

(2025) 05 SC CK 0309

In the Supreme Court Of India

Case No : Civil Appeal No. 14170 Of 2024

State Of Uttar Pradesh & Anr

APPELLANT

Vs

Gaurav Kumar & Ors

RESPONDENT

Date of Decision : 08-05-2025

Acts Referred:

Constitution of India, 1950 — Article 21, 48A, 51A(g)National Green Tribunal Act, 2010 — Section 14, 18Mines and Minerals (Regulation and Development) Act, 1957 — Section 2Environment Protection Act, 1986 — Section 3, 3(2)(v), 5

Citation : (2025) 05 SC CK 0309

Hon'ble Judges : Pamidighantam Sri Narasimha, J;Manoj Misra, J

Bench : Division Bench

Advocate : Vishnu Shankar Jain, Vanshdeep Dalmia, S.P. Singh, Revathy Raghavan, Kavya Roy Choudhury, B.N. Thakur, Ashish Pratap Singh, Rohit Gupta, Ajit Sharma, Kanchan Kumar, Yuvrajsinh C Solanki, Lareb Habib Ansari, Pradeep Misra, Tejaswi Kumar Pradhan

Final Decision : Dismissed

Judgement

Pamidighantam Sri Narasimha, J.

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1. Affirmation:

We unequivocally uphold the law and the regulations governing sand mining, demanding zero tolerance for unauthorized activities, strict adherence to these regulations is non-negotiable.

1.1. Unregulated sandmining disrupts riverine ecosystems, alters natural flow patterns, and leads to erosion and habitat loss. Aquatic biodiversity suffers as spawning grounds are destroyed and water quality deteriorates. The destabilisation of riverbanks increases flooding, risking human life and animal habitat alike. Moreover, the illicit sand trade often operates under the shadow of organised crime, undermining the rule of law and weakening governance structures. Therefore, absolute standards with get tough policies, strict enforcement and quick accountability are compelling for effective regulatory control.

1.2. We have upheld the decision of National Green Tribunal "NGT" quashing e-auction notice dated 13.02.2023 issued by the State Government for sand mining and the consequent grant of Letters of Interest (LOIs) in favour of successful bidders on the ground that the auction was conducted in the absence of a valid, final and a subsisting District Survey Report (DSR). We have also held

that a Draft DSR is not tenable. A draft DSR can never be the basis for a recommendation by the District Level Expert Appraisal Committee (DEAC) and for the District Level Environment Impact Assessment Authority (DEIAA) for B2 category projects pertaining to mining of minor minerals lease area less than or equal to five hectares to grant environment clearance.

2. Facts:

District Magistrate, Saharanpur issued notice inviting e-tenders on 13.02.2023 for sand gravel, boulders, etc. available in the riverbed in Saharanpur district under the U.P. Sub Mineral (Remedy) Rules, 2021. Questioning the legality and validity of the e-auction notice, respondent no. 1, a resident of Haryana approached the National Green Tribunal by filing an original application invoking section 14 and 18 of the National Green Tribunal Act contending that the e-auction notice is illegal as there was no District Survey Report (DSR) as on that date. It was his contention that the last DSR for the Saharanpur district of 2017 expired in the year 2022. Thereafter, steps were taken to prepare a DSR for the succeeding 5 years for Saharanpur district, but only a draft DRS was ready by 13.01.2023. However, even before its finalization, the impugned e-auction notice was issued by District Magistrate, Saharanpur on 13.02.2023 which according to the respondent no. 1 is illegal and unsustainable in law.

3. Proceedings before the NGT leading to Civil Appeals & Submissions:

NGT vide order dated 13.03.2023 constituted a Joint Committee comprising of Central Pollution Control Board (CPCB), State Pollution Control Board (UPPCB) and District Magistrate, Saharanpur (D.M.) to collect relevant information and submit a factual report. The Joint Committee submitted its report on 10.07.2023 indicating that pursuant to the e-auction notice dated 13.02.2023 Letters of Interest (LOI) were issued with respect to 14 sites for river bed mining. Accordingly, the NGT impleaded the parties holding LOIs as party respondents to the original application.

3.1. Pending further proceedings before the NGT, the State Expert Appraisal Committee (SEAC) considered the draft DSR and accorded its approval on 03.05.2024 and then, the State Environment Impact Assessment Authority (SEIAA) granted its approval to the fresh DSR in its 814th meeting on 24.05.2024.

