

## Sharvesh Sharma vs State Of Madhya Pradesh on 23 December, 2022

Item No.3

BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONE BENCH, BHOPAL  
(Through Video Conferencing)

Original Application No. 90/2022(CZ)  
(I.A.No.76/2022)  
(I.A.No.79/2022)

Sharvesh Sharma

Applicant(s)

Versus

State Of Madhya Pradesh & Ors

Respondent(s)

Date of Hearing: 23.12.2022

CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s):

Mr. Vanshdeep Dalmia, Adv

For Respondent(s) :

Mr. Sachin K.Verma, Adv  
Mr. Mayank Pandey, Adv

ORDER

1. Heard the learned counsels for the parties and perused the records.

2. The grievances of the applicant in this Original Application is two NIT's dated 13.05.2022 and 14.05.2022 in respect of Districts Narsinghpur and Datia where under mining leases are slated to be executed before the preparation of the District Survey Report (DSRs), in violation of provisions of MoEF & CC notification dated 15.01.2016 and Sustainable Mining Management Guidelines, 2016 and Sustainable Sand Mining Management Guidelines, 2020.

3. It is contended that the authority of the DEIAA was under

consideration before Principal Bench of this Tribunal in Execution Application No. 55/2018 of Original Application No. 520/2016. Order dated 11.12.2018 runs as follows:

1. Grievance in this application is that there is non-compliance of the judgment of this Tribunal dated 13.09.2018 in Original Application No. 186/2016, Satendra Pandey

Vs. Ministry of Environment, Forest & Climate Change & Anr. The Hon'ble Supreme Court, vide judgment in Deepak Kumar Vs. State of Haryana & Ors.: (2012) 4 SCC 629, required proper Environmental Clearance before grant of lease of minor minerals, including sand mining. Vide Notification dated 15.01.2016 issued by MoEF&CC, environmental clearance was to be given by the District Environment Impact Assessment Authority (DEIAA) which defeat the direction of the Hon'ble Supreme Court

2. This Tribunal noted that the Notification dated 15.01.2016 issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) was not consistent with the mandate in Deepak Kumar (supra).

3. The District Expert Appraisal Committee (DEAC) comprised officers having no expertise or scientific knowledge to assess environment implications. Permitting DEAC to make assessment was also not consistent with the Sustainable Sand Mining Management Guidelines, 2016. Accordingly, MoEF&CC was directed to take steps to revise the procedure laid down in the Notification dated 15.01.2016.

4. According to the applicant, the MoEF&CC failed to issue appropriate Notification. Moreover, the State of Uttar Pradesh vide the letter dated 25.10.2018 and State of Kerala vide the letter dated 29.10.2018 directed Environmental Clearance to be given in accordance with the Notification dated 15.01.2016 in violation of the judgment of this tribunal dated 13.09.2018 which in turn is to implement the direction of the Hon'ble Supreme Court in Deepak Kumar (supra).

5. Accordingly, we direct the MoEF&CC to comply with the order dated 13.09.2018 forthwith and furnish a report of compliance on or before 31.12.2018 failing which coercive measures may have to be taken. We also make it clear that till a fresh Notification is issued by the MoEF&CC, Notification dated 15.01.2016 will not be acted upon.

6. Since our attention has been drawn to letter dated 29.10.2018 issued by the State Environment Impact Assessment Authority, Kerala addressed to the District Environment Impact Assessment Authorities of various districts in Kerala that Notification dated 15.01.2016 having not being stayed, the same be followed. This interpretation is clearly contrary to the order of this Tribunal disapproving the Notification dated 15.01.2016 and requiring the same to be revised. The direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment of this Tribunal. The same will stand suspended till a fresh Notification is issued by the MoEF&CC as directed hereinabove.

