IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17523 of 2023

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Manjeet Chawla S/o Late Amarjeet Singh Chawla, R/o G201, Preet Vihar, New Delhi - 110092. Through Power of Attorney Holder Ramesh Prasad Singh, male, aged about 55 years approximately, Son of Sh. Ram Yash Singh, Resident of Village - Sahejani, P.O. - Hasan Bazar, P.S.- Piro, District - Bhojpur, State- Bihar Pin – 802204.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Mines and Geology Department, Government of Bihar, Patna.
2. The Director, Mines and Geology Department, Government of Bihar, Patna.
3. The Managing Director, Bihar State Mining Corporation Ltd., Bihar, Patna.
4. The Authorised Officer, Bihar State Mining Corporation Ltd., Bihar , Patna
5. The District Magistrate-cum-Collector, Bhojpur, Ara, Bihar.
6. The Assistant Director, Mines, Ara, Bhojpur.
7. The District Mining Officer, Bhojpur, Ara, Bihar.
8. The Mineral Development Officer, Bhojpur, Ara.
9. State Environment Impact Assessment Agency, Patna (SEIAA) through its Member Secretary., Bihar, Patna.
10. State Level Expert Appraisal Committee (SEAC), Bihar through its Member Secretary, Bihar, Patna-800023.
11. Rana Uday Pratap Singh, S/o- Late Rana Ranvijay Pratap Singh Add.- Jai Prakash Nagar, Vishunpur Nala, Dist.- Dhanbad, Jharkhand, Pin- 826001.
12. Paropkar Consultant Pvt. Ltd., Auth.- Bablu Kumar, Add.- Bag Majhuwan, Dist.- Bhojpur, Pin- 802163.
13. Keshav Construction, Berar tola, P.O.- Barah Ranitalab, Dist.- Patna- 801112.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Yashraj Singh Deora, Sr. Advocate
		Mr. Sriram Krishna, Advocate
		Mr. Devesh Shankar Singh, Advocate
		Mr. Amarjeet, Advocate
		Mr. Prabhat Kumar Singh, Advocate
		Mr. Shashank Shekhar Kunwar, Advocate
For the State	:	Mr. Ajay, G.A.-5
		Mr. Akash Raj, A.C. to G.A.-5
For the Mines Department	:	Mr. Naresh Dikshit, Spl. P.P.
		Mr. Brij Bihari Tiwari, Advocate
		Ms. Shruti Singh, Advocate
		Ms. Kalpana, Advocate
For the SEIAA	:	Mr. Kumar Ravish, Advocate

For the BSMCL : Mr. Ranjeet Kumar Pandey, Advocate
For the Private Respondent: Mr. Madhav Krishna, Advocate
Mr. Suraj Samdarshi, Advocate
Mr. Avinash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 30-01-2026

The present writ petition has been filed on behalf of the successful bidder in the auction of Bhojpur Sone 35 Ghat (65 Hectares). The central grievance of the petitioner is that the respondent State while issuing the tender notice had asserted that the aforesaid sand *ghat* had 11,70,000 CuM of sand available annually for sand mining, however the quantity of sand mineral, as asserted by the respondent-State, was not actually available since, according to the petitioner, after the issuance of the Letter of Intent on 28.10.2022 in favour of the instant petitioner, the respondent - Bihar State Mining Corporation Ltd. (BSMCL) had granted short term permits in favour of third parties resulting in extraction of sand from the areas that overlapped with the settled areas of the petitioner causing depletion in the sand availability. The petitioner is also aggrieved by the action of the respondent-State in not conducting a proper replenishment study in accordance with law and raising demand from the petitioner to pay the full royalty of Rs.19,30,50,000/- per annum towards the full represented quantity even though, according to the petitioner, the asserted quantity of sand does not exist.

2. In this backdrop, the petitioner by way of the present writ petition has prayed for the following reliefs:-

"I. To issue an appropriate Writ(s), Order(s) or Direction(s) to the respondent authorities to reduce the total amount of royalty payable by the petitioner, because in the meantime, after the issuance of Letter of Intent dated 28.10.2022 as contained in memo no. 4394 to the petitioner under the signatures of Mineral Development Officer, Bhojpur, large quantity of sand has already been extracted by third party agencies on the basis of grant of short term permits by respondent nos. 3 and 4 herein out of the Sand Ghat area settled with the petitioner, due to overlapping;

II. To issue an appropriate Writ(s), Order(s) or Direction(s) to the respondent authorities to conduct a fresh survey to estimate the mineral actually available and charge royalty based on the same;

III. To issue an appropriate Writ(s), Order(s) or Direction(s) setting aside the letter dated 08.09.2023 as contained in memo no.3837 issued under the signatures of the Collector, Bhojpur, Ara;

IV. To pass any other appropriate Writ(s), Order(s) or Direction(s) that this Hon'ble Court may deem fit on the facts and circumstances of the case."

3. Subsequently, in compliance of the directions of the coordinate Bench of this Court *vide* order dated 04.02.2025, the petitioner had filed a representation before the Respondent no.2 which came to be decided by the aforesaid respondent authority *vide* order dated 07.04.2025. Further, during the pendency of this writ petition, the respondent authorities have granted environmental clearance to the petitioner for the entire represented quantity of sand being 11,70,000/- CuM. The petitioner, thereafter, had preferred Interlocutory Applications for amending the prayer portion of the writ petition, which was allowed by the Coordinate Bench of this Court vide order dated 19.08.2025 and following additional prayers were made:-

> *"V. To issue an appropriate writ(s), order(s) or direction(s) to the respondent authorities for reconsidering / amending the Environmental Clearance for the proposed sand mining activity at the Sone 35 Ghat granted to the petitioner on 19.12.2023 (Annexure P-19 of I.A. No. 01 of 2024) i.e., subsequent to the filing of the connected writ petition and providing for the annual extraction quantity based on the true quantity of sand available on site.*
>
> *VI. Issue a writ, order or direction in the nature of certiorari or any similar writ, order or direction to quash the order dated 07.04.2025 passed by the Respondent No.02 as being arbitrary and being contrary to law."*

4. The brief facts relevant for the present purpose is that the respondent State had published a tender notice on 13.09.2022 for grant of mining licence for the sand *ghats* through auction in various districts of the State including for the district of Bhojpur. The present *lis* revolves around the Bhojpur Sone 35 *Ghat* situated at *mauza* Kharaon Kalan spanning over an area of 65 Hectares with an estimated quantity of 11,70,000 CuM of sand available annually for mining. Pursuant to the auction notice, the process of auction was conducted on 17.10.2022 and the petitioner emerged as the highest bidder for the aforesaid Bhojpur Sone 35 sand *ghat*. Thereafter the petitioner made the requisite payments and a Letter of Intent (LoI) dated 28.10.2022 was issued to the petitioner for the settlement of the aforementioned *ghat*. Mining plan was submitted by the petitioner on 08.11.2022, which came to be approved vide letter dated 24.11.2022 by the Director of Mines.

5. Subsequent thereto, the petitioner availed the services of an Environmental Advisor, and the process of obtaining environment clearance was set in motion. The application for grant of environment clearance along with draft Environmental Impact Assessment (EIA) were submitted by the petitioner. On 09.12.2022 the authorized signatory of the petitioner submitted the project report, pre-feasibility report and other necessary documents for the proposed project of sand *ghat* in order to obtain the terms of reference (ToR) for the

Environmental Clearance. The aforesaid ToR was issued to the petitioner on 11.01.2023. The petitioner submitted the draft EIA and a request for arranging the public hearing was made which was conducted on 21.06.2023.

