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

ORIGINAL APPLICATION NO. 123 OF 2014
AND
M.A. NO. 419 of 2014

IN THE MATTER OF:

Himmat Singh Shekhawat,
98, Rooprajat Township, Phase-II,
Pal Road, Jodhpur – 342008
Rajasthan

..... Applicant

Versus

1. State of Rajasthan
   Through Principal Secretary, Mines Department,
   Government of Rajasthan, Secretariat,
   Jaipur – 302001,
   Rajasthan.

2. Director, Mines & Geology Department
   Khanij Bhawan,
   Shashtri Circle, Udaipur - 313001,
   Rajasthan

3. Union of India
   Through the Secretary
   Ministry of Environment and Forests
   Government of India,
   Paryavaran Bhawan, CGO Complex
   Lodhi Road, New Delhi – 110003

4. Secretary, Forest Department
   Government of Rajasthan,
   Secretariat, Jaipur – 302001,
   Rajasthan.

5. Larsen & Toubro Ltd.
   4th Floor, SDC Monarch,
   Plot no. D-236,
   Amrapali Marg,
   Jaipur – 302021
   Rajasthan

   Through Mr. Vivek Narayan Gokhale,
   Project Director, Larsen and Tourbo Ltd.

6. M/s. Hi-Tech Rock Products & Aggregates Ltd.

(A Company incorporated under the
Companies Act, 1956)
Having registered Office at
Mount Poonamallee Road,
Manapakkam, P.O. Box 979,
Chennai – 600089

Through Mr. K. Prasanna Kumar,
Manager (Mines)
Hi-Tech Rock Products & Aggregates Ltd.

7. Mr. Prahlad Rai
R/o Ward No. 10,
Behind DSP Office,
Ladnu Road,
Sujan Garh,
District Churu, Rajasthan
Through POA holder – Shri Rohitash.

8. Mr. Jagdish Kumar Jat
R/o 13, Ramdev Mandir Mohalla,
P.O. Salasar, Tehsil-Sujangarh,
District Churu,
Rajasthan 331507
Through POA holder – Shri Rohitash

9. Mr. Yogesh Kumar Nyariya
R/o Krishi Upaj Mandi,
Shrimadhopur,
District Sikar, Rajasthan
Through POA holder – Sh. Shahbuddin Quereshi

10. M Vinita Devi
R/o Karni Dharma Kanta,
H-Pratham,
23-Industrial Area,
Neemka Thana
District Sikar, Rajasthan
Through POA holder – Sh. Shahbuddin Quereshi

11. Ms. Kavita Jain
R/o Sadar Bazar, Rupangarh,
Tehsil-Kishangarh
District Ajmer, Rajasthan
Through POA Holer – Proprietor,
M/s. Maruti Mines & Minerals
Mr. Sarveshwar Agarwal &
Sh. Sanjay Kumar Jain

12. Ms. Sushila Jain
R/o Sadar Bazar, Rupangarh,
Tehsil – Kishangarh
District Ajmer, Rajasthan

Through POA Holder – Proprietor,
M/s. Maruti Mines & Minerals
Mr. Sarveshwar Agarwal &
Sh. Sanjay Kumar Jain

13. Mr. Virendra Dave
Bada Bas, Near Laxmi Temple,
Sojat City,
Dist, Pali, Rajasthan
Through POA Holder – Shri. Rajuram Gurjar

14. Mr. Sohanlal Gurjar
Gurjaro Ka Vas,
Village Kharchi

.....Respondents

AND

APPEAL NO. 23 OF 2014

AND

M.As. NO. 469 OF 2014, 470 OF 2014, 471 OF 2014, 473 OF 2014, 479 OF 2014, 480 OF 2014, 488 OF 2014, 489 OF 2014, 512 OF 2014 AND 563 OF 2014

IN

APPEAL NO. 23 OF 2014

IN THE MATTER OF:

Sunil Acharya
S/o Shri Chndra Shekhar Acharya,
245, Ramchandra, Matri Chhaya, Tajgiron Ki Bari,
Kalika Mata Road, Banswara
Rajasthan.

..... Applicant

Versus

1. Shri Sanjay Bakliwal
S/o Shri Manak Chandra Bakliwal,
Director, M/s. R.K. Grenny Marmo Pvt. Ltd.,
R/o Oswali Mohalla, Madanganj, Kishangarh,
District Ajmer, Rajasthan-305001

2. Shri Ashok Patni
S/o Shri Kanwarlal Patni,
Director, M/s. R.K. Premises Pvt. Ltd.,
R.K. House, Madanganj, Kishangarh,
District Ajmer, Rajasthan – 305001

3. Shri V.K. Gheeya
S/o Late Shri Kamal Prasad Gheeya,
Director, M/s. Patni Premises Pvt. Ltd.,
R/o 202, Mahalaxmi Apartment, Post Badgaon,
Bedla Road, Udaipur, Rajasthan-313001
Through the Chief Secretary,

Delhi Secretariat, I.P. Estate,
New Delhi - 110002

4. Shri Vinay Patni
S/o Shri Suresh Kumar Patni,
Director, M/s. Patni States Pvt. Ltd.
Through its Vice Chairman,
Vikas Bhawan,
New Delhi – 110002

5. Shri Suresh Patni
S/o Shri Kanwarlal Patni,
Director, M/s. Supreme Buildstates Pvt. Ltd.
R/o R.K. House, Madanganj, Kishangarh,
District Ajmer, Rajasthan-305001

6. Shri Parmanand Patidar
S/o Shri Prabhulal Patidar,
Director, M/s. Elegant Premises Pvt. Ltd.
R/o 20, Kanchan Deep, Bohra Ganesh Road,
Udaipur, Rajasthan-313001.

7. Shri Jaideep Shah
S/o M/s. R.K. Super Cement Product Pvt. Ltd.
R/o D-8, Lal Bahadur Nagar,
In front of Hotel Clark, J.L.N. Marg,
Jaipur, Rajasthan.

8. The Government of Rajasthan
Through the District Collector and the President,
District Level Forest Rights Committee,
Banswara, Rajasthan-327001.

9. The Assistant Engineer,
Mines and Geology Department,
Banwara – 327001.

10. The Dy. Forest Conservator,
Department of Forest,
Dahod Road,
Banswara - 327001

11. The Senior Assistant Inspector General of Forest,
Ministry of Forest Environment House,
C.G.O. Complex, Lodhi Road,
New Delhi.

.....Respondents

AND
ORIGINAL APPLICATION NO. 343/2013
AND
M.A. NO. 442 OF 2014 and M.A. NO. 1093 OF 2013
IN
ORIGINAL APPLICATION NO. 343 OF 2013

Shri Ranbir Singh
S/o Shri Swadesh Singh,
Proprietor M/s. New Shiva Stone Crusher,
Vill. & P.O. Kandwal, Tehsil Nurpur
And Distt. Kangra,
Himachal Pradesh.

..... Applicant

Versus

1. State of Himachal Pradesh
   Through Secretary (Industries) to the Govt. of
   Himachal Pradesh, Shimla-1.

2. Director Industries to the State of H.P.
   Udyog Bhawan,
   Shimla – 1

3. State Geologist to the State of H.P.
   Udyog Bhawan,
   Shimla –1

4. Mining Officer,
   Solan Distt., Solan,
   Himachal Pradesh

5. Mr. Parshant Joshi
   5-A, Agar Nagar,
   Ludhiana.

.....Respondents

AND

ORIGINAL APPLICATION No. 279(T_{HC}) of 2013
AND
M.A. NO. 1120 OF 2013
IN
ORIGINAL APPLICATION No. 279(T_{HC}) of 2013

1. Smt. Promila
   W/o Shri Rajesh Kumar,
   Proprietor M/s. Amarjeet Stone Crusher,
   Vill. Sainsiwala, P.O. Barotiwala, Tehsil Baddi
   And Distt. Solan,
   Himachal Pradesh.

2. Shri Mohan Lal Mehta
   S/o Shri Hira Nand Mehta,
   Proprietor M/s. Vishwakarma Hard Stone Crusher,
   Vill. Khali, P.O. Kumarhatti, Tehsil & Distt. Solan,
   Himachal Pradesh.

3. Shri Sanjay Singh
S/o Shri Mohan Singh,
Proprietor M/s. Shiva Stone Crusher,
Vill. Kailar, P.O. Saproon, Tehsil & Distt. Solan,
Himachal Pradesh.

..... Applicants

Versus

4. State of Himachal Pradesh
Through Secretary (Industries) to the Govt. of
Himachal Pradesh, Shimla-1.

5. Director Industries to the State of H.P.
Udyog Bhawan,
Shimla – 1
6. State Geologist to the State of H.P.
Udyog Bhawan,
Shimla – 1
7. Mining Officer,
Solan Distt., Solan,
Himachal Pradesh

.....Respondents

AND

M.A. NOs. 529 of 2014 & M.A. NO. 623 OF 2014
IN
Original Application No. 171 OF 2013

IN THE MATTER OF:

National Green Tribunal Bar Association ..... Applicant

Versus

Ministry of Environment & Forests & Ors. .....Respondents

AND IN THE MATTER OF:

Dr. Sarvabhoum Bagali,
Kachari Road, Opp. Head P.O.,
Indi, Dist. Bijapur, Karnataka-586209

..... Applicant

Versus

1. State of Karnataka
Department of Mines and Geology,
Through its Director,
No. 49, Khanija Bhavan,
Race Course Road, Bengaluru,
Karnataka – 560001

2. Department of Law, Justice & Human Rights,
Government of Karnataka,
Through its Principal Secretary,
Vidhana Soudha, Bangaluru-560001

3. Karnataka State Pollution Control Board
Through its Member Secretary,
'Parisara Bhavan', #49, IVth & Vth Floor,
Church Street, Bengaluru- 560001

4. Department of Industries and Commerce,
Govt. of Karnataka,
Through Secretary to the Government,
No. 49, South Block, Khanija Bhavana,
Race Course Road, Bengaluru- 560001

5. Karnataka State Environment Impact Assessment
Authority (SEIAA), Through its Chairman,
Department of Ecology & Environment,
Room No. 709, VII Floor, IV Gate,
M.S. Building, Bengaluru

6. Public Works Department,
Through its Principal Secretary,
Karnataka Government Secretariat,
III Floor, Vikasa Soudha, M.S. Building,
Dr. Ambedkar Road, Bengaluru- 560001

7. Executive Engineer,
Public Works Department,
Bangalore Rural Division,
PWDD Annexue Building, II Floor
K.R. Circle, Bengaluru,
Karnataka – 560001

8. Executive Engineer,
Public Works Department,
PWD Division, 23rd Sector,
Navanagar, Bagalkot,
Bagalkot Distt., Karnataka - 587103.

9. Executive Engineer,
Public Works Department,
PWD Division, Kote, Belgaum,
Belgaum Distt.,
Karnataka – 590016

10. Executive Engineer,
Public Works Department,
PWD Division, Kote, Bellary,
Bellary Distt.,

Karnataka – 583102

11. Executive Engineer,
Public Works Department,
PWD Division, Mangalpet,
Opp. to S.P. Office, Bidar, Bidar Distt.,
Karnataka – 585401

12. Executive Engineer,
Public Works Department,
PWD Division, Station Road,
Opp. to State Bank of India, Bijapur,
Bijapur Distt. Karnataka – 586101

13. Executive Engineer,
Public Works Department,
PWD Chamarajnagar Division,
Kote Road, Chamarajnagar,
Chamarajnagar Distt., Karnataka – 571313

14. Executive Engineer,
Public Works Department,
PWD Chikkaballapur Division,
Opp. to Govt. Hospital, Chikkaballapur,
Chikkaballapur Distt., Karnataka - 562101

15. Executive Engineer,
Public Works Department,
PWD Chikmagalore Division,
Near Azad Park, Belur Road, Chikmagalore,
Chikmagalore Distt., Karnataka – 577101

16. Executive Engineer,
Public Works Department,
PWD Chitradurga Division,
D.C. Circle, Chitradurga
Chitradurga Distt., Karnataka – 577501

17. Executive Engineer,
Public Works Department,
PWD Mangalore Division, Mini Soudha,
II Floor, Opp. Nehru Ground, Hampanakatte,
Mangalore, Dakshina Kannada Distt., Karnataka - 575001.

18. Chief Secretary,
Government of Mizoram
Civil Secretariat,
Block-C Aizwal-796001.

19. Chief Secretary,
Government of Nagaland
Secretariat,

Kohima-797001.

20. Chief Secretary,
Government of NCT of Delhi
New Secretariat Building, I.P Estate
New Delhi-110002.

21. Chief Secretary,
Government of Orissa,
General Admn. Dept.
Orissa Secretariat,
Bhubaneshwar-751001.

22. Chief Secretary,
Government of Pondicherry
No. 1, Beach Roard,
Pondicherry-605001.

23. Chief Secretary,
Government of Punjab
Punjab Civil Secretariat,
Chandigarh-160001.

24. Chief Secretary,
Government of Rajasthan
Secretariat,
Jaipur-302005.

25. Chief Secretary,
Government of Sikkim
Tashiling Secretariat,
Gangtok-737101.

26. Chief Secretary,
Government of Tamil Nadu
Secretariat,
Chennai-600009.

27. Chief Secretary,
Government of Tripura
Civil Secretariat,
Agaartala -799001.

28. Chief Secretary,
Government of Uttar Pradesh
Lal Bahadur Shastri Bhavan
UP Secretariat,
Lucknow-226001.

29. Chief Secretary,
Government of Uttarakhand
Uttarakhand Secretariat,

4B Shubhash Road
Dehradun-248001.