7. This direction will apply to all the State Environment Impact Assessment Authorities/State Governments.

8. List for further consideration along with the report of the MoEF&CC on 14.01.2019.

4. The direction issued as above clearly provides that environmental clearance granted by the DEIAA stands suspended till the fresh notification issued by the MoEF & CC.
5. In compliance of the above, MPSEIAA vide order dated 27.12.2021 issued office memorandum as follows:

Hon'ble NGT(PB), New Delhi vide order dated 13-09-2018 in OA No. 186/2016 Satyendra Pandey V/s MoEF&CC, GoI and others has inter-alia directed as follows:-

I. Providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling member category B-2 par with Category B-1 by SEAC/SEIAA as well as for cluster situation wherever it is not provided: II. Form 1M by made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;

III. If a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environment clearance;

IV. EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendation 6, 7 and 8 thereof;

V. Revise the procedure to also incomplete procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; VI. The MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining;

As per above order of Hon'ble NGT(PB), Ministry of Environment, Forest & Climate Change (MoEF&CC), Govt. of India vide Office Memorandum F.No.L-11011/175/2018-IA-II (M) dated 12-12-2018, has directed to compliance the above direction of Hon'ble NGT. Besides this, Hon'ble NGT(PB) in its order dated 11.12.18 in OA 520/2016 has suspended the activities of issuing EC by DEIAA/DEAC for minor minerals as per MOEF&CC Notification dated 15.1.2016 till a fresh notification is issued by ministry. Therefore, in compliance of MoEF&CC, GoI, OM dated 12-12-2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by MP-SEIAA for Environmental clearance and hence all concerned Project Proponent will apply in MP-SEIAA in Form-1 with other required supporting documents on online MoEF & CC website [www.environmentclearance.nic.in](http://www.environmentclearance.nic.in) for process of application for grant of prior environmental clearance with immediate effect till further order.

6. The matter was again considered by the Principal Bench of this Tribunal in Original Application No. 319/2022 in I.A No. 152/2022 in the matter of Dileep Singh vs. State of Uttar Pradesh & Ors

and vide order dated 01.07.2022 the Tribunal observed as follows:

1. The applicant has filed the present application seeking setting aside/quashing of the impugned Environmental Clearance dated 31.03.2018 issued in respect of Sand Ghat/ Mine located at Khand No. 11/15 and 11/16 at Village- Diya Upahar, Tehsil, Manjhanpur, District- Kaushambi, Uttar Pradesh for an area admeasuring 24.28 hectares and restraining respondent no. 6 from transferring impugned environmental clearance in favor of respondent no. 7 on the grounds that the impugned environmental clearance is defective/invalid having been granted without EIA/EMP/Public Consultation and contrary to order dated 13.09.2018 passed by this Tribunal in O.A No. 186/2016 titled as Satendra Pandey Vs. MoEF & CC and others.
2. The applicant has pleaded that the impugned environmental clearance for the said Sand/Morrum Mining Project was awarded on 31.03.2018 by SEIAA, Uttar Pradesh in favor of M/s Rishab Herbal Pvt. Ltd.

At the time of awarding of the environmental clearance the Project being less than 25 hectares was categorized as Category - B2 Project in view of MoEF & CC Notification dated 15.01.2016 and was exempted from EIA study, EMP and Public consultation. Subsequently, the MoEF & CC Notification dated 15.01.2016 was partly quashed by this Tribunal vide order dated 13.09.2018 passed in Satendra Pandey's case (supra) and Category B-2 projects were brought at par with Category B-1 Projects and EIA/EMP and Public Consultation were made mandatory for all projects having area above 5 hectares. The MoEF & CC vide Office Memorandum dated 12.12.2018 communicated the Judgment passed in Satendra Pandey's case (Supra) to all State Chief Secretaries and SEIAAs for requisite compliance. The SEIAA/SEAC, Uttar Pradesh in compliance of the Judgment passed by this Tribunal in Satendra Pandey's case (Supra) and the MoEF & CC Office Memorandum dated 12.12.2018 treated all mining projects from 5 hectares to 25 hectares, earlier falling under Category B-2, as Category B-1 and decided to revoke 19 ECs granted without following the requisite procedure of EIA, EMP and Public Consultation. The mining lease was revoked and fresh E-auction notice was issued on 24.06.2021. Respondent no. 7 was granted LOI with liberty to get the existing environmental clearance transferred in his favour. Respondent no. 7, accordingly, submitted an application for transfer of the Impugned environmental clearance dated 31.08.2018 which was during pendency of the present application transferred in favour of respondent no. 7 vide transfer order dated 04/22.04.2022. Environmental clearance dated 31.03.2018, which was coterminous with mining lease granted in favour of M/s Rishab Herbal Pvt. Ltd. and had expired with revocation thereof, could not be transferred in favour of Respondent no. 7. Respondent no. 4- MoEF & CC had under SSMG, 2016 and EMGSM, 2020 made conducting of replenishment study necessary for river bed mining. This Tribunal quashed environmental clearance for sand ghats situated in the District Saharanpur, Uttar Pradesh granted without conducting a replenishment study. No replenishment study has been conducted for mining lease granted in favour of respondent no. 7. Environmental clearance for mining lease granted in favour of respondent no. 7 without EIA, EMP, Public Consultation and replenishment study is defective /invalid and liable to be set aside.