6. Pertinently, the ToR, under additional specific condition no. 02, required the petitioner to submit the details of the overlapping areas with the previously allotted mining lease or already working or worked out mining lease. The petitioner, therefore, wrote a letter dated 30.06.2023 (Annexure-P/11) and also a reminder letter dated 21.07.2023 addressed to the District Mining Officer seeking the requisite details which was responded to by the District Mining Officer vide his letter dated 03.08.2023 (Annexure P/13) stating therein that 21.84 Hectares of cluster No. 08 situated at Kharaon Kalan sand *ghat* and 07 Hectares of cluster No.09 at Lodipur sand *ghat* were overlapping with the Bhojpur Sone-35 sand *ghat* and further that a total of 1,98,062.72 MT of sand had already been extracted/mined. A map was also appended with the aforesaid letter dated 03.08.2023. The aforesaid letter dated 03.08.2023 is reproduced herein-below:-

जिला खनन कार्यालय, भोजपुर(आरा)

संपर्क नं०–7546125387 E-mail ID-bhojpurmining@gmail.com

पत्रांक–3407 दिनांक–02/08/2023

प्रेषक,

खनिज विकास पदाधिकारी,
भोजपुर, आरा।

प्रेषित,

Manjeet Chawla,
S/o-Late Amarjeet Singh Chawla,
Add-G201, Preet Bihar, Delhi-110092
Mob-9811055564,
Email- chawlamanjeet1234@gmail.com

विषय– भोजपुर जिलान्तर्गत बालूघाट/बालूखण्ड BHOJ SON–35, रकबा–00 है. के क्षेत्र पर पूर्व से संचालित बालूघाट का Overlapping की स्थिति एवं Overlapped क्षेत्र से खनन/प्रेषण की विवरणी उपलब्ध कराने के संबंध में।

प्रसंग– आपका आवेदन पत्रांक–शून्य, दिनांक–30.06.2023

महाशय,

उपर्युक्त विषयक आपका पत्रांक–शून्य, दिनांक–30.06.2023 के क्रम में आपको राज्य पर्यावरण समाघात निर्धारण प्राधिकार (SEIAA, Bihar) द्वारा निर्गत TOR के Additional Specific Condition No-02 के आलोक में सूचित किया जाता है कि बालूघाट/बालूखण्ड BHOJ SON-35 में पूर्व से कलस्टर सं0–08 खरॉवकला बालूघाट का 21.84 Ha area एवं कलस्टर सं0–09 लोदीपुर बालूघाट का 7 Ha area Overlapped है, जिससे कुल 198082.72 MT का उत्पादन/प्रेषण हुआ है।

अनु–Map Showing Overlapped Area.

विश्वासभाजन

खनिज विकास पदाधिकारी,
भोजपुर, आरा।

7. It is the case of the petitioner that while the Bihar State Mining Corporation Ltd., had granted short term mining permits for the very same mineral, i.e., sand, to certain third parties for the sand *ghats* situated at *Mauza* Kharaon Kalan, Bhojpur on the Sone River, the Mining Department, Government of Bihar granted a five year mining lease to the petitioner for the area which overlapped with the area under the short term permit. In other words, according to the petitioner, a large part of the area over which the petitioner was granted the mining licence stood overlapped with the prior short term mining permits of the third party granted by the BMSCL. Further, it is the case of the petitioner that even after completion of the auction process, the respondent State continued to grant short-term licence to third parties over overlapping areas.

8. It is further the case of the petitioner that while the petitioner was successful in the auction process for the aforesaid Bhojpur Sone 35 sand *ghat* which was for a period of five years, the petitioner was under a *bona fide* belief that the representation made by the respondent-State in the tender notice regarding the availability of quantity of sand was lawful. It is stated on behalf of the petitioner that at that stage there was no indication that short term permits had already been granted or would be granted to third parties over overlapping areas while the petitioner, being the successful bidder, was obtaining necessary permissions to commence the process of mining.

9. It is also the case of the petitioner that vide letter dated 08.09.2023, the Collector, Bhojpur, Ara directed the petitioner to submit the EIA before the SEIAA, Bihar in order to obtain environmental clearance within a period of three days from the date of receipt of the letter.

10. The learned Senior Counsel for the petitioner submits that the petitioner was shocked to learn that there was a major overlap of area and that the mining was undertaken even after the area was auctioned off in favour of the petitioner and the petitioner was amidst the process of obtaining the necessary clearances. It is submitted by the learned Senior Counsel that the peculiar situation had put the petitioner in a quandary as on the one hand, having learnt that the quantity, as had been auctioned, even as per the own admission of the respondent-State, stands significantly reduced on account of continued mining/extraction by third parties and therefore, the grant of environmental clearance in favour of the petitioner with 11,70,000 CuM of sand would bind the petitioner to mine the aforesaid quantity. *Secondly,* according to the petitioner, if proceeded, the petitioner would have to pay the entire royalty irrespective of the fact that the actions of the respondent-State would constitute fraud and unjust enrichment.

11. It is submitted on behalf of the petitioner that a study based on satellite imagery was conducted by an expert hired by the petitioner, which according to the petitioner, revealed the extent of sand available in the area. It is submitted by the petitioner that while in the year 2018 there was almost 54.64 Hectares out of 65 Hectares reflecting sand, and the balance was under water, the aforesaid area stood reduced to

42.86 Hectares in 2019 and further reduced to 31.44 Hectares in 2022. Furthermore, by the year 2023 the area stood at only 11.76 Hectares and the balance was underwater and even out of the aforesaid 11.76 Hectares of sand only 9.61 Hectares was not overlapped.

12. The learned Senior Counsel has next submitted that since mining activities continued, it was incumbent upon the respondent State to undertake a fresh replenishment study immediately after complete cessation of mining activities by third parties in order to reflect the true availability of sand in the *ghats* since the SEIAA can only grant environmental licences based on and only to the extent of actual mineral availability and replenished. It is categorically submitted by the learned Senior Counsel that petitioner had requested the SEIAA to defer the grant of environmental clearance in order to undertake fresh replenishment study to ascertain true availability of sand in the ghat. It is further the categorical submission of the learned Senior Counsel for the petitioner that grant of environmental clearance permitting the petitioner to mine 11,70,000 CuM of sand without confirming if such quantity of sand is actually even available or not, particularly in light of the own admission by the respondent

State regarding extraction of sand to the tune of 1,98,062MT would be totally unlawful and against the settled principles of environmental law.

13. The learned Senior Counsel has further argued that the respondent authorities are asserting that irrespective of the quantity of sand available in the *ghat* area, the royalty would have to be paid for the entire represented quantity, i.e., 11,70,000 CuM which equals to Rs.19,30,50,000/- per annum. The learned Senior Counsel has argued that the reliance placed by the respondent authorities on clause-21(iv) of the tender document to contend that total royalty must be paid is totally misplaced since that would be manifestly arbitrary. It is vehemently argued on behalf of the petitioner that the State authorities making a representation regarding a quantity and then actively undertaking steps to reduce the quantity by granting short term permits would clearly amount them to taking advantage of their own wrong.

14. The learned Senior counsel for the petitioner has argued that even though the petitioner cannot extract more quantities of sand than what is actually available after being reduced as a result of the actions of the respondents themselves by permitting third parties to extract sand under short term permits, yet the petitioner is being tied down to pay the same annual settlement amount even when admittedly the quantities available for extraction are lesser and have reduced than what was originally represented.

