

**Item No.3:-**

**Court No.1**

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI**

*(Through Video Conference)*

**Original Application No.144 of 2020 (SZ)**

IN THE MATTER OF:

**Dr. Sarvabhoun Bagali**

S/o. Late Satagouda,  
R/o. Kachari Road,  
Opp. Head Post Office, INDI,  
Vijayapura District, Karnataka – 586 101.

...Applicant(s)

**Versus**

**State of Karnataka**

Through its Director,  
Department of Mines and Geology,  
#49, Khanija Bhawan,  
Race Course Road, Bengaluru and Ors.

...Respondent(s)

For Applicant(s): Mr. Aagney Sail.

For Respondent(s): Mr. Rajat Jonathan Shaw represented  
Mr. Darpan K.M. for R1, R3, R5 & R6.  
Mrs. M. Sumathi for R2 & R7.  
Mr. Vasanth H.K. for R4.

**Judgment Pronounced on: 02<sup>nd</sup> September 2022.**

**CORAM:**

**HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER**

**HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER**

**ORDER**

Judgment pronounced through Video Conference. The original application is disposed of with directions vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

**Sd/-  
Justice K. Ramakrishnan, JM**

**Sd/-  
Dr. Satyagopal Korlapati, EM**

**O.A. No.144/2020 (SZ),  
02<sup>nd</sup> September 2022. Mn.**

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...Applicant(s)

**Versus**

**1) State of Karnataka**

Through its Director,  
Department of Mines and Geology,  
#49, Khanija Bhawan,  
Race Course Road, Bengaluru – 560 001.

**2) Ministry of Environment, Forests & Climate Change**

Through its Secretary  
Indira Paryavaran Bhavan,  
Jorbagh, New Delhi – 110 003.

**3) Karnataka State Wetland Authority**

Through its Member Secretary  
II Floor, Parisara Bhavan  
#49, Church Street, Bengaluru – 560 001.

**4) Karnataka State Environment Impact Assessment Authority  
(SEIAA)**

Through its Member Secretary  
Room No.709, VII Floor, IV Gate, M.S. Building,  
Bengaluru – 560 001.

**5) Deputy Commissioner – Raichur District**

Deputy Commissioner's Office,  
Sathkacheri, Raichur  
Raichur District, Karnataka – 584 101.

**6) Deputy Commissioner – Vijayapura District**

Deputy Commissioner's Office,  
Vijayapura District, Karnataka – 586 101.

**7) National Wetlands Committee**

Through its Member Secretary (Joint Secretary)  
Ministry of Environment, Forests & Climate Change  
Jorbagh, New Delhi – 110 003.

...Respondent(s)

For Applicant(s): Mr. Aagney Sail.

For Respondent(s): Mr. Rajat Jonathan Shaw represented  
Mr. Darpan K.M. for R1, R3, R5 & R6.  
Mrs. M. Sumathi for R2 & R7.  
Mr. Vasanth H.K. for R4.

**Judgment Reserved on: 01<sup>st</sup> August 2022.**

**Judgment Pronounced on: 02<sup>nd</sup> September 2022.**

**CORAM:**

**HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER**

**HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER**

Whether the Judgment is allowed to be published on the Internet – Yes.

Whether the Judgment is to be published in the All India NGT Reporter – Yes.

### **J U D G M E N T**

***Delivered by Justice K. Ramakrishnan, Judicial Member***

- 1.** The grievance in this application is regarding the illegal sand mining being done in Vijayapura and Raichur Districts of State of Karnataka from the water bodies in the guise of dredging and maintenance of lakes.
- 2.** The applicant had reiterated the nature of proceedings initiated by him before the Principal Bench and this Bench in respect of environmental issues to claim that he is interested in protecting the environment. He is a senior citizen, retired as a Government Doctor from the Health Department of State of Karnataka in the year 2004 and after retirement, he joined politics and elected as Member of Legislative Assembly in the year 2008 and served till 2013. Thereafter, he was engaged in activities for protecting environment.
- 3.** It was alleged in the application that as per the direction of the Hon'ble Supreme Court in **Deepak Kumar Vs. State of Haryana & Ors.**<sup>1</sup>, Environmental Clearance (EC) is required for doing sand mining of minor minerals irrespective of its extent. After the direction of the Hon'ble Supreme Court in *Deepak Kumar's* case cited supra

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<sup>1</sup> (2012) 4 SCC 629

and this Tribunal order dated 13.01.2015, there was a direction to make a policy of Environmental Clearance (EC) of mining lease in cluster of minor minerals and the Ministry of Environment, Forests & Climate Change (hereinafter referred to as '**MoEF&CC**') had issued the notification amending the Environmental Impact Assessment (EIA) Notification, 2006 on 15.01.2016, wherein certain categories were exempted under Appendix – IX which includes customary extraction of sand from sources situated in Grama Panchayat for personal use or community work in village and community works like de-silting village ponds or lakes, evidenced by Annexure – A2. On 15.03.2016, the MoEF&CC had issued Sustainable Sand Mining Management Guidelines, 2016 (hereinafter referred to as '**SSMMG-2016**') after extensive consultation with the States and stakeholder departments for a period of nearly one year. The main objective of the guideline was to ensure the sustainable sand mining and environment friendly management practices in order to restore and maintain the ecology of the river and other sand sources and the relevant extracts were produced as Annexure – A3. Subsequent to the decision of the Hon'ble Apex Court in *Deepak Kumar's* case and the MoEF&CC's Guidelines issued in 2016, the State of Karnataka incorporated the said directions/guidelines by amending the Karnataka Minor Mineral Concession Rules, 1994 vide amendment dated 12.08.2016. In January 2020, the MoEF&CC issued Enforcement & Monitoring Guidelines for Sand Mining, 2020 (hereinafter referred to as '**EMGSM-2020**') for effective enforcement of regulatory provision and their monitoring for sand mining and this was issued in compliance with the directions issued by the National Green Tribunal, Principal Bench, New Delhi in O.A. No.173 of 2018 dated 04.09.2018, O.A. No.44 of 2016 dated 05.09.2018, O.A. No.304 of 2015 dated 10.09.2018 and O.A. No.360 of 2015 dated 05.04.2019 and the relevant extracts of the Enforcement Guidelines, 2020 was produced as Annexure – A4.

4. In 1971, Ramsar Convention on Wetlands, the importance of protection of wetlands especially as waterfowl habitat is the oldest conservation convention was considered and its name related to the place where the convention was held in Iran. As per the Article 1.1 of Ramsar Convention evolved in 1975 defines wetlands as "*areas of marsh, fen, peatland or water, whether natural or artificial,*

*permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters".* Further, it has large biological diversity resources and act as storm and flood control mechanism, provide life to various flora and fauna and this was recognized by various institutions. The National Wetland Map was launched by the Government of India and wetlands were mapped. The main objectives of the project are:

- *To map the wetlands on 1 : 50,000 scale using two date (pre and post monsoon) IRS LISS III digital data following a standard wetland classification system.*
- *Integration of ancillary theme layers (road, rail, settlements, drainage, administrative boundaries)*
- *Creation of a seamless database of the states and country in GIS environment.*
- *Preparation of State-wise wetland atlases.*

5. The project was initiated during 2007 and it is being carried in consultation with the various expert bodies. The Wetland Atlas in respect of Karnataka prepared during August 2010 was produced as Annexure – A5. There were about 326 wetlands identified out of total 453 wetlands in Raichur District and about 102 wetlands were identified out of 273 wetlands in Vijayapura District, having less than 2.25 Hectare. The State of Karnataka published a New Sand Policy, 2020 dated 21.05.2020 where sand mining was allowed in ponds, lakes and nallas for local consumption, which according to the applicant is in violation of the EIA Notification, 2006 and the Sand Mining Guidelines of the MoEF&CC. They are not expected to carry out the sand mining against the provisions of the EIA Notification, 2006 and any rule framed against the guidelines issued by the MoEF&CC are against law. For the purpose of doing river sand mining, it is necessary to prepare a District Survey Report and only after preparing the District Survey Report and identifying the areas and the availability of the sand, permission can be granted for sand mining. As per the New Sand Policy, 2020 instead of Mining Department, sand mining can be permitted by the local people for their local purpose. The Lake Authorities were constituted in Karnataka on the basis of the provisions of the Karnataka Lake Authority Act, 2014 which is intended for the purpose of protecting the water bodies and certain regulations have been provided in respect of use of water bodies. So, permitting the sand mining in lakes, ponds and nallas are against the provisions of the EIA

Notification, 2006, Wetlands (Conservation and Management) Rules, 2010 and 2017 (hereinafter referred to as '**Wetlands Rules**') and the Karnataka Lake Authority Act, 2014 and the Guidelines issued by the MoEF&CC in 2016 and 2020. The copy of the Wetlands (Conservation and Management) Rules, 2017 was produced as Annexure – A9. The notification issued by the State of Karnataka appointing the Karnataka State Wetland Authority was produced as Annexure – A10. The order passed by the Principal Bench of National Green Tribunal, New Delhi in O.A. No.140 of 2014 dated 16.03.2020 was produced as Annexure – A11.

6. Since the activities of the State of Karnataka were against the statutory provisions, the applicant has no other remedy except to approach this Tribunal seeking the following reliefs:-

*"A) Declare that sand mining, regular as opposed to desilting, of ponds, lakes, tanks and Nallahs (whether man made or natural) is in violation of the Environment Impact assessment Notification, 2006, Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement & Monitoring Guidelines for Sand Mining (Jan.2020) both issued by Ministry of Environment, Forests & Climate Change (MoEF & CC).*

*B) Declare that sand mining activity in a pond/tank type inland Wetland (manmade) and in a Lake/pond type Inland wetland (natural) is a prohibited activity under the Wetlands (conservation & Management)Rules, 2017.*

*C) Direct the Karnataka State Wetland Authority (Respondent No.4 through its Member Secretary) to submit a detailed report on Wetlands (District-wise) as per Rule 5(4)(a), (b) & (c) of the Wetlands (Conservation & Management ) Rules, 2017.*

*D) Direct the Ministry of Environment, Forests & Climate Change (MoEF & CC) (Respondent No.2 through its Secretary) to file a detailed report of permissions granted for customary extraction of sand in the State of Karnataka as per appendix – IX of the EIA Notification, 2006 since 15.01.2016 till date.*

*E) Direct the Deputy Commissioners of Vijayapura and Raichur Districts (who are the incumbent Chairman of the District Sand Monitoring committee as per Rule 31R (1) of the KMMC Rules, 1994) to submit a report of the details of Sand quarrying leases given for ponds/lakes/nallahs in the last 5 years till date."*

7. Vide Order dated 07.08.2020, this Tribunal admitted the matter and appointed a Joint Committee comprising of (i) Senior Officer from the Regional Office of Ministry of Environment, Forests and Climate Change (MoEF&CC), Bangalore, (ii) Senior Officer from the Regional Office of Central Pollution Control Board, Bangalore, (iii) Senior Officer from Karnataka State Wetland Authority, (iv) Senior Officer from the Karnataka State Pollution Control Board, (v) Senior Officer from Karnataka State Environment Impact Assessment Authority (SEIAA- Karnataka), (vi) the Deputy Commissioner – Raichur District, (vii) Deputy Commissioner, Vijayapura District and (viii) the Director

of Mines and Geology to inspect the area in question and submit a factual as well as action taken report, if there is any violation found.