3.2. However, in view of the fact that the last subsisting DSR issued in 2017 expired after five years, i.e. by 2022 and that only a draft DSR dated 13.01.2023 was subsisting when the impugned e-auction notice dated 13.02.2023 was issued, the NGT quashed the auction on the ground that it is in violation of the legal mandate under the 2006 EIA Notification, as amended in 2006, 2018 and also the Enforcement and Monitoring Guidelines for Sand Mining, 2020 and decision of this Court in *State of Bihar v. Pawan Kumar* (2022) 3 SCC 102. Hereinafter, "Pawan Kumar".

3.3. Questioning the legality and validity of the judgment of the NGT, 3 appeals are filed before us. The first Civil Appeal No. 14170 of 2024 is by the State of U.P., represented by Ld. ASG Aishwarya Bhati, assisted by Mr. Vishnu Shankar Jain. In the other Civil Appeal No. 14933 of 2024 and Civil Appeal No. 14000 of 2024 by M/s Vedanta Associates and Nutressaorganics India Pvt. Ltd., LOI holders, we have also heard Mr. Ranjit Kumar, Sr. Advocate, ably assisted by Mr. Vanshdeep Dalmia and also Mr. S.P. Singh, Sr. Advocate respectively.

3.4. Having considered submissions of the Ld. Counsels for the appellants in detail and having examined the relevant documents and material on record we had agreed with the reasoning and the conclusions drawn by the NGT and therefore proceeded to dismiss the civil appeals By order dated 12.02.2025. By way of this judgment, we supply detailed reasons for our decision.

4. Sandmining and its impact on Environment:

Sand holds significant ecological and environmental value. Coastal dunes, river, and seabeds act as natural buffers against storms, floods, and rising sea levels, thereby enhancing climate resilience. Sand also supports vital ecosystems by providing habitat for numerous plant and animal species, including microorganisms crucial to nutrient cycling and water purification. Its role in maintaining the structural integrity of freshwater and marine systems underscores its contribution to biodiversity and environmental sustainability. As such, the stewardship of sand resources is not only an economic imperative but also an ecological necessity.

4.1. As per a study [UNEP (2019). Sand and sustainability: Finding new solutions for environmental governance of global sand resources : synthesis for policy makers. United Nations Environment Programme, Nairobi] undertaken by the United Nations Environment Programme (UNEP), approximately 50 billion tonnes of aggregate sand and gravel are reportedly removed globally each year. With the rapid increase in global population and urbanization, the demand for sand continues to rise at an unprecedented rate.[Yi Han, et al., 'Ecological impacts of unsustainable sand mining: urgent lessons learned from a critically endangered freshwater cetacean', Proceedings of the Royal Society, 2023.] Consequently, it has become the most extracted mineral on the planet, with billions of tons being mined annually from riverbeds, lakes, coastlines, and deltas.

4.2. The rate at which we are mining sand, for whatsoever purposes, is much higher than the replenishment rate. This imbalance between consumption and natural replenishment is what becomes the cause of worry.[Marco Hernandez, Simon Scarr & Katy Daigle, The Messy Business of Sand Mining Explained, REUTERS (Feb. 18, 2021).] The geological processes that produce sand-like the weathering of rocks and the movement of sediments through rivers cannot match the rate at which we're extracting sand from nature. Further, human interventions, such as damming rivers or diverting their natural courses block the natural downstream flow of sediment. As a result, sand fails to reach the places

where it would normally accumulate, the river deltas and coastal areas. Beaches are wearing away faster than natural forces can restore them, and riverbeds are being emptied more quickly than upstream erosion can replenish them.[E.S. Rentier & L.H. Cammeraat, *The environmental impacts of river sand mining*, Science of The Total Environment, Volume 838, Part 1, 2022.]

4.3. The need for development, and the concerns to preserve ecology stands at crossroads when it comes to the issue of sand mining. The urgent need is to raise awareness that while sand is a crucial resource for economic and industrial development, it also plays a vital role in climate resilience and preserving healthy ecosystems.