30. Chief Secretary,
Government of West Bengal
Wriers' Building,
Kolkata -700001.

31. Chief Secretary,
U.T. of Andaman & Nicobar Islands
Secretariat, Port Blair
Andaman – 744101

32. Adviser to Administrator
U.T. of Chandigarh
Secretariat, Sector 9
Chandigarh – 160001

33. Administrator
U.T. of Dadra & Nagar Haveli
Secretariat, Silvasa – 396230

34. Administrator
U.T. of Daman & Diu
Fort Area, Secretariat
Moti Daman – 396220

35. Administrator
U.T. of Lakshadweep
Secretariat, Kavaratti – 682555

36. State Level Environment Impact Assessment Authority
Directorate of Environment, State of Uttar Pradesh
Dr. Bhim Rao Ambedkar Paryavan Parisar,
Vineet Khand – I, Gomati Nagar
Lucknow, Uttar Pradesh PIN – 226010

37. Geological Survey of India
3rd Floor, A wing,
Shastri Bhawan, New Delhi 110001

38. Department of Geology & Mining
Through Director
State of Uttar Pradesh,
Khanij Bhawan 27/8,
Ram Mohan Rai Marg
Lucknow – 226001

39. Department of Irrigation
Through Engineer in Chief
State of Uttar Pradesh,

New Planning Bhawan Toilibag, 3rd Floor
Lucknow, PIN – 226001
Uttar Pradesh

40. Central Pollution Control Board
Through Member Secretary
Parivesh Bhawan, CBD-Cum Office Complex
East Arjun Nagar, Delhi – 110032

41. Uttar Pradesh State Pollution Control Board,
Through the Member Secretary
Picup Bhawan, 2nd Floor, B – block
Vibhuti Khand, Gomiti Nagar,
Lucknow – 226010

42. District Magistrate,
Gautam Budha Nagar,
Noida, Uttar Pradesh
PIN 201301

43. Superintendent of Police,
Gautam Budha Nagar,
Noida, Uttar Pradesh
PIN 201301

44. Ministry of Mining
Shastri Bhawan, New Delhi

45. Vishal Agarwal
S/o Lt. Sri Nahar Singh
R/o 12/10, Ashirwad Enclave
Ballupeer, Dehradun.

46. Vivek Kumar Aggarwal

47. Deepak Gupta

48. Jagannath Mane

49. Ministry of Environment and Forest.

50. Mohit, S/o Sh. Devendra,
Resident of Mandi, Mailganj
Tehsil Nagina, District.

51. Mrs. Muntur W/o P. Ismail
R/o Puliyamthodi House,
Vazhakkad Post
Malapurram, Dist.
Kerala.

52. Lasim C., S/o Basheer
R/o Kodi thodina House,
Payangadi Amsom,
Kondotty Post,
Malappuram Dist. Kerala

53. Dr. Sarvabhoum Bangali
Kacheri Road.
Opp. Head P.O.
Distt. Bijapur
Karnataka.

54. Ministry of Water Resources,
New Delhi

55. Santhakumar A, S/o U. Achuthan
Secretary, All Kerala Quarry Association,
Palakkad.

56. K.M. Koyamu, S/o Modi Kattathodi
Secretary, All Kerala Crusher Owner Association
State Committee, Malappuram, Kerala

57. Muneer, P.M. S/o Moidu
Paleri Town, P.O. Kulliyati
Kerala

58. A.K. Sasi
Athimattathil House
Palakkad, P.O.
Palakkad District
Kerala

Counsel for Applicants:

Mr. Anand Verma, Advocate in OA No.123/2014.
Mr. Pinaki Mishra, Sr. Advocate with Mr. Rohit Gupta and Mrs. Megha Mehta Agarwal, Advs. in M.A. No. 419/2014 in OA No.123/2014.
Mr. Raj Panjwani, Sr. Advocate with Mr. Aagney Sail, Advocate in M.A. No. 529/2014 in OA No.171/2013.
Mr. Rishi Malhotra and Mr. Deepak Kaushal, Advocates in OA No.343/2013 and OA No. 279(THC)/2013.
Mr. Parikshit Nayak, Advocate in Appeal No. 23/2014

Counsel for Respondents :

Mr. Parag P. Tripathi, Sr. Advocate along with Mrs. Megha Mehta Agarwal and Mr. Rohit Gupta, Advocates for Respondent No. 5 – 14 in OA No.123/2014
Mr. Vikas Malhotra along with Mr. P. Sahay, Advocates for MoEF in OA No.123/2014

Mr. Vikas Malhotra along with Mr. M.P. Sahay, Advocates for Respondent No. 1 in OA No.171/2013
Mr. Bikas Kargupta, Advocate for State of West Bengal, Respondent No. 30 in OA No.171/2013
Mr. Dev Raj Ashok, Advocate for State of Karnataka in OA No.171/2013
Mr. Suryanaryana Singh, Addl, AG along with Ms. Kanupriya Tiwari, Advocates for Respondent No. 1 in OA No. 343/2013
Mr. Vikas Malhotra along with Mr. M.P. Sahay, Advocates for MoEF and Applicant in M.A.No.442/2014
Mr. A.R. Takkar, Ms. Gurinderjit, Mr. Ankur Sharma, Ms. Nilika Kumar and Mr. Soumil Garg, Advocates for Respondent No. 6 in OA No.343/2013
Mr. Suryanaryana Singh along with Ms. Kanupriya Tiwari, Advocates for Respondent No. 1 in OA No. 279(T_{HC})/2013
Mr. Vikas Malhotra along with Mr. M.P. Sahay, Advocates for MoEF in OA No. 279(T_{HC})/2013
Mr. A.R. Takkar, Ms. Gurinderjit, Mr. Ankur Sharma, Ms. Nilika Kumar and Mr. Soumil Garg, Advocates for Respondent No. 6 in OA No. 279(T_{HC})/2013
Mr. Krishanan Venugopal, Sr. Advocate and Mr. Sandip Jha, Advocate in M.A. No. 470-471/2014 in (Appeal No.23/2014(PH))
Mr. Sanjeev, Advocate in M.A. No. 473/2014 in (Appeal No.23/2014(PH))
Mr. Sunil Prakash Sharma, Advocate in M.A. No. 480/2014 in (Appeal No.23/2014(PH))
Ms. Bhavna Sharma, Advocate in M.A. No. 488/2014 in (Appeal No.23/2014(PH))
Mr. Vivek Chib along with Mr. Asif Ahmed, Advocates for MoEF (Respondent No. 11) in (Appeal No.23/2014(PH))

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)

Reserved on 16th October, 2014
Pronounced on 13thJanuary, 2015

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The National Green Tribunal Bar Association filed Original Application No. 171 of 2013 under Sections 14 and 15 read with

Sections 18 (1) and 18 (2) of the National Green Tribunal Act, 2010 (for short 'the NGT Act') stating that rampant illegal sand mining in the Yamuna riverbed was going on in violation of law, without taking prior Environmental Clearance. This activity of sand mining has adversely affected the eco-system and overall ecology of the area. Various incidents of rampant illegal sand mining have been referred to in the petition. It is averred that, despite serious efforts made by some officers, still, the illegal activity was going on. Referring to a recent academic study on environment, which in fact, relates to sand mining, it has been stated that in-stream mining of sand and gravel can reduce water quality, as well as, degrade the channel bed and banks. Mining of these aggregates on the floodplain can affect water table and alter the land-use. The impacts of sand mining from a riverbed are stated to be Habitat and Aesthetic Beauty Degradation, Land use Change, River System Degradation, Floodplain Ponding, Riparian Zone Degradation. The applicant, while relying upon the judgment of the Hon'ble Supreme Court in *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629, stated that the extraction of alluvial material from within or near a stream bed has a direct impact on the stream's physical habitat characteristics. The Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) observed as follows:-

> "These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and

> expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand."

In paragraph 29 of the same judgment, the Hon'ble Supreme Court, while emphasising upon the need for seeking Environmental Clearances in relation to mining activity, held as under:

> "Leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF"

2. The applicant further submitted that, it is the duty of the said authorities and the State Environmental Impact Assessment Authority (for short, 'SEIAA') to ensure that the objective of Environmental Impact Assessment Notification, 2006 (for short, 'Notification of 2006') is upheld in letter and spirit and that indiscriminate and rampant mining in the riverbed is not permitted. Such authorities have failed to take or are intentionally not taking any effective steps to prevent this menace. The application was filed with the prayer that the Tribunal should direct the authorities to take appropriate legal action against all sand mining which was being carried on without seeking prior Environmental Clearance or wherever Environment Clearance has been granted, in violation of its conditions. Further, it is also prayed that respondent authorities should formulate proper scheme to prevent illegal mining.

3. It may be noticed here that the applicant has impleaded Ministry of Environment and Forest, Union of India (for short 'MoEF') and all

the State Governments, Central Pollution Control Board (for short, 'CPCB') and Pollution Control Board of the States particularly, Uttar Pradesh (for short, 'UPPCB') amongst other authorities of Union and the State Governments.

4. When this application (O.A. No. 171 of 2013) came up for hearing before the Tribunal on 5th August, 2013, the Tribunal passed a detailed order directing all concerned to prohibit illegal mining, particularly, on the riverbeds. While issuing notice to the respondents, the Tribunal passed the following directions:

> "In the meantime, we restrain any person, company, authority to carry out any mining activity or removal of sand, from riverbeds anywhere in the country without obtaining Environmental Clearance from MoEF/SEIAA and license from the competent authorities.
> All the Deputy Commissioners, Superintendent of Police and Mining Authorities of all the respective States are directed to ensure compliance of these directions."

5. On 14th August, 2013, when the case again came up for hearing, the Tribunal, issued certain directions and also required the States to submit a status report as to what steps had been taken by them in furtherance to the Judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra).The Tribunal also invited suggestions in relation to the formation of a Committee of experts which would help in implementation of the directions. The States were required to submit details in relation to illegal mining and how many cases of that kind were caught by the different wings/departments of the States. The States were also required to submit a comprehensive study as to what extent and in what manner mining activity can be permitted.

6. Against the order of the Tribunal dated 5th August, 2013, the State of Madhya Pradesh had preferred an appeal before the Hon'ble Supreme Court of India. In that appeal, it was stated that an application had been filed, being M.A. No. 685 of 2013, before the Tribunal, for modification of the order dated 5th August, 2013 praying that a District Level Committee shall be constituted to grant permission to carry on mining at the district level and that the Tribunal had not passed any final order in that regard. The Hon'ble Supreme Court vide its order dated 16th August, 2013, disposed of the appeal with the following directions:

> "Considering the aforesaid submission made by Mr. Tankha instead of entertaining these appeals, we request the National Green Tribunal, Principal Bench, New Delhi to take up IA No. 685 of 2013 and pass orders thereon in accordance with law if possible within a week from today. The appeals stand disposed of in the above terms."

In the meanwhile, M.A. No. 708 of 2013 had been filed by the Madhya Pradesh State Mining Corporation Limited for impleadment and for being heard in support of M.A. No. 685 of 2013 filed by the State of Madhya Pradesh. In Original Application No. 171 of 2013, vide its order dated 28th November, 2013, passed by the Tribunal, M.A. No. 708 of 2013 was allowed, while, M.A. No. 685 of 2013 came to be dismissed. We would be dealing with some of the findings recorded by the Tribunal in this judgment dated 28th November, 2013, shortly here in after.

7. Another Original Application No. 279 of 2013(Thc) was filed by Smt. Promila Devi and others praying that the order dated 30th August, 2013, passed by the Mining Officer, Solan, Himachal

Pradesh be quashed and set aside. In view of the order dated 5th August, 2013, passed by this Tribunal in Original Application No. 171 of 2013, the authority, vide order dated 30th August, 2013, restrained the applicants from carrying on any mining activity or removing sand from the riverbed without obtaining Environmental Clearance from MoEF/SEIAA. The applicants were, thus, directed to take the requisite clearance. It is the case of these applicants that they hold mining lease for the land in question and the area is less than 5 hectares. The lease had been granted to the applicant on 29th March, 2011, i.e., prior to *Deepak Kumar's* judgment (supra) and as such, the order of the Tribunal dated 5th August, 2013, was not applicable to their case. Therefore, the order passed by the Mining Officer, Solan, Himachal Pradesh was liable to be set aside and they should be permitted to carry on with their activity.

8. On similar lines, however, without challenging any specific orders passed by the State of Himachal Pradesh, another Applicant - Ranbir Singh filed an Original Application No. 343 of 2013, praying that since mining leases of the applicants are not covered under the order of the Tribunal dated 5th August, 2013, therefore, their mining activity should not be disrupted by the respondent authorities.

9. Original Application Nos. 279(T_{HC}) of 2013 and 343 of 2013 had been listed together for hearing. On 28th March, 2014, when these matters came up for hearing, the Tribunal stayed the

operation and effect of the Office Memorandum dated 24th December, 2013, issued by the MoEF.

10. One Himmat Singh Shekhawat has filed an Original Application No. 123 of 2014, submitting that, he was the holder of Letter of Intent issued by the State of Rajasthan for excavation of minor mineral, bajri/sand in an area admeasuring 2439 hectares located on the riverbed of Rivers Luni and Mitri. According to him, he fulfilled three conditions for the grant and execution of mining lease, i.e, submission of mining plan duly approved by the competent authority, Environmental Clearance granted by the MoEF and had also submitted an affidavit for financial assurance under Rule 37J of the Rajasthan Minor Mineral Concession Rules, 1986 (for short, Rajasthan Rules of 1986). These Rules came to be amended by way of Rajasthan Minor Mineral Concession (Amendment) Rules, 2012, published on 23rd May, 2012, (for short 'Rajasthan Rules of 2012'). The amended Rules provided that mining leases for mineral, 'bajri', shall be granted only by way of auction or tender. On 8th January, 2014, the State of Rajasthan issued guidelines as well as a notice on 6th May, 2014 for auction of minor minerals. The applicant was aggrieved from the procedure being adopted by the State Government. Thus, he filed this application before the Tribunal, praying that, the guidelines issued by the State of Rajasthan dated 8th January, 2014 and the Public Notice dated 6th May, 2014, by the State of Rajasthan, should be quashed and as an interim order, its operation should be stayed.

11. Another Applicant, Sunil Acharya, filed an Appeal No. 23 of 2014. He submitted that, he is an eminent citizen and a social activist of Banswara and is concerned with the environment. He was raising challenge to the orders passed by the Government of State of Rajasthan, granting approval on the basis of the applications filed by the non-applicants in regard to grant of mining leases ML No. 9/09 to 24/09 in relation to village Kothara, Tehsil and District Banswara. According to the appellant, the Additional Director, Mines vide his letter dated 22nd February, 2012, addressed to the Assistant Mining Engineer, Banswara had directed him to comply point wise with the terms and conditions specified in the letter dated 13th February, 2012, issued by the Government of India and to submit a report in this regard to the Head Chief Forest Conservator, Jaipur through the Divisional Forest Officer, Banswara and Chief Forest Conservator, Udaipur. The matter was further examined by the Assistant Mining Engineer, Mines and Geology Department. Thereafter, the District Collector, Banswara, vide his letter dated 29th February, 2012, issued a certificate with regard to diversion of 64 hectare of forest land in favour of 16 lease holders for mining of marble in the Banswara district of Rajasthan. It was also stated that the permission granted under the Forest (Conservation) Act, 1980 (for short 'Act of 1980') shall be subject to Environmental Clearance under the Environment (Protection) Act, 1986 (for short 'Act of 1986'). It is stated by the appellant that the non-applicants/respondents no. 1 to 7, in collusion with the

Respondent Nos. 9 and 10, and in violation of the Notification of 2006, made false representations in their applications that the area of mining was less than 5 hectares, i.e., 4 hectares and hence the Notification was not applicable to them. The Respondents No. 1 to 7 were granted different mining leases. The appellant served the notice under Section 80 of Code of Civil Procedure, 1908. The appellant, being aggrieved by the decisions taken by the authorities, vide their orders dated 22nd February, 2012, 23rd February, 2012 and 29th February, 2012, has filed an appeal challenging the correctness of these orders. In the appeal, it was even prayed that temporary injunction may be issued for staying the orders of the authorities dated 22nd February, 2012, 23rd February, 2012 and 29th February, 2012, prohibiting Respondents No. 1 to 7 from carrying on illegal mining operation during the pendency of the appeal.