- 8.** The Joint Committee was directed to go into the question as to whether there was any impact of environmental loss in carrying out the proposed removal of sand from the ponds, Nallas as per the present Sand Policy, 2020 of Karnataka, if so what are all the remedial measures to be taken to protect the water bodies against mining the natural resources like sand without adhering to the environmental laws and also assess the environmental compensation, if there is any flagrant violation of the environmental laws found, on account of such illegal activity and also ascertain the number of such permissions granted in those districts by the authorities and also the persons to whom it was granted and whether they are adhering to the procedure of obtaining necessary permission from the authorities before carrying out the mining work in the water bodies.
- 9.** The Regional Office, Ministry of Environment, Forests and Climate Change (MoEF&CC), Bangalore was designated as the nodal agency for co-ordination and also for providing necessary logistics for this purpose.
- 10.** Respondents Nos. 1, 5 & 6 have filed counter affidavit in the form of an affidavit through the Deputy Director, Department of Mines and Geology, Bengaluru contending that the application is not maintainable. They put the applicant to strict proof regarding the activities undertaken by him to protect the environment. No permission to extract sand from pond/lake has been issued by the Department of Mines and Geology in either of the districts. Only two leases to quarry sand in Nalha (otherwise called Stream) in Raichur District were issued and no lease or permit for sand mining in Stream (Nalha) is issued in Vijayapur District. In Raichur District, one lease to mine sand in Pootanal nalha in Gonavara Village and second in Albanuru Village in Sindhanuru nalha were issued on 06.06.2017 over an extent of 12.20 Acres each, to extract 20,000 Metric Tons per annum. Since last 3 ½ years they have extracted hardly 17,260 MT in Gonavara Village and 32,700 MT in Albanuru Village. The leases were issued as per the provisions of the Karnataka Minor Mineral (Amendment) Rules, 2016. No illegal quarrying is done in Vijayapur and Raichur Districts from ponds/lakes/ nalhas. Sand mining in the

above two villages permitted were legal. The State Government has not authorized de-silting in ponds/lakes/nalhas. The Environmental Clearances have been granted for sand mining on 08.06.2017. There was no breach of directions issued by the Tribunal or the Hon'ble Supreme Court in *Deepak Kumar's* case committed in carrying out the Mining Policy in the State of Karnataka. The directions and guidelines issued by the Hon'ble Supreme Court in *Deepak Kumar's* case were incorporated in the rules framed by the State of Karnataka in respect of minor minerals as Karnataka Minor Mineral Concession Rules, 1994. This has been appreciated by this Tribunal in another matter mentioned by the applicant in Para (8) of the application. Finding accumulation of more sand, obstructing easy flow of water, causing floods and that nalhas (streams) were no less than a river, thought of removing such troublesome sand blocks. They were identified jointly by Revenue, Forest, Department of Mines and Geology etc., and auctioned by calling tenders. They denied the allegation that New Sand Policy, 2020 was issued by the Karnataka State permitting regular sand mining in Ponds/Lakes/Nalhas in violation of the EIA Notification, 2006. There is no specific bar in the Notification of 2006 prohibiting permission for removal of sand as silt and for local use by the public and local bodies. If it is not permitted, it results in floods, reduces the water storage in them etc., Use of small quantity of sand from ponds/lakes/nalha is customary, since time immemorial. They are necessary for well being of the society and natural resources. There are few lakes and nalhas in these Districts and they are small in size and very negligible sand formation takes place in those places. Regular sand mining is not done and cannot be done in the water bodies. These two districts are special in character in as much as they are surrounded by Bheema, Krishna, Malaprabha and Thungabhadra Rivers. They provide much of sand to cater the needs of the district. So, there was no necessity for sand mining in ponds/lakes/nalha is done. There was no environment pollution affecting the forest due to small mining in ponds/lakes/nalhas of these two districts. The Karnataka Sand Policy, 2020 did not permit regular sand mining in ponds/lakes/nalhas, but no commercial sand extraction was permitted or done in ponds etc., Occasional sand mining in ponds/lakes/nalhas is not detrimental to the environment and the aquatic life of the water body, but at the same time, it may not harm if it is regularly done. Occasional de-silting is not a prohibited one



and it is necessary for maintenance of such water bodies. There was no evidence adduced or materials provided by the applicant showing the past impact of such activities on environment in these districts. The two leases that have been granted in Raichur District were produced as Annexure R1 & R2. During the survey, it was found that 10 to 15 ft depth of sand is available and only 3 ft or 1 meter depth was alone permitted. So, there was no merit in the application and they prayed for dismissal of the application.

**11.** The 2<sup>nd</sup> Respondent/MoEF&CC through their Regional Office, Bengaluru filed counter affidavit after reiterating the allegations made in the application and also the nature of the reliefs claimed, they further contended that the Ministry had issued EIA Notification dated 14.09.2006. whereby certain projects were mandated to obtain prior Environmental Clearance (EC) before making construction or establishment of the same, including expansion of the project. The EIA Notification also describes the nature of projects which are expected to obtain prior Environmental Clearance (EC), their categorization and the authorities which is empowered to grant Environmental Clearance. The said notification was amended by EIA Amendment Notification S.O. 141 (E) dated 15.01.2016, whereby they have vested the power of granting Environmental Clearance in respect of 'B2' Category projects pertaining to mining of minor mineral of lease area less than or equal to 5 Hectare require prior Environmental Clearance from the District Environment Impact Assessment Authority (DEIAA) and the DEIAA shall base its decision on the recommendations of District level Expert Appraisal Committee (DEAC), evidenced by Annexure – R2(1), Notification. As per the Appendix IX of the said Notification and subsequent amendment by Notification dated 28.03.2020, granted exemption of certain cases from requirement of Environmental Clearance which includes

*"5. Community works like de-silting of village ponds or tanks, construction of village roads, ponds, bunds undertaken in Mahatama Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes, and community efforts. 6. Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management".*

**12.** It is further contended that the project/activities which do not fall under the ambit of exemption as specified in the above mentioned notification shall be governed by the provisions of EIA Notification, 2006 and its subsequent amendment from time to time and the latest amended copy of the notification vide S.O. 1224 (E) dated 28.03.2020 was produced as Annexure – R2 (2). The EIA Notification dated 15.01.2016 was challenged before the Principal Bench of National Green Tribunal, New Delhi by filing Original Application No. 186 of 2016 titled as Satendra Pandey Vs. Ministry of Environment, Forest and Climate Change and the Tribunal in Para (25) of the order dated 13.09.2018, directed as follows, *"The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15.01.2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in Deepak Kumar (supra)"*, evidenced by Annexure – R2 (3), Order of the National Green Tribunal. Subsequently, the MoEF&CC had issued Office Memorandum in tune with the directions issued by the Principal Bench of National Green Tribunal, abolishing the DEIAA and directing the SIEAA to consider all the applications which are pending with the DEIAA at that time, evidenced by Annexure R2(4). The Principal Bench of National Green Tribunal in Execution Application No. 55 of 2018 in Original Application No. 520 of 2016 (Vikrant Tongad Vs. Union of India) dated 11.12.2018 passed the following order

*"6. ....The direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment of this Tribunal. The same will stand suspended till a fresh Notification is issued by the MoEF&CC as directed hereinabove.*

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

evidenced by Annexure R2(5), Order of the Principal Bench.

**13.** Pursuant to the order dated 13.09.2018 and 11.12.2018 passed by the Principal Bench of National Green Tribunal, the Ministry had challenged the orders by filing Civil Appeal before Hon'ble Apex Court as Civil Appeal No. 3799-3800 of 2019 (Union of India Vs. Rajiv Suri & Ors.) and those appeals are pending and as regards those aspects is concerned, it will be sub-judice. By exercise of powers conferred under 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 made further amendments in the EIA Notification, 2006 vide S.O.3977(E) dated 14.08.2018 wherein, Schematic Presentation of Requirements on Environmental Clearance (EC) of Minor Minerals including cluster situation in Appendix-XI and entries relating thereto and certain items were substituted, evidenced by Annexure – R2 (6). On the basis of the directions issued by the Principal Bench in O.A. 173/2018 (Sudarsan Das Vs. State of West Bengal & Ors.) dated 04.09.2018, the Ministry had issued new guidelines viz., Enforcement & Monitoring Guidelines for Sand Mining, 2020 (EMGSM-2020) supplemental to the existing guidelines i.e. Sustainable Sand Mining Management Guidelines, 2016 (SSMMG-2016), which focus on the effective monitoring of the sand mining since from the identification of sand mineral sources to its dispatch and end-use by consumers and the general public. This document will serve as a guideline for collection of critical information for enforcement of the regulatory provision(s) and also highlights the essential infrastructural requirements necessary for effective monitoring for Sustainable Sand Mining. The copy of the said guidelines was produced as Annexure - R2 (7). The EMGSM-2020 & SSMG-2016 shall be read and implemented in sync with each other. In case of any ambiguity or variation between the provisions of both these document arises, the provision made in Enforcement & Monitoring Guidelines for Sand Mining-2020 shall prevail. The Principal Bench of National Green Tribunal, New Delhi in O.A No.08 of 2018 (CZ) titled as Suraj Pagare & Anr. Vs State of M.P. vide order dated 11.06.2020 directed the Principal Secretary for Mines, Director of Mines and State of Madhya Pradesh to follow the guidelines issued by MoEF&CC in January, 2020 viz., EMGSM- 2020. The Tribunal vide order dated 26.02.2021 passed in the matter of Original Application No. 360/2015 titled as National Green Tribunal Bar Association Vs. Virender Singh, State of Gujarat and connected matters, directed all the States/UTs to strictly follow the SSMG-2016 read with EMGSM-2020 reinforced by mechanism for preparation of DSRs, Environment Management Plans, replenishment studies, mine closure plans, grant of EC, assessment and recovery of compensation, seizure and release of vehicles involved in illegal mining, other safeguards against violations, grievance redressal, accountability of the designated officers and periodical review at higher levels in 12 terms of the