4.4. While a complete ban on sand mining would certainly restore ecology and preserve environment, we all know that such a measure is impractical. Way ahead is sustainable development with effective regulation. While development may be necessity for societal progress, it must be pursued with a balanced approach that prioritizes environmental conservation.[Naveen Kumar, *Sand Mining in India - Grain of Despair: Failure of Regulatory Machinery*, 2023 SCC OnLine Blog OpEd 44.] It is imperative for regulatory authorities to design an effective and an efficient regulatory regime and implement it by maintaining absolute standards and strict enforcement[At the same time, while only so much can come from the regulatory side, we must also endeavor to explore alternatives to sand mining. Researchers from the University of Geneva (UNIGE) and the Sustainable Minerals Institute at the University of Queensland (UQ) have identified a sustainable alternative to natural sand, termed "ore-sand".⁹ Derived from mineral processing waste, ore-sand offers a dual solution to two pressing global challenges: the growing demand for sand and the massive accumulation of mining waste, which currently amounts to 30-60 billion tonnes annually. By repurposing what was once considered discarded material, ore-sand not only reduces environmental pressure on natural ecosystems but also promotes a circular economy. According to experts like UNIGE's Pascal Peduzzi and UQ's Daniel Franks, this innovation can significantly cut down on mine tailings while providing a responsible, scalable sand resource. If adopted widely, ore-sand could help shift the global construction industry toward more sustainable and environmentally conscious practices].

5. Legal Framework:

We will now refer to the legal framework concerning mining and its regulation in India. The mining sector forms the backbone of key industries such as steel, cement, petroleum, petrochemicals, fertilizers, power generation and of course, for erection of civil infrastructure. Government of India Act, 1935 placed the subject of "mines" and "development of minerals" under the control of Central Legislature and Provincial Legislature vide Entry 36, List I and Entry 23, List II. However, there was no dedicated legislation to deal with issues of mining. With the advent of the Constitution, Entry 54 of List I [54 (List I): Regulation of mines and minerals development to the extent to which such regulation and

development under the control of the Union is declared by Parliament by law to be expedient in the public interest] and Entry 23 List II [23 (List II) Regulation of mines and minerals development subject to the provisions of List I with respect to regulation and development under the control of the Union] became the source of legislative competence to enact laws developing and regulating mining. Parliament enacted the Mines and Minerals (Regulation and Development) Act, 1957. "MMRD Act" Section 2 [Section 2. Declaration as to expediency of Union Control.?It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided] of MMRD Act is the declaration that it is expedient in the public interest that the Union should take under its control regulation of mines and development of minerals as indicated in Schedule I. However, the scope of this enactment was limited to development and regulation of mines and minerals, with no special emphasis on the environmental concerns. Hence, recourse has to be made to the environmental legislations such as the Water Act, 1974, Air Act, 1981 and the Environment Protection Act, 1986, and policies such as the National Mineral Policy, 2008, followed by the National Mineral Policy, 2019.

6. Environment Protection Act, 1986:

The Environment Protection Act, 1986 "1986 Act", is an overarching legislation governing the field of environment protection. The object of the 1986 Act is to "provide for the protection and improvement of environment and for matters connected there with". Section 3 [3. Power Of Central Government To Take Measures To Protect And Improve Environment.- (1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution. (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:-- (3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.] enable the Central Government to take such measures as are deemed or necessary for the purpose of protecting and improving the quality of the environment and also preserving,

controlling and abating environmental pollution. Section 5[5. Power To Give Directions.- Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may , in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. Explanation--For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct- (a) the closure, prohibition or regulation of any industry, operation or process; or (b) stoppage or regulation of the supply of electricity or water or any other service.] gives the Central Government the power to issue directions.

7. EIA Notifications:

In exercise of powers under section 3(2)(v) read with the Environment Protection Rules, 1986, the Ministry of Environment, Forest and Climate Change (MoEFCC) issued an important notification, popularly referred to as the EIA Notification 1994.

8. EIA Notification, 1994:

The EIA Notification was a landmark regulation that made environmental clearance mandatory for certain industrial and developmental projects, including mining. It introduced a structured process for assessing the potential environmental consequences of proposed projects before granting approval. It was stipulated that the expansion or modernization of any activity, where such expansion would result in an increase in the existing pollution load or the establishment of a new project listed under Schedule I of the said Notification, shall not be undertaken in any part of India without obtaining prior Environmental Clearance (EC) from the Central Government, in accordance with the procedure prescribed therein. This regulatory required project proponents to conduct an Environmental Impact Assessment (EIA), obtain public feedback, and implement mitigating measures to minimize environmental damage. It established a structured procedure for the grant of EC to ensure that industrial and developmental projects adhere to environmental safeguards. As per Para 2 of the Notification, any individual or entity intending to undertake a new project, or seeking expansion or modernization of an existing industry or project, as specified in Schedule I, was required to submit an application to the Secretary, MoEFCC.