12. After hearing the Counsel for the parties on 10th July, 2014, the Tribunal issued notice on the appeal and passed the following order:

> "We have heard Mr. Parikshit Nayak, learned Counsel appearing for the Applicant.
> The grievance of the Applicant is that permission is granted to the Respondent Nos. 1 to 7 for carrying out mining operations without obtaining Environment Clearance and it twas pursuant to the decision of the Ministry of Environment & Forests. Though, by Office Memorandum dated 24.12.2013, it is provided that EC is not necessary, if the area of mining is less than 5 hectares, the Tribunal has already stayed operation of the said Office Memorandum dated 24.12.2013 by order dated 28.03.2014 in the case of *"(Ranbir Singh Vs. State of H.P. & Ors. Application No. 343/2013)".*

> In such circumstances, if Respondent Nos. 1 to 7 have not obtained the EC and is not having the necessary consent to operate, they are not entitled to carry on mining.
> In such circumstances, Issue Notice to the Respondents by registered post/acknowledgment due and Dasti as well. Requisites be filed within three days from today.
> In the meanwhile, Respondent Nos. 1 to 7 are restrained from carrying on mining operations, without obtaining EC and obtaining consent from the Rajasthan State Pollution Control Board."

It may be noticed here that M.A. No. 469 of 2014 was filed by the Respondent No. 5 in Appeal no. 23 of 2014, wherein he prayed for vacation of the order dated 10th July, 2014, as their business was being adversely affected. Similarly, M.A. No. 470 of 2014, M.A. No. 473 of 2014, M.A. No. 479 of 2014, M.A. No. 480 of 2014, M.A. No. 488 of 2014 and M.A. No. 489 of 2014 were filed by other respondents in Appeal No. 23 of 2014 with the same prayer as made by the applicant in M.A. No. 469 of 2014.

13. In continuation to the proceedings pending before the Tribunal in all the above five matters, which were being heard together, MoEF placed on record, the Office Memorandum dated 24th December, 2013, with an explanatory affidavit. Having noticed certain ambiguities in it, the Tribunal on 28th August, 2014, recorded the statement of Dr. V.P. Upadhyay and Dr. P.B. Rastogi from MoEF. This clarification is of serious consequences as far as the matter in issue in the present case is concerned. Thus, it will be useful to refer to the order of the Tribunal passed in this case on 28th August, 2014, which reads as under:

"Dr. V.P. Upadhyay, Scientist – 'F' (Director) and Dr. P.B. Rastogi, Scientist – 'F' (Director) from the Ministry of Environment and Forests are present before the Tribunal.

It is submitted before us that Office Memorandum dated 24th December, 2013 issued by the MoEF intended to stop consideration/grant of Environment Clearance for any river bed mining where area in question is less than 5 hectares. There are certain ambiguities in the said Memorandum. These Officers submit that they are duly authorised by their Ministry to make statement before the Tribunal today.

Joint Statemnet of both these Officer is being recorded, being authorised representatives of the MoEF, which is also confirmed by the learned counsel appearing for the MoEF.

They make the following statement:-

Statement

1. The Office Memorandum dated 24th December, 2013 intends and it is now clarified and reiterated that no Environmental Clearance will be granted for extraction of Minor Minerals (sand mining) from any river bed/ water body where the area is less than 5 hectares.

2. In other words the mining activity of minor minerals (river sand mining) area of less than 5 hectares is not permitted.

3. The surface water level as referred in the Office Memorandum dated 24th December, 2013 would be the normal water level prevalent during the lean season.

4. The minor minerals mining activity in areas other than riverbed (sand mining) would be permitted, provided that Environmental Clearance for the same is taken in accordance with law.

To that extent the Office Memorandum dated 24th December, 2013 is explained and clarified and it will bind the MoEF in accordance with law.

The above statement made on behalf of MoEF has been taken on record.

Learned counsel appearing for the different parties wish to argue the matter."

14. M.A. No. 442 of 2014, M.A. No. 469 of 2014, M.A. No. 470 of 2014, M.A. No. 473 of 2014, M.A. No. 479 of 2014, M.A. No. 480 of 2014, M.A. No. 488 of 2014 and M.A. No. 489 of 2014 have been filed by different applicants in the above mentioned cases praying for the vacation of the injunction granted or the directions passed

by the Tribunal vide its order dated 5th August, 2013, 28th March, 2014 and 10th July, 2014.

15. As already noticed, vide these orders, the Tribunal had restricted carrying on of any mining activity from the riverbeds anywhere in the country, without obtaining Environmental Clearance from MoEF/SEIAA and license from the competent authority. The Tribunal had also stayed the operation of the Office Memorandum issued by the MoEF on 24th December, 2013. Lastly, in the case relating to the State of Rajasthan, similar restraint order was passed and it was also directed that, without obtaining consent from the Rajasthan State Pollution Control Board, the mining activity cannot be permitted to be carried on.

Discussion on law in force in relation to mining of minor minerals

16. In order to properly consider various contentions that have been raised in the above Original Applications, Appeal as well as Miscellaneous Applications, it is necessary for us to examine the regime of law, relating to mining of brick earth, ordinary earth and all other minor minerals that has been in force.

17. Entry 54 of List 1 in Schedule VII to the Constitution of India, is an entry that enabled the Parliament of India to acquire power in respect of 'Regulation of mines and minerals development, to the extent to which such regulation and development, under the control of the Union, is declared by the Parliament by law to be expedient in the public interest'. On the other hand, Entry 23 of List 2 of the

same Schedule, read with Article 246(3) of the Constitution of India, confers legislative powers on the State Legislature in respect of 'Regulation of mines and mineral development', but, this power is subject to the provisions of List 1 with respect to the regulation and development under the control of the Union. The Indian Parliament, with the object to amend and consolidate the law relating to the regulation of labour and safety in mines enacted the Mines Act, 1952. Section 2(JJ) of the Mines Act, 1952 defines "minerals" to mean, all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oils (which, in turn, include natural gas and petroleum). This Act, primarily provided for welfare of the labourers working in mines, inspection and surveying by inspectors, mining operation and management of mines. Mines Rescue Rules also came to be framed under Section 59 of the Act in the year 1984.

18. On 1st June, 1958, the law, to provide for the regulation of mines and development of minerals under the control of the Union came into effect and was promulgated as the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'Act of 1957'). This Act provides, *inter alia*, for general restrictions on undertaking prospecting and mining operations, the procedure for obtaining prospecting licences or mining leases in respect of the land in which the minerals vests in the Government, the rule making power for regulating the grant of prospecting licences and mining leases,

special powers of Central Government to undertake prospecting or mining operations in certain cases, and for development of minerals. This Act was amended by the Amendment Act of 1972 by adding Section 4A to the Act of 1957, which provided for premature termination of mining leases and the grant of fresh leases to Government Companies or Corporations owned or controlled by the Government. The word 'regulation' in Entry 54 would not include 'prohibition' and should not be confused with 'restrictions', occurring under Article 19(2) to (6) of the Constitution of India. The Entry was stated to be purposive and keeping in view, the object and purpose of the legislation, the Hon'ble Supreme Court said that the legislative power of regulation and development of mines must dictate the nature of law made in the exercise of that power because public interest demands that power [*K.C. Gajapati Narayan Deo and Ors. v. The State of Orissa*, (1954) 1 SCR 1].

19. With the passage of time and development of law, the Union of India, issued various Notifications and Circulars to impose restrictions and prohibitions on the expansion and modernization of any activity or new projects in respect of mining in major and minor minerals.

20. The Act of 1986 and Environment (Protection) Rules, 1986 (for short 'Rules of 1986') were enacted and came into force on 19th November, 1986. The object of this Act of 1986 is to provide for the protection and improvement of environment and for matters connected therewith. Under provisions of the Act and Rules of 1986,

MoEF issued various other Notifications regulating the mining of minor minerals, specifically stating the procedures that were required to be complied by persons intending to carry on such mining activity and for the authorities to regulate the same.

21. It appears that, prior to 1994, there was no specific regime in place in relation to mining activity being carried on in minerals. The Notification issued by MoEF on 27th January, 1994, in exercise of the powers vested in it under Sub-Rule 3 of Rule 5 of the Rules of 1986 and Sub Section (1) and Clause (v) of Sub-Section (2) of Section 3 of the Act of 1986, prescribed the requirement and procedure for seeking Environmental Clearance for the projects listed in Schedule I. Schedule I of this Notification did not deal with mining projects of minor minerals. On the contrary, the projects covered under S. No. 20 of Schedule I of this Notification were only "mining projects (major mineral) with leases more than 5 hectares". This Notification provided as to how the applications have to be moved/considered and that the project should be site specific. It also provided for the constitution of Expert Committees and preparation of Environmental Impact Assessment Report which was to be evaluated and assessed by the Impact Assessment Agency. It is clear that there had been a vacuum in specific law for regulation of and effective control on the minor mineral mining activities. In exercise of its statutory powers afore-indicated, the Central Government on 14th September, 2006, issued a Notification, i.e., 'Environmental Clearance Regulation, 2006'. In terms of this

Notification, the projects as stated in the Schedule to this Notification, required prior Environmental Clearance as per the procedure. The projects have been categorised into two kinds, i.e., Category 'A' and Category 'B' under Clause 2 of the Notification. Projects under Category 'A' were required to take prior Environmental Clearance by MoEF. For Category 'B' projects, Environmental Clearance was to be given by SEIAA. In the present case, we are considered with Entry 1(a) of the Schedule to the Notification of 2006 which was substituted vide Notification dated 1st December, 2009. This entry reads as under:

Project of Activity		Category with threshold limit		Conditions if any
		A	B	
1		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)
[18][1(a)	(i) Mining of minerals. (ii) Slurry pipe-lines (coal lignite and other ores) passing through national parks/ sanctuaries/coral reefs, ecologically sensitive areas.	≥50 ha of mining lease area in respect of non-coal mine lease >150 ha of mining lease area in respire of coal mine lease Asbestos mining irrespective of mining area All projects	<50 ha ≥ 5 ha of mining lease area in respect of non-coal mine lease ≤150 ha ≥5 ha of mining lease area in respect of coal mine lease]	[19][General conditions shall apply *Note:* (i) Prior environmental clearance is as well as required at the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal. (ii)Mineral prospecting is exempted.

22. From this Entry in the Schedule to the Notification of 2006, it is clear that projects in respect of non-coal mine leases, where the area is more than 50 hectares would require prior Environmental Clearance from MoEF, while the projects of less than 50 hectares and more than 5 hectares of mining area, would require prior Environmental Clearance from SEIAA. The procedure for taking prior Environmental Clearance under both these categories is more or less the same except that the agency which gives the clearance is different. Clause 7 of the Notification of 2006, specifies the stages through which such projects for grant of Environmental Clearance are required to be passed and processed. They include Screening, Scoping, Public Consultation and Appraisal, upon which, the Expert Appraisal Committee would make a recommendation to the MoEF/SEIAA as the case may be, which would then grant or refuse the Environmental Clearance to the project in question. Under the head 'Screening', this Clause 7 also provides for a further bifurcation of projects falling under category 'B' into 'B(1)' and 'B(2)'. The relevant part of Clause 7, dealing with this aspect, reads as under:

> "Stage (1) - Screening:
> In case of Category 'B' projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project . The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and

> remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time."

23. In terms of the above, at the stage of 'Screening', the State Level Expert Appraisal Committee has to determine whether or not the project requires further environmental studies for preparation of an Environmental Impact Assessment report for its appraisal, prior to the grant of Environmental Clearance, depending upon the nature and location specificity of the project. The projects requiring an Environmental Impact Assessment report shall be termed as Category 'B1' and remaining projects shall be termed as Category 'B2', which will not require an Environment Impact Assessment report and for this categorisation, i.e., 'B1' and 'B2', the MoEF retained with itself, powers to issue guidelines from time to time. From the record before the Tribunal, it is evident that prior to the institution of these cases, no guidelines have been prepared or notified by the MoEF, in terms of Stage 1 of Clause 7 of the Notification of 2006. The Notification of 2006 came to be amended by Notification dated 1st December, 2009. It made some amendments in different clauses of the Notification of 2006 and deleted some portion appearing in column 5 of Entry 1(a) of the Schedule to the Notification of 2006. In substance, it made no change as far as minor mineral activity was concerned. Note (i) in column 5 stood omitted. Subsequent to the amendment of the Notification of 2006 in 2009, the judgment of the Hon'ble Supreme

Court came to be pronounced in IA No. 12-13 of 2011, in the case of *Deepak Kumar* (supra). In compliance to the direction of the Hon'ble Supreme Court in para 29 of the said judgment, MoEF issued an Office Memorandum dated 18th May, 2012, with an intent to implement the said direction of the Hon'ble Supreme Court. MoEF also noticed in the Office Memorandum, direction of the Hon'ble Supreme Court dated 16th April, 2012, wherein the applicants before the Hon'ble Supreme Court in the order dated 27th February, 2012, who were carrying on mining activity below 5 hectares were given liberty to approach MoEF for permission to carry on mining. These applications were to be disposed of by MoEF within 10 days from the date of the applications. The order of the Hon'ble Supreme Court dated 16th April, 2012, reads as under:

> "All the same, liberty is granted to the applicants before us to approach the Ministry of Environment and Forests for permission to carry on mining below five hectares and in the event of which Ministry will dispose of all the applications within ten days from the date of receipt of the applications in accordance with law."

24. In this Office Memorandum, it was decided by MoEF that all the mining projects for minor minerals, including their renewal, irrespective of the size of the lease would, henceforth, require prior Environmental Clearance. Wherever the area was less than 5 hectares, they would be treated as category 'B' projects in terms of Notification of 2006 and should be processed accordingly.

25. On 24th June, 2013, MoEF issued another Office Memorandum stating guidelines for consideration of proposals for grant of Environmental Clearance under the Notification of 2006 for

mining of 'brick earth' and 'ordinary earth' having lease area of less than 5 hectares. Referring to the judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) and its Office Memorandum dated 18th May, 2012, it further considered that the 'brick kiln' manufactures had stated that it was a small scale activity requiring that certain depth should be kept outside the purview of Environmental Clearance. Having considered various aspects, the recommendations of the Expert Committee, constituted by MoEF, were also examined and finally it was directed as follows:

> "(a) The activities of borrowing / excavation of 'brick earth' and ordinary earth', upto an area of less than 5 ha, may be categorized under 'B2' Category subject to the following guidelines in terms of the provisions under '7.I Stage(1)-Screening' of EIA Notification, 2006:
> (i) The activity associated with borrowing/excavation of 'brick earth' and 'ordinary earth' for purpose of brick manufacturing, construction of roads, embankments etc. shall not involve blasting.
> (ii) The borrowing/excavation activity shall be restricted to a maximum depth of 2 m below general ground level at the site.
> (iii) The borrowing/excavation activity shall be restricted to 2 m above the ground water table at the site.
> (iv) The borrowing/excavation activity shall not alter the natural drainage pattern of the area.
> (v) The borrowed/excavated pit shall be restored by the project proponent for useful purpose(s).
> (vi)Appropriate fencing all around the borrowed/excavated pit shall be made to prevent any mishap.
> (vii) Measures shall be taken to prevent dust emission by covering of borrowed/excavated earth during transportation.
> (viii) Safeguards shall be adopted against health risks on account of breeding of vectors in the water bodies created due to borrowing/excavation of earth.
> (ix) Workers / labourers shall be provided with facilities for drinking water and sanitation.
> (x) A berm shall be left from the boundary of adjoining field having a width equal to at least half the depth depth of proposed excavation.