order refereed by the Tribunal in the order mentioned above. As regards the granting of mining lease is concerned, it is State Department of Mines and Geology is dealing with the allotment of mining lease under the Mines and Minerals (Development and Regulation) Act [MMDR Act] and they are entrusted with the enforcement and regulation of mining operations in the State including illegal mining. Under Section 23 C of the said Act, the State Government is empowered to make rules for prevention of illegal mining, transportation and storage of minerals and the same will be have to undertaken by the Department of Mines & Geology. Wetlands are a vital part of the hydrological cycle and they are highly productive ecosystems which support rich biodiversity and provide a wide range of ecosystem services such as water storage, water purification, flood mitigation, erosion control, aquifer recharge, micro climate regulation, aesthetic enhancement of landscapes while simultaneously supporting social and cultural activities which are a part of our cultural heritage. The MoEF&CC is implementing a centrally sponsored scheme namely, National Plan for Conservation of Aquatic Eco-systems (NPCA) for conservation and management of wetlands in the country on cost sharing basis between Central Government and respective State/UT Governments (60:40 percentage sharing between Central Govt. and State Govt., 90:10 percentage sharing between Central Govt. and North-eastern States and 100% Central Govt. funded for Union Territories). The scheme covers various activities such as interception, diversion and treatment of wastewater, shoreline protection, lake front development, in-situ cleaning i.e. de-silting & de-weeding, storm water management, bioremediation, catchment area treatment, lake beautification, survey & demarcation, bio-fencing, fisheries development, weed control, biodiversity conservation, education and awareness creation, community participation, etc. Depletion and destruction of wetlands is a serious concern for the Ministry and number of wetlands were threatened by reclamation and degradation through drainage and landfill, pollution (discharge of domestic and industrial effluents, disposal of solid wastes), hydrological alteration (water withdrawal and changes in inflow and outflow), over-exploitation of their natural resources and illegal construction resulting in loss of biodiversity and disruption in ecosystem services provided by wetlands. The Wetlands (Conservation and Management) Rules, 2017 apply to the wetlands

or wetland complexes categorised as 'wetlands of international importance' under the Ramsar Convention and wetlands as notified by the Central Government, State Government and Union Territory Administration. The Hon'ble Supreme Court in M.K. Balakrishnan & Ors. Vs. Union of India & Ors., dated 04.10.2017 observed that "*We make it clear and reiterate that in terms of our order dated 08.02.2017, 2,01,503 wetlands that have been mapped by the Union of India should continue to remain protected on the same principles as were formulated in Rule 4 of the Wetlands (Conservation and Management) Rules, 2010.*" So, they prayed for accepting their contentions and passing appropriate orders.

- 14.** The 4<sup>th</sup> respondent/ SEIAA – Karnataka filed counter statement more or less reiterated the contentions raised by the MoEF&CC in their counter statement. So, we are not reiterating the same. They also prayed for accepting their contentions and passing appropriate orders.
- 15.** The State of Karnataka through Deputy Director, Department of Mines and Geology has filed additional statement contending that the reports obtained from concerned Mining and Geology Department in respect of Vijayapur and Raichur Districts are produced along with this additional statement, evidenced by Annexure – R3 & R4. The State of Karnataka is taking stringent action to control and prevent illegal sand quarrying throughout the state. The Geologists employed in the particular districts are entrusted to keep vigilance on such matters. Further, the officers of the Police Department, Revenue Department, PWD, and Forest have been given powers to take action against illegal sand mining. Officers of the Village Panchayat were also taking care of illegal sand mining. The State of Karnataka through different departments had appointed Home Guards specifically to watch the sand mining. Police were deployed for this purpose. There is a proposal before the Government to create a separate protection force to prevent illegal mining. Check posts were established at relevant, important, key points. Unauthorised village roads leading to ponds, lakes, nallas, rivers etc. were blocked by either causing trenches or constructing cement pillars etc. Sand blocks were identified by the Department of Mines and Geology and they are being auctioned so that there is scientific sustainable sand mining and prevents illegal sand mining by third parties. The vehicles

of the lessees are fitted with GPS to keep watch over the transportation. Weigh bridges and CCTV Cameras are fitted at important places. Transport permits are issued and they are intercepted to check, if there is multiple transportation on using the same permit. In case of violation of Rules and illegality, cases are booked. If the parties were prepared to compound and approach the authorities, the same will be compounded as per Rules and if it is not compounded, then complaints will be filed before the concerned jurisdictional courts. The Government is taking necessary steps to prevent and control illegal sand mining and on account of the various steps taken, the same is under control now and they are strictly following the guidelines issued by the MoEF&CC in 2016 and 2020 and directions issued by this Tribunal. The allegations contra made in the application are denied. When compared to legal mining, recovery of royalty, regulated scientific quarrying, transportation and distribution of sand to the public, illegal sand mining is under Control. The sand policy of 2016, 2020 and the directions of this Tribunal are strictly followed while identifying sand blocks, quarrying, transportation and distribution of the sand.

- 16.** The MoEF&CC along with the 7<sup>th</sup> respondent filed additional counter affidavit contending that the Wetlands (Conservation and Management) Rules, 2017 apply to the wetlands or wetlands complexes categorized as 'wetlands of international importance' under the Ramsar Convention and wetlands as notified by the Union Government, State Government and Union Territory Administration. These rules will not apply to the wetlands falling in areas covered under the Indian Forest Act, 1927, the Wildlife (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the State Forest Acts and the Coastal Regulation Zone Notification, 2011 as amended from time to time. They have reiterated the observation made by the Hon'ble Supreme Court in M.K. Balakrishnan & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No.230 of 2001] dated 04.10.2017 which was extracted earlier. Rule (2) (i) of Wetlands Rules, 2017 defines the "wise use of wetland" as maintaining the ecological character of them through implementation of ecosystem approach with the help of sustainable development. The wetlands shall be conserved and managed in accordance with the above said principle. The "wise use

of wetland” is a parameter to prohibit the activities in wetlands. As per Rule 4 (2) (i) of the Wetlands Rules, 2017, ‘conversion for non-wetland uses’ is a prohibited activity. The removal of sand for maintaining the ecological balance and conserving the ecosystem carried out in a controlled scientific manner can be permissible in the wetlands. Whereas the mining of sand for the commercial activity cannot be made permissible in the wetlands. As per the Rule 5(4) (g), (h) and (n), the State Wetland Authority or Union Territory Wetlands Authority can perform certain functions to strategize the conservation and wise use of wetland. “Wise use of wetland” is a principle which shall govern the management of ecosystem which incorporates sustainable uses, they can issue necessary directions for conservation and sustainable management of wetlands. Rule 5 of the Wetlands Rules which reads as follows:-

*"5. Wetlands Authorities. –*

*(4) The State Wetlands Authority or Union Territory Wetlands Authority shall exercise the following powers and perform the following functions, namely:-*

*(g) define strategies for conservation and wise use of wetlands within their jurisdiction; wise use being a principle for managing these ecosystems which incorporates sustainable uses (such as capture fisheries at subsistence level or harvest of aquatic plants) as being compatible with conservation, if ecosystem functions (such as water storage, groundwater recharge, flood buffering) and values (such as recreation and cultural) are maintained or enhanced;*

*(h) review integrated management plan for each of the notified wetlands (including trans-boundary wetlands in coordination with Central Government), and within these plans consider continuation and support to traditional uses of wetlands which are harmonized with ecological character;*

*(n) issue necessary directions for conservation and sustainable management of wetlands to the respective implementing agencies;"*

**17.** So, they prayed for accepting their contentions and passing appropriate orders.

**18.** The Department of Mines and Geology, State of Karnataka has filed additional objection contending that KMMC Rules, 1994 did not permit sand mining in wetlands. The State of Karnataka has not issued permission for sand mining in wetlands in Karnataka State. However, Rule 31 -T of the KMMC Rules, 1994 provides removal of sand in I, II and III order streams and tanks for local consumption. Rule 31 -T reads as under:-

*"31-T. Regulation and extraction of available sand in I, II and III - order streams and tanks for local consumption.-*

*(1 ) At Gram Panchayat Level, the concerned Panchayat Development Officer or Secretary, Tahasildar, Assistant Engineer of the Minor Irrigation Department Geologist of Department of Mines and Geology shall identify, quantify and fix the boundaries of sand deposit*

areas along with Geo-co-ordinates of I, II and III - order streams and tanks.

(2) The Member Secretary, Taluk Sand Committee shall submit joint inspection report to the District sand committee through the Taluk sand committee with clear recommendation for the purpose of notification and reserve the area for extraction of sand in the concerned Gram panchayat.

(3) After considering the recommendations of the Taluk sand committee, the District sand committee shall, either after accepting or accepting with such modification as necessary, notify in the official Gazette to reserve respective sand bearing areas to the concerned Gram panchayat.

(4) After receipt of the notification from the District sand committee, the Chairman of the Taluk sand committee shall issue necessary permission to Gram panchayat for removal of sand from the notified sand bearing area.

(5) The excavation of sand shall be done manually and no mechanical means be allowed for excavation. The sand sourced from the streams of I, II and III-order and tanks shall be disposed by the concerned Gram panchayat, as per guidelines issued by the Government from time to time.

(6) The period of extraction of sand shall be for one year from the date of order or exhaustion of permitted quantity, whichever is earlier.

(7) Sand excavation in I, II and III-order streams and tanks shall be utilised within the Gram panchayats of concerned taluk for local domestic needs, community works and Government sponsored low income Housing schemes.

(8) The taluk shall be treated as a unit for free movement of sand within the jurisdiction.

(9) An allottee (the end user) may cause to collect sand from the allotted Blocks from the streams of I, II and III-order streams and tanks for local needs to end user but not for second sale and shall be transported through low laden capacity vehicle not exceeding 3 tons or carrier like tractor, bullock cart etc., and the concerned Gram Panchayat shall issue a transport permit on payment of sale price as fixed by the State Government, from time to time.

(10) The Taluk sand committee shall ensure and monitor that the sand extraction and transportation are being done in accordance with law. If the committee finds any illegal extraction and transportation of sand, it shall take action against the offenders as per law.

(11) Sand extracted from the notified area shall be transported during day time only i.e., 6 A.M. to 6 P.M. Any sand extraction, loading and transportation in night shall be treated as illegal and stringent action shall be taken against such persons through concerned officer under the provisions of these rules."

- 19.** The above rule has been framed based on the guidelines issued by the MoEF&CC on 15.01.2016. Removal of sand from ponds, tanks, construction of village roads, ponds, bunds undertaken in Mahatma Gandhi Rural Employment and Guarantee Schemes, etc., is not sand mining, but they were considered as Local Consumption. Sub-Rule 5 of Rule 31-T mandates that excavation of sand shall be done manually and no mechanical means be allowed for excavation. Powers to dispose the sand, as per guidelines issued by the Government is given to Grama Panchayat. Sub-Rule 7 states that sand so excavated should be utilized within the Grama Panchayats of concerned Taluka for local domestic needs, community works and Government sponsored low income Housing Schemes. Sub-Rule 9 prohibits second sale of the said sand and allows use of small vehicle



for transportation. The permission granted under Rule 31-T is not sand mining and the removal of sand from tanks is permissible one. So, they prayed for dismissal of the application.

