

Item No. 03

Court No. 1

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

(By Video Conferencing)

Original Application No. 61/2022

All India Kaimur People's Front

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 16.08.2022

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

Applicant: Mr. Vikas Kumar Singh, Advocate

Respondent(s): Mr. Daleep Dhyani, Advocate for UPPCB  
Mr. S.K. Pathak & Mr. Sunil Singh, Advocate for R - 7  
Mr. Sharad Chauhan, Advocate for M/s BCS Enterprises (R - 8)  
Ms. Prabha Sharma, Advocate for M/s Ishana Construction (R - 9)

**ORDER**

1. Grievance in this application is against illegal mining on the land of Chak Dam (Small village Dam) nala and railway pit, within the periphery of 50 meters from the land of dam, nala and railways in village Billi Markundi, Tehsil Obra, District Sonbhadra, in violation of Sustainable Sand Mining Guidelines and other environmental norms, including Mining Rules, 1963, by Respondents – Rajesh Kumar son of late Kaliram, Farida Begum wife of Imtiyaz Ahmad, Chopan, District Sonbhadra, M/s BCS Enterprises, Proprietor Chandra Bhushan Gupta son of Ram Lakhan Gupta, Obra, District Sonbhadra and M/s Ishana Construction, Proprietor

Afreena Khan wife of Ishtiyag, resident of village Billi Markundi, Obra, District Sonbhadra, UP.

2. Vide order dated 23.03.2022, the Tribunal directed the District Magistrate, Sonbhadra, Chief Development Officer, Sonbhadra and State PCB to look into the grievance and take remedial action in accordance with law. It was further directed that an action taken report be filed and if any violations are noticed, the violators may be put to notice of these proceedings for their response.

3. Accordingly, an action taken report has been filed on 25.05.2022 through the State PCB and the affected Project Proponents (PPs) have filed their response.

4. The report mentions that site inspection was conducted on 21.05.2022. It was found that the PPs had undertaken illegal mining. PP - Rajesh Kumar and Farida Begum, apart from earlier violations for which action was taken, conducted mining in excess of permitted quantity to the extent of 3854 cubic meters of boulders, for which notice was issued for recovery of penalty of Rs. 37,49,840.00/-. Further, illegal mining/ transportation was also found to the extent of 15,200 cubic meters, apart from other violations. In respect of M/s BCS Enterprises, there was illegal mining for which a sum of Rs. 26,79,440.00/- has been assessed and paid by the PP. In respect of Ishana Construction, illegal mining was found beyond permitted area to the extent of 15,732 cubic meters for which notice to recover amount of Rs. 1,19,99,000/- has been issued. The report recommends recovery of compensation for illegal mining from the three PPs in question.

5. The PPs have filed their respective replies. According to Rajesh Kumar and Farida Begum, mining was stopped on 28.01.2022 by Director, Mines & Safety. The said PPs have not undertaken any illegal mining. Stand of M/s BCS Enterprises is that there is no illegal mining outside the mining lease area. Stand of Ishana Construction is also that no illegal mining had been done.

6. The applicant has filed objections to the effect that the report ignores existence of *nalla* which is entered in the Revenue Record. The report merely states that the same was not visible. The report also ignores other violations of mining in prohibited area, ignoring the deep pits in the area showing further violations and need for stringent action for repeated violations.

7. We have heard learned counsel for the parties and perused the record.

8. We are of the opinion that the report being based on site inspection by a credible team of statutory regulators, there is no reason to reject the findings therein in absence of any tangible reason. Self-serving denial by the PPs can certainly be no reason to hold that there is no violation particularly when Rajesh Kumar and Farida Begum have already deposited the penalty on 15.03.2022. Mere fact that Ishana Construction claims to have challenged the penalty cannot be a ground to hold that no action is liable to be taken against the said PP.

9. Learned Counsel for the project proponent has referred to letter on record suggesting verification of compliance status of 22 leaseholders. The same may accordingly be verified and remedial action taken as per law.

10. Accordingly, we accept the facts found as per the report, showing illegal mining by the PPs for which accountability of the said PPs is required to be fixed. Apart from recovery of royalty and penalty under the Mining Rules, compensation for damage to the environment is also required to be assessed and recovered as per law, particularly judgements of the Hon'ble Supreme Court in *Common Cause vs. Union of India & Ors*, (2017) 9 SCC 499 and *Goa Foundation v. Union of India & Ors*. (2014) 6 SCC 590, to the effect that under section 21 (5) of the MMDR Act, 1957, the entire value of the mined material is to be recovered, in addition to compensation for damage to the environment.

11. Accordingly, we direct the District Magistrate and State PCB to take further steps in the matter in accordance with law, preferably within three months. Since environmental offences fall in the schedule to the PMLA Act, ED is free to consider if any action is warranted on their part under the law.

The Application is disposed of.

A copy of this order be forwarded to the District Magistrate, State PCB and Director, ED by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

August 16, 2022  
Original Application No. 61/2022  
AB