(xi) A minimum distance of 15 m from any civil structure shall be kept from the periphery of any excavation area.
(xii) The concerned SEIAA while considering granting environmental clearance for such activity for brick earth / ordinary earth will prescribe the guidelines as stated at (i) to (xi) above and specify that the clearance so granted shall be Iiable to be cancelled in case of any violation of above guidelines.
(b) Notwithstanding what has been stated at (a) above, the following will apply:-
(i) No borrowing of earth / excavation of 'brick earth' or 'ordinary earth' shall be permitted in case the area of borrowing/ excavation is within I km of boundary of national parks and wild life sanctuaries.
(ii) In case the area of borrowing / excavation is likely to result into a cluster situation i.e. if the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 ha, the activity shall become Category '8 I' Project under the EIA Notification, 2006. In such a case, mining operations in any of the borrow areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.
This issues with the approval of the Competent Authority."

26. These directions which were specific only to 'brick earth' and 'ordinary earth' activities for areas less than 5 hectares, as decided to be categorised as 'B(2)' Category projects, subject to the restrictions stated in the memorandum, provided that if the cluster area exceeded 5 hectares, then it would become Category 'B(1)' and would not be treated as Category 'B(2)' projects. It is clear that this Office Memorandum was not dealing with the issues of sand mining or any other minor mineral activity except 'brick earth' and 'ordinary earth'. On 9th September, 2013, MoEF, in exercise of its powers under the Act and Rules of 1986, dispensed with the requirement of notice and amended the Notification of 2006. Entry 1(a) was further amended as follows:

(1)	(2)	(3)	(4)	(5)
1(a)	(i) Mining of minerals.	≥50 ha of mining lease Area in respect of non-coal mine lease. ≥150 ha of mining lease area in respect of coal mine lease Asbestos mining irrespective of mining area.	<50 ha of mining lease area in respect of minor minerals mine lease; and ≤ 50 ha ≥ 5 ha of mining lease area in respect of other non-coal mine lease. ≤ 150 ha > 5 ha of mining lease area in respect of coal mine lease.	General Conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals: Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environmental clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha. **Note:** (i) Prior

				environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4th November, 2011.

27. During the pendency of the present application and passing of certain orders by the Tribunal requiring the MoEF to clarify its stand in the light of *Deepak Kumar's* judgment (supra) of the Hon'ble Supreme Court, MoEF, on 24th December, 2013, issued another memorandum for consideration of proposals for grant of Environmental Clearance regarding categorisation of Category 'B' projects into Category 'B(1)' and 'B(2)'. Mining of minor minerals

had been separately dealt with in this Office Memorandum. This Office Memorandum stated that no river sand mining project with mining lease area of less than 5 hectares may be considered for grant of Environmental Clearance. Such area up to 25 hectares would be Categorised as 'B(2)' and such projects were to be considered, subject to the stipulations stated therein. This Office Memorandum had apparent ambiguities, which, as already noticed, were cleared by the statement of officers of the Ministry made before the Tribunal on 24th August, 2014, wherein it was stated that no Environmental Clearance would be granted for extraction of minor minerals from any riverbed and/or water body, where the area is less than 5 hectares. Sand mining, in area other than riverbeds, would be permitted, only if the Project Proponent takes Environmental Clearance.

28. Against the order dated 5th August, 2013, the State of Rajasthan and some others have preferred an appeal before the Hon'ble Supreme Court. These appeals came to be dismissed as 9703-9706 of 2013 titled, *Chief Secretary, Government of Rajasthan v National Green Tribunal Bar Association and Others*. While issuing notice, the Hon'ble Supreme Court had stayed the proceedings before this Tribunal in Original Application No. 171 of 2013. However, this order of the Hon'ble Supreme Court came to be varied by the Hon'ble Supreme Court vide its order dated 25th November, 2013, which varied the order of stay of all proceedings and passed specific orders in relation to 82 applicants who were holders of Letter of Intent. In relation to those

remaining, including other States, the Hon'ble Supreme Court directed that the matters may go on unless there was a specific stay granted by the Hon'ble Supreme Court in that particular case. The order of the Hon'ble Supreme Court dated 25th November, 2013, reads as under:

> "Pursuant to orders passed by this Court on 11th November, 2013, the learned Solicitor General has submitted a status note on behalf of the Ministry of Environment and Forests on the applications for environmental clearance in respect of mining lease of bajri in the State of Rajasthan which is pending before the Ministry of Environment and Forests.
>
> From the aforesaid status note it appears that the time period prescribed under Environmental Impact Assessment Notification 2006 for processing the applications of 82 letter of intent holders/project proponents received from the State of Rajasthan will expire some time in February, 2014. Obviously the mining activity with regard to the bajri lease in the State of Rajasthan cannot be totally kept in abeyance till February, 2014.
>
> We, therefore, direct that till the end of February, 2014, the letter of intent holders who have submitted their applications to the Ministry of Environment and Forests for clearance (numbering 82 only) can carry on mining operations in accordance with the Notification dated 21st June, 2012 of the Mines (Act 2) Department, Government of Rajasthan issued under Rule 65A of the Rajasthan Mines and Mineral Concession Rules, 1986.
>
> We make it clear that the orders that will be passed by the Ministry of Environment and Forests on the 82 applications will be in accordance with the Notification, Environmental Impact Assessment 2006 dated 14th September, 2006.
>
> The State of Rajasthan will ensure that this interim order is not violated in any manner.
>
> It has been mentioned by Mr. Raj Panjwani, learned counsel appearing for the National Green Tribunal Bar Association that besides the Rajasthan matters, other matters are pending before the Tribunal. We make it clear that the other matters may go on in the Tribunal if there are no specific orders of this Court staying the proceedings in the particular matter."

29. It is in furtherance to the above order, that, proceedings before this Tribunal continued in relation to all other States, as well as, beyond those 82 applicants who were specifically covered by the above order of the Hon'ble Supreme Court.

Stand of the Respective States and Respondents

30. We may now notice the stand taken by the respective States before the Tribunal in the above case.

State of Rajasthan has taken a common stand in two of these cases (Appeal No. 23 of 2014 and Original Application No. 123 of 2014). It is stated on behalf of the State that, Respondent No. 1, Sanjay Bakliwal, in Appeal No. 23 was granted consent to establish and operate on 26th November, 2012. This respondent was granted lease for mining of minor minerals on 23rd November, 2012. In furtherance to the judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), all the States were directed to consider the recommendations of the Committee which were recorded in the judgment and were directed to frame their rules and their mining policy. Accordingly, the State of Rajasthan amended the State Rules w.e.f. 19th June, 2012 by incorporating Chapter IVA for scientific and eco-friendly mining. Under the amended Rules, the mining area allowed for mining of minor minerals is 1 hectare. Obtaining Environmental Clearance, for carrying on river sand mining activity, in an area of less than 5 hectares, was not required. Such requirement was introduced vide Notification dated 9th September, 2013. Lease holders carrying on the minor mineral activity were to apply for

Environmental Clearance at the time of renewal as per the Notification of 9th September, 2013. This Notification made prior grant of Environmental Clearance mandatory in relation to river sand mining and provided that Environmental Clearance will only be required at the stage of renewal of mining in the cases of existing lease.

31. State of Rajasthan, as noticed above, had amended its rules and particularly introduced Rules 37P, 37Q, 37R, 37S, reference to which would be necessary. Rule 37P provided for grant of short term permits for mining in an area of less than 5 hectares. Association of lessees could, through recognised persons, submit Environment Management Plan to the District Level Environmental Committee for approval. The association was to be formed within three months from declaration of cluster. Under this, various persons would become Members of the association and apply for cluster mining. Even a person falling within a cluster was deemed to be a member of the association. 37R provided for the composition of the District Level Environmental Committee. Environment Management Plan had to be approved by such Committee, which was required to be implemented in terms of Rule 37S. This was to provide environmental safeguards which were to be implemented by the holders of the short term permits and the association. According to Respondent No. 1, the lessee, he had complied with all these requirements and as per Government practise, clusters were formed by the State Government and Environment Management Plan was approved by the District Environmental Committee. However, Respondent No. 1 also submits that, during the

operation of the orders of the Tribunal, he had applied for obtaining Environmental Clearance. The Rajasthan State Pollution Control Board, vide its letter dated 31st October, 2013, also directed Respondent No. 1 that if they wished to increase the production after 9th September, 2013, they must obtain Environmental Clearance. It is the stand of the Respondents that ToR has been issued by SEIAA and public hearing has been done on 27th-28th August, 2014 and that they are awaiting grant of Environmental Clearance. According to Respondent No. 1, the Notification dated 9th September, 2013, is not applicable to the lease as it operates only prospectively.

32. According to State of Rajasthan, post Notification dated 9th September, 2013, issued by the MoEF, they have not granted any mining lease without Environmental Clearance. However, in the period between 27th February, 2012 and 9th September, 2013, i.e., the bridge period, mining leases for minor minerals were granted to all the private respondents as no Environmental Clearance was required for such activity. Directions contained in the case of *Deepak Kumar* (supra) were followed by requiring clusters to make Environment Management Plan in accordance with the Rules afore-referred. It is further submitted by the State of Rajasthan, that, after the operation of the Office Memorandum issued by MoEF dated 24th December, 2013, was stayed by this Tribunal, the State has not given effect to the Office Memorandum dated 24th June, 2013 also, which, has in fact, become one of the grievances of the private respondents in OA No. 123 of 2014.

33. As already stated, two applicants, namely, Smt. Promila Devi and Shri Ranbir Singh have filed independent petitions, *inter alia*, praying for quashing of the order dated 31st August, 2013, and threat to implement the same against the other by the Mining Officer, Solan, wherein, for not obtaining Environmental Clearance, the mining activity was ordered to be stopped. While in the latter, according to the applicant, he was granted mining lease of sand, stone and bajri which is found in mixed states in Khads and not in any manner on the river bed. The applicant has, therefore, prayed that in both the mines at Mohal Maira Doomal/Maira Batrah, in Tehsil Nurpur, District Kangra, Himachal Pradesh, Mining activity should not be stopped, with reference to the order of the Tribunal dated 5th August, 2013. The applicant prayed for vacation of the stay order. According to the applicant, they are not covered by the said order of the Tribunal and therefore, their mining activity should be permitted to be continued.

34. The stand of State of Himachal Pradesh in the case of Ranbir Singh is that the applicant had initially applied for mining of an area which was more than 5 hectares, but, later sought for reduction of the area to less than 5 hectares. Upon the reduced area, supplementary mining lease was executed on 8th December, 2013. However, after passing of the order of the Tribunal dated 5th August, 2013, the Mining Officer, Kangra has suspended the mining activity as it falls in the Khad/stream, i.e., river bed.

35. The applicant also submits that his mining activity is connected to a stone crusher and, as such, he would suffer serious losses. The matter pertaining to the applicant was also pending before the High Court of Himachal Pradesh in terms of the order of the Hon'ble Supreme Court, in the case of *Nanak Chand Dhiman & Ors. v. Chief Secretary to the Government of Himachal Pradesh, Shimla & ors.*, dated 25th July, 2013.

36. In the case of Smt. Promila Devi, it is stated that the Mining Officer, Solan, has suspended the mining activity of the applicant in compliance to the order of the Tribunal dated 5th August, 2013. According to the State, the area of petitioner no. 1 does not form part of the river bed, but, that of petitioner nos. 2 and 3 partly or wholly lies in the river bed. As such, since the order of the Tribunal was applicable only to petitioner Nos. 2 and 3, the order passed against petitioner no. 1 was withdrawn vide letter dated 11th October, 2013.

37. Under the River/Stream Bed Mining Policy/Guidelines for the State of Himachal Pradesh, 2004 (for short 'Policy of 2004'), it was mandatory for the holder of the mineral concession to prepare Working-cum-Environmental Management Plan. This plan was to be approved by the State Geologist, Himachal Pradesh and not by the MoEF/SEIAA. The MoEF had also issued a Circular on 2nd July, 2007 stating that Notification of 2006 shall not be applicable to those leases where neither the production has increased nor area is enhanced, till expiry of lease period.

38. According to the Himachal Pradesh Minor Minerals (Concession) Revised Rules, 1971 (for short 'Rules of 1971'), the State of Himachal Pradesh had reserved to itself, the power to grant mining lease for an area as it may deem fit. In terms of provisions of Rule-13 (1), for setting up of crusher and granting lease for river stream bed mining, an area of 10 hectares or above, was to be given priority and free sale of minor minerals lease up to 5 hectare shall be granted. That means, less than 5 hectare of mining lease could be granted. This Rule does not specifically contemplate issuance of Environmental Clearance.

39. According to the State, none of the petitioners have so far applied for Environmental Clearance, in accordance with the Notification of 2006. Against the order of the High Court of Himachal Pradesh dated 15th June, 2012, a Civil Appeal No. 6179/2013 titled '*Nanak Chand Dhiman & Ors. Vs. Chief Secretary of Government of Himachal Pradesh & Ors.*' was filed. The Hon'ble Supreme Court of India had set aside the orders of the High Court dated 15th June, 2012 and 14th September, 2012 and ordered that the appellant would file an appropriate application for impleadment before the High Court of Himachal Pradesh which will be considered afresh in accordance with law. It may be noticed that as per website of the Himachal Pradesh High Court, Civil Writ PIL No. 9 of 2011 and other applications have been finally disposed of by the High Court, vide its order dated 20th March, 2014.

The Hon'ble Supreme Court, while setting aside the order of Himachal Pradesh High Court, which had permitted one year period for the lease holders to obtain Environmental Clearance, though they were operating prior to 27th February, 2012 and the mining leases which were executed after 27th February, 2012, had directed stoppage of mining operations on the ground that the order was passed without granting opportunity of representation to the lessees who were having a valid lease. The State has taken the stand before the Hon'ble Supreme Court that it has already framed Rules in line with the recommendations of MoEF, placing incidents of getting Environmental Clearance from the authorities concerned. Where the leases were granted prior to 27th February, 2012, Environmental Clearance was not warranted as they were being appropriately regulated under the respective mining plans. The Hon'ble Supreme Court, without commenting upon the restrictive contentions, had set aside the High Court orders and granted liberty to the appellants to file appropriate applications before the High Court.

40. Following the directive of the Hon'ble Supreme Court in the case of *Deepak Kumar v. State of Haryana & Ors*, (supra), the State of Himachal Pradesh submits that they have not executed any fresh mining lease after 27th February, 2012. Vide Office Memorandum dated 18th May, 2012, MoEF, Government of India has brought all the mining leases irrespective of the area under the ambit of Notification of 2006. Except to the exceptions carved out in their Circular dated 2nd July, 2007, the mining activity and sanctioning

of mining lease in State of Himachal Pradesh is being granted in accordance with the Rules of 1971.

