gives an excuse to lease holders that the demarcation pillars have been washed away. In absence of properly demarcated and visibly identifiable lease area, it's difficult to differentiate between legal and illegal mining if any.

5.3 Majority of the area falling under Swan river belongs to private ownership where agriculture is being done by majority of landowners. Overall ambiguity of land boundaries and the availability of private agricultural land in the Swan river bed further complicates the problem.

6. Recommendation:

6.1. At the mining plan approval stage itself, Geo fencing of the leased area is to be done using ETS-GPS method so as to remove any ambiguity related to lease area and its boundaries. Along with this high accuracy GPS location trackers, are to be given to mining/ police teams to act against mining lease holders if found mining illegally.

6.2. A compulsory GPS installation in all the JCBs and earth moving equipment's along with suitable alert mechanism (whenever it breaches the No-Go areas) can be developed to prevent mechanical unscientific mining in Swan river."

6. The report of the independent Committee refers to the above report of the District Magistrate and contains interim recommendations which are as follows:

"6.0 Interim recommendations of independent five members Committee

1. The report submitted by the Committee, constituted under the Chairmanship of Additional Deputy Commissioner, Una, has prima facie proved that there is unscientific and illegal mining in Som Bhadra river (Swan river), wherein, 58 mining sites have been leased out, out of which 33 mining leases have been granted in private land, 4 mining leases have been granted by the Govt. and 21 mining leases have been granted Swan river to feed existing stone crushers. Unscientific mining has been mentioned due to the following reason

i) Depth of mining in river bed is more than 1m

ii) The data provided by various departments indicate that mechanical mining is going on the mining lease areas and the same has been verified by the Deputy Commissioner's Committee from random Google earth images taken from Nagran area in Swan river bed where 6 JCBs/ earth moving machines were found at the site and during spot inspection, 2 JCBs were found illegally plying in the area.

Therefore, independent Committee recommends that Deputy Commissioner, Una may depute District level task force to verify as to whether mining leases operating in river Som Bhadra are complying with general conditions as mentioned in rule 34 of Himachal Pradesh Minor Mineral (Concession) are Minerals (Prevention of illegal Mining, Transportation and storage rules, 2015), failing which legal action may be initiated under rule 71 of the said rules.

2. Since no boundary marks/pillars for demarcation of the mining areas have been found by the Committee at the mining lease sites therefore, the department of Mining/Geology shall mark boundary wall/pillars around each mining site in Som Bhadra river maintaining only one entry and exit gate within 01 month.

3. District level Task Force shall check the compliance of Mining Plan submitted by each mining lease holder operating their mining activities in Som Bhadra river within 02 months and report be submitted to Mining department as well as Deputy Commissioner, Una for further action.

4. The Department of Irrigation (Swan river flood management circle) shall continue to inspect the banks and infrastructure developed for channelization of river Som Bhadra and ensure that no portion of channelized river is damaged due to mining activities in the area. Their inspections may be conducted on quarterly bases.

5. The department of Transport and Police shall jointly check the overloaded trucks / vehicles carrying minor mineral/sand and heavy fine may in imposed on these vehicles/trucks. Driving License of the driver may be seized of and put into safe custody for 01 month.

6. District level Task Force shall seize of the vehicles used for illegal mining in Som Bhadra river and those may be released as per methodology mentioned Para 8 in order dated 26.2.2021 in OA No 360 of 2015.

7. The department of Transport and Police shall jointly check the loaded/overloaded trucks/vehicles carrying minor minerals/sand and in case these trucks are found with extended bodies, the vehicle may be seized of and shall be released following the procedure and methodology as mentioned in par 8 of order dated 26.2.2021 in OA No 360 of 2015 in the matter of National Green Tribunal Bar Association V /s Virender Singh (State of Gujarat).

8. For transporting of minor mineral material from mining area, only one or two roads may be fixed and notified by department of Mining and all the mined materials should be transported only through these roads. There shall be total restriction on the movement of trucks carrying/transporting minor minerals/sand on the other non notified road

9. The department of Mining/Geology shall provide Geo fencing on all mining lease areas in river Som Bhadra within 03 months.

10. All the mining lease holders shall provide High frequency GPS on the vehicles deployed for transportation of mined material so that their movement can be tracked and can be monitored by

the Department of Mining and Police and prompt action may be taken against the illegal mining operator.

11. During the meeting held on 9.4.2021, it was informed to the Independent Committee that no JCB/Mechanical equipments are allowed in mining of minor minerals/sand in Som Bhadra river (Swan river). Therefore, the Independent Committee recommends that no JCB/mechanical equipments may be allowed for mining in the river Swan.

12. In no case, mining of minor minerals/sand may be allowed in night hours.

13. The department of Irrigation may continue to make survey along river Som Bhadra 04 times in a year to ensure that no sand and gravel may be allowed to be extracted where erosion may occur and especially at the concave banks of the river.