**20.** Pursuant to the order of the Tribunal dated 23.03.2022, the Principal Secretary to Government (Ecology and Environment), Department of Forests, Environment and Ecology, State of Karnataka has filed the report through their counsel with annexure of letter received from the Principal Secretary to Government, wherein they have given the details of the wetlands identified within their State. The following 11 wetlands have been identified for implementing the Wetlands (Conservation and Management) Rules, 2017 published by MoEF&CC dated 26.09.2017 and they have given the list of wetlands falling under the definition of Ramsar Convention identified in the State of Karnataka as follows:-

1. Aghanashini
2. Bellandur
3. Varthur
4. Magadi
5. Gudavi Bird Sanctuary
6. Bonal
7. Heggeri
8. Hidakal
9. Ranganathittu
10. KG Koppa
11. Ankasamudra."

**21.** It is further contended that the sand mining is not a permissible activity in the wetlands and no sand mining is being carried out in any of the identified wetlands. For the purpose of implementation of Wetlands (Conservation and Management) Rules, 2017, a meeting was conducted by the State Wetland Authority on 03.03.2022 and Karnataka Forest Department was requested to send a comprehensive proposal, including management and conservation plan for declaration as RAMSAR site after consultation with the stakeholders with respect to Agnashini, Magadi lake and Ranganathittu on a priority basis.

**22.** The Joint Committee has filed the report dated Nil, e-filed on 13.10.2021 which reads as follows:-

**"REPORT OF JOINT COMMITTEE IN THE MATTER OF O.A. 144 OF 2020 (DR. SARVABHOUM BAGALI) SUBMITTED BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI, AS PER ORDERS DATED 07.08.2020  
1.0 PREAMBLE**

In the Original Application No. 144 of 2020 (SZ), filed by Dr. Sarvabhoom Bagali, Vs The State of Karnataka & Ors, the Hon'ble National Green Tribunal (NGT), Chennai issued an Orders on 07.08.2020 with the following directions:

"In order to ascertain the real state of affairs, we feel it appropriate to constitute a joint committee comprising of 1) Senior Officer from Regional Office of Ministry of Environment Forests, and Climate Change (MoEF & CC), Bangalore 2) Senior Officer from the Regional Office of Central Pollution Control Board, Bangalore 3) Senior Officer from Karnataka State Wetland Authority, 4) Senior Officer from the Karnataka State Pollution Control Board 5) Senior Officer from Karnataka State Environment Impact Assessment authority (SEIAA), 6) The Deputy Commissioner – Raichur District, 7) Deputy Commissioner, Vijayapura District and 8) The Director of Mines and Geology to inspect the area in question and submit a factual as well as action taken report, if there is any violation found.

The committee is directed to go into the question as to whether there is any impact of the environmental loss in carrying out the proposed removal of sand from the ponds, nallas as per the present Sand policy, 2020 of Karnataka, if so what are the remedial measures to be taken to protect the water bodies against mining the natural resources like sand without adhering to the environmental laws and also assess the environmental compensation, if there is any flagrant violation of the environmental laws as found, on account of such illegal activity and also ascertain the number of such permission granted in those Districts by the authorities and also the persons to whom it was granted and whether they are adhering to the proceedings obtaining necessary permission from the authorities, before doing the mining work from these water bodies.

The Regional Office, Ministry of Environment, Forests and Climate change (MoEF & CC), Bangalore will be the nodal agency for co-ordination and for providing all necessary logistics for this purpose."

In compliance of above order, the Regional Office, Ministry of Environment, Forests and Climate Change (MoEF & CC), Bangalore, vide letter No. F. No. EP/12.7/NGT /52/KAR dated: 25/08/2020 has requested the concerned Departments / Authorities to nominate Senior official for the Committee to complete the task as assigned by the Hon'ble NGT.

The DC, Raichur, DC Vijayapura and Department of Mines and Geology have been addressed on 25.09.2020 for the information on details of sand mining permitted in ponds, nallas in both the Districts and information have been received.

#### **PRELIMINARY MEETING**

On receipt of the Nominations, a preliminary meeting was held on 09.10.2020 to decide the further course of action for completing the task assigned by Hon'ble Tribunal. Following members have attended:

1. Shri Santhosh Kumar Gouda, KAS, Assistant Commissioner, Raichur Sub-Division.
2. Shri M Sridhar, Zonal Senior Environmental Officer, KSPCB, Ballari.
3. Shri Mahanathesh T, Additional Director, Mines and Geology, Ballari.
4. Shri Kiran Kumar B S, Scientific Officer, Grade-I, Dept of Forest, Ecology and Environment and Karnataka Wetland Management Authority.
5. Shri M Viswanath, Senior geologist, Department of Mines & Geology, Raichur.
6. Mrs Anjana Kumari V, Scientist D, CPCB. Bangalore
7. Shri E. Thirunavukkarasu, Scientist 'E', Integrated Regional Office, Ministry of

Environment, Forest and Climate Change.

The Joint Committee discussed about the Terms of references given by the Hon'ble NGT, also noted the information submitted by the Department of Mines and Geology. In the preliminary meeting, it was decided to obtain the relevant additional information from concerned departments before the inspection of the Joint Committee such as District Survey Report (DSR) /report on estimation of sand deposits, List of mines permitted by the District Sand Committee, Audit of the quantity extracted etc. The site visit was also scheduled between 19-23 October 2020. However, due to meteorological forecast dated 13.10.2020 and continuous heavy rain in both the districts and flood

in the rivers, the members felt that it will be difficult to reach and visit all mines sites and committee cannot find out ground reality of the sites and compliance status etc., Hence, site visit could not be carried out in scheduled date. In view of the above, members suggested to seek additional time of Three months from Hon'ble NGT to complete the task. Hon'ble vide order dated 29.10.2020 has granted time till 17.12.2020 to file the report.

#### **INSPECTION BY THE JOINT COMMITTEE**

Joint Committee inspected the mine sites at Raichur on 24- 25, November 2020. Following members have attended:

1. Shri Santhosh Kumar Gouda, KAS, Assistant Commissioner, Raichur Subdivision.
2. Shri Mahanthesh T, Additional Director, Mines and Geology, Ballari.
3. Smt Suganda B Kuri, Deputy Environmental Officer, KSPCB, Raichur.
4. Smt. Anjana Kumari V, Scientist D, CPCB, Bangalore
5. Shri Kiran Kumar B S, Scientific Officer, Grade-I, Dept of Forest, Ecology and Environment and Karnataka Wetland Management Authority.
6. Shri M Viswanath, Senior Geologist, Department of Mines & Geology, Raichur.
7. Shri E. Thirunavukkarasu, Scientist 'E', Integrated Regional Office, Ministry of Environment, Forest and Climate Change, Bangalore.

Following were also present:

1. Smt K. Pusphalatha, Senior Geologist, O/O Joint Director, Department of Mines & Geology, Ballari
2. Shri B.Manjunath, Tahsildar, Sindhanur
3. Shri Manjunath, Geologist, Department of Mines & Geology, Raichur.
4. Shri Gopikrishna Geologist, Department of Mines & Geology, Raichur.
5. Shri Syed Fazl, Geologist, Department of Mines & Geology, Raichur.

#### **ABOUT THE GRANT OF MINING LEASE**

The Joint Committee noted that the following procedure is being followed in granting of sand mining

#### **Procedure followed in granting lease:**

Raichur District is bounded by Krishna River in Northern part & Tungabhadra River in the Southern part. Krishna River runs of about 183.401 km in the District by covering 3 taluks. Tungabhadra River runs about 100.397 km in the District by covering 3 taluks.

As per the Sustainable Sand Mining-2016 and 31(R) of Karnataka Minor Mineral Concession Rules -1994 (KMMCR) of amendment of 2016, Sand blocks have been inspected and identified with co-ordinates in river Krishna, Tungabhadra & in Nalas for the propose of Tender-Cum- Action or reservation for Governments works. With the assistance of Revenue, PWD, Forest, and DMG, the approximate quarriable sand available in each identified block is estimated by restricting quarrying depth to 1 to 3 meter or water level whichever is less.

After recommendations of the Taluk Committee, District Committee notifies in the official Gazette for grant of quarrying lease through auction for sand quarrying or extraction by Government Departments.

Tender-cum-auction is done through online. Highest price offer is declared as the successful bidder; the successful bidder obtains Quarry Plan, Environmental Clearance, as per Chapter- II-A of KMMCR-1994 of amendment of 2016. Sand quarrying permission is issued up to a period for five years.

Under the New Sand Policy -2020, a Taluk Sand Committee through Joint Assessment team estimates sand deposits available, and submit the report with latitude and longitude details, to District Sand Committee for the approval and notification. In and around IV, V & VI order streams / rivers and removal of silt in backwater of dam/ reservoir is granted to State Government owned agency/ Corporation/ Board/ Mandali which has been notified by the Government.

And sand available in and around First, Second & Third tier streams (I, II & III tier streams) District Sand Committee after notifying area, depending upon the availability of sand in these sand deposits to give the approval to Gram Panchayat for taking up mining of sand using

manual labour.

In Raichur District, 25 sand leases in riverbed and 2 sand leases in Nalas awarded to the successful bidder through Tender-Cum-auction as per Sand Policy-2016. In Vijayapura District, 13 blocks have been identified, notified and one block at Chikkagalagali, the pre-qualification of tender process has been completed and lease awarded. No other leases are awarded due to stay imposed by Hon'ble NGT vide order dated 10.03.2017 in an application filed by the present applicant Vs State of Karnataka. Leases have been executed after obtaining the EC by the bidder.

It is noted that no sand blocks in Ponds and nallas are identified under the KMMCR-1994 of New Sand Policy, 2020.

As per the 31 (R) 3 (iii) (viii) & (ix) of KMMCR-1994 of amendment 2016, sand blocks reserved to Government works, and executed 4 sand leases to PWD in Raichur District. List of sand leases is placed at **Annexure-I.**

Sand mining is not allowed in stream and no sand areas are identified for sand mining activity in a pond/tank. Mechanized boats and dredgers in river sand mining are prohibited, however usage of backhoe equipment like JCB is allowed as per Chapter IV-B, 31-R of KMMCR,1994 & its amendment-2016. Further, the Sustainable mining practices under Sustainable Sand Mining Management Guidelines, 2016, provides the following: "Depending upon the location, thickness of sand, deposition, agricultural land/riverbed, the method of mining may be manual, semi mechanized or mechanized". In many sand leases in Yamuna River semi mechanized method is allowed by MoEF&CC. Copy of an EC is enclosed at **Annexure-II.**

The District level Sand Monitoring Committee ensures stipulation of following conditions as per the New Sand Policy, 2016, KMMCR, 1994 and Amendment,2016 and as per the Sustainable Mining Management Guidelines,2016:

- a) No sand quarrying shall be undertaken without a quarrying plan and Environmental Clearance.
- b) Lessee shall make Stockyard, Office, CC Camera, Weigh Bridge near to the sand block.
- c) Quarrying shall be done in accordance with MOEF Guidelines.
- d) Instream, mining sand extraction and loading to vehicles directly from river is prohibited. So, lessee should store mining sand in stockyard.
- e) Lessee should mine as per the mine plan without damaging safety zone and riverbed.
- f) Sand quarrying activity shall be in accordance with terms and conditions of the EC
- g) The sand has to be mined in the sand lease blocks and to be stored in stockyard.
- h) No Sand quarrying shall be allowed within a radius of 500 mts from water supply.
- i) Permits shall be issued to vehicles having GPS.
- j) The vehicles having non-communication mode, shall not be issued with permits and shall not be allowed to load sand.
- k) Permits issued for transportation of Sand shall be obtain sign in the Check Post.
- l) Mechanized boats and dredgers in river sand quarrying are prohibited.
- m) Usage of backhoe equipment like JCB is allowed as per Chapter IV – B, 31-R of Karnataka Minor Mineral Concession Rules -1994 & its amendments.
- n) Sand stored in stockyard, shall be disposed by issuing Computerised Mineral Dispatch Permits (CMDR) to the transporters.