8.1 Schedule I of the Notification enumerated 29 categories of projects that necessitated prior EC. Notably, Item 20 pertained specifically to mining projects, thereby bringing such activities under the purview of environmental regulation. This provision underscored the legislative intent to subject mining operations to rigorous environmental scrutiny, ensuring that mineral extraction did not proceed without due assessment of its impact on our ecology. Para 2 provided that in respect of mining projects, amongst others, the project proponent shall intimate

the Government of the location site, and it may grant clearance after conducting necessary investigation and survey.

9. EIA Notification, 2006:

Twelve years after the EIA Notification 1994, MoEFCC issued the present notification EIA Notification, 2006 "2006 Notification". Para 2 of the 2006 Notification reads as under;

"2. Requirements of prior Environmental Clearance (EC):-The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

9.1 Projects under the 2006 Notification were categorized into Category 'A' and Category 'B' based on spatial extent of potential impact on human health and natural and manmade resources. For projects included under Category A, EC from Central Government is mandated. As far as projects categorized under Category B are concerned, the EC shall be obtained from a new body created, the State Environmental Impact Assessment Authority, SEIAA. Further, Paras 5, 6 and 7 gives a detailed procedure for grant of prior EC. The same are extracted below for ready reference:

"5. Screening, Scoping and Appraisal Committees:

The same Expert Appraisal Committees (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and (SEAC) at the State or the Union territory level shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively. EAC and SEAC's shall meet at least once every month.

- (a) The composition of the EAC shall be as given in Appendix VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition;

(b) The Central Government may, with the prior concurrence of the concerned State Governments or the Union territory Administrations, constitutes one SEAC for more than one State or Union territory for reasons of administrative convenience and cost;

(c) The EAC and SEAC shall be reconstituted after every three years;

(d) The authorised members of the EAC and SEAC, concerned, may inspect any site(s) connected with the project or activity in respect of which the prior environmental clearance is sought, for the purposes of screening or scoping or appraisal, with prior notice of at least seven days to the applicant, who shall provide necessity facilities for the inspection;

(e) The EAC and SEACs shall function on the principle of collective responsibility. The Chairperson shall endeavour to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.

6. Application for Prior Environmental Clearance (EC):

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1 A if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/ or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1 A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:

? Stage (1) Screening (Only for Category 'B' projects and activities)

? Stage (2) Scoping

? Stage (3) Public Consultation

? Stage (4) Appraisal

....."

9.2 Under Para 8, the appropriate authority can either grant or reject prior EC. Para 9 deals with the tenure and validity of an EC and Para 10 provides for post grant monitoring. The Appendix III enumerates the generic structure of an EIA application and its essentials.

9.3 Over the years, amendments were brought about in this EIA Notification, 2006 for the purpose of strengthening the EC norms and laying down further procedures for close scrutiny. For the present purpose, we are not concerned with other details, except to indicate herein the background in which amendments leading to requirement of District Survey Report, with which we are concerned, are incorporated in the notification. The starting point for this can be said to be the decision of this Court in *Deepak Kumar v. State of Haryana* (2012) 4 SCC 629. Hereinafter, "Deepak Kumar".

10. *Deepak Kumar v. State of Haryana*:

Validity of certain mining leases granting permission for sand mining in violation of environment norms in the State of Haryana came up for consideration before this Court. Deprecating the practice of issuing auction notice without conducting necessary studies to analyse the impact such mining will have on the ecology, this Court held;

"8..... Sand mining on either side of the rivers, upstream and instream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India's rivers and riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers, etc.

9. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both instream 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.

10. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3-6-2011 and 8-8-2011 have permitted quarrying, mining and removal of sand from instream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and riverbeds and sand extraction may have an adverse effect on biodiversity as well. Further, it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. The rivers mentioned in the auction notices are on the foothills of the fragile Shivalik Hills. Shivalik Hills

are the source of rivers like Ghaggar, Tangri, Markanda, etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik Hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, River Yamuna.

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

* * *

25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long-term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on biodiversity as loss of habitat caused by sand mining will affect various species, flora and fauna and it may also destabilise the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48-A and Article 51-A(g) read with Article 21 of the Constitution."