41. It has also been brought on record that the State of Himachal Pradesh, in furtherance to the directions issued by the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), has taken necessary steps and safeguards. According to the State, they had already initiated such steps as back as in the year 2004, while framing Policy of 2004. The State has carried-out necessary amendments in the Rules of 1971 vide Notification dated 10th June, 2004. It is even averred by the State that the order of the Hon'ble Supreme Court dated 27th February, 2012, is not applicable to the current mining leases as the direction would be considered only at the time of renewal, including, grant of Environmental Clearance. In terms of the Policy of 2004, and subject to the satisfaction of the conditions provided therein, mining activity is permitted.

42. Documents have been filed and it was also contended on behalf of the State of Himachal Pradesh that, after order of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), the Rules of 1971, as such, have not been amended, but, the State Government has framed the Himachal Pradesh Mineral Policy – 2013 (for short 'Policy of 2013') which has been notified on 24th August, 2013, wherein, subject to compliance of conditions, mining activities in the area of less than 5 hectares have been permitted. The river bed mining is permitted, subject to Environmental Clearance. Under this Policy, Sub-Divisional Level Committee has

been constituted, which has to provide recommendatory role for grant of Environmental Clearance. Other minor mineral activity is also allowed in the area of less than 5 hectares, subject to Environmental Clearance. The difficulties posed, which are stated to be peculiar in States like Himachal Pradesh, are that, larger mining areas of more than 5 hectare are hardly available, particularly in the river beds. It is also contended that 95% of the mining areas are privately owned and are less than 5 hectare. Removal of sand from the river bed that gets accumulated from the flow of river, also justifies the grant of mining permission in areas of less than 5 hectares, without obtaining Environmental Clearance for the same.

43. The stand of MoEF, even in these cases, is that the Ministry has already taken a decision on 2nd September, 2014 that no Environmental Clearance will be granted for extraction of minor minerals (sand mining) from any river bed where the area is less than 5 hectare in terms of its Office Memorandum dated 24th December, 2013. The minor minerals mining activity in areas other than river bed (sand mining) would be permitted, provided, Environmental Clearance is obtained in accordance with law.

44. One Dr. Sarvabhoum Bhagali has filed M.A. No. 529/2014 praying that, there is rampant illegal mining going on in the State of Karnataka, including mining in eco-sensitive areas. According the applicant, through video-conferencing dated 2nd January, 2014, the Director of Mines and Geology, had issued instructions that one

year period be given to take Environmental Clearance and during the transit period, mining activity could be continued. It is also stated that Rule 31-R(20) of the Karnataka Minor Mineral Concession (Amendment) Rules, 2013 (for short 'KMMC Rules of 2013') should be construed to declare that no mining activity, including existing leases, can be carried on without obtaining Environmental Clearance. The mine lessees, which have been shown as Respondents No. 7 to 35 have carried on illegal sand mining and they should be asked to furnish the details thereof and of the mining that they have done since 16th December, 2013. The amendments to Rule 31-R are contrary to law and are impermissible. The amendments permitting mining without Environmental Clearance and appointment of Regional Environment Management Committee are contrary to the judgment of the Hon'ble Supreme Court in *Deepak Kumar's* case (supra), as well as, the Notification of 2006 issued by MoEF.

45. The State of Karnataka has filed a detailed affidavit taking the stand that after the order of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), the Karnataka Minor Minerals Concession Rules, 1994 (for short 'Rules of 1994') have been amended vide Notification dated 16th December, 2013, which was duly published in the Gazette. The State of Karnataka claims to have adopted a unique mechanism of disbursing of sand since 2nd July, 2011 wherein Public Works Department (for short 'PWD') is given the responsibility of quarrying, storing and sale of sand from blocks

handed over by the concerned District Sand Monitoring Committee but no lease or licence is being issued. According to them, there is a direct control of the State PWD. The State of Karnataka is collecting 'Environmental Protection Fee' of Rs.84,000/- per hectare from all mining leases including minor minerals, except sand, murram and brick earth, since 2009. After amendment, a fee called the 'Environment Management Fee' of Rs.10 per cubic meter of sand sold is being collected. Mining in *patta* lands is prohibited throughout the State. According to the State of Karnataka, Notification dated 16th December, 2013, has been issued which constituted the Regional Environmental Committees. However, it is stated that they do not have much significance, as the applicant is to seek Environmental Clearance from SEIAA or MoEF, as the case may be. This was also clarified vide amendment dated 5th March, 2014. In the State of Karnataka, 375 persons have been granted permission by SEIAA for carrying on the mining activity. The Karnataka State Pollution Control Board is not issuing any consent to the sand, lime shell and building stone mining/quarrying activity (minor minerals). The Department of Mines and Geology has caught about 18354 cases of illegal mining, including illegal transportation and about 17587 cases have been compounded, as per the provisions of Section 23A of Act of 1957, by collecting compounding penalty of Rs.3495.74 lakhs in total. 702 cases are pending for disposal before jurisdictional courts. According to the State, huge mining activity is being carried on in the State.

Referring to the statistics, it has been stated that from March, 2012 to March 2013, total 6810709 MT of sand, 433431 cubic meter of Ornamental stone and 13023699 MT of building stone and 1790347 MT of other minor minerals like Laterite, Lime Kankar, Lime shell, Murram, Steatite, Ordinary Clay etc. were extracted in the State and royalty of Rs. 747.76 Crores has been realized for that year. According to the State, there are 527 mines of specified minor minerals. In the major part of these mines, the area involved under the lease is less than five hectares. In 202 cases, Environmental Clearance has been granted for specified minor minerals, including, four expansion projects. 169 number of Environmental Clearances were granted for non-specified minor mineral leases by SEIAA.

46. 116 applications are stated to be pending with SEIAA for grant of Environmental Clearance and no consents are being issued by the Karnataka State Pollution Control Board. As far as the contention in relation to the instructions issued through video conference is concerned, such a meeting was held and instructions were issued. However, referring to the amended Rules, it was stated that, in terms of Rule-31R (1C), the Taluk Sand Monitoring Committee is to conduct spot inspection of the sand blocks identified and the blocks to be newly identified and submit report to the District Committee. One year time was granted to obtain Environmental Clearance. During this period, mining was permitted. The minimum extent of permitted area for ordinary sand mining is fixed as 10 acres and all sand blocks less than 10 acres

are to be taken up under cluster method and separate quarrying plan and Environmental Clearance certificate has to be obtained for such blocks. The District Committee was empowered to reserve any blocks for the State or Central Government or other government projects.

47. The PWD was required to invite tenders for extracting the sand for transportation, stocking and loading. To extract sand in the Coastal Regulation Zone in the coastal districts, it is mandatory to obtain Environmental Clearance. The District Committee was further empowered under Rule31R (1B)(x) to delegate authority to any lower level officer of member department to control illegal sand mining activity.

48. Referring to the Notification of MoEF dated 9th September, 2013, categorisation of the projects relating to the minor minerals with an area less than 50 hectares as 'B' Category was also introduced. Six months' time was granted to submit approved quarrying plan in terms of Rule-8(I) for all the existing mines and one year time was granted to obtain approval of Environmental Management Project in terms of Rule-8(Q). The State Administration has also not admitted allegations in relation to illegal mining being carried on without Environmental Clearance. The State Government has also stated that they are taking steps to curb incidents of illegal mining and more coercive steps would be taken in future.

49. According to the State, prior to *Deepak Kumar's* judgment (supra), mining in less than 5 hectare was allowed without Environmental Clearance. The Hon'ble Supreme Court had not dealt with the existing cases of mining in the areas of less than 5 hectares as on the date of passing of the order. Hence, according to the State, order in the case of *Deepak Kumar* (supra) has no application to the leases which existed prior to 27th February, 2012, and accordingly, Notifications issued by the MoEF dated 9th September, 2013 and 16th December, 2013, have no application to these cases. They have also relied upon the Circular issued by the MoEF on 2nd July, 2007, stating that, the mining projects, which did not require Environmental Clearance under Notification of 1994, could continue to operate without Environmental Clearance till the mining lease falls due for renewal. The existing mines had to take Environmental Clearance within one year, with effect from, 16th December, 2013. Even in terms of the Amended Rule-25(A), no quarrying lease is to be granted or renewed to quarry non-specified minor minerals to the extent, not less than that specified in Schedule-II(A). Under Schedule-II(A), mining of ordinary sand has to have a minimum of 10 acres of area. The schedule gives different areas for different kinds of mining. For instance, for brick and tile clays, the area could be 1 acre, while for marble or crystalline limestone as ornamental stone the area could be 2.20 acres and for limestone under title "Shahabad Stone" it could be 0.20 acre. For all such unspecified minerals, it could be 1 acre.

50. As already noticed, and according to the stand taken by the parties, and more particularly, by the respective states, first and foremost, we have to deal with the legal history of the legislations in relation to extraction of minor minerals.

51. The Act of 1986 was enacted by the Parliament to implement the decision taken at the United Nations Conference on 'Human Environment' at Stockholm in 1972. The preliminary object was to take appropriate steps for protection and improvement of human environment. Environment includes water, air and land and inter-relationship which exists among and between water, air, land and human being and the other living creatures, plants, micro-organism and property. Anything that directly or indirectly pollutes any or all these, are subject to steps and action that could be taken by the concerned authorities, in terms of these laws. Mining of minor minerals in our country is an activity which is carried on at a large scale. Unregulated and illegal mining has serious adverse impacts on the environment and ecology of the State concerned.

52. MoEF, for the first time, issued a notification in exercise of the powers vested in it under Clause-(a) of Sub-Rule-(3) of Rule-(5) of the Rules of 1986 on 27th January, 1994. The draft Notification was issued on 28th January, 1993, inviting objections. Upon considering the same, final notification, specifying the imposition, restrictions and prohibition on the expansion and modernisation of any activity or new projects which were being undertaken in any part of India, unless Environment Clearance has been accorded by

the Central Government or State Government as per notification, was issued. This notification contemplated that any person who desires to undertake any new project or an expansion or modernisation of the existing industry or project listed in Schedule-I, has to move an application for seeking Environmental Clearance from the MoEF. Schedule-I to this notification, covered mining, amongst others, under Clause-II(a). However, in terms of Schedule-I, the list of projects requiring the Environmental Clearance from the Central Government, covered only mining projects (major minerals) with leases more than 5 hectares which were included under serial no. 20. In other words, there was no regulatory regime in place, as far as Central Government was concerned, in relation to carrying on extraction of minor minerals. However, some of the States, under their respective Rules, did provide regulation of minor minerals.

53. Then, in the year 2006, MoEF notified the Environmental Clearance Regulations, 2006, in exercise of its powers under the same provisions. Schedule to this Notification spells-out the list of projects or activities which require prior Environmental Clearance. Minor minerals were classified into two different categories. (i) where the mining lease area of more than 50 hectares was categorised as category 'A' project, while mining of an area of less than 50 hectare but more than 5 hectare was categorised as Category 'B' projects. Category 'A' projects required Environmental

Clearance from the MoEF, while category 'B' projects could be granted Environmental Clearance by SEIAA.

54. To this notification, certain objections were raised, which came to be clarified vide Circular dated 2nd July, 2007, whereby MoEF clarified that, all mining projects which did not require Environmental Clearance under the EIA Notification-1994 would continue to operate without Environmental Clearance till the mining lease falls due for renewal, and if, there is no increase in the lease area or enhancement of production.

55. This came to be amended vide notification dated 1st December, 2009, wherein amongst others, the Schedule-I was also amended. This notification made a distinction between non-coal mining lease and coal mining lease. Equal or more than 50 hectare of mining lease are in relation to non-coal mining lease with which we are concerned, required clearance from MoEF while more than or equal to 5 hectare but less than 50 hectare non-coal mine required clearance from SEIAA.

56. Thereafter, on 9th September, 2013, a Notification was issued under the relevant provisions of the Act and the Rules of 1986. By this Notification, Clause 4 of the Notification of 2006 was amended, i.e., for mining in respect of minor mineral, where the lease area was less than or equal to 50 hectares and greater than or equal to 5 hectares. In respect of other non-coal mine lease, the projects were to be treated as Category 'B' Projects, thus requiring Environmental Clearance from SEIAA. This Notification had been issued while

dispensing with the requirements of Clause (a) of Sub Rule 3 of Rule 5 in the public interest. In other words, inviting of the objections and dealing with them, in accordance with law, was waived. On 24th December, 2013, vide Office Memorandum, the Category 'B' Projects were divided into categories of 'B1' and 'B2' and guidelines in that behalf were issued. It was stated that the Project categorized as 'B1' will require Environmental Impact Assessment Report for appraisal and were to undergo public consultation process (as applicable). Projects categorized as 'B2' will be appraised based on the application in Form-I accompanied with the Pre-feasibility Report. While referring to earlier Office Memorandums in relation to brick earth and ordinary earth which termed some of them as 'B2' Projects, it also referred to the cluster situation and finally provided that river sand mining project with mine lease area of less than 5 hectares may be considered for granting Environmental Clearance on cluster basis. The river sand mining project within mining lease area of equal to or more than 5 hectares but less than 25 hectares were to be considered as B2 projects and were to furnish the required documents, subject to the conditions stated in that memorandum. From the above narrated events relating to issuance of Notifications, Office Memorandums and Circulars etc., it is clear that MoEF had been dealing with the entire situation on ad-hoc basis. Under the Notification of 2006, Clause 2, the Scheduled projects are to be divided only into two categories being category A and category B respectively. It does not contemplate any further

classification. However, Clause 7 of Notification of 2006 which primarily provides for the stages through which the project has to be cleared for grant and/or refusal of Environmental Clearance under 'Screening' states that, in case of Category B projects or activities at the time of scrutiny of application seeking Environmental Clearance, the State Expert Appraisal Committee is called upon to determine whether or not the project or activity requires further environmental study for preparation of an Environmental Impact Assessment for its appraisal prior to grant of Environmental Clearance depending upon the nature, location specificity of the Project. The project requiring Environment Impact Assessment Report shall be termed B1and remaining projects shall be Category B2 and will not require an Environmental Impact Assessment Report. The Ministry has been empowered to issue guidelines from time to time for categorization of projects into B1 and B2 except item 8(b) of the Schedule i.e. township and area development projects.

57. It needs to be noticed here that, vide Office Memorandum dated 24th June, 2013, it was declared that no borrowing of brick earth or ordinary earth shall be permitted in case the area of borrowing excavation is within 1 km from the boundary of national parks and wild life sanctuaries. Another exception to the grant of such permissions was that in case the area of borrowing/excavation is likely to result into a cluster situation i.e. if the periphery of one borrow area is less than 500 m from the

periphery of another borrow area and the total borrow area equals or exceeds 5 hectares, the activity shall become Category 'B 1' in terms of the Notification of 2006 and such operation will be permitted only if the Environmental Clearance has been obtained in respect of the cluster.

Finally the Central Government issued an Office Memorandum dated 24th December, 2013 stating it to be guidelines for consideration of proposals for grant of Environmental Clearance. Under this memorandum, they categorized 'B' category projects into two categories, i.e., 'B1' and 'B2' and thus, it amended the notification dated 9th September, 2013 to that extent. The Category 'B2' projects, in relation to Brick Earth/ordinary Earth, mining projects where lease area was less than 5 hectares were to be considered as per guidelines of 24th June, 2013 for granting Environmental Clearance. The river sand mining project with mining lease area of more than 5 hectares but less than 25 hectares were categorized as 'B2' projects subject to the conditions stated in that Office Memorandum.