#### **Storage and Transport**

As per the Sustainable Sand Mining Management Guidelines,2016, the lessee have established stockyard with geo-fencing and setup up

a Camp Office with Computer facility, Electricity supply, CC Camera and Weigh Bridge. Inward and dispatch registers and stock register are maintained in the Camp Office. Sand stored in stock yard is being disposed of, by issuing Computerised Mineral Dispatch Permit (CMDP) through vehicles fitted with Global Positioning System.

#### **Action taken on violators**

Established 14 check post across the District to check the illegal transportation of sand. Action have been taken to file FIRs impose penalty, against the violators like multiple illegal transport using same permit, vehicles for transporting more than the Permit Quantity, vehicles not equipped with GPS, usage of Heavy machinery like Hitachi etc. Following are the major action taken to prevent illegal sand mining/transportation/stock by the District/Taluk sand Monitoring Committee on defaulters:

- i. 83 vehicles which have not equipped with GPS have been block listed and sand permits not issued for a period of three months.
- ii. 77 vehicles which have violated the rules by using the same permits transporting 237 multiple times from the 11 different sand stockyards of sand blocks have been block listed and transport permits not issued for a period of three months. Tender bid amount, Royalty, District Mineral Fund (DMF) of amount Rs.38,02,344/- has been collected as penalty. Each Vehicle owners have been imposed penalty of Rs. 25,000.
- iii. Six FIRs have been lodged against multiple illegal sand transportation on vehicles.
- iv. 30 FIRS have been registered & penalised for 76 vehicles of an amount Rs: 13,01,535/- by the members of the District Sand Monitoring Committee/Taluk Sand Monitoring Committee against the vehicles for transporting more than the Permit (Mineral Dispatch Permit) quantity.
- v. 78 vehicles have been penalised of an amount Rs 13.01 lakhs for transporting more than the Permit.
- vi. Six FIRs have been filed against for being used Hitachi's for mining in the blocks.
- vii. An amount of Rs 14 lakhs have been imposed as penalty for using Hitachi's for mining in the blocks.
- viii. In the Year 2017-18, 27 FIRs against the 27 Survey numbers and in the Year 2018-19, 38 FIRs against 68 Survey numbers have been registered for unlawful collection of sand on Patta land. District Level Sand Committee decided that, such lands to be entered as "Government" in the records.
- ix. Rs 58.66 lakhs imposed on three Sand Mining Lease holders who have extracted more quantity and six Sand Mining Lease holders for encroachment.
- x. During 2017-18, 2018-19, 2019-20, 2020-21 District/Taluk Sand Monitoring Committee lodged  
-995 FIR's against illegal transportation (1090 Tippers, 320 Tippers/lorry Seized)  
-105 FIR's against illegal Storage of sand (54118 MT Seized)  
-6 FIR's against illegal Sand Mining ( 7 Hitachis, 4 JCBs, 5 tippers Seized)

#### **DELIBERATIONS OF THE COMMITTEE**

Hon'ble National Green Tribunal in the order dated 07.08.2020 directed the Joint committee to look into the following:

- i. whether there is any impact of the environmental loss in carrying out the proposed removal of sand from the ponds, nallas as per the present Sand policy, 2020 of Karnataka
- ii. if so what are the remedial measures to be taken to protect the water bodies against mining the natural resources like sand
- iii. if there is any flagrant violation of the environmental laws as found, on account of such illegal activity, assess the environmental compensation
- iv. ascertain the number of such permission granted in those Districts by the authorities and also the persons to whom it was granted and whether they are adhering to the proceedings obtaining necessary permission from the authorities, before doing the mining work from these water bodies.

In order to deliberate on the above given Terms of References (ToR),

the Committee, inspected the mine sites, had examined various documents like mine lease, Environmental Clearance and the compliance status with the prevailing regulations and guidelines etc., Based on the above, each ToR has been deliberated in detail and following are the observations/comments:

**Whether there is any impact of the environmental loss in carrying out the proposed removal of sand from the ponds, nallas as per the present Sandpolicy, 2020 of Karnataka**

Karnataka Minor Mineral Concession Rules -1994 & its amendment and the Sand Policy of Karnataka, 2020 permits sand mining in ponds and nallas. It is noted that following two sand mining in nallas have been permitted in Raichur District under the Sand Policy, 2016 and no sand blocks in Ponds and nallas are identified under the New Sand Policy, 2020, as per the information from Department of Mines and Geology, Raichur:

**Table -1: Details of Mine leases granted in Nallas in Raichur District**

So. No	Name of the nalla, village	Extent ( acres)	Date of Quarry Plan approval	Date of EC	Quantity permitted , MT	Extracted from 2017 to till date, MT
1	Gonavara	12.20	06.06.2017	08.06.2017	20,000	17,260
2	Albanuru	12.20	06.06.2017	08.06.2017	20,000	32,700

No sand mining in ponds and nallas has been permitted in Vijayapura District. It is noted that these sand mining are permitted following due procedure prescribed under the regulations and guidelines. Copy of the ECs are enclosed at **Annexure- III and IV.**

The Environmental clearance was granted to Govanara sand mining block in the name of Shri. Sharana Basappa on 08.06.2017. Reported that the mine was not in operation for past six months. From the google satellite imageries (January, 2017 to February, 2020) & field visit following points are inferred:

- It is evident that mining was started only after obtaining Environmental Clearance.
- There is no water logging found from satellite image & during field visit also no such water loggings were found which an evidence that no excess mining has been done.
- It has been observed from the Image of 2017 that the site is almost it is a dry area. Hence no question of Environmental loss such as flora & fauna/ water ecosystem etc. from the activity.

According to DMG, Raichur, there are no encroachment and mining beyond the permitted depth, however, the lease owner has penalised Rs 1,34,400/- for the transport of sand by 10 multiple trips with the same permit.

The Environmental clearance was granted to Albanuru sand mining block on 08.06.2017. The mine is not in operation since April, 2020. From the google satellite images (April, 2017 to January, 2020) & field visit following points are inferred:

- It is evident that mining was started only after obtaining Environmental Clearance.
- There is no water logging found from satellite image & during field visit also no such water loggings were found which an evidence that no excess mining has been done.
- It has been observed from the Image of 2017 that the site is almost it is a dry area. Hence no question of Environmental loss such as flora & fauna/ water ecosystem etc. from the activity.

According to DMG, Raichur, there are no encroachment and mining beyond the permitted depth, however, the lease owner has penalised Rs 1,87,920/- for the transport of sand by 15 multiple trips with the same permit.

**Environmental Impacts due to mining:** The Joint Committee noted that the likely impacts from such mining activity may include noise from the operation of machineries like JCB, dust from mining, loading/ unloading, disturbance to the flora/ fauna if present at/close

to the mine site, change of hydrology and related issues if the depth of mining is more etc.,. **The Joint Committee noted that only manual method of mining is being practiced in the above two nallas.**

**Dust pollution:** The Committee noted that the moisture content in the sand naturally prevent generation of dust pollution. Moreover, the dust settles down within the site itself due to density of sand particle. The ambient air quality monitoring carried out by Ms/Horizon Ventures, Bangalore from these mine sites revealed that the dust particles (particulate matter) are within the permissible limit.

Water sprinkling is carried out on haul roads to control the dust generated from the plying of vehicles.

The transport route from mining site to the stock yard and to main road shall be improved and water sprinkling shall be carried out to control the dust generated from the plying of vehicles.

**Noise Pollution:** It is learnt from the local that only manual mining is being carried out in the above two mining in nallas.

The Committee noted that from the noise level monitored by Ms/Horizon Ventures, Bangalore from these mine sites revealed that the noise level varies are within the permissible limit.

**Eco- Sensitive Area:** No eco- sensitive area is located near the mine area.

**Water Pollution:** There are no wastewater generation from the activity.

**Depth of mining:** According to the DMG, the mines sites are periodically inspected, and the encroachment and depth of mining are monitored. Since all the storage and movement of mined materials are monitored through geo-fencing, computerised e- permit, transport through GPS fitted vehicle, any excess mining either through encroachment of outside mine lease area or beyond the depth permitted, will be traced and fine are imposed which is about double the cost of the mined material. Moreover, the sand availability also restricts the depth of mines. In view of the above, in general, the mines are not mining beyond the permitted depth.

**Safety Zone:** Safety zone are being maintained as per Sustainable Sand Mining Management Guidelines -2020 to avoid damage to riverbanks thereby erosion etc.

**Hydrology:** No diversion or obstruction of water course is carried out for the mining so as to maintain the hydrology of the river.

**Therefore, the committee concluded that the impact caused on environment, environment loss due to the sand mining in pond and nallas is negligible and likely impact in long course will also be negligible if the regulations and guidelines are followed strictly in granting mining lease as well as carrying out the mining activity.**

Further, the Committee opined that individual mines of minor minerals being small in size may have insignificant impact, however, their collective impacts, taking into consideration of various mines on a regional scale, may be significantly adverse. **In view of the above, a Cumulative EIA for both Krishna and Tungabhadra river be carried out after mining period of about five years, by the District Sand Committee/ DMG/ Government of Karnataka. The cost towards the carrying out the study may be met from all the mine owners.**

**If so what are the remedial measures to be taken to protect the water bodies against mining the natural resources like sand**

The Committee concluded that the impact due to the above mining activities is negligible, however, following measures are suggested for protection of water bodies against the mining of sand:

- i. Audit on the quantity permitted, quantity mined out, rate of replenishment etc shall be conducted once in every year.
- ii. In addition to the imposition of penalty, cancellation of mine lease in case of any violation- encroachment, excess mining etc, and barring the lease owner in participating in Auction for a particular period say one to two years, may be considered.
- iii. All the relevant Regulations and Guidelines shall be followed strictly in granting mining lease, carrying out the mining activity and monitoring.
- iv. Strengthen the DMG with manpower and infrastructure so as to

- enhance the frequency of monitoring.
- v. The CC Cameras at stock yard shall be connected to the servers of District / Taluk Sand Monitoring Committees/ DMG for monitoring.
  - vi. The CC Cameras shall be installed at check post on the sand transport route and connected to the servers of District / Taluk Sand Monitoring Committees/ DMG for monitoring.
  - vii. The transport route from mining site to the stock yard and to main road shall be improved and water sprinkling shall be carried out to control the dust generated from the plying of vehicles.