(emphasis supplied)

10.1 The above quoted observations became the jurisprudential basis for evaluating the DSR for gauging the impact assessment of sand-mining on the ecology and the environment in general even at the district level.

11. EIA Notification 2016:

Following the decision of this Court in Deepak Kumar (supra) the Government amended the EIA Notification 2006 to introduce special procedure with respect to river bed mining, sand mining and mining of minor minerals. The preamble of this notification is important even for considering the nature, scope and ambit of the DSR which has fallen for our consideration. The relevant portion of the preamble is as under;

"And whereas, in pursuance to the order of Hon'ble Supreme Court dated the 27th February, 2012 in I.A. No.12-13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc., prior environmental clearance has now become mandatory for mining of minor minerals irrespective of the area of mining lease;

And whereas, as a result of the above said Order of Hon'ble Supreme Court, the number of cases which are now required to obtain prior environmental clearance has increased substantially;

And whereas, the Hon'ble National Green Tribunal, vide its order dated the 13th January, 2015 in the matter regarding sand mining has directed for making a policy on environmental clearance for mining leases in cluster for minor minerals;

And whereas, the State Governments have represented for streamlining the process of environmental clearance for mining of minor mineral;

And whereas, the Ministry of Environment, Forest and Climate Change in consultation with State Governments, has prepared Guidelines on Sustainable Sand Mining detailing the provisions on environmental clearance for cluster, creation of District Environment Impact Assessment Authority and proper monitoring of sand mining using information technology and information technology enabled services to track the mined out material from source to destination;

Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the said notification, namely:-

In the said notification,- (a) in paragraph 2, after the words "in the said Schedule", the following words shall be inserted, namely:- "and at District level, the District Environment Impact Assessment Authority (DEIAA) for matters falling under Category 'B2' for mining of minor minerals in the said Schedule";

(b) after paragraph 3, the following paragraph shall be inserted..."

12. Establishment of District Level Environment Impact Assessment Authority (DEIAA) & District Expert Appraisal Committee (DEAC) under Para 3A:

As is evident from the above extracted portion of the preamble to the EIA Notification 2016, two bodies namely, the DEIAA and DEAC have been established by inserting Para 3A to the EIA Notification, 2006 for grant of EC to a newly introduced category (by amending para 2), called category B2. The amended Para 3A establishing DEIAA and DEAC, is extracted herein below for ready reference;

"3A. District Level Environment Impact Assessment Authority:

(1) A District Level Environment Impact Assessment Authority hereinafter referred to as the DEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of four members including a Chairperson and a Member-Secretary.

(2) The District Magistrate or District Collector shall be the Chairperson of the DEIAA.

(3) The Sub-Divisional Magistrate or Sub-Divisional Officer of the district head quarter of the concerned district of the State shall be the Member-Secretary of the DEIAA.

(4) The other two members of the DEIAA shall be the senior most Divisional Forest Officer and one expert. The expert shall be nominated by the Divisional Commissioner of the Division or Chief Conservator of Forest, as the case may be. The term and qualifications of the expert fulfilling the eligibility criteria are given in Appendix VII to this notification.

(5) The members of the DEIAA who are serving officers of the concerned State Government or the Union territory Administration shall be ex-officio members except the expert member.

(6) The District Level Expert Appraisal Committee hereinafter referred to as the DEAC shall comprise of eleven members, including a Chairman and a Member-Secretary.

(7} The senior most Executive Engineer, Irrigation Department in the district of respective State Governments or Union territory Administration shall be the Chairperson of the DEAC.

(8) The Assistant Director or Deputy Director of the Department of Mines and Geology or District Mines Officer or Geologist of the district shall be the Member-Secretary of the DEAC in that order.

(9) A representative of the State Pollution Control Board or Committee, senior most Sub-Divisional Officer (Forest) in the district, representative of Remote Sensing Department or Geology Department or State Ground Water Department, one occupational health expert or Medical Officer to be nominated by the District Magistrate or District Collector, Engineer from Zila Parishad, and three expert members to be nominated by the Divisional Commissioner or Chief Conservator of Forest, as the case may be, shall be the other members of the DEAC. The

term and qualifications of the experts fulfilling the eligibility criteria are given in Appendix VII to this notification.

10) The members of the DEAC who are serving officers of the concerned State Government or the Union territory Administration shall be ex-officio members except the expert members.

(11) The District Magistrate or District Collector shall notify an agency to act as Secretariat for the DEIAA and the DEAC and shall provide all financial and logistic support for their statutory functions.