15. The next limb of argument advanced by the learned Senior Counsel is that the scientific studies have clearly established that the sand bar area has reduced from 54.64 Hectares in 2018 to 11.76 Hectares in 2023. Drawing strength from the scientific study conducted by the Central Mine Planning and Design Institute Limited, Ranchi, the learned Senior Counsel for the petitioner submits that pre and post monsoon data of 2024 has confirmed that replenishment occurred only on 20.96 Hectares of sand ghat area to the extent of only 1,82,291 CuM of sand, as opposed to what the respondent State had asserted in the tender notice as 11,70,000 CuM of sand annually. The relevant findings of the replenishment study conducted by the Central Mine Planning & Design Institute Limited in January, 2025 for the Bhojpur Son-35 *ghat* reads as under:-

> *"**FOLLOWING FINDINGS EMERGE ON A COMPARISON OF THE DATA COLLECTED AND STUDIES UNDERTAKEN PRE AND POST MONSOON.***
>
> *a) The replenishment which has taken place is more*

along the banks of the river and over area where the sand bar/ dry area existed pre monsoon.

b) Majority of the lease area continues to be inundated under water ie. flowing river and there has not been any major difference in this area post monsoon. ***<u>This reflects that there may not be sufficient replenishment over the said region where water continues to flow as otherwise sand bars would have been generated by now.</u>*** *This is specifically keeping in view of the admitted facts from mine operator that no mining has been undertaken in the said area post-2023. Generally, if the area had seen replenishment the same would have become evident with enlargement of the existing sand bar and diversion or narrowing of the river due to creation of sand bar.*

c) The rate of replenishment, therefore, can only be considered for the dry area i.e. 20.11 Ha and the same finding cannot be extended to the areas inundated under water.

d) The sand bank / dry area pre-monsoon was 20.96 Ha. having an estimated reserve of 2,26,419 cum. sand, if mining was undertaken to average depth of 1.08 meters as thereafter water would be intercepted. No mining is permissible below the water table and accordingly sand could have been mined to an average depth 1.08 meters over the dry area only.

e) ***<u>In terms of data collected, the dry area post monsoon is 20.11 Ha, wherein there has been a slight decrease in the dry area from 20.96 Ha to 20.11 Ha. As per the model, there has been a replenishment of approximate 182291.70 cum. over the now dry area i.c. 20.11 Ha.</u>***

<u>f) Accordingly, the approximate reserves as</u>

available in the dry area would be (226419 cum. pre monsoon reserve + 182291.70 cum. Replenishment post monsoon) = 408710.70 cum."

16. Therefore, it is argued that the insistence of the State that the petitioner must extract the auction quantity equal to 11,70,000 CuM annually and pay the royalty accordingly on the same would be in total breach of environmental regulations. It is categorically pointed by the learned Senior Counsel that the balance area is inundated under water and the law clearly prohibits mining below the water level.

17. It is the further submission of learned Senior Counsel for the petitioner that no scientific data has been produced by the respondent-State to bring on record that the replenishment and annual availability of sand is equal to the quantity represented during the auction. The respondent State while rejecting the representation preferred by the petitioner *vide* order dated 07.04.2025 had made a bald averment that allegedly the entire quantity of sand is available in the subject sand *ghat* which would not suffice in view of scientific studies and therefor, contrary to the records. It is submitted that the aforesaid order dated 07.04.2025 is evidently without any scientific particulars and without taking into consideration relevant factors like total dry area, water level in the said dry area, replenishment, if any etc. and therefore, cannot be a substitute to the scientific studies suggesting significant reduction in the replenishment and availability of sand.

18. Adverting to Rule 26 (3) of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019, the learned Senior Counsel has submitted that the mining can only be undertaken upto to three meters or before breaching the water level, whichever is first, however, from study conducted by the CMPDIL, it is evident that the water level is available at an average depth of 1.08 meters only. Therefore, it is the submission of learned Senior Counsel for the petitioner that the order dated 07.04.2025 more specifically in paragraph no.3 (iv) is clearly contrary to the settled principles of law.

19. It is submitted that in terms of the EIA notification, the State while identifying the site has to ensure that only 60% of the mineable reserves is put to auction. In furtherance of the same, the State has auctioned the mining rights over 65 Hectares, stating that it would have 11,70,000 CuM of sand. In contrast to the same to overcome the fact that majority of the lease area, as auctioned, is inundated under water and therefore, no mining can take place over the area so covered, the Respondents are seeking to contend that the petitioner herein, from the 65 Hectares put to auction can carry out mining only in 60% of the area i.e., 39 Hectares, it is therefore, the submission of learned Senior Counsel that there is no such rule or restriction. Moreover, the mining plan approved by the respondent-State itself permits mining over the entire lease area of 65 Hectares.

20. It is the next submission of the learned counsel for the petitioner that the auction of the lease, in the present case, as conducted is admittedly for river sand and in light of the judgment of the Hon'ble Supreme Court in the case of ***Deepak Kumar v. State of Haryana*** reported as ***(2012) 4 SCC 629***, the Ministry of Environment, Forests and Climate Change has enacted the Sustainable Sand Mining Management Guidelines, 2016 (SSMMG, 2016) and Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM, 2020) and also amended the EIA notification to include the requirement of compliance of guidelines and therefore, the State is under a legal duty to accurately provide the quantity of the minerals being auctioned, as the bid by the interested party is based on the quantity being auctioned.

21. It is submitted that the action of the State as impugned in the present proceedings on the face of it is manifestly arbitrary and unreasonable, inasmuch as, the State made a specific representation that 11,70,000 CuM of sand would be available per annum against which a reserve price of Rs 17.55 crore per annum was fixed at the rate of royalty of Rs 150 per CuM. The petitioner based on the said representation submitted a bid of Rs.19.3050 crores i.e. Rs 165 per CuM. However, admittedly in terms of scientifically collected data and replenishment study by CMPDIL, only 2,26,419 CuM of sand was available pre monsoon even after mining by third parties stood suspended since 2023 and after monsoon, a replenishment of only 1,82,291 CuM of sand was found deposited. Therefore, it is the categorical submission of learned Senior Counsel for the petitioner that as of today only 4,08,710 CuM of sand is available in the area identified as the lease area. Despite the same, the State is demanding that the petitioner pay the entire royalty for 11,70,000 CuM of sand, which apart from being manifestly arbitrary also leads to unjust enrichment.

22. Furthermore, the extraction must not exceed 60% of the total mineral potential, with replenishment being subject to annual assessment. From the perusal of the guidelines and notifications, it is evident that it is the duty cast on the State to arrive at the quantity that can be mined through a scientific means and based on actual surveys. It is submitted that mining is to be restricted to replenished quantity, in order to safeguard the environment. However, according to the learned Senior Counsel, the State is being driven by only economic considerations when it otherwise has a duty to safeguard the environment and permit mining only in accordance with law.

23. In support of this submission, learned Senior Counsel for the petitioner has relied upon a decision of the Allahabad High Court in the case of ***M/s Anandeshwar Agro Foods (P) Ltd. v. State of U.P.***, reported as ***2025 SCC OnLine All 1536*** wherein the Allahabad High Court has emphasized the need of replenishment study, after considering the 2016 and 2020 guidelines and held as under:-

> *"**29.** As stated above, pre and post-monsoon replenishment studies are mandated in the EMGSM, 2020 guidelines and the same are an extension of the survey, demarcation and evaluation of the area or areas declared under Rule 23. The purpose of the survey and the evaluation that are requisites under the provisions of Chapters 2 and 4 of the Rules, 2021 are to inform the prospective bidders at the auction/tender mining leases for minor minerals (sand and morrum in this case) so that the prospective bidders are well aware as to the*

quantity and quality of the minerals available in the declared area before they place their bids. ***<u>The State Government cannot put the onus on the prospective bidders by stating that it is the bidders who should undertake an inspection of the area and satisfy themselves as to the quality and quantity of the minerals available at the area proposed to be leased, when the Rules, 2021 and the EMGSM, 2020 Guidelines require the State Government to undertake that exercise.</u>***

30. *The guidelines contained in the SSMMG, 2016 and in the EMGSM, 2020 have been framed taking into account the judgments of the Supreme Court, the High Courts and the NGT. These guidelines appear to have been issued by the Central Government in purported exercise of power to issue directions under Section 20-A of the Mines and Minerals (Development and Regulation) Act, 1957 (Act, 1957). The importance of the survey/evaluation by the State authorities in the interest of the ecology and environment in respect of the areas proposed to be leased under the Rules, 2021 cannot be over emphasised. It is the only available and prescribed manner by which the State Government can make a realistic assessment as to the extent to which mining can be permitted in the leased area after taking into account the fragility of the ecology, the flora and fauna and the rivers, as well as the impact on the environment.*

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42. *Thus, the annual audit envisaged under the aforesaid EMGSM, 2020 guidelines and the replenishment study, both pre-monsoon and post-monsoon, assume great importance keeping in view the environment and ecology of the mining area.*

Mining within or near riverbeds has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flowpaths. This may also cause an adverse impact on in-stream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore, the Emgsm, 2020 guidelines recommends that it is imperative to have a study of replenishment of material during the defined period to minimise the adverse impact arising out of sand mining in a given river stretch. The Emgsm, 2020 guidelines provides that the excavation will be limited to estimated replenishment estimated with consideration of other regulatory provisions."