58. This power to issue guidelines is not a general power but is a specific power with inbuilt limitations. The limitations are that, such guidelines would alone be for the purposes of categorizing upon scrutiny of applications, projects that would fall under Category 'B1' and 'B2' respectively with specific exclusion of the projects specified under Item 8(b) of the Schedule. Restrictive power to issue guidelines, is further illustrated, by the fact that Clause 2

of the Notification of 2006 does not contemplate any such categorization except projects falling under Category 'A' and 'B' only. The purpose appears to be that the power of State Level Appraisal Committees to bifurcate projects into 'B1' and 'B2' categories respectively should not be unguided and unchecked. Prescription of such guidelines could be done by issuance of appropriate Office Memorandum or orders as the power to issue such guidelines has been vested in MoEF under the statutory provisions. But the greater part of such Office Order or Office Memorandum should be such that it would not vary the content or be contrary to the statutory provisions which are in place by virtue of enacting such provisions either by primarily legislative or delegated legislative power.

59. It is a settled principle that legislature can only delegate to an outside body subordinate or ancillary legislative power for carrying out a policy of the act. The body to whom such power is delegated is required to act strictly within the framework of such delegated powers. Such power is incidental to the exercise of all powers in as much as it is necessary to delegate for the proper discharge of all the public duties. It is because the body constituted should act in the manner indicated in law and should exercise its discretion by following the procedure therein itself or by such delegation as is permissible. Unlike the situation the judges are not allowed to surrender their judgments to others. The legislature and executive can delegate powers within the framework of law. It is an axiom of Constitutional law that representative legislative bodies are given the legislative powers

because the representative Government vested in the persons chosen to exercise the power of voting taxes and enacting laws which is the most important and sacred trust known to civil Government. The Delegation has its own restrictions. For instance, the legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. A memorandum which is nothing but administrative order or instruction cannot amend or supersede the Statutory Rules adding something therein which would specifically alter the content and character of the Notification itself. It has been consistently reiterated with approval by the Hon'ble Supreme Court that administrative practice/ administrative order cannot supersede or override the statutory rule of Notification and it is stated to be a well settled proposition of law.

The delegated power is primarily for carrying out the purposes of the Act and this power could hardly be exercised to bring into existence a substantive right or obligation or disabilities not contemplated by the provisions of the Act or the primary Notification. A Constitution Bench of the Hon'ble Supreme Court in the case of *Sant Ram v. State of Rajasthan* AIR 1965 SC 1910, while dealing with the scope of executive instructions held that instructions can be issued only to supplement the statutory rules and not to supplant it. Such instructions should be subservient to the statutory provisions. They would have a binding effect provided the same has been issued to fill up the gaps between the statutory provisions and are not inconsistent with the said provisions. (Reference in regard to the above can be

made In Re: *The Delhi Laws Act*, 1912 AIR 1951 SC 332, *P.D. Aggarwal and Ors. v. State of U.P. and Ors.*, (1987) 3 SCC 622, *Ram Sharma v. State of Rajasthan and Anr.*, (1968) I ILLJ 830 SC, *Mahender Lal Jaine v. State of Uttar Pradesh*, (1963) Supp. 1 SCR 912, *Naga People's Movement of Human Rights v. Union of India*, AIR 1998 SC 431).

60. In the case before the Tribunal, specific challenge has been raised to the Office Memorandum dated 24th December, 2013 on the ground that it violates the above stated principles, in as much as by an Office Memorandum, guidelines for 'B1', 'B2' categories cannot be provided and thus, it runs contra to the statutory provisions. We may also notice here that vide this memorandum, besides providing guidelines for categorization of 'B1', 'B2' projects under Clause (iii) of paragraph 2, MoEF has taken a decision that river sand mining project with mine lease area of less than 5 hectares may not be considered for grant of Environmental Clearance and river sand mining projects with mining lease areas of equal or more than 5 hectares but less than 25 hectares will be categorized 'B2', that too subject to the restrictions stated in that Office Memorandum. Though, the applicants have primarily raised a challenge in regard to the former only, but bare reading of the Notification has brought before us the question in regard to the latter as well. Dealing with the former challenge afore-noticed, it is clear that Clause 7 of the Notification of 2006 provides for further categorization of projects falling under Category 'B' into 'B1' and 'B2'. Though Clause 2 of the said Notification does not contemplate any classification other than 'A' and 'B', but, there is no challenge raised before us to the

Notification of 2006 and we see no reason to go into that aspect. The Notification of 2006 *ex facie* permits classification of Category 'B' projects and that discretion has been vested in State Level Expert Appraisal Committee, which, upon scrutiny of the applications has to take the decision. This discretion vested in the Committee is ought to be controlled by the issuance of guidelines by MoEF. MoEF had issued two guidelines, one on 24th June, 2013 and the other on 24th December, 2013 in relation to further classification and criteria which is to be adopted in that regard. Since the Office Memorandum dated 24th June, 2013, only relates to brick earth and ordinary earth and as per that Office Memorandum, such projects where the excavation area was less than 5 hectares were to be categorized as 'B2' projects, subject to the guidelines stated therein they were to be screened in accordance with the Notification of 2006. Under Paragraph 4(b) of this Memorandum, restrictions were laid down prohibiting any excavation of brick earth or ordinary earth within one km of national parks and wild life sanctuaries as well as it intended to elaborate the cluster situation. If the periphery of one borrow area is less than 500 m from the periphery of another borrow area and the total borrow area equals or exceeds 5 hectares, the activity shall become Category 'B1' project in terms of the Notification of 2006 and such activity will be permitted only if the Environmental Clearance has been obtained in respect of the cluster. If we examine these two Office Memorandums in the light of the well settled legal principles that we have referred above, partially both these Office Memorandums cannot stand scrutiny of law. As far

as guidelines or instructions in relation to classification of projects falling under Category 'B' into 'B1' and 'B2' is concerned, the exercise of such power would be saved on the strength of Clause 7(1) of the Notification of 2006 because it is an Office Memorandum which provides guidelines for exercise of discretion by the State Level Expert Committee for such categorization. Thus, it is an exercise of executive power contemplated under the Notification of 2006. Hence the contention of the applicant on that behalf cannot be accepted and deserves to be rejected. However, in so far as the Office Memorandum dated 24th June, 2013 placing a prohibition under paragraph 4(b) (i) is concerned, it apparently is beyond the scope of such guidelines. Prohibition of carrying on of mining activity or excavation activity which is otherwise permitted by the Notification of 2006 cannot be done by an Office Order, because it would apparently run contra to the provisions of Notification of 2006. In other words, such restriction is not only beyond the scope of the power vested in MoEF but in fact imposition of absolute restriction in exercise of delegated power is not permissible. Similarly, the Office Memorandum dated 24th December, 2013 in so far as it declares that river sand mining of a lease area of less than 5 hectares would not be considered for grant of Environmental Clearance is again violative of the above settled principles. No such restriction has been placed under the Notification of 2006 or under the provisions of the Act and the Rules of 1986.The executive therefore, cannot take away the right which is impermissible under the principle or subordinate legislation. Of course, part of the same Paragraph 2(iii),

in so far as it categorizes 'B2' projects, covering the mine lease area equal to or more than 5 hectares but less than 25 hectares is concerned, the same cannot be faulted in view of the fact that it only provides a criteria or a guiding factor for determining the categorization of projects. It neither vests any substantive right, nor any obligation in relation to any matter that is not squarely or effectively covered under the Notification. This only furthers the cause of fair classification of projects, which is the primary purpose of the Notification. For these reasons, we quash paragraph 4(b)(i) of the Office Memorandum dated 24th June 2013 and part of paragraph 2(iii) in so far as it prohibits grant of Environmental Clearance to the mine area of less than 5 hectares as being violative of the Notification of 2006 and the Rules of 1986. The MoEF has no jurisdiction in exercise of its executive power to issue such prohibitions, impose restrictions and/or create substantive rights and obligations. It *ex facie* is not only in excess of powers conferred upon them, but, is also in violation of the Notification of 2006. As already noticed, this Notification has been issued by MoEF in exercise of powers conferred upon it under Clause 5 of sub section 2 of section 3 of the Act of 1986 read with sub rule 4 of rule 5 of the Rules of 1986.Vide this Notification, the Central Government substituted item no. 1(a) and entries relating thereto. A Clause stating that the projects relating to non-coal mine lease and where the mining area was less than 50 hectares equal or more than 5 hectares was to be treated as Category 'B' projects, in addition to that, the minor mineral lease projects, where the mine lease area was less

than 50 hectares, were also to be treated as Category 'B' projects, also, the general conditions with provisos were also substituted. It is significant to note here that the Notification of 2006 had been amended by the Central Government by issuing a Notification dated 1st December, 2009 in exercise of its delegated legislative powers. While issuing this Notification, the Central Government had followed the procedure prescribed under Sub Rule 2 and 3 of Rule 5 of Rules of 1986. It had invited objections from the public and considered those objections as is evident from the very recital of the Notification where it recorded "and where as all objection and suggestions received in response to above mentioned draft Notification have been duly considered by the Central Government……." and then it published the final Notification. Vide the Notification dated 1st December, 2009, the Central Government had substituted item no. 1(a) and the entries relating thereto of the Schedule to the Notification of 2006 besides making other amendments as well in different entries. However, while making further amendments vide Notification dated 9th September, 2013, the Central Government did not follow the prescribed procedure under Rule 5. On the contrary it substantially altered, and in fact substituted, as well as made additions of a substantial nature in Clause 4 and Clause 5 of the Notification of 2006, where, for the first time, it added minor mineral mine leases of less than 50 hectares, and also added 'general conditions to apply except for the projects where the area was less than 5 hectares in relation to minor mineral lease' and provisos thereto. The period for applying for renewal of mine lease

of one year was changed to two years under the Notification dated 9th September, 2013.

61. It is significant to note here that Sub Rule 4 of Rule 5 empowers the Central Government to dispense with the prescribed procedure under Sub Rules 2 and 3 of Rule 5 in public interest. Firstly, the Notification is entirely silent as to what was the public interest which was required to be served by dispensation of the prescribed procedure. Secondly, no material has been placed before us to show what the grounds were for invoking the exception carved out under Sub Rule 4 of Rule 5. Such justification has to be, both in fact and in law. Justification in support thereof, has to be in contradistinction to imperfect justification. The justification should be objective and need based. Public interest is an expression of definite connotation. The Courts, including the Hon'ble Supreme Court of India, have examined this expression in different contexts and fields. However, the essence of the expression has remained unchanged. 'Public interest' has been explained in different contexts differently with reference to the peculiar facts and circumstances of a given case. Usefully reference can be made to the following:

> "**Stroud's Judicial Dictionary, Vol. 4, Fourth Edn.:** A matter of public or general interest does not mean that which is interesting or gratifying curiosity or a love of information or amusement but in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.
> In the case of *Babu Ram Verma v. State of Uttar Pradesh through Commissioner and Secretary and others,* 1971 S.L.R. 649, the Allahabad High Court observed:

What is the meaning and scope of "Public interests"? Public interest in common parlance means an act beneficial to the general public. An action taken in public interest necessarily means an action taken for public purpose, public interest and public purpose are well-known terms, which have been used by the framers of our Constitution in Articles 19, 31 and 304(b). It is impossible to precisely define the expression 'public interest' or 'public purpose'. The requirements of public interest vary from case to case. In each case, all the facts and circumstances would require a close examination in order to determine whether the requirements of public interest or public purpose were satisfied.

In *Kalyani Stores v. State of Orissa,* 1966 SCR (1) 865, While discussing the reasonableness of the restriction and the requirement of public interest Shah J., speaking for the Court, made the following observations:-

"Reasonableness of the restriction would have to be adjudged in the light of the purpose for which the restriction is imposed, that is, "as may be required in the public interest". Without entering into an exhaustive categorization of what may be deemed required in the public interest", it may be said that restrictions which may validly be imposed under Article 304 are those which seek to protect public health, safety, morals and property within the territory."

In *Onkar Lal Bajaj and Ors. **v**. Union of India and Anr.,* (2003) 2 SCC 673, the Apex Court observed:

35. The expression 'public interest' or 'probity in governance' cannot be put in a strait-jacket. 'Public interest' takes into its fold several factors. There cannot be any hard and fast rule to determine what is public interest. The circumstance in each case would determine whether Government action was taken is in public interest or was taken to uphold probity in governance.

In the case of *Meerut Development Authority v. Association of Management Studies and Anr,* (2009) 6 SCC 171, the Supreme Court held as under:

67. The expression "public interest" if it is employed in a given statute is to be understood and interpreted in the light of the entire scheme,

> purpose and object of the enactment but in the absence of the same it cannot be pressed into service to confer any right upon a person who otherwise does not possess any such right in law."

From the above, it is clear that 'Public Interest' is an expression of general connotation which has to be interpreted in context of the facts of the case. However, in the present case, justifiable reasons had to be placed on record by MoEF to show that they have exercised their discretion in taking recourse to the exception in accordance with law.

62. It is noteworthy that the Notification dated 9th September, 2013 in its recital only records 'after having dispensed with the requirements of the Notification under Clause (a) of sub rule 3 of the said rule 5 in public interest'. Sub Rule 4 of Rule 5 is an exception to the 'rule of following the prescribed procedure'. The recourse to an exception of this kind cannot be made in a casual or routine manner. For instance, wherever recourse to emergency clause for acquisition of land is made and objections under Section 5(a) of the Land Acquisition Act are not invited. There, valid and proper reasons have to exist on record. In the case of *Gurinderpal singh and others v. State of Punjab*, Civil Appeal No. 10181 of 2013 (arising from SLP(C) No. 3916 of 2013)**,** the Hon'ble Supreme Court while referring to the judgment of the Hon'ble Supreme Court in the case of *Radhy Shyam v. State of Uttar Pradesh* (2011) 5 SCC 553, reiterated that invocation of emergency clause has to be in cases of real urgency. Even an argument of an action taken in response to a public demand for invoking urgency provision was rejected.

This would clearly demonstrate that invocation of the exceptions have to be on existence of real demanding and exceptional grounds and circumstances. The purpose of the prescribed procedure is to give notice to all the concerned persons, who are likely to be affected by issuance of a restriction, to file objections. Such objections have to be considered by the authorities objectively so as to make the law framed in exercise of subordinate or delegated legislation effective in the public interest and to provide for due safeguards in regard to the imposition of restriction in the interest of environment. The purpose is to provide more comprehensive study and objective application of mind to avoid subjectivity in accordance with Rules/Notifications. Thus, avoidance of the prescribed procedure cannot be in a mechanical process, which is devoid of proper application of mind, reasons and grounds.