3. Vide order dated 09.05.2022, considering the above, the Tribunal sought response of the respondents and also directed that no illegal mining should be carried out by Respondent No. 7 -M/s Manali Vintrend Pvt. Ltd. Though the matter was scheduled to be listed for hearing on 28.07.2022, Respondent No. 7 filed applications for early hearing being IA No. 152/2022 and also IA No. 153/2022 for vacation of ex parte order. The said respondent has also filed counter affidavit. At the instance of Respondent No.7, the matter has been listed today. Though IA Nos. 152 and 153 of 2022 are shown to be listed for hearing, since the same also involves consideration of the entire matter, instead of piecemeal consideration of the said IAs, we have heard learned Counsel for the parties with reference to the issue raised in the main application also, preponing the hearing to today.

4. Main contention of the applicant is that grant of EC without EIA, EMP and replenishment study is not permissible in view of judgment of the Hon'ble Supreme Court in Deepak Kumar Vs. State of Haryana & Ors.1 following which this Tribunal passed order dated 13.09.2018 in Satendra Pandey's case (supra). In Deepak Kumar (supra), the Hon'ble Supreme Court observed:

"xxx .....xxx .....xxx

11. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a riverbed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 km, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan."

5. The Tribunal held in Satendra Pandey's case (supra) that the directions in Deepak Kumar (supra) cannot be diluted by any administrative orders or notifications and laid down procedures have to meet the mandate of judgment of the Hon'ble Supreme Court. Observations of this Tribunal are as follows:

"xxx .....xxx... ..... xxx

22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation(2012) 4 SCC 629 wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be

prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area;

(vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining."

6. In the light of above, the MoEF&CC has issued revised procedure in terms of Enforcement and Monitoring Guidelines for Sand Mining 2020 (EMGSM- 2020) inter-alia requiring replenishment study by way of para 5 and preparation of mining plan by way of para 4.3.

7. According to the applicant, EC already granted could also not be enforced being in conflict with the judgment of the Hon'ble Supreme Court in Deepak Kumar (supra) and should have been revoked.

8. It is undisputed that neither any replenishment study has been undertaken till date nor any EIA and EMP have been submitted nor other requirements, in terms of judgment of the Hon'ble Supreme Court and the guidelines, including public consultation, complied.

9. In view of above undisputed facts, we direct SEIAA, UP to revisit the EC and related issues as per law, including the SSMG-2016 and EMGSM-2020, within two months. It will be open to the parties to put forwarded their viewpoint, if any, before SEIAA, UP. Pending such consideration, the interim order will continue."

7. The applicant has contended that out of total 30 sand ghats, existing ECs for 18 sand ghats have been transferred in violation of guidelines issued by the Hon'ble Supreme Court of India and this Tribunal quoted above and also in violation of office memorandum issued as quoted above. The tabular chart showing the status of the EC transfer process for 30 sands ghats in district Datia is as under:

| DISTRICT   | DATIA    | S.NO    | SAND GHAT | DATE OF EC | DATE OF EC | STATUS   | DATE OF EC |
|------------|----------|---------|-----------|------------|------------|----------|------------|
| ISSUED     | TRANSFER | OF      | CTO       | CTO        | BY         | BY       | SEIAA      |
| ISSUANCE   | CTO      | 1       | Ajitpura  | 1          | 16/05/18   | DEIAA    | 22-11-2022 |
| 28/11/22   | Granted  | CTO     | 2         | Ajitpura   | 2          | 16/05/18 | DEIAA      |
| 22-11-2022 | 28/11/22 | Granted | 3         | Astot      | 16/05/18   | DEIAA    | 22-11-2022 |