24. It is, therefore, submitted by the learned Senior Counsel for the petitioner that the contention of the State that under the tender notice condition no 42(xix), the bidder had to satisfy itself about the availability of the mineral, is of no avail since the requirement under the law is that the estimation being provided by the State is to be based on current scientific studies and the State cannot shift that burden on the bidders as has been held by the Allahabad High Court in the case of ***M/s***

Anandeshwar Agro Foods Pvt. Ltd. (supra). Further, the condition being sought to be relied on is impossible to fulfill, if read in the manner as is being done by the respondent-State since the availability of sand cannot be based only on ocular consideration and would require detailed studies.

25. The next submission of learned Senior Counsel for the petitioner is that the SEIAA and the SEAC being a statutory body was bound to apply its mind before granting the environmental clearance to the petitioner. The SEAC minutes dated 05.10.2023 itself records that the project proponent (petitioner) had informed the Committee that enough replenishment of sand has not happened after the closure of the previous mining, however, despite this fact being brought to the notice, the SEIAA had imposed a contradictory condition, on one hand, the SEIAA had granted the environmental clearance on 19.12.2023 for the production of the full quantity i.e. 11.70 lakhs CuM of sand but on the other hand, simultaneously imposed a contradictory condition not to mine beyond the replenished quantity of sand.

26. The learned Senior Counsel has drawn strength from a decision of the Hon'ble Supreme Court in the case of ***Territory of J & K vs. Raja Muzaffar Bhat*** reported as

2025 SCC OnLine SC 1789 wherein the Hon'ble Supreme Court after considering the 2016 and 2020 guidelines has held that in absence of replenishment study, no mining can be permitted in the river bed since only based on a replenishment study, one can know the extent to which the sustainable mining can be undertaken.

27. Lastly, it has been submitted by learned Senior Counsel for the petitioner that even in contractual matter, the State is bound to act fairly, reasonably and the conduct is subject to judicial scrutiny on the touchstone of Article 14. In support of the aforesaid submission, he has placed reliance on the decision rendered in the cases of ***ABL International Ltd. vs. Export Credit Guarantee Corporation of India Ltd.*** reported as ***(2004) 3 SCC 553*** and ***Indian Oil Corporation Limited vs. Nilofer Siddiqui*** reported as ***(2015) 15 SCC 125***.

28. *Per contra,* the learned counsel for the respondent nos.3 to 8 has, at the outset, submitted that the present writ petition is premised on the fact that during the period prior to the commencement of the mining by the petitioner, sand was extracted under short-term arrangements and therefore the petitioner is entitled to reduction of royalty or reassessment of mineral quantity. It is the submission of the learned counsel for the respondent nos. 3 to 8, that said premise is factually incorrect and legally untenable.

29. It is the categorical submission that the estimated quantity of sand with respect to the Bhojpur Sone-35 sand *ghat* was duly disclosed in the notice inviting tender dated 13.09.2022 which was based on the District Survey Report (DSR) prepared by the Sub-Divisional Committee and duly approved by the SEIAA on 07.04.2022. Further, in the aforesaid DSR, the total reserve of sand was assessed at 31,59,000 MT and therefore in accordance with the Enforcement & Monitoring Guidelines for Sand Mining, 2020 (EMGSM-2020), only 60% of the said total reserve i.e., 18,95,400 MT per annum was permitted to be mined.

30. The learned counsel for respondent Nos. 3 to 8 has next submitted that the petitioner had participated in the auction with the full knowledge of the estimated quantity and having accepted the terms in the NIT, he can not turn around to seek reassessment at a later stage. Pertinently, the petitioner had never raised any objection at the stage of preparation or approval of the Mining Plan or before the SEIAA while applying for the environmental clearance or even during the public hearing. Therefore, now having consciously participated in the auction process and accepted the disclosed estimation, the petitioner is now estopped from seeking a post-bid reassessment or reduction of royalty.

31. The learned counsel for the petitioner has next submitted that the replenishment study confirms sufficient availability. It is emphasized that the replenishment study of the Sone River was conducted through CMPDIL, Ranchi and the aforesaid study revealed 112% replenishment of sand after monsoon, therefore conclusively establishing that river Sone is a living river and annual replenishment being a natural and continuous process, the contention of the petitioner that prior mining would exhaust the mineral availability is untenable. It is further the submission that the non-availability of sand is therefore scientifically incorrect and contrary to record.

32. Adverting to the decision of the Hon'ble Supreme Court in the case of ***State of Bihar vs. Pawan Kumar & Ors. (Civil Appeal Nos. 3661-3662 of 2020)*** reported as ***(2022) 2 SCC 348,*** the learned counsel for the respondent nos. 3 to 8 has submitted that the allegations of grant of short-term mining permits to third parties does not stand, since the aforesaid permits were granted in compliance of the directions given by the Hon'ble Supreme Court in ***Pawan Kumar (supra),***

the relevant portion of which reads as under:-

> ***"15.*** *We further find that when the 2020 Guidelines as well as the notification issued by MoEF and CC of 2016 itself provide for constitution of Sub-Divisional Committees comprising of the officers of the State Government from various Departments for identification of the potential sites for mining, there would be no necessity of the DSRs being prepared through private consultants as directed by the Tribunal in the impugned order [Pawan Kumar v State of Bihar, 2020 SCC OnLine NGT 2848]. The Sub-Divisional Committee consists of various officers from Revenue Department, Irrigation Department, State Pollution Control Board, Forest Department and Geology and Mining Department of the State Government. They are better equipped to visit the sites and prepare the draft DSR for the district concerned. Apart from that, preparation of DSR through private consultants would also unnecessarily burden the public exchequer. We are therefore of the view that the direction in that regard issued by the Tribunal requires to be modified. We are further of the considered view that until the DSRs are finalised and granted approval by SEAC and Seiaa, it is appropriate that certain necessary arrangements are permitted so that the State can continue with legal mining activities. This apart from preventing illegal mining activities, would also ensure that the public exchequer is not deprived of its share in legalised mining.*
>
> ***16.*** *We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14-10-2020 [Pawan Kumar v. State of Bihar, 2020 SCC OnLine NGT 2848], with the*

following directions:

16.1. *The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the Sub-Divisional Committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or Mining Officer. The same shall be prepared by undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the district concerned shall forward the same for examination and evaluation by SEAC. The same shall be examined by SEAC within a period of 6 weeks and its report shall be forwarded to SEIAA within the aforesaid period of 6 weeks from the receipt of it. SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon.*

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

16.3. *Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.*

17. *List the matter after 20 weeks."*

33. Therefore, it is the submission of the answering respondents that the short-term mining arrangements, as referred by the instant petitioner, were thus expressly authorized by the Hon'ble Supreme Court and were undertaken in public interest intended to ensure continuity of lawful mining pending statutory approvals. It is, therefore, argued by the answering respondents that any extraction carried out in pursuance of the aforesaid directions cannot be termed illegal, arbitrary or excessive nor can it create any vested right in favour of a subsequent bidder to claim refund or reassessment.

34. It is also the submission advanced by the learned counsel for the answering respondents that due to closure of the Bhojpur Sone sand *ghat* no. 35 for the last three years has resulted in substantial revenue loss to the Government in the form of settlement (*bandobasti*) amount.