14. District level Special Task Force shall not allow extraction of sand and gravel with 200 to 500m from sensitive structures such as water intake system, pumping station and bridges.

15. The department of Mining shall identify ways of scientific and systematic mining in Som Bhadra river and shall conduct replenishment study which may include the time for continuing replenishment after mining on area.

16. The department of Mining shall ensure that while preparing District Survey Report of mining area along Som Bhadra river, the stretches of river having aggradations/deposition of material where mining can be allowed may be identified. Identification of area of erosion and proximity to infrastructure structures and installation where mining should be prohibited may also be done.

Further the District Survey report of mining area may be prepared as per structure mentioned in Sustainable Sand Mining Management Guidelines, 2016.

17. For monitoring illegal sand/gravel mining in Som Bhadra river, there should be a provision of checking Transport permits, printing of transport permit on security papers, invisible ink mark, fugitive ink background and unique barcode system. The department of Mining shall provide said documents to the monitoring teams or District Level Special Task Force at District level. The Monitoring team deployed for checking of vehicles/trucks carrying mined material should be in a position to check the validity of Transport permit or receipt by scanning them using website, mobile phone application and SMS etc.

18. There should be a mechanism at district level to generate the system which may enable the authorities to develop periodic report on different parameters like daily lifting report, vehicle log or history, lifting against allocation and total lifting. The system can be used to generate auto mails or SMS. This will enable the Deputy Commissioner to get all the relevant details and shall enable the authority to block the scanning facility of any site found to be indulged in irregularity.

19. The mining lease holder shall ensure that vehicles used for transportation of sand/mined material are to be permitted only with of fitness and PUC Certificates and he shall ensure that the road may not be damaged due to transportation of the mined material and transport of minerals will be as per IRC Guidelines with respect to complying with traffic congestion and density. The compliance in this regard may be checked by department of Mining.

20. The District level Task Force while monitoring the mining areas in Som Bhadra river shall check the following parameters.

i) No river/stream bed mining may be allowed within 75 meter from the periphery of soil conservation works, nursery plantations, check dams or within the distance as recommended by the Sub-Divisional Committee whichever is more.

ii) No river/stream bed mining may be allowed within 1/ 10th of its span or 5 meters from the banks or as specified by the Sub-Divisional Level Committee, whichever is more.

iii) No river/stream bed mining may be allowed within 200 meters upstream and downstream of water supply scheme or as specified by the Committee, whichever is more.

iv) No river/stream bed mining may be allowed within 200 meters upstream and 200 to 500 meters downstream of bridges depending upon the site specific conditions.:

v) No digging for more than 1 meter shall be allowed in river/stream beds.

vi) No blasting shall be allowed in river/stream beds."

7. We have duly considered the above reports and are shocked at the extent of violations and helpless shown in taking remedial action. The violations are resulting in serious harm to the environment and public health. It is established that unscientific and illegal mining is continuing for long in more depth than permitted, by prohibited mechanical means such as using JCBs/earth moving machines, absence of boundary marks/pillars for demarcation of mining areas, non-adhering to mining plan, damage to the river bank and infrastructure for channelization of the river, overloading of trucks/vehicles, absence of geo fencing of mining leased areas, absence of high frequency GPS in the vehicles used for transportation, absence of survey to check regulation of mining where erosion is happening, extraction of material from sensitive structures such as water intake systems, pumping station and bridges, absence of proper district survey report, checking of transport permits and other documents, mechanism to generate daily reports. The report of the District Magistrate, Una shows that there are as many as 518 registered JCBs/Excavators/Earth moving equipments in District Una. It is surprising that if such large number of equipments have been registered, why the same are not monitored. It is difficult to believe that the administration lacks competence in taking action. There is no reason for the plea that monitoring is not taking place. If it is so why? There appears to be laxity on the part of the police in not controlling overloading trucks, illegal theft in the form of illegal mining. Equal failure is of mining department. So is the failure of the State PCB and SEIAA for inaction against violation of EC and Consent

conditions.

8. Vide order of this Tribunal dated 26.02.2021 in OA 360/2015, National Green Tribunal Bar Association v. Virender Singh (State of Gujarat), it was directed that the vehicles involved in transportation of illegally mined material need to be seized and not released without payment of amounts mentioned in the said order. The said order having been passed under Section 15 of the National Green Tribunal Act, 2010 has overriding effect on provisions of any other statute in view of section 33 of the said Act. Indicative scale of compensation to be recovered has been approved taking into account the illegal benefit taken by violation of norms, cost of loss to ecological services and cost of restoration with deterrence element if violations are of continuing nature. We reproduce below relevant observations on the subject of seizure of vehicles, compensation assessment and coercive measures from the said order:

"Seizure and Release of vehicles involved in illegal mining

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	Rs. 4 lacs

value more than Rs. 25 lacs and less than 5 years old.