4 Badonkalan A - - - - -

5 Badonkalan D 03/03/17 SEIAA - - -

6 Badonkalan E - - - - -

7 Basaimalak 1 - - - - -

8 Basaimalak 2 17/04/18 DEIAA 22-11-2022 - -

9 Berachh 27/01/18 DEIAA 22-11-2022 - -

10 Bhikampura A - - - - -

11 Bhikampura B 10/03/17 SEIAA - - -

CTO 12 Bichhodana 20/09/18 DEIAA 22-11-2022 28/11/22 Granted 13 Bichhreta  
27/01/18 DEIAA 22-11-2022 - -

14 Bundhera - - - - -

15 Dhamna 20/04/18 DEIAA 22-11-2022 - -

16 Dongarpur 20/09/18 DEIAA - - -

17 Jara 20/04/16 SEIAA - - -

CTO 18 Kanjauli 1 20/09/18 DEIAA 22-11-2022 28/11/22 Granted 19 Kanjauli 2  
15/05/18 DEIAA 22-11-2022 - -

20 Khamrauli A - - - - -

21 Khiriyajhansi 25/01/18 DEIAA 22/11/22 - -

22 Kutauli 20/09/18 DEIAA 22-11-2022 - -

23 Madikhera 1 20/04/18 DEIAA - - -

24 Madikhera 2 - - - - -

25 Marsenikhurd 20/09/18 DEIAA 22/11/22 - -

26 Mustara 20/04/18 DEIAA 22-11-2022 - -

27 Ruhera 16/05/18 DEIAA 22/11/22 - -

28 Saletara 20/04/18 DEIAA 22-11-2022 - -

29 Salon A 25/01/18 DEIAA 22-11-2022 - -

30 Sarsai 29/01/18 DEIAA 22-11-2022 - -

8. The contentions of the learned counsel for the Applicant is that the chart as quoted above related to District Datia reveals that all 18 EC's which has been granted by the DEIAA are void-ab-initio and non-est in the eyes of law, thereby making the transfer invalid and illegal for the reasons that it is in violation of notification issued by MoEF & CC. It is further contended that guidelines issued in Satyendra Pandey Vs Union of India has not been complied with by the authorities.

9. The MoEF & CC vide OM dated 12.12.2018 communicated the order passed in Satyendra Pandey Vs Union of India quashing the action taken by the DEIAA for the reasons that District officers deciding the matter lacked expertise, experiences and scientific knowledge in the matter of environment and were incapable of assessing the potential implications to the environment.

10. In the matter of District Narsinghpur the matters of environmental clearance considered and granted by DEIAA are enumerated as follows:

DISTRICT NARSINGHPUR S.N SAND GHAT EC DATE OF EC STATUS O. DATE OF  
EC ISSUED APPLICATION BY FOR EC TRANSFER 1 Ajanda 1 03/10/18 DEIAA  
24-11-2022 PENDING TOR 2 Ajanda-2 - - -

Issued 3 Arjungaon - - - -

4 Bagdara 03/10/18 DEIAA 24-11-2022 PENDING 5 Bairagarh 05/09/18 DEIAA  
24-11-2022 PENDING 6 Bhumiya Dana 05/09/18 DEIAA 09/03/20 -

SEIAA Chhena 7 13/05/21 23-11-2022 PENDING Kachhar 1 Chhena SEIAA 8 13/05/21 23-11-2022  
PENDING Kachhar 2 9 Chirahkala - - - -

10 Dewa Kachhar 05/09/18 DEIAA 09/03/20 -

SEIAA 11 Dharampuri 12/02/21 24-11-2022 PENDING SEIAA 12 Dhigsara 21/07/15 14/10/20 -