(12) The DEIAA and DEAC shall exercise the powers and follow the procedure as specified in the said notification, as amended from time to time.

(13) The DEAC shall function on the principle of collective responsibility and the Chairman shall endeavor to reach a consensus in each case and if consensus cannot be reached, the view of the majority shall prevail.";

13. New category called Category B2 for sandmining in districts was introduced through para 4(iv):

Paragraph 4 of the EIA notification 2006 relating to categorization of projects and activities was also amended and category B2 falling within the jurisdiction of the DEIAA, acting on the decision and recommendation of DEAC is introduced. Relevant portion of para 4(iv) is as under;

"4. Categorization of projects and activities:

(i)

(ii)

(iii)

(iv) The 'B2' Category projects pertaining to mining of minor mineral of lease area less than or equal to five hectare shall require prior environmental clearance from DEIAA. The DEIAA shall base its decision on the recommendations of DEAC, as constituted for this notification."

14. Preparation of District Survey Report Introduced through Para 7(iii):

Para 7 of the EIA Notification 2006 has already been reproduced. It relates to the process before grant of EC. While 7(i) related to process for new projects, which comprises of four stages namely, screening, scoping, public consultation and appraisal respectively; para 7(ii) relates to process for expansion or modernisation or change of project mix in existing projects. It is in this very paragraph that the amendment introduces para 7(iii). Introduction of para 7(iii) for the first time contemplated, preparation of DSR for sand mining or river bed mining and mining of other minor minerals. Para 7(iii) reads as under;

"7. Stages in the Prior Environmental Clearance (EC) Process for New Projects

(i)

(ii) ...

(iii) Preparation of District Survey Report for Sand Mining or River Bed Mining and Mining of other Minor Minerals:

(a) The prescribed procedure for preparation of District Survey Report for sand mining or river bed mining and mining of other minor minerals is given in Appendix X.

(b) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI."

15. Procedure for preparation of DSR introduced through Appendix X:

Procedure for preparation of the above referred DSR under para 7(iii) is laid down in great detail in Appendix X to the notification. Appendix X, apart from laying down the detailed procedure, also declares that the, "District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects. The Report shall be updated once every five years." Appendix X is as follows;

"PROCEDURE FOR PREPARATION OF DISTRICT SURVEY REPORT

The main objective of the preparation of District Survey Report (as per the Sustainable Sand Mining Guideline) is to ensure the following:

Identification of areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area.

The report shall have the following structure:

1. Introduction
2. Overview of Mining Activity in the District
3. The List of Mining Leases in the District with location, area and period of validity
4. Details of Royalty or Revenue received in last three years
5. Detail of Production of Sand or Bajari or minor mineral in last three years
6. Process of Deposition of Sediments in the rivers of the District
7. General Profile of the District
8. Land Utilization Pattern in the district: Forest, Agriculture, Horticulture, Mining etc.

9. Physiography of the District

10. Rainfall: month-wise

11. Geology and Mineral Wealth

In addition to the above, the report shall contain the following:

- (a) District wise detail of river or stream and other sand source.
- (b) District wise availability of sand or gravel or aggregate resources.
- (c) District wise detail of existing mining leases of land and aggregates.

A survey shall be carried out by the DEIAA with the assistance of Geology Department or Irrigation Department or Forest Department or Public Works Department or Ground Water Boards or Remote Sensing Department or Mining Department etc. in the district.

Drainage system with description of main rivers

Methodology adopted for calculating mineral potential

The mineral potential is calculated based on field investigation and geology of the catchment area of the river or streams. As per the site conditions and location, depth of minable mineral is defined. The area for removal of the mineral in a river or stream can be decided depending on geo-morphology and other factors, it can be 50 % to 60 % of the area of a particular river or stream. For example in some hill States mineral constituents like boulders, river born Bajri, sand up to a depth of one meter are considered as resource mineral. Other constituents like clay and silt are excluded as waste while calculating the mineral potential of particular river or stream.

The District Survey Report shall be prepared for each minor mineral in the district separately and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on district's website for twenty one days. The comments received shall be considered and if found fit, shall be incorporated in the final Report to be finalised within six months by the DEIAA.

The District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects. The Report shall be updated once every five years."