35. The next limb of the argument advanced by the learned counsel is that the contention of the highest bidder that after auction conducted in their favour in the year 2022, sand mining was carried out for a period of only two to three months and it has been alleged that the portion of land where mining was undertaken, through falling partially within the allotted sand *ghat* area, contained an inadequate quantity of sand is totally baseless and devoid of merit. It is submitted that it is well-established fact that every year during the four months of the monsoon season when the sand mining operations remain completely suspended, sufficient natural replenishment of sand takes place in the sand ghats. Such replenishment is scientifically assessed every year by the CMPDIL and as per the annual reports submitted by the CMPDIL to the State Government, the replenishment rate is assessed at approximately at 112% every year. Therefore it is submitted that, during the last three years, the quantity of sand replenished is several times higher than the alleged depletion claimed by the petitioner. It is therefore vehemently argued that the shortage of sand is entirely untenable and contrary to records.

36. It is next submitted that in the district of Bhojpur, approximately 40 sand *ghats* are operational, out of which 10 sand *ghats* are currently being operated in their third year and 20 of them are in their second year of operation. Therefore it is submitted by the answering respondents that this clearly demonstrates that sand mining was carried out in the first year, replenishment occurred in the second year, followed by mining again within the same demarcated area and thereafter replenishment took place once more before mining in the third year. This cycle of mining and replenishment is continuous and well established. Hence, it is argued that the contention raised by the petitioner stands completely contradicted by prevailing ground realities.

37. It is, therefore, argued that owing to the said act and inaction on the part of the petitioner the State has suffered revenue loss exceeding three times the annual settlement amount per year.

38. Adverting to the clause 42(xix) of the tender document, the learned counsel for the answering respondents has submitted that the aforesaid clause unequivocally stipulates that the bidder must satisfy himself regarding the availability of the sand, transportation routes and all factual and technical aspects and no claim beyond the terms of the tender shall be entertained. It is also argued by the learned counsel for the answering respondents that there is no statutory provision for the reduction, refund or reassessment of royalty. The statutory scheme treats royalty as the consideration payable for grant of mineral concession and governed strictly by the Rules, tender conditions and executed agreement. It is therefore further argued by the learned counsel for the answering respondents that in absence of any enabling statutory provision, the relief sought by the petitioner is impermissible.

39. Lastly, the learned counsel for the answering respondents has argued that the petitioner had raised no grievance at any relevant statutory stage and approached this Court after the liability to pay the royalty was crystallized. It has been argued by the learned counsel for the answering respondents that the present petitioner seeks to convert a purely contractual and statutory obligation into an equitable claim which is wholly impermissible in writ jurisdiction.

40. I have considered the submissions of the parties and perused the materials available on record.

41. In the present case, the availability of sand in the Bhojpur Sone 35 sand *ghat*, settled in favour of the highest bidder – petitioner, by way of e-auction, was put to question on the ground that short term mining permits were issued to third parties on overlapping areas as that of the petitioner, which according to the petitioner, resulted in severe depletion in availability of sand. During the course of obtaining environmental clearance, the petitioner came to know the extent to which such overlapping exists and the extraction of the sand which has taken place. Thereafter, it appears that the petitioner took upon himself and conducted a Satellite Imagery Analysis to further ascertain the extent of overlap and the availability of sand in the aforesaid sand *ghat*. The petitioner, in support of his assertion, draws strength from a replenishment studies conducted by the CMPDIL, Ranchi, in September, 2024 and January, 2025 wherein there has been a significant reduction in the replenishment of the sand. Based on the aforesaid, the petitioner contends that the demand for royalty to the extent of original/entire represented amount of 11,70,000 CuM of sand cannot be recovered from him.

42. On the other hand the contention is rebutted by the answering respondents by stating that the river in question is a living river having continuous annual replenishment rate of 112% and therefore, a post bid reassessment is impressible.

43. It is settled law that the mining activities cannot be permitted beyond the annual replenishment rate since that would endanger the environment and if the geological processes that naturally replenish the availability of sand cannot match the rate at which the mining occurs then over the period of time aggressive and continued mining activity would result in long term environmental damage. Therefore, sustainable development is *sine qua non* to strike a balance between developmental activities and the conservation of environment.

44. The National Green Tribunal in the case of ***Raj Kumar vs. State of U.P. (O.A. No.140/2021)***, ***Pramod vs. State of U.P. (Appeal No.23/2021)*** and ***Junaid Ayubi & Ors. vs. State of Haryana & Ors.*** reported as ***2024 SCC OnLIne NGT 445*** has held that replenishment studies is a prerequisite mandatory condition for sand mining projects.

45. The seriousness of the adverse impact on the ecology of a river owing to excessive river bed mining was underscored by the Hon'ble Supreme Court in the case of ***Deepak Kumar & Ors. vs. State of Haryana & Ors.*** reported as (***2012) 4 SCC 629.*** Relevant paragraphs of the aforesaid decision read as under:-

> *"8. We have no materials before us to come to the conclusion that the removal of minor minerals, boulders, gravel, sand quarries, etc. covered by the auction notices dated 3-6-2011 and 8-8-2011, in the places notified therein and also in the riverbeds of Yamuna, Ghaggar, Tangri, Markanda, Krishnavati River basin, Dohan River basin, etc. would not cause environmental degradation or threat to the biodiversity, destroy riverine vegetation, cause erosion, pollute water sources, etc. Sand mining on either side of the rivers, upstream and instream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India's rivers and riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which*

damage the ecosystem of rivers and the safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers, etc.

9. *Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both instream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.*

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

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

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

xxxx

*25. **Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive instream sand and gravel mining causes the degradation of***

rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

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

46. It would be apposite to refer to the guidelines issued by the Ministry of Environment, Forest and Climate Change, Sand Mining guidelines of 2016 and 2020, which prohibit mining beyond the rate of replenishment.

47. The provisions under Clause-4, 5 and 6.1 of the Enforcement and Mining Guidelines for Sand Mining, 2020 has been quoted by the National Green Tribunal in the case of ***Junaid Ayubi v. State of Haryana*** reported as ***2024 SCC OnLine NGT 445,*** which read as under:-

> *"18. In the present case, EC has been issued on 29.01.2022 and on the date of issuance of the EC, the guidelines of 2020 had come in force. The relevant considerations which are to be kept in mind for sand/gravel mining while approving the mining plan are reflected in clause 4.3 of the guidelines of 2020 and in terms of clause 4.3(b), the distance between sites for sand and gravel mining depends on the replenishment rate of the river. Clause 4.3 reads as under:—*
>
> > *"Following considerations shall be kept in mind for sand/gravel mining while approving mining plan:*
> >
> > *a) Parts of the river reach that experience deposition or aggradation shall be identified. The Leaseholder/Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.*
> >
> > *b) The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.*
> >
> > *c) Sand and gravel may be extracted across the*

entire active channel during the dry season.

d) Abandoned stream channels on the terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. The stream should not be diverted to form the inactive channel.

e) ***Layers of sand and gravel which could be removed from the river bed shall depend on the width of the river and replenishment rate of the river.***

f) Sand and gravel shall not be allowed to be extracted where erosion may occur, such as at the concave bank.

g) Segments of the braided river system should be used preferably falling within the lateral migration area of the river regime that enhances the feasibility of sediment replenishment……"

19. *Clause 4 of the guidelines of 2020 deals with Requirements for Monitoring & Enforcement and its relevant sub-clauses are as under:—*

xxx……………..xxx…………………. xxx

ii) The mining lease auctioned by State government as per their Minor Mineral Concession Rules are granted of Letter of Intent (LoI), but it has been observed that many of the sites are not suitable w.r.t. environmental aspects. In most of the cases, the unplanned grant of mining lease leads to formation of cluster and/or contiguous cluster of small mining leases which sometimes is difficult to regulate and monitor. In order to address such issues, more emphasis is required on the preparation *of District Survey Report and its format for reporting.*

xxx…………..xxx……………….xxx

iv) There is no practice for regular replenishment study to ascertain the rate of depositing, plan and section needs to be prepared based on the restrictions provided in letter of intent and provisions of Sustainable Sand Mining Management Guidelines 2016.

xxx…………..xxx…………………..xxx

viii) ***The river reaches with sand provide the resource and thus it is necessary to ascertain the rate of replenishment of the mineral. Regular replenishment study needs to be carried out to keep a balance between deposition and extraction. This document provides the procedure to be followed for conducting replenishment study.***

xxx………………..xxx…………….xxx

4.1.1 **Preparation of District Survey Report.**

"Sustainable Sand Mining Guidelines, 2016" issued by MoEF&CC requires preparation of District Survey Report (DSR), which is an important initial step before grant of mining lease/LoI. The guidelines emphasize detailed procedure to be followed for the purpose of identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited. ***Calculation of annual rate of replenishment, allowing time for replenishment after mining, identification of ways of scientific and systematic***

mining; identifying measures for protection of environment and ecology and determining measures for protection of bank erosion, benchmark (BM) with respect to mean Sea Level (MSL) should be made essential in mining channel reaches (MCR) below which no mining shall be allowed.