13 Dighori 03/10/18 DEIAA 24-11-2022 PENDING SEIAA 14 Gadarwara 20/10/15 12/03/20 -

15 Gangai 05/09/18 DEIAA 27-11-2022 PENDING Ghagrola 16 - - - -

Patna SEIAA 17 Ghat Pipariya 20/10/15 12/03/20 -

|    |                     |          |       |            |         |
|----|---------------------|----------|-------|------------|---------|
| 18 | GhoorpurKajre<br>ta | 10/08/15 | SEIAA | 16/10/20   | -       |
| 19 | Hirapur             | 19/10/15 | SEIAA | 12/03/20   | -       |
| 20 | Imjhira             | 05/09/18 | DEIAA | 09/03/20   | -       |
| 21 | Karrhiya            | -        | -     | -          | -       |
| 22 | Khiriya             | -        | -     | -          | -       |
| 23 | Kudari              | 13/05/21 | SEIAA | 21-11-2022 | PENDING |



|    |               |          |        |            |         |
|----|---------------|----------|--------|------------|---------|
| 24 | Maheshwar     | -        | -      | -          | -       |
|    |               |          | SEIAA  |            |         |
| 25 | Mehragaon     | 15/05/19 |        | -          | -       |
|    |               |          | SEIAA  |            |         |
| 26 | Muar          | 12/02/21 |        | 24-11-2022 | PENDING |
|    |               |          | SEIAA  |            |         |
| 27 | Murgakheda    | 19/05/16 |        | 14/10/20   | -       |
|    |               |          | SEIAA  |            |         |
| 28 | Panagar 1     | 05/01/16 |        | 14/10/20   | -       |
|    |               |          | TOR    |            |         |
| 29 | Panagar-2     | -        |        | -          | -       |
|    |               |          | Issued |            |         |
| 30 | Rewanagar     | 05/09/18 | DEIAA  | 09/03/20   | -       |
|    |               |          | SEIAA  |            |         |
| 31 | Saikheda      | 12/02/21 |        | 24-11-2022 | PENDING |
|    |               |          | SEIAA  |            |         |
| 32 | Sansarkheda 1 | 30/06/15 |        | 12/03/20   | -       |
|    | Sansarkheda-  |          | TOR    |            |         |
| 33 |               | -        |        | -          | -       |
|    | 2             |          | Issued |            |         |
| 34 | Tumda         | -        | -      | -          | -       |
|    |               |          | SEIAA  |            |         |
| 35 | Umariya       | 12/05/21 |        | 27-11-2022 | PENDING |
| 36 | Vaarureva     | -        | -      | -          | -       |

11. It is further argued that this Tribunal in Original Application no.

142/2022 in the matter of Jayant Kumar VS. Moef & CC vide order dated 07.12.2022 (Court No.2) (Principal Bench) has considered the matter in issue and passed an order as follows:

1. Grievance in the present application is against grant of mining lease to respondent no.5 (M/s. Sai Ram Enterprises) and respondent no.6 (M/s.

C.S. Infra-construction Ltd.) on 5.10.2020 and 06.11.2020 respectively in violation of the judgment of the Hon'ble Supreme Court in Deepak Kumar Vs. State of Haryana & Ors. (2012), 4 SCC 629 and order dated 13.09.2018 of this Tribunal in O.A. no. 186/2016 titled as Satendra Pandey Vs. MoEF&CC & Anr.

2. Vide order dated 28.02.2022 this Tribunal constituted a Joint Committee comprising of State PCB, SEIAA and District Magistrate, Sonbhadra, (Uttar Pradesh) and directed the same to submit factual and action taken report within three months. In compliance thereof Joint Committee submitted its factual and action taken report dated 30.06.2022 vide email dated 01.07.2022.

3. Vide order dated 04.08.2022, notice was ordered to be issued to the respondents. None appeared for Ministry of Environment, Forest and Climate Change (MoEF&CC)

and District Magistrate, Sonbhadra. Replies on behalf of respondent no. 2-SEIAA and respondents no. 5 and 6-

project proponents were filed vide emails dated 01.09.2022 and 14.07.2022, respectively.

4. Objections to the report of Joint Committee and replies (rejoinders) to the replies of respondent no. 2 and respondents no. 5 and 6 were filed by the applicant vide email dated 04.08.2022, 30.06.2022 and 02.09.2022, respectively.

5. Arguments were heard and judgment was reserved vide order dated 08.09.2022 but subsequently vide order dated 06.12.2022, the matter was ordered to be listed for further hearing in view of the detailed reasons mentioned therein.