(emphasis supplied)

16. Challenge to the Notification 2016 the direction of NGT in Satendra Pandey's case:

Environmental concerns were expressed that the amendments brought about by the EIA notification 2016 did not translate into action the mandate of this Court's

decision in Deepak Kumar (supra). These concerns were considered by the NGT in Satendra Pandey v. MoEFCC 2018 SCC OnLine NGT 2388 wherein the following directions were issued.

"22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/SIEAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and time frame for replenishment after mining closure in an area; (vi) the MoEF & CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining."

17. EIA Notification for prescribing procedure for preparation of DSR of minor minerals other than sandmining and river bed mining:

A further amendment was introduced to the EIA Notification, 2006 as amendment by the EIA Notification 2016 for the purpose of prescribing a separate procedure for preparing DSR for minor minerals other than sand mining and river bed mining through notification dated 25.07.2018. This amendment introduces Part II to Appendix X which reads as under;

II. PROCEDURE FOR PREPARATION OF DISTRICT SURVEY REPORT OF MINOR MINERALS OTHER THAN SAND MINING OR RIVER BED MINING

The District Survey Report shall be prepared for each minor mineral in the district separately and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on district's website for twenty one days. The comments received shall be considered and if found fit, shall be incorporated in the final Report to be finalised within six months by the DEIAA.

The District Survey Report for minor minerals other than sand mining or River bed mining shall be as per structure mentioned below:

FORMAT FOR PREPARATION OF DISTRICT SURVEY REPORT FOR MINOR MINERALS OTHER THAN SAND MINING OR RIVER BED MINING

1) Introduction

2) overview of Mining Activity in the District;

- 3) general profile of the district;
- 4) geology of the district;
- 5) drainage of irrigation pattern;
- 6) land utilization pattern in the district: forest, agricultural, horticultural, mining etc;
- 7) surface water and ground water scenario of the district;
- 8) rainfall of the district and climatic condition;
- 9) details of the mining leases in the district.....
- 10) details of royalty or revenue received in last three years;
- 11) details of production of minor minerals in last three years;
- 12) mineral map of the district;
- 13) list of Letter of Intent (LOI) Holders in the district along with its validity....
- 14) total mineral reserve available in the District.
- 15) quality/grade of mineral available in the District;
- 16) use of mineral;
- 17) demand and Supply of the Mineral in the last three years;
- 18) mining leases marked on the map of the district;
- 19) details of the area of where there is a cluster of mining leases viz. number of mining leases, location (latitude and longitude);
- 20) details of Eco-sensitive Area, if any, in the District;
- 21) impact on the Environment (Air, Water, Noise, Soil, Flora & Fauna, land use, agriculture, forest etc.) due to mining activity;
- 22) remedial Measures to mitigate the impact of mining on the Environment;
- 23) reclamation of Mined out area (best practice already implemented in the district, requirement as per rules and regulation, proposed reclamation plan);
- 24) risk Assessment & Disaster Management Plan;
- 25) details of the Occupational Health issues in the District. (Last five-year data of number of patients of Silicosis & Tuberculosis is also needs to be submitted);
- 26) plantation and Green Belt development in respect of leases already granted in the District;
- 27) any other information.

18. Enforcement and Monitoring Guidelines for Sand Mining, 2020:

It is important to mention at this stage the MoEFCC has also issued the Sustainable Sand Mining Management Guidelines, 2016 "2016 Guidelines" and the Enforcement and Monitoring Guidelines for Sand Mining, 2020 "2020 Guidelines". The 2020 Guidelines does not replace the 2016 Guidelines, rather, they both supplement and complement each other.

18.1 Building on the 2016 Guidelines, MoEFCC came with the 2020 Guidelines. One of the key objectives with which the said guidelines were framed was to regulate the sand and gravel mining in the country. Para 4.1.1 deals with preparation of DSR. It is recognized therein that, "preparation of District Survey Report is a very important step and sustainable sand mining in any part of the country will depends on the quality of District Survey Report." A detailed procedure is given in para 4.1.1, the relevant portion of which is extracted as under;

"a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (LoI) by Mining department or department dealing the mining activity in respective states.

b) The first step is to develop the inventory of the River Bed Material and Other sand sources in the District. In order to make the inventory of River Bed Material, a detailed survey of the district needs to be carried out, to identify the source of River Bed Material and alternative source of sand (M-Sand). The source will include rivers, de-siltation of reservoir/dams, Patta lands/Khatedari Land, M-sand etc.