**If there is any flagrant violation of the environmental laws as found, on account of such illegal activity, assess the environmental compensation**

The Committee has noticed from the Google earth imagers that both the mines have commenced their mining activity only after the grant of EC. As per the records from Mines and Geology, the mined quantity is within the quantity permitted under EC and Mining Lease. There are no violation of Environmental laws, however, there are certain non-compliances of EC conditions relating to installation of dust control measures, implementation of water conservations measures, advertisement on grant of EC, improvement of transport route, constitution of Environmental Management Cell, submission of half yearly compliance report to Regional Office of the MoEFCC etc.,

The mine owners expressed technical difficulties / non-viabilities in installing the dust control measures and implementation of water conservations measures. It is noted that EC stipulated a condition as "Mineral handling area shall be provided with the adequate number of high efficiency dust extraction system. Loading and unloading areas including the transfer points should also have efficient dust control arrangement. These should be properly maintained and operated."

The Committee opined that the dust extraction could be installed and effectively operated in a closed area whereas both the mining as well as the sand storage area are open and hence it is technically not feasible. Further, the dust pollution is naturally prevented due to the moisture content and the density of the sand. Moreover, the dust settles down within few meters of the activity (within the site itself) due to density of sand particle. **In view of the above, the Committee opined that this condition is not so relevant. Instead of dust extraction, water sprinkling at stock yard may be insisted.**

As regards, water conservation, it is noted that EC stipulates condition as " The project authority should implement suitable conservation measures to augment ground water resources in the area in consultation with the Regional Director, Central Ground Water Board within 3 months and report be submitted to the Authority." In general water conservation involves minimisation of water usage, recycling and rainwater harvesting etc,. Whereas, there is no water usage and waste water generation in the sand mining. Since all the mine sites are located either in riverbed or nallas, no separate rainwater harvesting measures are required. In view of the above, the committee opined that this condition is not so relevant.

As regards, CSR, the mine owners have informed that they pay District Mineral Fund which is used in the CSR activities in the vicinity of the project and also carry out certain activities viz distribution of tree saplings, issue of books for the school students etc, hence, stipulation of separate conditions on CSR amounts to duplication. The Committee also agree with the statement of mine owners.

As regards non- constitution of Environmental Management Cell (EMC), the committee felt that it may not be viable for such mines to have a separate Environment Management cell in view of the number of workers engaged and their educational quality, nature of activity etc, and hence the mine owners may utilise the service of accredited environmental consultant/laboratory for the environmental management instead of having their own EMC.

**In view of the above, the Committee opined that conditions on dust extraction system, water conservation, Environmental Management Cell, CSR need to be revisited. The SEIAA need to consider suitable modification of above conditions in the EC in future.**

As regards the other non- compliances, considering the nature of non- compliances, the Committee instructed the mine owners to comply with the EC conditions and submit a compliance report within



a month, otherwise enforcement action will be initiated as per the regulations.

**Ascertain the number of such permission granted in those Districts by the authorities and also the persons to whom it was granted and whether they are adhering to the proceedings obtaining necessary permission from the authorities, before doing the mining work from these water bodies.**

As per the records produced by Mines and Geology, 31 mine leases have been granted in Raichur District and One in Vijayapura District. Out of these, two sand mining in nallas have been permitted in Raichur District and in Vijayapura District, no sand mining in ponds and nallas has been permitted. It is noted from the records of Department of Mines and Geology and Google Earth Imageries that all the mines including the two in nallahs have commenced their mining activity only after possession of all required permissions such as EC and Quarry Plan approval etc.

#### **• CONCLUSION AND RECOMMENDATIONS**

After detailed deliberation, the Joint Committee has made the following conclusions and Recommendations:

- **The impact caused on environment, environment loss due to the sand mining in pond and nallas is negligible and the likely impact in long run will also be negligible if the regulations and guidelines are followed strictly in granting mining lease as well as carrying out the mining activity.**
- **The individual mines being small in size may have insignificant impact, however, their collective impacts, taking into consideration of various mines on a regional scale, may be significantly adverse. In view of the above, a Cumulative EIA for both Krishna and Tungabhadra river be carried out after mining period of about five years, by the District /Taluk Sand Committees/ DMG/Government of Karnataka. The cost towards the carrying out the study may be met from all the mine owners.**
- **There are no violation of Environmental laws noticed except certain non- compliances of EC conditions relating to advertisement on grant of EC, improvement of transport route, constitution of Environmental Management Cell, submission of half yearly compliance report to Regional Office of MoEFCC etc,. Considering the nature of non- compliances, one Month time may be given to the mine owners to comply with the EC conditions and submit a compliance report to Integrated Regional Office, MoEFCC, Bangalore / SEIAA, Karnataka with a copy to DMG, Raichur.**
- **The Committee also felt that the conditions stipulated in the EC such as dust extraction in mineral handling area (storage area), water conservation, etc are not so relevant for these mines hence conditions on dust extraction system, water conservation, Environmental Management Cell, CSR need to be revisited. The mine owners may utilise the service of accredited environmental consultant / laboratory for the environmental management instead of having their own Environment Management Cell. The SEIAA need to consider suitable modification of above conditions in the EC in future.**
- **Audit on the quantity permitted, quantity mined out, rate of replenishment etc shall be conducted every year.**
- **The usage of semi mechanized, or mechanized mining may be permitted as per the Sustainable Sand Mining Management Guidelines, 2016, only in case of the blocks where the depth of sand deposition is more than three meters and depth of mining can be permitted more than one meter. Mining up to one-meter depth should be by manual only.**
- **In addition to the imposition of penalty, cancellation of mine lease in case of any violation- encroachment, excess mining etc, and barring the lease owner in participating in Auction for**

**a particular period say one to two years, may be considered.**

- **All the relevant Regulations and Guidelines shall be followed strictly in granting mining lease, carrying out the mining activity and monitoring.**
- **DMG need to be strengthened with manpower and infrastructure so as to enhance the frequency of monitoring**
- **The CC Cameras at stock yard shall be connected to the servers of District / Taluk Sand Monitoring Committees/ DMG for monitoring.**
- **The CC Cameras shall be installed at check post on the sand transport route and connected to the servers of District / Taluk Sand Monitoring Committees/ DMG for monitoring.**
- **The transport route from mining site to the stock yard and to main road shall be improved and water sprinkling shall be carried out to control the dust generated from the plying of vehicles.”**

**23.** The Joint Committee also filed second report dated Nil, e-filed on 17.12.2021 which reads as follows:-

**"SECOND REPORT OF JOINT COMMITTEE IN THE MATTER OF O.A. 144 OF 2020 (DR. SARVABHOUM BAGALI) SUBMITTED BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI, AS PER ORDER DATED 09.11.2021.**

#### **1.0 PREAMBLE**

*In the Original Application No. 144 of 2020 (SZ), filed by Dr.Sarvabhoun Bagali, Vs The State of Karnataka &Ors, the Hon'ble National Green Tribunal (NGT), Chennai vide Order dated 07.08.2020 constituted a Joint Committee to inspect the sites in question and submit a Report. Accordingly, the Joint Committee has inspected the sand mines at Raichur District and submitted a report on 21.12.2020. Hon'ble NGT vide order dated 09.11.2021 issued following directions:*

*"6. There was nothing mentioned about the quantity of the minerals mined buy the lease holders, so as to ascertain as to whether there was any excess mining done by any of the lease holder and if so, what is the quantity of excess mining done and the amount recovered for such illegal mining.*

*7. It was also not clear from the conclusion portion as to how many of the violations noted by them relate to the persons to whom mining leases and the permissions have been granted. So the Committee is directed to file a detailed report incorporating in these aspects as well."*

#### **DELIBERATIONS OF THE COMMITTEE**

*To deliberate on the above directions, the Committee, had collected the information from concerned Departments and deliberated in detail. Following are the details/ observations/comments regarding the "quantity of excess mining done, and the amount recovered for such illegal mining and violations":*

*Karnataka Minor Mineral Concession Rules -1994 & its amendment and the Sand Policy of Karnataka, 2020 permits sand mining in ponds and nallas. According to DMG, following two mine leases ( Gonavara and Albanuru) were granted permission for mining in nala. Details of sand mining lease permitted in nallas in Raichur District are given*

below:

**Table 1 A: DETAILS OF GONAVARA MINE LEASE**

Name of the Block	Gonavara
Name of the lease	Sri. M Sharana Basappa
Name of the river	Nala
Date of EC granted	EC No. DEIAA-OS-26-MIN-2017/170 dt. 08.06.2017
Geo-Co-ordinates	1. 15 °52' 18.56" N , 76°58' 13.08" E 2. 15 °52' 19.76" N , 76°58' 11.59" E 3. 15 °52' 26.86" N , 76°58' 34.22" E 4. 15 °52' 25.40" N , 76°58' 33.59" E
Permitted Quantity in MTPA	20,000
Total area	12.20 Acres (i.e 4.93 Ha)
Depth for mining allowed.	Up to 3 m as per approved mining plan
Type of mining	Manual

The details on year-wise quantity of sand mined since from the grant of EC is given in table below:

**Table 1 B: QUANTITY OF SAND MINED**

<b>2017-18 (in MTPA)</b>	<b>2018-19 (in MTPA)</b>	<b>2019-20 (in MTPA)</b>	<b>2020-21 (in MTPA)</b>	<b>2021-22 (till date in MTPA)</b>	<b>Total quantity mined since the grant of lease (in MT)</b>
7250	2350	2250	6150	450	18450

**OBSERVATIONS ON GONAVARA MINE LEASE**

- a. From the above table, it is inferred that the sand is mined by the lease within the permitted quantity, there is no excess sand mining by these leases.
- b. The royalty paid by the lessee to Govt. is **Rs. 1,17,26,590/-** (Rupees one crore seventeen lakhs, twenty-six thousand, five hundred ninety only) royalty at the rate of **Rs. 60/- & Rs. 80/-** per ton along with bid amount of **Rs. 606/-** per ton.
- c. The lease has also displayed EC details at their stock yard.
- d. In the EC, depth allowed for mining & method to be used for mining is mentioned in general as "Working should be carried out as per MoEFCC guidelines". Manual mining is followed.
- e. The Committee has noted from the Google earth imageries that above said mine has commenced their mining activity only after the grant of EC. No violations of EC conditions are observed by the committee. However, there are certain non-compliances of EC conditions. As regards the non-compliances of EC, lessee has been directed to take action to comply with the conditions and submit an Action taken report / Action plan. The lessee has submitted compliance report along with latest ambient air quality monitoring reports, noise level

reports etc,. The monitoring report reveals that all the parameters are within the limit. However, there are few short comings such as irregular submission of Half-yearly compliance report, advertisement about grant of EC etc,.