6. It is pertinent to observe that EIA Notification dated 14.09.2006 was amended vide Notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 which were challenged before this Tribunal by filing O.A. No. 186/2016 titled as Satendra Pandey vs. MoEF&CC & Anr., and connected applications. This Tribunal allowed the applications vide order dated 13.09.2018 and relevant part of the order reads as under:-

"21. Dispensing with the requirement of Public Hearing which forms a part of the Public Consultation under Stage-III of the Environmental Clearance process under EIA Notification, 2006 for areas measuring 0 to 25 ha for individual mine areas and in cluster situation where public hearing has been provided, has resulted in gross dilution of EIA Notification dated 14th September, 2006. Such dilution would, in our view, result in its misuse by unscrupulous elements and the situation would revert back to the lawless state prevailing prior to the decision in the case of Deepak Kumar (supra). Stringent measures are, therefore, necessary if the rampant exploitation of the minor minerals is to be curbed. This apparently was also the view of the Hon'ble Supreme Court in the case of Deepak Kumar (supra).

22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance;

(iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof;

(v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; (vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.

23. We have permitted retention of 0-5 ha as a category keeping in view that some States grant isolated single lease of 5 ha and less not falling in cluster situation for which stringent requirements in Form-1M will serve the purpose of providing safeguards for protection of the environment and sustainable mining of minor minerals. This is particularly true in smaller and mountainous States as will also appear from condition no. 2 under "The Issues and Management of Mining in Cluster" referred to earlier in para 20 of this order.

24. It is reiterated that any attempt to split the lease area for the purpose of avoiding the applicable regulatory regime shall be viewed seriously. This in our view will be in the interest of the environment as deliberated in detail in the case of Deepak Kumar (supra) and would also satisfy the Precautionary Principle and the Principle of Sustainable Development contemplated under Section 20 of the National Green Tribunal Act, 2010.

25. The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in Deepak Kumar (supra).

The applications stand disposed of."

7. The MoEF&CC issued OM No. F.No. L-

11011/175/2018-IA-II(M) dated 12.12.2018, the relevant part of which reads as under:-

" Office Memorandum Sub: Order dated 04th September, 2018 & 13th September, 2018 passed by the Hon'ble National Green Tribunal, New Delhi in O.A. No. matters titled "Sudarshan Das Vs. State of West Bengal & Ors." & ""Satendra Pandey Vs. Ministry of Environment Forest & Climate Change & Anr." respectively-regarding.

This is with reference to the recent order of the Hon'ble NGT dated 04th September, 2018 in the matter titled as Sudarshan Das Vs. State of West Bengal & Ors. and order dated 13th September, 2018 in the matter titled as Satendra Pandey Vs. Ministry of Environment Forest & Climate Change & Anr. Copy of the orders are enclosed herewith for ready reference.

2. The Hon'ble NGT vide order dated 13th September, 2018 (Satendra Pandey Vs. Ministry of Environment Forest & Climate Change & Anr.) has inter-alia directed as follows:-

"(i) Providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling member Category B-2 at par with Category B-1 by SEAC/SEIAA as well as for cluster situation wherever it is not provided.

(ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;

(iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance;

(iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof;

(v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area;

(vi) The MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining."

3. In view of the above, the undersigned is directed to forward the copy of the aforementioned orders for necessary compliance and inform the Ministry about the action taken. A copy of the same has been sent to the Chief Secretaries of all the States/UTs."

8. However, it appears that EIA Notification 14.09.2006 as amended vide notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 was not suitably revised by the MoEF&CC which has created confusion and has also resulted in non-compliance with order dated 13.09.2018 passed by this Tribunal in Satendra Pandey (supra), as is demonstrated by the facts of the present case. Such confusion has even led to contradictory stands by the concerned authorities in different cases at different stages as demonstrated in the following paragraphs.

9. In O.A. No. 474/2019 tilted as Surender Singh Vs. MoEF&CC and Others, in the report filed by the Joint Committee it was mentioned as under:-

"VI. As per order of NGT dated 11.12.2018 a joint meeting of SEIAA and SEAC was held on 05.02.2019 and following decision was taken.

"In compliance of MoEF&CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UPSEIAA for Environment Clearance. All concerned project proponents will apply to UPSEIAA in Form-I with other required supporting documents on online MoEF&CC website [www.environmentclearance.nic.in](http://www.environmentclearance.nic.in) to process the application for grant of prior environment clearance with immediate effect till further order.