.....

c) District Survey Report is to be prepared in such a way that it not only identifies the mineral-bearing area but also define the mining and no mining zones considering various environmental and social factors.

d) Identification of the source of Sand & M-Sand.....

e) Defining the sources of Sand/M-Sand in the district is the next step for identification of the potential area of deposition/aggradation wherein mining lease could be granted.....

* * *

p) Public consultation-The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the sub-divisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/Khatedari land, desiltation location (ponds/lakes/dams), M-

Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure-V. The details regarding cluster and contiguous cluster needs to be provided in Annexure-VI. The details of the transportation need to be provided in Annexure-VII."

19. Decision of this Court in *State of Bihar v. Pawan Kumar* (2022) 2 SCC 348. Hereinafter, "Pawan Kumar":

Considering the mandatory requirement of preparation of DSR, which shall form the basis for grant of EC for sand mining in any districts, this Court specifically directed appraisal by SEIAA and SEAC as under;

16.2. Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed.

19.1 Further, noting the existence of the Enforcement and Monitoring Guidelines for Sand Mining, 2020, the Court directed as under;

"12. It could thus be seen that in accordance with the 2020 Guidelines, the DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity in the respective States. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a Sub-Divisional Committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The Sub-Divisional Committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexures appended to the said policy.

13. It is further to be noted that Appendix X of the Notification dated 15-1-2016, issued by MoEF and CC also provides for composition of the Sub-Divisional Committee:

"A Sub-Divisional Committee comprising of Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geology or Mining Officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof."

14. It is to be noted that with the advent of modern technology, various technological gadgets like drones and satellite imaging, etc. can be used for identification of the potential sites and preparation of the DSR and also to check misuse and unauthorised mining."

(emphasis supplied).

19.2 We have also noted that the NGT has been taking a consistent stand about the mandatory requirement of a DSR being a condition precedent to carry mining activity. *Anjani Kumar v. State of U.P.*, 2017 SCC OnLine NGT 979. Further, the

decision of the NGT that DSR should be the basis for an application for grant of an EC and that an application without DSR is incomplete cannot be processed or proceeded further is correct in law. Raza Muzaffar Bhat v. SEIAA, J&K, Appeal No. 24/2022, NGT, Principal Bench. We may add that a 'draft DSR' is virtually a non-existing DSR for purpose of grant of environmental clearance.

20. Conclusion:

Having considered the regulatory regime introduced from time to time, increasing the width as well as the depth of scrutiny before granting an environmental clearance for sand mining, we are of the opinion that there is a mandatory requirement of preparation of a DSR. The DSR shall form the basis for application of environmental clearance. It shall also be the basis for preparation of reports and also appraisal of the projects. Another important facet of DSR is that it shall be prepared for all the districts and the draft is to be placed in the public domain. There is a requirement for keeping a copy of DSR in Collectorate. It must also be posted on the district's website for 21 days. After comments are received, they shall be considered and if found correct, they will be incorporated in the final report. The final DSR will then be finalized within 6 months by the DEIAA. The lifetime of the report is five years. After five years the existing DSR will not be tenable and a new DSR will have to be prepared and finalized. The purpose and object of prescribing a lifetime of five years for subsistence of a DSR is for the reason that the position of ecology and the environment is rapidly changing and the position that exists five years back, may not subsist for later days. It is true that it might have changed even before the expiry of five years but a reasonable estimate, to work as a benchmark is a policy consideration. May be a precautionary principle, it is not only legal and valid but is also mandatory. It must be enforced strictly and with all vigor.

21. We conclude by holding that:

- (i). A District Survey Report is a document of seminal importance as it enables informed decision making.
- (ii). Preparation of a DSR as per the procedure prescribed for its preparation under Appendix X, read with para 7(iii)(a), is required to be followed meticulously.
- (iii). A valid and a subsisting DSR alone can be the basis for an application for grant of EC. A draft DSR is untenable for grant of an EC.
- (iv). Preparation of reports and appraisal of projects by DEIAA and DEAC shall be on the basis of a valid and a subsisting DSR.
- (v). DEIAA and DEAC are recognized as the authorities fastened with the statutory duty of preparing the DSR every five years and this duty compels them to have a comprehensive and a real time perspective of the environment position of the district including its eco-sensitivity and other fragilities.

22. For the reasons stated above, we reiterate our decision of dismissing these civil appeals against the judgment and order passed by the NGT holding that the e-auction notice dated 13.02.2023 is illegal and contrary to law.