The Notification proceeded to make substantive amendments to law taking recourse to the provided exception. However, grounds, reasons and object of dispensing with the prescribed procedure are conspicuous by their absence in the Notification or any record before the Tribunal. Dispensation of prescribed procedure can only be on justifiable grounds and in public interest. Reference can also be made to the dictum of the Hon'ble Supreme Court in the case of *Ram Dhari Jindal Memorial Trust vs. Union of India (UOI) and Ors.* (2012) 11 SCC 370:

> "The power of urgency by the Government under Section 17 for a public purpose like Residential Scheme cannot be invoked as a rule but has to be by way of exception. As noted above, no material is available on record that

justifies dispensation of enquiry under Section 5A of the Act. The High Court was clearly wrong in holding that there was sufficient urgency in invoking the provisions of Section 17 of the Act."

Resultantly, we quash the Notification dated 9th September, 2013 in its entirety.

63. The MoEF through Dr. V.P. Upadhayay and Dr. P.B. Rastogi both scientists had made a submission on behalf of the MoEF on 28th August, 2014, before the Tribunal to explain an opinion to put the contents of the Office Memorandum dated 24th December, 2013 beyond ambiguity.

64. From those submissions, it is clear that no Environmental Clearance would be granted for extraction of minor minerals, sand mining from any riverbed where the area is less than 5 hectares. This will amount to total prohibition of carrying on of minor mineral activity of extraction of sand from riverbed anywhere in the country. Such prohibition, as we have already noticed, cannot be imposed in exercise of executive powers in face of the Notification of 2006 which places no such restriction. Furthermore, it will depend upon geographical and ecological situations in a given case. India is a diverse country with varied geographical, ecological and environmental limitations and situations. If such a direction is required to be imposed then it must be backed by proper data and objective application of mind. For instance, in the State of Himachal Pradesh which is symbolic of all hill States, may find it very difficult to find a mining area equal to or more than 5 hectares on the riverbed. It may be practically difficult to find an area where the area of sand mining is 5 hectares or more. It was

contended before us that if this restriction is to be imposed across the States, then it would be very difficult for the State of Himachal Pradesh to permit any sand mining on the riverbed in its entire State. For extraction of sand and other minor minerals, river/seasonal rivers are the main source in the State of Himachal Pradesh. This argument has to be considered with some merit. Again, neither the Office Memorandum dated 24th December, 2013 discusses any of these issues, nor it provides any data which was the foundation for issuing such Office Memorandum. Furthermore, no material in that regard is placed before the Tribunal. Therefore, we find that this restriction is without any basis and is incapable of being imposed through an Office Memorandum. The minor mineral mining activity, other than sand mining, on riverbed was permitted in the sense that for such activity even areas less than 5 hectares could be considered for grant of Environmental Clearance.

65. Now, we revert to the case advanced on behalf of the respective States in relation to the reliefs prayed by the applicant. According to the Applicant in Original Application No. 171/2013, rampant illegal mining is going on in different parts of the country particularly, the States involved in the present petition and there is clear violation of the orders passed by Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) and orders of the Tribunal. As already noticed most of the States have denied that there is any illegal or unauthorized mining which is being carried on, particularly, on the riverbeds. However, this contention of the State Governments does not appear to be absolutely

correct. Besides this, applicant made specific averments and even placed documents to show that illegal and unauthorized sand mining, particularly, in the riverbeds is being carried on in different locations where the area was less or even more than 5 hectares. Certain States have even filed affidavits, which we have referred above, wherein it was stated that large number of cases of illegal mining have been detected and State Governments have taken action against such persons, as well as, huge amount of revenue on account of royalty or otherwise has been recovered. There is apparently some dispute between the State of Himachal Pradesh and Punjab in regard to where and who is carrying on such illegal mining. According to one State, the activity is being carried on in the area of other State, exactly contra is the stand of the other State. Whatever be the correctness of these averments, fact of the matter remains that at the border of Himachal Pradesh and Punjab, illegal mining is going on, causing degradation of environment and ecology as well as loss of the revenue to the concerned State. In furtherance to the order of the Tribunal during the pendency of these applications, it was also noticed by the inspecting team that illegal mining was going on at the border of the two States.

66. According to the State of Himachal Pradesh, though they have not carried out any amendments to their State Rules after the pronouncement of the Judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), but they have issued Policy of 2013 which brings it in conformity with the recommendations of MoEF and directions of the Hon'ble Supreme Court in the case of *Deepak Kumar*

(supra). Under this scheme, the removal of over-accumulated sand from the riverbeds even in the area of 1 hectare is allowed. However, this direction was kept in abeyance because of the orders of the Tribunal. In other words, the State of Himachal Pradesh, under its policy, is permitting carrying on of minor mineral activity (sand mining) on the riverbed in areas of 1 hectare, which is obviously less than 5 hectares. As already noticed, an attempt was made on behalf of the State of Himachal Pradesh to justify this policy on the ground of necessity, but fact of the matter remains that this policy and the practice followed by the State of Himachal Pradesh is in direct conflict with the order of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) as well as the Office Memorandum issued by MoEF so far.

State of Himachal Pradesh, while granting lease in terms of Rule 14 of Rules of 1971, had also allowed grant of mining lease in relation to any area which is not compact and contiguous, for the reasons to be recorded in writing, in the interest of development of any mineral, if the State Government feels it to be necessary.

67. The State of Karnataka claims to have amended its Rules of 1994 after the passing of the Judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra). In terms of these Rules, minor minerals mining in area of less than 5 hectares has been permitted, by either cluster mining or mining in the minimum specified area, which is, 10 acres, i.e., less than 5 hectares. In regard to other minor mineral mining even in the areas less than 5 hectares but subject to grant of

Environmental Clearance. The holders of existing mining lease for sand mining, even in the areas less than 5 hectares, have been granted one year to take Environmental Clearance w.e.f. 16th December, 2013. Environment Management Plan is to be submitted which has to be approved by a regional authority which has now been given up by the States and consent/Environmental Clearance is to be granted by SEIAA/MoEF only. Reference can be made to the Rules:

> "**8Q. Environmental Management Plan for individual or clusters of leases / licenses / working permission/sand tender areas.-**
>
> Every holder of lease / license / working permission shall prepare an Environment Management Plan through recognized qualified person and submit to the Regional Environment Management Committee/State Environment Impact Assessment Authority/Ministry of Environment and Forest as the case may be for approval and the lessees / licensees / permission holders of a cluster shall submit a collective Environment Management Plan through cluster association within a period of three months of formation of cluster association.
>
> Provided that the existing holder of lease/license/working permission having an area less than stipulated shall form the cluster association and submit collective EMP within one year from the commencement of these rules.
>
> However in case of sand, the Environment Management Plan shall be prepared through recognized qualified person and submitted to the Regional Environment Management Committee/ SEIAA/MoEF as the case may be for approval by Deputy Director / Senior Geologist concerned.
>
> Provided, that in respect of plans within its purview, the Regional Environment Management Committee may extend the above period up to a further period of six months by recording the reasons."

Instructions issued by the State of Karnataka through its Video Conferencing are also not in conformity with law. They had permitted continuation of mining activity without obtaining Environmental Clearance for a period of one year from 16th December, 2013. That period of one year is now over. Thus, in any case, nothing would survive for consideration resulting from the said video conference. The obvious result would be whether, Environmental Clearance is required for persons carrying on mining activity in an area of less than 5 hectares, through cluster mining or otherwise?

68. State of Rajasthan has also amended its Rules after the judgment of the Hon'ble Supreme Court in *Deepak Kumar* (supra). Rajasthan Minor Mineral Concession Rules, 1986 were amended by Notification dated 3rd May, 2012. Under these Rules, there are three most noticeable aspects. First relates to permission for carrying on mining activity in an area of less than 5 hectares, that too without obtaining the Environmental Clearance from SEIAA/MoEF. It has created District Level Environmental Committees to whom application of Environmental Clearance is to be moved and which has to recommend grant/refusal of such clearances. It has permitted cluster-mining by stating that an Environmental Management Plan could be submitted for such cluster mining and permits could be given for an area of less than 5 hectares. The short-term permit holders of the lease in clusters were required to form an association and file applications along with the Environment Management Plan to the District Committee for approval in terms of Rule 37P. Under proviso to this Rule, the permit

holders of short-term permits within the boundary of the cluster after formation of the association will be deemed to be members of the association. All these three issues are not in conformity with the law in force and the judgment of the Hon'ble Supreme Court. Secondly, they also suffer from the infirmity of imposing obligations on a person who may not be desirous of becoming a member of the association within the cluster boundaries. In our considered view, the 'deeming fiction' contained in proviso to Rule 37Q would not stand the scrutiny of law. It is in fact impractical as well as unsustainable. This would encourage what the Hon'ble Supreme Court has specifically discourage in the case of *Deepak Kumar* (supra) that persons carrying on mining activity should not be permitted by creating smaller segments of the areas of the mining activity and then forming a cluster or even without forming the clusters carrying on the mining activity degrading the environment and ecology of the area. The Rules amended by the State of Rajasthan thus, are not in line with the dictum of the Hon'ble Supreme Court and even the Notifications issued by the MoEF including the Notification of 2006.

69. The Union Parliament is vested with the powers of making laws for regulation and development of mines and minerals so far they are expedient in public interest. Similarly, legislative power is vested in the State but it is subject to the provisions of List I. The Parliament having enacted the Act of 1957, the Rules for regulation that can be framed by the State Legislature under Section 15 of the said Act has to be compliant of the Parliamentary legislation. In other words, whatever

rules are to be framed by the State Government, they should be in conformity with the Act of 1957 as well as with the Act of 1986. In terms of Article 141 of the Constitution, the Judgment of the Hon'ble Supreme Court is the law of the land and is binding on all concerned. The State Government while framing Rules in exercise of powers of delegated legislation has to be conscious of the fact that such legislation is expected to be in conformity with the law of the land as declared by the Hon'ble Supreme Court. The said Rules thus, so framed have to be in conformity with all, the two enactments, i.e., the Act of 1957 and Act of 1986 and Judgment of the Hon'ble Supreme Court. The constitution of District Level Environmental Committee for the purpose of considering and approving the Environment Management Plan in terms of proviso to Rule 37(Q) is another provision that requires consideration. Under the Notification of 2006, the projects whether falling in category 'A', 'B', 'B1'or 'B2' have to be considered for the purposes of grant of Environmental Clearance and other related matters by MoEF/SEIAA. The District Level Committee is neither framed under the provisions of the Act or Rules of 1986 and for that matter, nor under the Notification of 2006. Once the law provides for a particular procedure to be done or undertaken in a particular manner and by a specified authority, then it can be done in that manner alone by that authority and not in any other way. Even in the case of *Deepak Kumar* (supra), the Hon'ble Supreme Court had permitted consideration of Environmental Clearance application only by SEIAA or MoEF. It was contended that such Committees were only

expected to recommend the cases to SEIAA and not to grant or refuse Environmental Clearances. Firstly, this submission is not supported by any of the Rule. The Rules 37P and 37Q clearly requires that an Environmental Management Plan for cluster would be approved by the Committee. In that context, the expression 'approval' cannot be granted, any other meaning except that a final 'decision' in that regard will be taken. Once approval is granted by the District Level Environmental Committee, it is impractical to imagine, how it would be able to decline Environmental Clearance. In other words, it is a machinery created by the Rules which is in derogation to the Principle legislation and the Notification of 2006.

70. At this stage, we may revert to the judgment of the Tribunal dated 28th November, 2013, in the case of *National Green Tribunal Bar Association* (supra). In this judgment, the Tribunal specifically rejected the contention of the State of Madhya Pradesh that in view of Rules 42 to 49 and 68 of the Madhya Pradesh Minor Mineral Rules, 1996, the State has given authority to the District Level Environmental Committees to grant lease or license in accordance with the Rules. Amendment of the Rules, by the State Governments, cannot be done so as to entirely wipe out the impact, effect and procedure prescribed in the Central law. The District Level Environmental Committees so constituted have to perform their functions under the Act of 1957 and the Rules framed therein. The Act does not empower the State authorities to grant Environmental Clearance. The Tribunal further held that the appropriate way to read and interpret these Sections

would be that such powers are to be exercised in relation to environment but primarily for the purposes of granting or refusing mining leases or licences. The consideration and grant of Environmental Clearance is statutorily regulated by the Notification of 2006 and the State Government would not be competent to alter or completely give a go-by to the said statutory procedure and methodology, the Environmental Clearance has to be granted in accordance with the Central law. Thus, the contentions raised in the present case on similar lines cannot be accepted by us as well.

71. The Hon'ble Supreme Court had permitted preparation of Mining Plan primarily with the object of providing for reclamation and rehabilitation of the mined out area. It was to deal with progressive mine closure plan and post mined land of use. The Judgment of the Hon'ble Supreme Court had also dealt with cluster mining approach for small size mines. The purpose of adopting cluster approach with reference to small mine leases was to take care of preparation of Environmental Management Plan in clusters of mines, where the mining activity was being carried out in smaller areas. The Hon'ble Supreme Court accepted the recommendation of MoEF in regard to the above. The Hon'ble Supreme Court specifically noticed, what was pointed by the CEC to examine, whether there has been an attempt to flout the Notification of 2006 by breaking of homogenous area into pieces of less than 5 hectares. The Hon'ble Supreme Court upon taking note of the recommendations of MoEF which were passed on technical, scientific and environmental grounds, had directed the State

Governments to implement the recommendations. They were directed to get the Mining Plan prepared as afore-noticed. Besides all these, the Hon'ble Supreme Court had directed that lease of minor minerals, including their renewal, for an area of less than 5 hectares is granted by the said Union Territories/State only after getting Environmental Clearance from the MoEF.

From the above discussion, it is clear that there is apparent contradiction between the Rules framed by the State under the shelter of the Judgment of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) on the one hand and the Central Law and Notifications on the other. This has created uncertainty in fact and in law. To put it more plainly, the actions taken by the State Governments post the case of *Deepak Kumar* (supra) has created more problems than it ought to have solved by the Hon'ble Supreme Court in its judgment. Thus, the State Government and MoEF needs to examine the matter collectively, objectively and with an intent to bring uniformity in law. We would issue directions in this regard separately.

72. India is not only a diverse country in relation to culture, language and character, but, it is also materially distinct and different in relation to geography, ecology and environment. Narrow rivers in the mid of the hills, limited riverbed space, snowing peaks and high altitude on the one hand and on the other huge river and riverbed, wide field areas are the indicators of this diversity. It may be difficult to have a uniform policy or law in relation to activities, like mining, particularly minor minerals, which have a very serious impact on the

environment, ecology and river flow. There is a dire need to formulate the laws which may be State specific but do not degrade or damage the environment and ecology. Any damage to the environment and ecology may be happening in one State but its adverse impacts would be seen on the entire nation. Therefore, there is a need for an effective and protective Central Legislation which will not only protect the environment in a particular area but the entire Indian Territory.

73. Another incidental but material issue that would fall for consideration is that whether State Rule providing for mining activity to be carried on in an area of less than 5 hectares would cause environmental concerns, particularly when no Environmental Clearance is obtained for the same.