VII. The Director, Directorate Environment and Director, Geology and Mining by their orders dated 14.02.2019 requested all the District Magistrate to act as per decision taken by Joint Committee of SEIAA and SEAC on 05.02.2019 as follows (Annexure-12).

"In compliance of MoEF&CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UPSEIAA for Environment Clearance. All concerned project proponents will apply to UPSEIAA in Form-I with other required supporting documents on online MoEF&CC website [www.environmentclearance.nic.in](http://www.environmentclearance.nic.in) to process the application for grant of prior environment clearance with immediate effect till further order."

10. However, in the report of the Joint Committee filed in the present case no reference was made to the decision taken in the joint meeting of SEIAA and SEAC held on 05.02.2019 and orders dated 14.02.2019 conveyed by the Director, Directorate Environment and Director, Geology and Mining to all the District Magistrates in the State of U.P. On the other hand while referring to the provisions of the Uttar Pradesh Minor Minerals (Concession) Rules, 2021 and by completely ignoring directions given by Hon'ble Supreme Court in Deepak Kumar (supra) order dated 13.09.2018 passed by this Tribunal in Satendra Pandey (supra) and OM dated 12.12.2018 issued by MoEF&CC, it has been submitted that on 23.10.2018, the District Level Environmental Assessment Authority was legally working and the EC issued to respondents no. 5 and 6 is valid as well as in accordance with law.

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11. No doubt, OM dated 12.12.2018 was issued by MoEF&CC for compliance with order dated 13.09.2018 passed by this Tribunal in Satendra Pandey (supra), but MoEF&CC was also thereby required to revise Notification dated 14.09.2006 as amended by notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 which were challenged in that case. The notification issued in exercise of statutory powers could be revised only by issuance of another notification in exercise of such statutory powers. Office Memorandum issued in exercise of administrative powers cannot be said to be due compliance of the order for revision of the notification. Therefore, mere issuance of OM dated 12.12.2018 cannot be said to be due compliance of order dated 13.09.2018 passed by this Tribunal in Satendra Pandey (supra).

12. In view of the above, MoEF&CC is directed to file an affidavit regarding compliance by it with order dated 13.09.2018 passed by this Tribunal in Satendra Pandey (supra). In case the notification has already been revised after 12.12.2018 then copy of the revised notification be filed before this Tribunal and in case, the notification has not been revised so far then the same be revised in consonance with the orders of Hon'ble Supreme Court and the Tribunal in the matter within one month and compliance report in this regard be filed within two months by email 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.

13. Further, this Tribunal has observed that mining leases in which is environmental clearance was granted by DEIAA in view of amendment notification dated 15.01.2016 are still continuing even after passing of order dated 13.09.2018 by this Tribunal in Satendra Pandey (supra) and issuance of OM dated 12.12.2018 by MoEF&CC without any re- appraisal by SEIAA and appropriate remedial action on the basis of such re-appraisal. All such mining leases in which environmental clearance was granted by DEIAA need to be brought in consonance with the directions given by Hon'ble Supreme Court in Deepak Kumar (supra) and order dated 13.09.2018 by this Tribunal in Satendra Pandey (supra) by re-appraisal by SEIAA and only such mining leases may be continued which have been on re-appraisal granted environmental clearance by SEIAA. MoEF&CC is, therefore, directed to take appropriate steps for compliance in this regard by issuance of requisite directions in exercise of the statutory powers under the Environment (Protection) Act, 1986. For this purpose, MoEF&CC is directed to collect information regarding such mining leases in which environmental clearance was granted by DEIAA and the period of which has not yet expired and are still continuing in all the States and Union Territories and by issuing appropriate directions for compliance with directions given by Hon'ble Supreme Court in Deepak Kumar (supra) and order dated 13.09.2018 passed by this Tribunal in Satendra Pandey (supra) by re-appraisal for grant of EC by SEIAA.

12. Learned counsel for Respondent No.7 has argued that the controversy on two points:

- (i) The NITs issued in violation of Sustainable Mining Management Guidelines, 2016 and Sustainable Sand Mining Management Guidelines, 2020 for want of proper and valid DSR,
- (ii) The matters in which the environmental clearance has been granted by the DEIAA.