Xxx…………….xxx…………………….xxx

Therefore, preparation of District Survey Report is a very important step and sustainable sand mining in any part of the country will depends on the quality of District Survey Report.

xxx…………….xxx…….………………..xxx

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

20. *Clause 5 deals with replenishment study and provides as under:-*

*“**5.0 REPLENISHMENT STUDY***

The need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due to excessing sand extraction. Mining within or near riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium

of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on instream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore, to minimize the adverse impact arising out of sand mining in a given river stretch, it is imperative to have a study of replenishment of material during the defined period."

[emphasis supplied]

21. *As per clause 6.1, the mining operation is required to be strictly carried out in accordance with the approved mining plan. Clause 6.1 reads as under:-*

*"**6.1 Mining Operation:***

The mining operations should be strictly carried out in accordance with the approved mining plan and after complying with all the conditions stipulated in Environmental & Other Statutory Clearance. Mine owner shall follow the operational procedure (for sale, dispatch, storage, reserve reconciliation and transportation) as may be defined by the concerned state government in its monitoring guidelines. Mine owner should comply with the recommendation and suggestion made by the High-Power Committee as applicable."

22. *Clause 8.1 of the guidelines of 2020 relates to pre-requisite for starting sand mining operation. Sub-clause (i) necessitates preparation of a comprehensive mining plan and prohibits mining in the area which has not been identified in the comprehensive mining plan of the district. Sub-clause (ii) requires conducting replenishment study on the regular basis. In terms of clause 4.3, the details of* *replenishment study conducted for all the years needs to be included at the time of review of the mining plan.*

A cogent reading of above clauses of 2020 guidelines reveal that replenishment study is necessary for grant of EC for sand mining*."

48. The Hon'ble Supreme Court even while passing the interim order in the case of ***Pawan Kumar (supra)*** which has been quoted herein-above had emphasized the mandatory requirement of preparation of DSR, of which, replenishment study forms an integral part thereof and held that even though the State Government may carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment. Therefore, it is clear that even while permitting for grant of temporary mining permits, the Hon'ble Supreme Court had mandated that the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.

49. Recently, the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Anr. vs. Gaurav Kumar & Ors.*** reported as ***2025 SCC OnLine SC 1069 = 2025 INSC 650*** has held as under:-

> *"**20. Conclusion:** Having considered the regulatory regime introduced from time to time, increasing the width as well as the depth of scrutiny before granting an environmental clearance for sand mining, we are of the opinion that there is a mandatory requirement of preparation of a DSR. The DSR shall form the basis for application of environmental clearance. It shall also be the basis for preparation of reports and also appraisal of the projects. Another important facet of DSR is that it shall be prepared for all the districts and the draft is to be placed in the public domain. There is a requirement for keeping a copy of DSR in Collectorate. It must also be posted on the district's website for 21 days. After comments are received, they shall be considered and if found correct, they will be incorporated in the final report. The final DSR will then be finalized within 6 months by the DEIAA. The lifetime of the report is five years. After five years the existing DSR will not be tenable and a new DSR will have to be prepared and finalized. The purpose and object of prescribing a lifetime of five years for subsistence of a DSR is for the reason that the position of ecology and the environment is rapidly changing and the position that exists five years back, may not subsist for later days. It is true that it might have changed even before the expiry of five years but a reasonable estimate, to work as a benchmark is a policy consideration. May be a precautionary principle, it is not only legal and valid but is also mandatory. It must be enforced strictly and with all vigor.*
>
> ***21.** We conclude by holding that:*
>
> *(i). A District Survey Report is a document of seminal*

importance as it enables informed decision making.

(ii). Preparation of a DSR as per the procedure prescribed for its preparation under Appendix X, read with para 7(iii)(a), is required to be followed meticulously.

(iii). A valid and a subsisting DSR alone can be the basis for an application for grant of EC. A draft DSR is untenable for grant of an EC.

(iv). Preparation of reports and appraisal of projects by DEIAA and DEAC shall be on the basis of a valid and a subsisting DSR.

(v). DEIAA and DEAC are recognized as the authorities fastened with the statutory duty of preparing the DSR every five years and this duty compels them to have a comprehensive and a real time perspective of the environment position of the district including its eco-sensitivity and other fragilities.

50. In the case of ***Union Territory of J & K vs. Raja Muzaffar Bhatta (supra),*** the Hon'ble Supreme Court has reiterated the importance and mandatory nature of a valid replenishment study and concluded as under:-

"*1. In State of UP v. Gaurav Kumar (2025 SCC OnLine SC 1069), we have declared that a valid and subsisting District Survey Report is mandatory for grant of environmental clearance for sand mining. We have also annulled certain environmental clearances, even though recommended by District Expert Appraisal Committee and granted by District Level Environment Impact Assessment Authority, on the basis that a 'draft DSR' is untenable in law (2025 SCC OnLine SC 1069). In this appeal we take* *a step further. District Survey Reports are prepared under para 7(iii) of EIA notification dated 15.01.2016 following the mandatory procedure laid down in Appendix X read with Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020. The purpose and objective of preparing such District Survey Report is to scientifically locate the place for sand mining after calculation of annual rate of replenishment for allowing mining in the area.*

2. *Just as forest conservation requires assessment of tree growth rate before permitting timber harvesting to ensure that felling of trees does not exceed tree growth, a replenishment study enables us to take an informed decision as to whether sand mining can be permitted without degrading the rivers' natural balance. Importance of replenishment study is explained in the Sand Mining Guidelines 2020 as follows:*

> *"The need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due to excessive sand extraction. Mining within or near riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine*

regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on in-stream biota and riparian habitats. ***<u>It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore, to minimize the adverse impact arising out of sand mining in a given river stretch, it is imperative to have a study of replenishment of material during the defined period."</u>***

3. ***<u>It is, therefore, compelling to hold that a DSR is valid and tenable only when a proper replenishment study is conducted.</u>***

xxxx

10. Need for replenishment study:

29. *From the foregoing analysis, it is apparent that in light of Guidelines, 2016 and the Guidelines, 2020, the absence of a replenishment study renders a DSR fundamentally defective.* ***<u>These guidelines categorically require that any assessment of mineable mineral quantity must be premised on scientific estimation of replenishment rates, failing which the DSR lacks the foundational data necessary to determine sustainable extraction limits</u>****.*

30. *Over the past two decades, environmental statutory and regulatory law in India has undergone significant evolution, particularly in response to the challenges posed by unregulated and unsustainable sand mining. Recognizing the adverse ecological impacts of such activities, successive legal and policy frameworks have progressively tightened the* *requirements for environmental compliance. In order to appreciate the present controversy, it was necessary to retrace the legal trajectory. Recently, this Court has discussed, in detail, the legal regime surrounding the preparation, nature, scope and importance of DSR in Gaurav Kumar (supra). However, the focal point for present discussion is the value that must be appended to replenishment study before EC is granted to mining operations.*