- f. DMG has imposed penalty of **Rs. 1, 34,400/-** to above said lease for violations of Standard Operating Procedure such as with one permit lessee has transported sand in 10 multiple trips, in November, 2019. The lessee is yet to be make the payment.
- g. DMG has imposed **penalty of Rs. 25,000/-** for not maintaining of boundary pillar and **penalty of Rs. 50,000/-** for not maintenance and not giving a slip on the Weighbridge, in October, 2021.

**Table 2 A: DETAILS OF ALBANURU MINE LEASE**

Name of the Block	Albanuru
Name of the lease	Sri. M Earanna
Name of the river	Nala
Date of EC granted	EC No. DEIAA-OS-19-MIN-2017/168 dt. 08.06.2017
Geo-Co-ordinates	1. 15 °45' 47.49" N , 76°52' 11.91" E 2. 15 °45' 45.39" N , 76°52' 13.08" E 3. 15 °45' 54.72" N , 76°52' 34.04" 4. 15 °45' 56.33" N , 76°52' 32.88" E
Permitted Quantity in MTPA	20,000
Total area	12.20 Acres (i.e 4.93 Ha)
Depth for mining allowed.	Up to 3 m as per approved mining plan
Type of mining	Manual

The detail on year-wise quantity of sand mined since from the grant of EC is given in table below:

**Table 2 B: QUANTITY OF SAND MINED, IN MTPA**

2017-18 (in MTPA)	2018-19 (in MTPA)	2019-20 (in MTPA)	2020-21 (in MTPA)	2021-22 (till date (in MTPA))	Total quantity mined since the grant of lease (in MT)
9200	13150	10350	850	450	34000

**OBSERVATIONS ON ALBANURU MINE LEASE**

- a. From the above table, it is inferred that the sand is mined by the lease within the permitted quantity, there is no excess sand mining by these leases.
- b. The royalty paid by the lessee to Govt. is **Rs. 1,62,35,640/-** (Rupees one crore sixty-two lakhs, thirty-five thousand six hundred and forty only) at the rate of **Rs. 60/- & Rs. 80/-** per ton along with bid amount of **Rs. 606/-** per ton.
- c. The lease has also displayed EC details at their stock yard.
- d. In the EC, depth allowed for mining & method to be used for mining is mentioned in general as "Working should be carried out as per MoEFCC guidelines". Manual mining is followed.

- e. *The Committee has noted from the Google earth imageries that above said mine has commenced their mining activity only after the grant of EC. No violations of EC conditions are observed by the committee. However, there are certain non-compliances of EC conditions. As regards the non-compliances of EC, lessee has been directed to take action to comply with the conditions and submit an Action taken report/Action plan. The lessee has submitted compliance report along with latest ambient air quality monitoring reports, noise level reports etc,. The monitoring report reveals that all the parameters are within the limit. However, there are few short comings such as irregular submission of Half-yearly compliance report, advertisement about grant of EC etc,.*
- f. *DMG has collected penalty of Rs. 1,87,920/- to above said lease for violations of Standard Operating Procedure such as with one permit lessee has transported sand in 15 multiple trips.*

#### **CONCLUSION AND RECOMMENDATIONS**

- i. ***Joint Committee noted that there is no excess sand mining in both the sand mines which are the subject matter of this OA.***
- ii. ***As regards the compliance to the conditions of Environmental Clearance, there are few short comings such as irregular submission of Half-yearly compliance report, advertisement about grant of EC etc,. In view of the least importance given by the lease owners on EC compliances and to bring attention and importance on EC, the committee felt that a lumpsum amount, say Rs five lakhs may be imposed on both the mines as Environmental compensation.***
- iii. ***DMG has imposed penalty of 1,34,400/- for violations of Standard Operating Procedure such as with one permit lessee has transported sand in 10 multiple trips, in November, 2019 and the Lessee is yet to make the payment. Further, DMG has imposed penalty of Rs. 25,000/- for not maintaining of boundary pillar and penalty of Rs. 50,000/- for not maintenance and not giving a slip on the Weighbridge to Gonavara lease, in October, 2021.***
- iv. ***DMG has collected penalty of Rs. 1, 87,920/- for violations of Standard Operating Procedure such as with one permit lessee has transported sand in 15 multiple trips to Albanuru lease."***

**24.** The Joint Committee also filed third report, wherein they have mentioned that on verification of the Environmental Clearance (EC) and Mining Leases granted in Raichur District, it was found that it was granted only for mining the sand in Nallah and not for desilting or dredging.

**25.** Heard the learned counsel appearing for the applicant and respondents.

**26.** The learned counsel appearing for the applicant argued that in the guise of the desilting and dredging, large scale mining is being undertaken in wetlands/lakes/ponds/Nallahs which are not permissible under law. Mining is a prohibited activity in wetlands and

there is no regulation for monitoring these aspects. In the guise of granting permits for community use, in fact it is being used for commercial purpose which is not permissible under law. So, certain mechanisms will have to be provided and it must be strictly followed and necessary directions will have to be issued in this regard.

**27.** On the other hand the learned counsel appearing for the MoEF&CC and SEIAA – Karnataka argued that on the basis of the directions issued by the Principal Bench of National Green Tribunal, New Delhi, the MoEF&CC has issued several directions and guidelines, including guidelines issued in 2016 and 2020 viz., SSMMG-2016 and EMGSM-2020 which covers all these aspects. Certain activities were exempted from obtaining Environmental Clearance under Appendix – IX to the EIA Notification, 2006 as amended by Notification dated 15.01.2016. The Department of Mines and Geology is the authority to monitor these aspects and enforce the guidelines and take action, if there is any violation found.

**28.** The learned counsel appearing for the State of Karnataka argued that the Sand Mining Policy itself was issued on the basis of the guidelines issued by the MoEF&CC in 2016 and 2020 and also directions issued by the Principal Bench of National Green Tribunal and this Bench. No sand mining is being permitted in wetlands, but permission is being granted for community purpose and that is being monitored by the concerned Mining Department. Whenever violations are found, they are taking action and they will continue to take action as well.

**29.** We have considered the pleadings, reports filed, submissions made by the learned counsel appearing for the parties and also perused the documents available on record.

**30.** The points that arose for consideration are:

- (i)** Whether in the guise of desilting or dredging, any illegal mining is being done in the Lakes/Ponds/Nallahs/Wetlands in the State of Karnataka, especially in Raichur and Vijayapura Districts?

- (ii) What is the nature of activity permissible under the Wetlands (Conservations and Management) Rules, 2017?
- (iii) What is the nature of directions to be issued applying the principles of 'Precautionary Principle', 'Sustainable Development' and 'Intergenerational Equity' to protect environment?
- (iv) Relief and costs.

**POINTS:-**

- 31. Grievance in this application was that illegal sand mining is being done in the water bodies in the guise of dredging and maintenance of lake in Vijayapura and Raichur Districts of State of Karnataka. This is also against the Sustainable Sand Mining Policy issued by the MoEF&CC and also against the provisions of the Wetlands (Conservation and Management) Rules, 2017.
- 32. Those allegations were denied by the State Departments.
- 33. The SEIAA - Karnataka and the MoEF&CC has contended that there are guidelines issued in this regard and it is for the State Government through the Mining Department to enforce and regulate the same.
- 34. It is in a way admitted by the State of Karnataka, MoEF&CC and SEIAA – Karnataka that no mining is permitted in the wetlands and they are only conducting dredging and desilting and removal of sand from the wetlands for community purpose is a permissible activity and only to that extent, they are giving permissions. In respect of mining, mining leases are granted and mining will be permissible only after obtaining necessary Environmental Clearance. The EIA Notification, 2006 as amended from time to time regulates the mining activity mandating prior Environmental Clearance for doing mining activities. Appendix – IX of the EIA Notification, 2016 exempt certain categories of activities from obtaining Environmental Clearance which are relevant for our purpose alone is extracted as follows:-

*"4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.*

5. Community works, like, de-silting of village ponds or tanks, construction of village roads, ponds or bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes and community efforts.

6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc."

**35.** Rule 2 (g) of the Wetlands Rules, 2017 defines wetlands as "wetlands means the areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters **but does not include river channels, paddy fields, human-made water bodies/tanks specifically constructed for drinking purposes and structures specifically constructed for aquaculture, salt production, recreational and irrigational purposes.**".

**36.** So, it is clear from this, that all water bodies are not wetlands and certain water bodies created for the purpose of drinking water and irrigation purposes are excluded from the purview of the wetlands. Wise use of wetlands was defined under Rule 2 (i) of the said Rules which says "wise use of wetlands means maintenance of their ecological character, achieve through implementation of eco-system approach within the context of sustainable development". Rule 4 deals with the restriction of activities in wetlands which reads as follows:-

"The following activities shall be prohibited within the wetlands, namely,-

(i) conversion for non-wetland uses including encroachment of any kind;

(ii) setting up of any industry and expansion of existing industries;

(iii) manufacture or handling or storage or disposal of construction and demolition waste covered under the Construction and Demolition Waste Management Rules, 2016; hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically engineered organisms or cells, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E-Waste (Management) Rules, 2016;

(iv) solid waste dumping;

(v) discharge of untreated wastes and effluents from industries, cities, towns, villages and other human settlements;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and,

(vii) poaching."



**37.** Dredging or mining as such is not prohibited. Rule 5 of the said Rules deals with the constitution of wetland authority and sub-rule 4 of the Rule 5 deals with the power of the State Wetland Authority / Union Territory Wetland Authority and nature of functions to be carried out by them which includes the following:-

*"(n) issue necessary directions for conservation and sustainable management of wetlands to the respective implementing agencies;*

*(o) undertake measures for enhancing awareness within stakeholders and local communities on values and functions of wetlands"*

**38.** This also permits certain measures to be taken for conservation and sustainable development of wetlands. So, the submission made by the learned counsel appearing for the applicant that there is a total ban of sand mining in the wetlands cannot be accepted, but at the same time, permitting sand mining in regulated and scientific manner after conducting proper study alone can be permissible and it cannot be granted in a causal manner and it must be intended for the purpose of protecting, conserving the ecosystem of the wetland and also sustainable conservation of the wetlands and more than that it is not permissible. If it can be restricted to dredging and desilting alone, that will be more beneficial for protection of wetlands and water bodies.

**39.** Whenever, the Government is permitting the wise use of wetlands for maintenance of their ecological character achieve through implementation of ecosystem approach within the context of sustainable development, then they will have to conduct a proper scientific study regarding these aspects and only on the basis of the study conducted by a competent authority, such activities can be carried out in the wetlands which includes removal of sand other than for community or other purpose and that too after obtaining necessary clearance under the environmental laws. However, commercial sand mining from the wetlands are to be prohibited, unless it is permitted as per the existing rules and guidelines issued by the MoEF&CC.