2 Vehicles/Equipments/Excavators with showroom Rs. 3 lacs value more than Rs. 25 lacs and more than 5 years but less than 10 years old.

3 For the remaining Vehicles older than 10 Rs. 2 lacs years/Equipments/ Excavators which are

otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.

Note - I: On repetition of the offence by the same vehicle/ equipment, Order dated 05.04.2019 will be applicable.

Note - II: 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.

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."

Scale of compensation for violations on polluter pays principle

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:

Permitted Total Excess Exceedance in Compensation Charge Quantity Extractio
Extraction Extraction: (in Rs.) (in MT or n (in MT (in MT or m3) m3) or m3) X Y Z =
Y-X Z/ X D * (1+RF + DF) Where D = Z x Market Value-of-

the-material-per-MT-or-m3 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 Table1).

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, $\square(C-B)$, 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:

Severity	Mild	Moderate	Significant	Severe	Risk Factor	0.25	0.50	0.75	1.0	Discount
8%	7%	6%	5%	"						

Rate

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

"Compensation Charge (Scenario II - explicit accounting of NPV) Market Value of Illegally Mined Material (D) $5000 \times 400 = 2000000/-$

Annual Value of Foregone Ecological Values $D \times RF = 2000000/-$

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

$$PV = \sum \left(\frac{\text{Annual Value of Foregone Ecological Values}}{(1+0.05)^n} \right)$$

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

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

Net Present Value (after netting out market value of illegal

material) - i.e., Total Compensation to be levied = $NPV = PV - D = \text{Rs. } 66,58,953/-$

Compensation Charge in above case:

Approach 1
(no explicit accounting of NPV)

$D \cdot (1 + RF + DF)$
Rs. 46,00,000/-

Approach 2
(explicit accounting of

@ 5% discount rate and
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 UP1 to which reference will be made later.

XXX.....XXX.....

Enforcement of Monitoring Mechanism and review by the Chief Secretary at State level and Secretary MoEF&CC at National level constituted by this Tribunal to oversee compliance of environmental issues, on suggestions of the State Government.

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."

9. It is a matter of surprise that such rampant violations are going on under the nose of all regulatory authorities - District Magistrate, District Police, Mining Department, Environment Department and Statutory Regulators, including SEIAA and State PCB. There is no dearth of power with the said authorities but failure is sought to be covered by pleading inability to handle the situation to remedy violations. Illegal mining is not only theft which is a cognizable offence under the IPC and covered by various offences under Chapter XIV of IPC but also offence under the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986. The State is the trustee for protection of environment under the Constitution. Public Trust Doctrine applies. Right to clean environment is a

fundamental right of the citizens. Natural wealth in the form of minerals belongs to the citizens which need to be protected by the State.

Unscientific mining has serious and irreversible consequences on river and environment which needs to be checked for giving effect to the 'sustainable development' principle, to which India is committed. Thus, mining has to be as per plan and in accordance with sustainable mining guidelines issued by the MoEF&CC. The mining department claims to have recovered some amount as per mining rules which may represent loss of royalty but not all the components of compensation. Thus, the State Authorities need to remedy their failure in performance of their duties and are accountable. Heads of concerned departments have to explain their failure and make amends. Their failures due to incompetence or connivance is taking toll on the rights of citizens.

Serious crimes are taking place unchecked. We alert the higher authorities of the State to take meaningful action against the officers aiding and abating such crimes in District Una by their inaction or wrongful action.

10. Accordingly, we direct the Chief Secretary and D.G.P., Himachal Pradesh to hold their inhouse brainstorming on the subject with all concerned departments/authorities and set their house in order to uphold the law instead of private interests of law violators. They may take stock of the situation and plan further course of action to prevent illegal mining, register criminal cases for offences involved, ensure seizure of vehicles involved in crime, assess and recover compensation for the violations, take action of cancellation of leases for violations, revocation of consents/ECs, criminal prosecution and other steps for protection and restoration of environment. Carrying capacity study must be conducted with a view to determine the number of leases to be granted and inter-se distance to be maintained for the same. Monitoring mechanism in place must be reviewed in the light of startling revelation of the continuing failure of the authorities. Colluding officers/authorities may also be identified and made accountable under the environment, criminal and service laws. First such meeting may be organized within 15 days from today to take stock of the situation and to plan remedial action. The Chief Secretary and the DGP, HP may remain personally present by Video conferencing with their action taken reports.

List for further consideration on 10.11.2021.

A copy of this order be forwarded to the Chief Secretary, Himachal Pradesh and D.G.P., Himachal Pradesh by e-mail for compliance.

Adarsh Kumar Goel, CP Sudhir Agarwal, JM Brijesh Sethi, JM Dr. Nagin Nanda, EM July 30, 2021
Original Application No. 57/2021 DV