31. ***Demand for construction-grade sand is growing at a tremendous rate and it is said that the world is expected to run out of this resource by 2050. Construction-grade sand, can be found in aquatic environments, such as rivers and is a provisioning ecosystem service. Even under controlled circumstances, the practice of extracting sand from the riverbed and banks impacts the environment. In the physical environment, the primary effects are riverbed widening and lowering. In the biological environment, the overarching effect is a reduced biodiversity and stretches from the aquatic and shoreline flora and fauna to the whole floodplain area. Due to easy access, river sand and gravel have been used extensively in construction projects. Depending on the mining operation method as well as morphologic and hydraulic characteristics of the river, sand mining may cause bed and bank erosion or other negative consequences for the river eco-system. It is, therefore, necessary to conduct appropriate studies, including that of replenishment to explore sustainable and cost-effective methods for river mining.***

32. *Without a proper study of the existing position of the* *riverbed and its sustainability for further sand mining, grant of environmental clearances would be detrimental for the ecology. It has therefore been held that a detailed study leading to a preparation of the replenishment report is an integral part of the DSR. If the DSR becomes the foundation for consideration of an application for environmental clearance, then it is compelling to ensure replenishment studies are undertaken in advance and the report forms an integral part of the DSR.*

33. ***<u>In view of the existing legal regime that mandates preparation of replenishment report in a scientific manner and such a report forming an integral part of the District Survey Report, we hold that a District Survey Report without a proper replenishment study is equally untenable.</u>****"*

51. It is settled law that the Doctrine of Public Trust binds the State to protect the environment. Recently a nine-judge Bench of the Hon'ble Supreme Court in ***Mineral Area Development Authority & Anr. v. SAIL & Anr.*** reported as ***(2024) 10 SCC 1*** had held as under:-

"(iv) Natural resources and the public trust doctrine

59. *The public trust doctrine is founded on the principle that certain resources are nature's bounty which ought to be reserved for the whole populace, for the present and for the future. [Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention", (1970) Michigan Law Review 471, 484.] Since these resources are intrinsically important to every person in society,* *the State Acts as a public trustee to safeguard them. In M.C. Mehta v. Kamal Nath [M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388, para 34], Kuldip Singh, J. observed that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The learned Judge further observed that the State has a legal duty to protect natural resources which cannot be converted into private ownership. [M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388, para 34] The environment and natural resources are national assets and subject to intergenerational equity. [M.C. Mehta v. Union of India, (2009) 6 SCC 142, para 45] The public trust doctrine looks beyond the needs of the present generation and obligates the State to protect natural resources for future generations as well. [T.N. Godavarman Thirumulpad v. Union of India, (2006) 1 SCC 1, para 89]*

60. *While dealing with the allocation of spectrum in CPIL v Union of India [CPIL v. Union of India, (2012) 3 SCC 1] , this Court held that the State should distribute natural resources in consonance with the principles of equality and public trust to ensure against action detrimental to public interest. The public trust doctrine imposes restrictions and obligations on the Government to protect long-established public rights over short-term private rights and private gain. [Fomento Resorts & Hotels Ltd. v. Minguel Martins, (2009) 3 SCC 571, para 55 : (2009) 1 SCC (Civ) 877] However, the obligation extends to every person who exercises rights over natural resources to use them without impairing or diminishing the rights of people and long-term interests in that property or resource. [Fomento Resorts & Hotels Ltd. v. Minguel Martins,* *(2009) 3 SCC 571, para 55 : (2009) 1 SCC (Civ) 877] In Reliance Natural Resources Ltd. v. Reliance Industries Ltd. [Reliance Natural Resources Ltd. v. Reliance Industries Ltd., (2010) 7 SCC 1, para 114], in the context of Article 297 [Constitution of India, Article 297] of the Constitution, this Court held that the nature of the word "vest" must be seen in the context of the public trust doctrine. [Reliance Natural Resources case, (2010) 7 SCC 1, para 122]*

61. ***<u>The principle which emanates from the above discussion is that the State holds all natural resources, including minerals, as a trustee of the public and must deal with them in a manner consistent with the nature of such a trust.</u>*** *[Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, para 88]*

62. *The Central Government or the State Government may not always be the "owner" of the underlying minerals. But the Constitution empowers both Parliament (under List I Entry 54) and the State Legislatures (under List II Entry 23) to regulate mines and mineral development, the entrustment to the State being subject to the power of Parliament to regulate the domain. The Constitution has entrusted the Union and the States with the responsibility to regulate mines and mineral development in consonance with the principles of the public trust doctrine and sustainable development of mineral resources. Under the MMDR Act, the Central Government, acting as a public trustee of minerals, regulates prospecting and mining operations in public interest. [State of Rajasthan v. Gotan Lime Stone Khanji Udyog (P) Ltd., (2016) 4 SCC 469, para 29; Orissa Mining Corpn. Ltd. v. Union of India, (2013) 6 SCC 476, para 58] In the process,* *the legislation seeks to increase awareness of the compelling need to restore the serious ecological imbalance and protect against damage being caused to the nature. [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, para 32 : (2014) 5 SCC (Cri) 437]*

63. In Pradeep S. Wodeyar v. State of Karnataka [Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62, para 49.3], one of us (D.Y. Chandrachud, J.) observed that the essence of the MMDR Act is to "protect humankind and every species whose existence depends on natural resources from the destruction which is caused by rapacious and unregulated mining". The Court noted that the restrictions under Section 4 of the MMDR Act are intrinsically meant to protect the environment and communities who depend on the environment.

***64.** The principle that the Union and State Governments act as public trustees of mineral resources has been incorporated in the MMDR Act. Section 4-A empowers the Central Government to prematurely terminate a prospecting licence, exploration licence, or mining lease, after consultation with the State Government in the interests of:*

(i) the regulation of mines and mineral development;

(ii) preservation of the natural environment;

(iii) control of floods;

(iv) prevention of pollution;

(v) avoiding danger to public health or communications;

(vi) ensuring the safety of buildings, monuments or other structures;

(vii) conservation of mineral resources; and

(viii) maintaining safety in the mines or for such other purposes. [See State of Haryana v. Ram Kishan, (1988) 3 SCC 416, para 7. This Court observed that Section 4-A : (SCC p. 420, para 7)

Moreover, the MMDR Act now mandates grant of mining leases, [MMDR Act, Section 10-B] exploration licences, [MMDR Act, Section 10-BA] and composite licences [MMDR Act, Section 11] in respect of notified minerals through the process of auction. The Central Government is empowered to prescribe the terms and conditions subject to which the auction shall be conducted.

65. *The regulatory regime under the MMDR Act recognises the important role of the State in regulating mines and mineral development. This emerges from the standpoint of the following perspectives:*

(i) the State is a public trustee of natural resources, including minerals;

(ii) pursuant to its role as a public trustee, the State has been empowered to regulate prospecting and mining operations;

(iii) ***the provisions of the statute reflect the priority of the State to regulate mining and related activities to ensure sustainable mineral development;***

(iv) prospecting and mining operations may be carried out by both the government as well as private lessees bearing in mind the public interest; and

(v) the Government has to ensure that mineral concessions are granted in a fair and transparent manner."

(emphasis supplied)

52. Further the Hon'ble Supreme Court in ***Mineral Area Development Authority v. SAIL (supra)*** had dealt with the meaning of royalty and distinguished it from 'dead rent' and explained as under –

"(iv) Meaning of "royalty"

99. *At the outset we clarify that in this reference, we are dealing with "royalty" in the context of the MMDR Act. Royalty is generally understood as compensation paid for rights and privileges enjoyed by the grantee. It has its genesis in the agreement entered into between the grantor and grantee. In Inderjeet Singh Sial v. Karam Chand Thapar [Inderjeet Singh Sial v. Karam Chand Thapar, (1995) 6 SCC 166] , this Court observed that royalty is equivalent to the expression "jura regalia" or "jura regia". Jura regalia is defined as royal prerogatives or rights. [Ramanatha Aiyar, Advanced Law Lexicon, Vol. 3 (2005) 2789.] For centuries, gold and silver mines (also called as royal metals) in the United Kingdom were treated as belonging to the Crown. Royal metals could be mined only after payments in the form of royalties were made to the Crown. The use of the word "royalty" underwent change in the United Kingdom with the decentralisation of the sovereignty which was absorbed by the landowners. [J.U. Nef, The Rise of the British Coal Industry (Routledge, 1966).] Land ownership was concentrated in the hands of landowners, who conceded the right to work mines to lessees in return for consideration which took the form of dead rent and royalties. [Royal Commission on Mining Royalties, Final Report of the Royal Commission Appointed to Inquire into the Subject of*

Mining Royalties (1893) 4.]