This has to be answered in the affirmative. Indiscriminate, uncontrolled and unregulated mining activity being carried on in any area, particularly the riverbed, is bound to have an adverse impact on ecology and environment. These adverse impacts can be seen in two different and distinct manners. Firstly, uncontrolled and unregulated mining on the riverbed would adversely affect ground water and if the mining is carried on in excess of the specified depth, then, it would affect the course of the river. Secondly, it would also be a concern in relation to floods and may result in failure of flood protective measures. Mining of minor minerals, including sand mining, not only on the riverbed, but, even on other sites, has to be carried out in a regulated manner and under the effective supervision of the regulatory bodies. The law has created a complete regulatory regime for carrying

on of mining activities and that mechanism should be adhered to as otherwise the obvious consequences thereof would be prejudicial to the environmental interests of the country.

74. Another argument that has been advanced on behalf of the States, as well as, some of the respondents is that the Notification published by MoEF dated 9th September, 2013, which makes it compulsory for the minor mineral mining lease holders of area of less than 5 hectares to seek Environmental Clearance is not retrospective and therefore, will not be applicable to the mine leases that were in force as on that date. Firstly, we have already quashed and declared the Notification dated 9th September, 2013 as ineffective and inoperative, having not been issued in consonance with the provisions of law. As such, this argument would hardly survive. Since this argument may have some bearing even in relation to the other Office Memorandums issued by MoEF or on other Notifications validly issued by MoEF such as the one dated 1st December, 2009 and Office Memorandum of 24th June, 2013 and 24th December, 2013, we will even proceed to discuss the merits of this submission.

75. The environmental laws are laws enacted for the benefit of public at large. They are socio-beneficial legislation enacted to protect the environment for the benefit of the public at large. It is in discharge of their Constitutional obligation that such laws have been enacted by the Parliament or by other authorities in furtherance to the power of delegated legislation vested in them. These legislations and directives are incapable of being compared to the legislations in the field of

taxation or criminal jurisprudence. These laws have been enacted to protect the Fundamental Rights of the citizens. Thus, the contention that the existing mine holders would not be required to comply with the requirements of environmental laws, cannot be accepted. To illustratively examine this aspect, we may take a hypothetical situation, not far from reality. An industrial unit which had been established and operationalized prior to 1974, 1981 and/or 1986, was granted permission under the laws in force and the unit owner had made heavy investments in making the unit operational. The Water (Prevention and Control of Pollution) Act came into force in 1974, Air (Prevention and Control of Pollution) Act in 1981 and Environment (Protection) Act in 1986. All these Acts deal with existing units as well as the units which are to be established in future. These laws granted time to the existing units to take all anti-pollution measures and obtain the consent of the respective Pollution Control Boards to continue its operations. Failure to do so, could invite penal action including, closure of industry under these Acts. The said Unit should not be permitted to contend that since it was an existing unit, it has earned a right to pollute the environment and cause environmental pollution, putting the life of the others at risk, on the ground that it was an existing unit and was operating in accordance with law. Such a contention, if raised, would have to be noticed only to be rejected. Similarly, these Notifications or Office Memorandums, having been issued under the environmental laws, would equally apply to the existing industries as well. The directions contained in these

Notifications and Office Memorandums which are otherwise valid, would equally operate to the existing mines as well as the newly undertaken mining activities. All that the law would require, is to give them some reasonable time to comply with the requirements of law, wherever a specific time is not provided under the Act or the Notification. Obviously, these laws *stricto sensu* are not retrospective, as they do not abolish or impair any vested rights under the existing laws. However, these laws impose a new obligation without taking away the vested right. In that sense and somewhat loosely, it can be interpreted as being retroactive in nature, as they do not take away the right of the person to carry on business or his industrial unit, but only impose a new obligation to take Environmental Clearance under the environmental laws. The activity is not prohibited, but, compliance to the environmental laws is made mandatory. Examined from that angle, in so far as we have held, the Notification dated 1st December, 2009, Office Memorandums dated 18th May, 2012, 24th June, 2013 and 24th December, 2013, except to the extent they have been quashed as above by us, are valid and would be enforceable against even the existing mining lease holders. They cannot be permitted to destroy the environment and ecology for their personal gains on the strength of the contention that they are existing units and these Notifications, Office Memorandums would not apply to them.

State of Karnataka has already given a one year time to the existing mine lease holders to comply with the requirements of obtaining Environmental Clearance. Similarly, the State of Rajasthan

and Himachal Pradesh should also direct the existing mine lease holders to take Environmental Clearance, irrespective of their area of mining. The Hon'ble Supreme Court in the case of *Deepak Kumar* (supra) has clearly directed that the miners possessed of mining area of less than 5 hectares cannot operate without taking Environmental Clearance. This would unexceptionally apply to the new units, but, in our considered view, would also apply to the existing mine lease holders as well; except that they would have to be given time to comply with the requirements of law.

Sunil Acharya

76. We have already noticed above that Appeal No. 23/2014 has been filed by Mr. Sunil Acharya – Appellant, on the premise that there has been diversion of 64 hectare forest land for mining of marble near village Kothara, District Banswara. The District Collector vide letter dated 29th February, 2012 had issued a certificate with regard to such diversion in favour of 16 lease holders. The Government of India had directed the Assistant Engineer, Mining to comply with the certain conditions in compliance vide letter dated 13th February, 2012.

According to the applicant, indiscriminate mining of marble was carried on and, therefore, he prayed that the respondents should be directed to ensure that no mining work is done by respondent nos. 1 to 7 (in whose favour the mining lease has been granted). The private respondents, in fact, stated to have been given 4 hectares of mining area, each with an intent to circumvent the law and avoid seeking Environmental Clearance. According to the applicant, the entire

mining activity was being carried on illegally and in an unauthorised manner.

77. Each of the private respondents had filed independent M.As. like M.A. No. 469/2014 praying that the ex-parte stay granted by the Tribunal on 10th July, 2014 be vacated. It is admittedly a case where the forest land has been diverted for carrying on the marble mining activity. The private respondents have also claimed that they have been carrying on the mining operation since 29thNovember, 2012 till its closure on 14th July, 2014. Further, according to these private respondents, they have already applied on 24th March, 2014 for seeking Environmental Clearance in terms of the Notification dated 9th September, 2013.

These private respondents have the permission for diversion of the forest area for carrying on mining activity which is stated to have been granted by the competent authority and still these private respondents claimed to have applied for seeking Environmental Clearance despite the fact that the mining area is less than 5 hectares. If that be so, it is not necessary for us to examine the various controversies raised by the parties in these applications. Though, we have already dealt with the various legal issues that arise in these cases at length above.

78. Be that as it may, Appeal No. 23/2014 as well as M.A. No. 469/2014, M.A. No. 469 of 2014, 470 of 2014, 473 of 2014 479 of 2014, 480 of 2014 488 of 2014, 489 of 2014 can be disposed of merely by a direction to the concerned authorities to consider and dispose of

these applications for grant of Environmental Clearance expeditiously. The mining activity of all these respondents has been prohibited under the orders of the Tribunal, primarily on the ground that they have not received Environmental Clearance. If they have the permission for conversion of forest land and they obtained the Environmental Clearance for carrying on mining activity, in accordance with terms and conditions of the Notification of 2006 and other applicable Notification/Office Memorandums, then, they can obviously carry on their activity of marble mining in accordance with law. If applications are filed as cluster and the total extent of the cluster exceeds 5 hectares, the entire cluster will be taken as a unit for granting Environmental Clearance, subject to all the owners joining the cluster application.

79. Thus, we direct the respondent authorities, particularly SEIAA, to dispose of the applications of all these private respondents seeking Environmental Clearance as expeditiously as possible, in any case not later than three months from today. Thus, Appeal No. 23/2014 and M.A. No. 469/2014, M.A. No. M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014, and 469/2014 stand disposed of with the above directions. We further direct that till the grant of Environmental Clearance they would not carry out any activity of marble mining

Himmat Singh

80. In Original Application No. 123/2014, the challenge has been raised to the guidelines issued by the Government of Rajasthan dated

8th January, 2014 and to the Office Memorandum issued by MoEF on 24th December, 2013. The challenge, as already referred by us above, is primarily based on the ground that attempt of both these documents is to permit illegal and unauthorised mining activity by directly auctioning and permitting mining in the areas less than 5 hectares or even between 5 to 25 hectares. Such action, being contrary to the very scheme under the Notification of 2006 and order of the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra), the Tribunal had granted an injunction for carrying of mining activities without obtaining proper mining lease, Environmental Clearance and other requisite permissions, in accordance with law.

81. In this application, M.A. No. 419/2014 was filed by various applicants, including the project proponent - Larsen and Toubro Ltd., praying therein that SEIAA be directed to consider the application for Environmental Clearance filed by the applicant in respect of the mining of minor minerals in areas which were owned/ were under the mining lease of the applicants. According to these applicants, they are only carrying on the activity of brick earth and ordinary earth excavation for the purposes of completing the project of construction of railway line of the portion of the Dedicated Freight Corridor from Rewari in Haryana to Iqbalgarh in Gujarat running along a length of 626 kms. on design build lumpsum price basis. The project involves formation in embankment/cuttings, bridges, structures, buildings, ballast on formation and track work, including testing and commissioning. The work comprises of railway track along a length of

626 kms, 110 major bridges, 1229 minor bridges and 20 stations. According to the applicants, they were not covered by the injunction order passed by the Tribunal, in as much as, the areas of lease mine holders were less than 5 hectares and in alternative, all of them had applied for taking Environmental Clearance as they are category 'B2' projects in terms of Office Memorandum dated 24th June, 2013. The challenge to the Office Memorandum dated 24th December, 2013 is also raised on the ground that though the Office Memorandum refers to the report of the Committee constituted by MoEF vide its Office Memorandum dated 30th January, 2013 but that Committee had not made any recommendations in regard to the criteria that should be adopted for categorisation of the projects as 'B1' and 'B2' respectively. Factually, it is correct that the report of the Committee in its recommendations has not made any recommendations in regard to the bifurcation of 'B' category projects into 'B1' and 'B2'. However, there is some discussion in the opening paragraphs of the report in that behalf. Once, Clause 7 of the Notification of 2006 empowers MoEF to issue guidelines on that behalf then such jurisdiction cannot be taken away on the ground that the Committee constituted by the Ministry did or did not make a particular recommendation. Of course, it is always more appropriate to issue Notifications/Office Memorandums which are based and are supported by scientific reason, but, that does not mean the absence thereof would vitiate office memorandums, which, otherwise have been issued in accordance with law and within the framework of the power vested in the MoEF. Therefore, we are

unable to accept the contention of the applicants that this Office Memorandum should be quashed or declared invalid in its entirety on that ground alone.

Therefore, in their application, the only prayer is that their application for grant of Environmental Clearance should be considered expeditiously to avoid any prejudice to the progress of the projects. In view of the limited prayer made in this application, it is not necessary for us to again deliberate much on this application.

82. We dispose of this application with a direction that SEIAA shall consider these applications filed for seeking Environmental Clearance, in accordance with law and observations made in this judgment, expeditiously and in any case within a period of three months from today.

83. In light of the above discussion and particularly keeping in view the persistent conflict between the State Regulations and the Central Notifications, it is imperative for us to issue directions specially to provide for an interim period, during which appropriate steps should be taken to comply with the Judgment of the Hon'ble Supreme Court and to issue Notifications which are necessary in that regard. Therefore, we pass the following order and directions:

I. For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and

for absence of any justifiable reason for dispensation of such procedure.

II. We also hold and declare that the Office Memorandums dated 24th June, 2013 and 24th December, 2013 to the extent afore-indicated are invalid and inoperative being beyond the power of delegated legislation.

III. All the Office Memorandums and Notifications issued by MoEF i.e. 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013(except to the extent afore-stated) are operative and would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.

IV. We further hold that the existing mining lease right holders would also have to comply with the requirement of obtaining Environmental Clearance from the competent authorities in accordance with law. However, all of them, if not already granted Environmental Clearance would be entitled to a reasonable period (say three months) to submit their applications for obtaining the same, which shall be disposed of expeditiously and in any case not later than six months from pronouncement of this judgment.

V. All the States and the Ministry of Environment and Forest shall ensure strict compliance to the directions issued by the Hon'ble Supreme Court in the case of *Deepak Kumar* (supra). We direct Secretary, Ministry of Environment and Forest to hold a

meeting with the State of Rajasthan, Himachal Pradesh and Karnataka to bring complete uniformity in application of the above referred Notifications and Office Memorandums including the Notification of 2006.

VI. We direct that in the meeting it shall also disused and appropriate recommendations be made and placed before the Tribunal, as to whether riverbed mining covering an area of less than 5 hectares can be permitted, if so, the conditions and regulatory measures that need to be adopted in that behalf.

VII. We direct that the District Environmental Committees constituted by the respective State Governments shall not discharge any functions and grant approval as contemplated under the Notification of 2006.

VIII. Secretary, Ministry of Environment and Forest along with such experts and the States afore-referred will also consider the possibility of constituting the branches of SEIAA at the district or at least, division levels, to ensure easy accessibility to encourage the mine holders to take Environmental Clearance expeditiously.

IX. It is stated before us that in large number of cases, particularly in relation of State of Rajasthan, persons carrying on mining activity of minor minerals, non-coal mining and brick earth and ordinary earth have applied for obtaining Environmental Clearances in accordance with the terms and conditions of the Notification of 2006. Let all such applications be dealt with and

orders passed by the concerned authorities at the earliest and in any case not later than six months from today.

X. We direct the respondent authorities, particularly SEIAA, to dispose of the application of all these private respondents who have already filed applications seeking Environmental Clearance as expeditiously as possible, in any case not later than three months from today. Thus, Appeal No. 23/2014 and M.A. No. 469/2014, M.A. No. M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014 and 469/2014 stand disposed of with the above directions. Till the grant of environmental clearance they would not carry out any activity of marble mining.

XI. We dispose of Original Application No. 123/13 with a direction that SEIAA shall consider the applications filed for seeking Environmental Clearance in accordance with law and observations made in this judgment, expeditiously, and in any case within a period of three months from today.

XII. In the meanwhile, no State shall permit carrying on of sand mining or minor mineral extraction on riverbed or otherwise without the concerned person obtaining Environmental Clearance from the competent authority.

XIII. We direct the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid

unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws.

XIV. In light of the judgment of the Supreme Court and what has emerged from the various cases that are subject matter of this Judgment, we direct the Ministry of Environment and Forest to formulate a uniform cluster policy in consultation with the States for permitting minor mineral mining activity including, its regulatory regime, in accordance with law.

84. For the reasons afore stated, we dispose of the Original Applications, Appeal and Miscellaneous Applications filed by different parties in all those Original Applications and Appeal, in terms of above directions, while leaving the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice M.S.Nambiar
Judicial Member

Dr. D.K. Agrawal
Expert Member

Order: This case was heard by a Bench consisting of Hon'ble Mr. Justice Swatanter Kumar (Chairperson), Hon'ble Mr. Justice M.S. Nambiar (Judicial Member), Hon'ble Dr. D.K. Agrawal (Expert Member) and Hon'ble Dr. R.C.

Trivedi (Expert Member). After the judgment was reserved, but, before its pronouncement, unfortunately, Dr. R.C. Trivedi, Learned Expert Member expired and left for heavenly abode on 26th December, 2014. Thus, the present judgment is being signed only by the remaining Members of the Bench.

New Delhi
13th January, 2015