13. So far as the matter of issue of NITs in District Raisen without proper DSR was concerned matter was considered by the Hon'ble Supreme Court of India in Civil Appeal No. 8551/2022 titled as The M.P State Mining Corporation Limited vs. Ajit Kumar & Ors and vide order dated 21.11.2022, the court observed as follows:

The M.P. State Mining Corporation Limited is one of the appellants. We are informed that the new DSR has been approved by SEIAA on 23.05.2022. A number of other contentions are raised. Looking at the controversy in question and also to ensure that sand is available and does not run out of stock, we stay the operation of the impugned judgment/order and direct as under:

- (i) M/s Euphoria Mines and Minerals and M/s Pushpa Enterprises will furnish an undertaking before this Court, and also furnish a bank guarantee equivalent to 15% of the bid amount stating that in case these appeals fail, they will be liable to pay the difference between their bid amount and the bid amount received by the State/ Corporation on issuance of fresh NITs.

(ii) The undertakings will be given by the partners/proprietors of M/s Euphoria Mines and Minerals and M/s Pushpa Enterprises. In case of a partnership firm, all partners will be bound by the said undertaking.

(iii) The bank guarantee will be in favour of the M.P. State Mining Corporation Limited. The figure of 15% of the bid amount is for the quantification of the liability of the bank, and does not reduce or constitute the upper limit of the liability under the undertaking.

(iv) The undertaking and bank guarantee will be submitted within a period of four weeks.

(v) The M.P. State Mining Corporation Limited will initiate steps for issue of fresh NITs on or before 01.04.2023.

14. This judgment has been relied by both the parties while on the one hand learned counsel for the Applicant has submitted that for want of DSR the Hon'ble Supreme Court of India has directed the State Mining Corporation Limited to initiate fresh steps for issue of fresh NITs on or before 01.04.2023.

15. The present matter relates to second issue as raised by learned counsel for the Respondent No.7, Environment clearance granted by DEIAA in violation of order passed by this Tribunal in O.A. No. 520/2016 (E.A. No. 55/2018) order dated 11.12.2018 and subsequent notification of SEIAA dated 27.12.2018.

16. Admittedly, the DEIAA has no authority and MP SEIAA has issued office memorandum clarifying the position that in compliance of the MoEF & CC, Government of India O.M dated 12.12.2018, it has been decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by MP-SEIAA for Environmental clearance and hence all concerned Project Proponent will apply in MP-SEIAA in Form-1 with other required supporting documents for process of application for grant of prior environmental clearance with immediate effect.

17. Thus, the orders as quoted above and the chart submitted by the applicant reveals that orders and actions initiated on the basis of the EC issued by DEIAA in district Datia and Narsinghpur are void-ab-initio having no force of law and thus against the provision of Sustainable Mining Management Guidelines, 2016 and Sustainable Sand Mining Management Guidelines, 2020, and against the orders of Hon'ble Supreme Court of India and orders passed by this Tribunal quoted above.

18. Accordingly, in light of the order dated 01.07.2022 passed by Principal Bench of this Tribunal in Dilip Singh vs. State of Uttar Pradesh & Ors in O.A. No. 319/2022, we direct that the Environment Clearances granted in district Datia and Narsinghpur by the DEIAA could not be enforced, being in contravention with the judgment of the Hon'ble Supreme Court of India in Deepak Kumar vs. State of Haryana and Ors (2012) 4 SCC, 629 and should have been revoked immediately and not to be

acted upon.

19. In view of the above undisputed facts, we direct MPSEIAA to revisit the EC's and related issues as per law including the SSMG, 2016 and EMGS, 2020 within two months and decide afresh in accordance with lawful procedure and in view of the orders/directions quoted above and also of the office memorandum dated 27.12.2018 passed by MPSEIAA.

20. It may be open to the parties to put forward their view points if any before MP SEIAA and pending such consideration, no mining lease can be permitted on the basis of transferred EC granted by DEIAA.

21. The I.A. No. 79/2022 is disposed of accordingly.

Original Application No. 90/2022

22. Learned counsel for the State, Sh. Sachin K. Verma and learned counsel for the Respondent no.7 sought a short time to file the reply.

Reply may filed within two weeks.

List it on 30th January, 2023 Sheo Kumar Singh, JM Dr. Arun Kumar Verma, EM 23rd December, 2022 PU