100. *This Court has had occasion to analyse the meaning of the expression "royalty" in its decisions. In H.R.S. Murthy v. Collector [H.R.S. Murthy v. Collector, 1964 SCC OnLine SC 176 : (1964) 6 SCR 666, para 6], a Constitution Bench observed that royalty connotes a payment made for materials or minerals won from land. In D.K. Trivedi & Sons v. State of Gujarat [D.K. Trivedi & Sons v. State of Gujarat, 1986 Supp SCC 20] , the distinction between "royalty" and "dead rent" was explained thus : (D.K. Trivedi case [D.K. Trivedi & Sons v. State of Gujarat, 1986 Supp SCC 20, para 45] , SCC p. 54, para 39)*

> *"39. In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called "dead rent". "Dead*

rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed."

(emphasis supplied)

101. *Minerals are exhaustible and finite resources. Each quantity of mineral removed leads to the depletion of the mineral stock of the mine. [W.R. Sorley, "Mining Royalties and their Effect on the Iron and Coal Trades", (1889) 52(1) Journal of Royal Statistical Society 60, 66.] Under a mining lease, a lessee acquires a right or interest in minerals. This right or interest allows the lessee to extract minerals and consume them. Royalty is a payment made by the lessee to the lessor or proprietor of the minerals for the removal of minerals. Royalty also serves to compensate the lessor for the degradation of the value of the mine because of the extraction of minerals. [W.R. Sorley, "Mining Royalties and their Effect on the Iron and Coal Trades", (1889) 52(1) Journal of Royal Statistical Society 60, 66.]*

102. *In Bherulal v. State of Rajasthan [Bherulal v. State of Rajasthan, 1956 SCC OnLine Raj 9, para 8 : AIR 1956 Raj 161] , a Division Bench of the Rajasthan High Court explained the concept of royalty in the following terms : (SCC OnLine Raj para 8)*

"8 … In Wharton's Law Lexicon, "royalty" is defined as 'payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working

the same on every on or other weight raised.'The present case is of the third kind, namely, payment to the owner of minerals for the right of working the same. This payment is based on the produce, and the rate is fixed as so much per ton or other weight. It is clear that royalty has nothing to do with where the purchaser is taking the mineral, or to whom he is going to sell it, whether at the place where the mine is situated or at some place hundreds of miles away. ... It is clear, therefore, that royalty is a charge by the owner of minerals from those to whom he gives the concession to remove them, and the charge is on production, the rate being fixed according to weight."

(emphasis supplied)

103. *The essential characteristics of royalty are that:*

(i) it is a consideration or payment made to the proprietor of minerals, either the government or a private person;

(ii) it flows from a statutory agreement (a mining lease) between the lessor and the lessee;

(iii) it represents a return for the grant of a privilege (to the lessee) of removing or consuming the minerals; and

(iv) it is generally determined on the basis of the quantity of the minerals removed.

104. *In comparison, dead rent acts as a deterrent against a leaseholder cornering a mining lease and keeping the mineral resources idle. [Government of India, Ministry of Mines, "Mineral Royalties" (January 2011) 27.] Similar to royalty, dead rent is also a* *statutory imposition and an integral part of the mining lease, but it generally does not serve as a consideration for the removal or consumption of minerals. The dead rent is determined on the basis of the area of land covered by the lease. Imposition of dead rent ensures that the proprietor obtains a fixed rent from the lessee even if the mine remains unworked. Therefore, dead rent is not in addition to royalty but an alternative."*

53. From the afore-quoted decisions, it is patently clear that a replenishment study must be undertaken by the State before auctioning the sand *ghats* since the replenishment study forms the very basis on which the quantity of permissible mining is determined and subsequently the environmental clearance is granted.

54. In the present case, the District Survey Report was prepared by the Sub Divisional Committee and approved by SEIAA on 07.04.2022. Pertinently, the notice inviting tender (NIT) was issued on 13.09.2022. It is an admitted position that short term permits for mining of sand were issued for overlapping areas and mining/extraction of sand took place subsequent thereto.

55. It is therefore, abundantly clear that the respondents did not consider a fresh replenishment study after the mining activities by the third parties under the short-term permits were ceased, to ascertain the availability of sand and the replenishment rate of the aforesaid sand. Moreover admittedly, there had been a reduction in the availability of sand owing to continued mining and the purported declining rate of replenishment.

56. The State ought to have considered a fresh replenishment study in order to ascertain the availability of sand and the true prevailing replenishment rates before proceeding with the auction.

57. In the impugned order dated 07.04.2025, the respondent authorities have merely averred that there is sufficient availability of sand in the sand *ghats* without adverting to scientific basis for arriving at such a conclusion and without refuting the recent replenishment study conducted in January, 2025. A mere bald statement without any scientific basis to refute the scientific replenishment study as asserted by the petitioner would not suffice and more importantly would cause aggressive mining of sand in the sand *ghat* and hamper the ecosystem.

58. What is clearly crystallized is that the annual extractable quantity must be less than the annual replenishment rate in order to align strictly with sustainable mining practices.

There is a huge variance, inasmuch as, a drastic reduction is noticed in the availability of sand and its replenishment rate between the year 2022 and 2025. Therefore, in the interest of justice and in order to prevent aggressive sand mining beyond the availability and its natural replenishment rate, this Court deems it appropriate to remit the matter back to the respondent authorities to conduct fresh replenishment study and thereafter decide the permissible extractable sand quantity and the royalty payable by the petitioner in accordance with law.

59. This Court has noted that fresh replenishment study is warranted and deemed necessary in the facts of the present case since there is allegedly a significant reduction in the availability of the sand as noted in two replenishment studies conducted by the very same institute, i.e., CMPDIL for the very same sand *ghat* and also since admittedly mining activities were permitted even after the auction of the aforesaid sand *ghat* in favour of the petitioner.

60. This Court has also duly noted that tethering the petitioner to pay much more that what is actually mined/extracted, would be arbitrary and unjust. The State cannot enforce covenant in a mining lease that compels the lessee to pay royalty even when the mineral in question is not available in sufficient quantity for its extraction, since that would be clearly unjust.

61. For the foregoing reasons, in order to strike a fair balance and keeping in view the sustainable mining practice, this Court deems it appropriate in the interest of justice to pass the following directions:-

i. The respondent nos. 3 to 8 shall get a fresh replenishment study done for the Bhojpur Sone 35 sand *ghat* to ascertain the present and true quantity of sand available in the sand *ghat* and its replenishment rate in the sand *ghat*, which has been allotted to the petitioner.

ii. The question of quantum of royalty shall be determined by the competent authority after the submission of fresh replenishment study report for the subject sand *ghat*. The respondents shall take the decision with regard to the royalty within three weeks from the date of submission of the aforesaid replenishment report and inform the petitioner.

iii. Since the environmental clearance granted to the petitioner *vide* letter dated 19.12.2023 has failed to consider the actual availability of sand, the same is rendered *otiose*. The matter is remitted to the respondent nos.9 and 10 for reconsidering the case of the petitioner in light of the fresh replenishment study for Bhojpur Sone 35 sand *ghat*.

iv. Since this Court has directed for reconsidering the case of the petitioner in light of the fresh replenishment study of the sand ghat, the respondents are restrained from taking any coercive steps including recovery of royalty amount against the petitioner till the case of the petitioner is reconsidered by the respondents.

v. The aforesaid exercise must be completed expeditiously and the mining activities must commence swiftly thereafter in accordance with law, in order to prevent any protraction of financial loss to the State.

vi. In view of the above, the impugned order dated 07.04.2025 passed by the respondent no.2 is quashed.

62. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Sandeep Kumar, J)

pawan/-

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