**40.** Further, the Sustainable Sand Mining Management Guidelines, 2016 also prohibits instream mining and they also provide methodology for doing Sustainable Sand Mining and procedure to be followed for this purpose which includes preparation of District Survey

Report, ascertaining the extent of sand available and the extent of sand that can be permitted to mine, after identifying the sand blocks in the river beds after obtaining necessary Environmental Clearance. Procedures were also provided as to how the mining of sand from the agricultural field, customary right of sand mining, desilting of reservoir, barrages, anicuts, lakes and canals have to be carried out. The Enforcement and Monitoring Guidelines of Sand Mining, 2020 issued by the MoEF&CC also deals with the mechanism for monitoring and enforcement, replenishment study etc.

- 41.** Further, the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines of Sand Mining, 2020 were issued by the MoEF&CC on the basis of the directions issued by the Principal Bench of National Green Tribunal in **Original Application No. 186 of 2016 (Satendra Pandey Vs. Ministry of Environment, Forest and Climate Change) and O.A. 173/2018 (Sudarsan Das Vs. State of West Bengal & Ors.)** and ultimately when the cases were disposed of by the Principal Bench, directed the State Authorities to implement the EIA Notification, 2006 as amended from time to time and also the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines of Sand Mining, 2020 issued by the MoEF&CC in this regard.
- 42.** It is seen from the counter statement filed by the authorities that they are not permitting any sand mining from the wetlands and also the instream river sand mining and whenever such things are brought to notice, they are taking action.
- 43.** As directed by this Tribunal, the Joint Committee has filed detailed reports and the Joint Committee report will go to show that the details of the action taken, including the penalty and royalty imposed and collected.
- 44.** This Tribunal also in **Udaya Suvarna Vs. The Deputy Commissioner/Chairman, Udupi District Sand Monitoring Committee and Ors. [Original Application No.252 of 2017 (SZ)] by Judgment dated 18.05.2022** had issued certain directions in respect of removal of sand bars and in the guise of dredging and desilting, no instream mining should be conducted.

There must be a regulatory mechanism even to monitor the customary sand removal for community purposes in order to ascertain as to whether there is any violation of such permissions being undertaken by them. Exemption granted for obtaining Environmental Clearance (EC) will not permit to do mining activity without obtaining Environmental Clearance (EC). The permissibility or otherwise for sand mining has to be considered by the authorities while considering the application for Environmental Clearance in respect of sand mining. The issuance of mining leases is governed by the Mines and Mineral (Development and Regulation) Act, 1957 and the State regulations namely, Karnataka Minor Mineral Concessions Rules, 1994 and subsequent amendments issued by the State of Karnataka in respect of their state. There also certain guidelines have been issued for these purposes and those guidelines and safeguards were extracted by the respective departments in their counter statement which were extracted above and as such, we are not repeating the same. However, there is a necessity for issuing certain directions for monitoring these activities.

**45.** So under such circumstances, we feel that the application can be disposed of by giving following directions:-

- a. In the guise of desilting and dredging, no sand mining shall be conducted in lakes/ponds/water bodies/wetlands.
- b. Even dredging and desilting must be done strictly in accordance with the guidelines provided by the Central Government through MoEF&CC in Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines of Sand Mining, 2020 and as per the directions issued by the Principal Bench of National Green Tribunal in **Original Application No. 186 of 2016 (Satendra Pandey Vs. Ministry of Environment, Forest and Climate Change), O.A. 173/2018 (Sudarsan Das Vs. State of West Bengal & Ors.) and Original Application No. 360/2015 (National Green Tribunal Bar Association Vs. Virender Singh, State of Gujarat)** and this Bench in **Original Application No.252 of 2017 (SZ) [Udaya Suvarna Vs. The Deputy Commissioner/Chairman, Udupi District Sand Monitoring Committee and Ors.]**.

- c. Even for granting permission for community purpose, there must be some regulation of getting permission from the concerned authorities specifying the area and quantifying the sand to be removed and the methodology to be adopted for removal of sand as provided under the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines of Sand Mining, 2020.
- d. There must be a mechanism for monitoring the execution of the permission granted, including the end use of the sand so removed from the water bodies/ wetlands for this purpose, if any conditions are imposed while granting permission and if there is any violation found, there must be a mechanism for taking action against those persons, including imposition of environmental compensation apart from the penalties imposed as per the Mines and Mineral (Development and Regulation) Act, 1957.
- e. The State of Karnataka is directed to implement the recommendations made by the Joint Committee in the report e-filed on 13.10.2021 extracted in the earlier paragraph of this Judgment.
- f. The State of Karnataka is also directed to form a Task Force to monitor these activities in each district and whenever violations are found, then they are directed to take appropriate action in accordance with law, including imposition of environmental compensation for the violations committed apart from initiating prosecution and other penalties to be imposed under the concerned mining laws.
- g. The District Collector/Deputy Commissioner and Director of Mines and Geology of each district are also directed to monitor the activities of sand mining, dredging and wise use of wetlands for maintaining the ecosystem and implementation of ecosystem with sustainable development and if there is any violation found, then they are directed to take appropriate action against those violators in accordance with law.
- h. In respect of vehicles used for such illegal activities, they are directed to strictly comply with the directions issued by the Principal Bench of National Green Tribunal, New Delhi in Original Application No. 360 of 2015 and other connected matters dated 26.02.2021.

- i. The Chief Secretary, State of Karnataka is directed to constitute a committee with the Principal Secretary to Government (Ecology and Environment) - Department of Forests, Environment and Ecology, State of Karnataka as Chairman, the Secretary to Government - Department of Mines, Textile and Small Scale Industries, Secretary to Government - Minor Irrigation Department, Chairman - Karnataka SPCB, Chairman - SEIAA, Karnataka and Chairman - Karnataka State Wetland Authority for monitoring the implementation of the regulations in respect of sand mining including the guidelines issued by the MoEF&CC in this regard viz., Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines of Sand Mining, 2020 and the directions issued by the Principal Bench as well as this Bench in several matters relating to sand mining and if there is any gap found in the implementation, then they are directed to evolve an effective mechanism by appointing some Task Force or other control mechanism to monitor these activities and take appropriate action against the violators in accordance with law.
- j. The Chief Secretary, State of Karnataka is also directed to periodically monitor the implementation of the directions issued and if there is any gap found from any of the regulators, then they are directed to take appropriate steps to rectify the same so as to implement the directions in its letter and spirit.

**46.** The points are answered accordingly.

**47. In the result, this Original Application is allowed in part and disposed of with the following directions:-**

- (i)** In the guise of desilting and dredging, no sand mining shall be conducted in lakes/ ponds/ water bodies/ wetlands.
- (ii)** Even dredging and desilting must be done strictly in accordance with the guidelines provided by the Central Government through MoEF&CC in Sustainable Sand Mining Management Guidelines, 2016 and Enforcement

and Monitoring Guidelines of Sand Mining, 2020 and as per the directions issued by the Principal Bench of National Green Tribunal in **Original Application No. 186 of 2016 (Satendra Pandey Vs. Ministry of Environment, Forest and Climate Change), O.A. 173/2018 (Sudarsan Das Vs. State of West Bengal & Ors.) and Original Application No. 360/2015 (National Green Tribunal Bar Association Vs. Virender Singh, State of Gujarat)** and this Bench in **Original Application No.252 of 2017 (SZ) [Udaya Suvarna Vs. The Deputy Commissioner/Chairman, Udupi District Sand Monitoring Committee and Ors.]**.

- (iii)** Even for granting permission for community purpose, there must be some regulation of getting permission from the concerned authorities specifying the area and quantifying the sand to be removed and the methodology to be adopted for removal of sand as provided under the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines of Sand Mining, 2020.
- (iv)** There must be a mechanism for monitoring the execution of the permission granted, including the end use of the sand so removed from the water bodies/wetlands for this purpose, if any conditions are imposed while granting permission and if there is any violation found, there must be a mechanism for taking action against those persons, including imposition of environmental compensation apart from the penalties imposed as per the Mines and Mineral (Development and Regulation) Act, 1957.
- (v)** The State of Karnataka is directed to implement the recommendations made by the Joint Committee in the report e-filed on 13.10.2021 extracted in the earlier paragraph of this Judgment.
- (vi)** The State of Karnataka is also directed to form a Task Force to monitor these activities in each district and whenever violations are found, then they are directed to take appropriate action in accordance with law,

including imposition of environmental compensation for the violations committed apart from initiating prosecution and other penalties to be imposed under the concerned mining laws.

- (vii)** The District Collector/Deputy Commissioner and Director of Mines and Geology of each district are also directed to monitor the activities of sand mining, dredging and wise use of wetlands for maintaining the ecosystem and implementation of ecosystem with sustainable development and if there is any violation found, then they are directed to take appropriate action against those violators in accordance with law.
- (viii)** In respect of vehicles used for such illegal activities, they are directed to strictly comply with the directions issued by the Principal Bench of National Green Tribunal, New Delhi in Original Application No. 360 of 2015 and other connected matters dated 26.02.2021.
- (ix)** The Chief Secretary, State of Karnataka is directed to constitute a committee with the Principal Secretary to Government (Ecology and Environment) - Department of Forests, Environment and Ecology, State of Karnataka as Chairman, the Secretary to Government - Department of Mines, Textile and Small Scale Industries, Secretary to Government - Minor Irrigation Department, Chairman - Karnataka SPCB, Chairman - SEIAA, Karnataka and Chairman - Karnataka State Wetland Authority for monitoring the implementation of the regulations in respect of sand mining including the guidelines issued by the MoEF&CC in this regard viz., Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines of Sand Mining, 2020 and the directions issued by the Principal Bench as well as this Bench in several matters relating to sand mining and if there is any gap found in the implementation, then they are directed to evolve an effective mechanism by appointing some Task Force or other control mechanism to monitor these activities and take appropriate action against the violators in accordance with law.

- (x) The Chief Secretary, State of Karnataka is also directed to periodically monitor the implementation of the directions issued and if there is any gap found from any of the regulators, then they are directed to take appropriate steps to rectify the same so as to implement the directions in its letter and spirit.
- (xi) Considering the circumstances, parties are directed to bear their respective cost in the application.
- (xii) The Registry is directed to communicate this order to the Chairman – Karnataka SPCB, Chairman – SEIAA, Karnataka and Chairman – Karnataka State Wetland Authority, Principal Secretary to Government (Ecology and Environment) - Department of Forests, Environment and Ecology, Secretary to Government - Department of Mines, Textile and Small Scale Industries, Secretary to Government - Minor Irrigation Department and also to the Chief Secretary, State of Karnataka for their information and compliance of directions.

48. With the above observations and directions, this Original Application is disposed of.

**Sd/-**  
**Justice K. Ramakrishnan, JM**

**Sd/-**  
**Dr. Satyagopal Korlapati, EM**

**O.A. No.144/2020 (SZ),**  
**02<sup>nd</sup> September 2022. Mn.**