

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONAL BENCH  
BHOPAL**

**Original Application No. 56/2014 (THC) (CZ)**

**Original Application No. 106/2014 (THC) (CZ)**

**Original Application No. 156/2014 (THC) (CZ)**

**Original Application No. 310/2014 (THC) (CZ)**

**CORAM:**

**Hon'ble Mr. Justice Dalip Singh  
(Judicial Member)**

**Hon'ble Mr. P.S.Rao  
(Expert Member)**

**In the matter of**

**Original Application No. 56/2014 (THC) (CZ)**

Harish Vyas  
S/o Late Raghu Nathji Vyas,  
Aged 76 years,  
R/o 1, Ashok Niwas,  
Vanasthali Vidhayapeeth,  
Niwai, District Tonk (Rajasthan) **.....Applicant**

**Versus**

1. Union of India  
Through the Secretary,  
Ministry of Environment and Forests,  
(F.C. Div.), Paryavaran Bhawan,  
C.G.O. Complex, Lodhi Road,  
New Delhi.
2. State of Rajasthan  
Through Secretary,  
Mines, Secretariat  
Jaipur (Rajasthan).
3. The Chief Conservator of Forests  
Ministry of Environment and Forests,  
Regional Office, Central Division,  
Kendriya Bhawan, 5<sup>th</sup> Floor, Sector-H,  
Aliganj, Lucknow.

4. The Director  
Mines & Geology,  
Shastri Circle,  
Udaipur (Rajasthan).

5. The Asstt. Mining Engineer  
Mines & Geology,  
Tonk (Rajasthan).

6. The Divisional Forest Officer  
Tonk (Rajasthan).

.....Respondents

**Original Application No. 106/2014 (THC) (CZ)**

Harish Vyas  
S/o Late Raghu Nathji Vyas,  
Aged 76 years,  
R/o 1, Ashok Niwas,  
Vanasthali Vidhayapeeth,  
Niwai, District Tonk (Rajasthan)

.....Applicant

**Versus**

Rajasthan State Pollution Control Board,  
4, Institutional Area,  
Jhalana Doongri, Jaipur – 302004.

.....Respondent

**Original Application No. 156/2014 (THC) (CZ)**

Harish Vyas  
S/o Late Raghu Nathji Vyas,  
Aged 76 years,  
R/o 1, Ashok Niwas,  
Vanasthali Vidhayapeeth,  
Niwai, District Tonk (Rajasthan).

.....Applicant

**Versus**

1. The Chief Conservator of Forests  
Ajmer.

2. The Director  
Mines & Geology,  
Shastri Circle,  
Udaipur (Rajasthan).

3. The Asstt. Mining Engineer  
Mines & Geology,  
Tonk (Rajasthan).

4. The Divisional Forest Officer  
Tonk (Rajasthan).

.....Respondents

**Original Application No. 310/2014 (THC) (CZ)**

Harish Vyas  
S/o Late Raghu Nathji Vyas,  
Aged 76 years,  
R/o 1, Ashok Niwas,  
Vanasthali Vidhayapeeth,  
Niwai, District Tonk (Rajasthan).

.....Applicant

**Versus**

1. Union of India  
Through the Chief Conservator of Forests (Central),  
5<sup>th</sup> Floor, Kendriya Bhawan,  
Sector – H, Aliganj, Lucknow (Raj.)
2. State of Rajasthan  
Through Secretary,  
Mines, Secretariat  
Jaipur (Rajasthan).
3. The Director  
Mines & Geology,  
Shastri Circle,  
Udaipur (Rajasthan).
4. The Asstt. Mining Engineer  
Mines & Geology,  
Tonk (Rajasthan).

.....Respondents

**Counsel for Applicant:**

**Shri R.S.Mehta, Advocate**

**Counsel for MoEF:**

**Shri Om S. Shrivastav, Advocate**

**Counsel for RSPCB :**

**Shri Rohit Sharma, Advocate for**

**Shri Sandeep Singh, Advocate**

**Counsel for State of Rajasthan:**

**Shri Sachin K.Verma, Advocate**

**Counsel for MoEF, RO, Lucknow:**

**Dr. M.S. Kachhawa, Advocate**

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**Dated: 15<sup>th</sup> December , 2014**

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**JUDGEMENT**

1. Four Writ Petitions i.e.WP Nos. 1445/2011, 16526/2010, 12940/2010 and 2195/2008 filed by the Petitioner, Shri Harish Vyas, before the Hon'ble High Court of Rajasthan, Jaipur Bench were transferred to National Green Tribunal, Central Zone Bench, Bhopal as ordered by the Hon'ble High

Court on 11<sup>th</sup> Feb., 2014 pursuant to the judgment of the Hon'ble Supreme Court of India dated 9<sup>th</sup> August, 2012 passed in *Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India & Others (2012) 8 SCC 32*. On transfer, they were registered as Original Application Nos. 56/2014, 106/2014, 156/2014 and 310/2014 respectively and since all these 4 Applications pertain to the issue of granting Mining Lease (in short 'ML') in Khasra No. 16/66 Niwai Reserved Forest Block of Tonk Forest Division, Rajasthan for mining Silica sand to the Petitioner (Applicant), they are dealt together.

2. The Applicant, aggrieved by the letter dated 12.09.2007 of the Chief Conservator of Forests (CCF) (Central), MoEF Regional Office, Lucknow addressed to the Chief Secretary, Government of Rajasthan informing that the Hon'ble Supreme Court of India on 08.04.2005 has ordered for restraining mining in any area of Aravali Hills falling in the State of Rajasthan where permissions have been accorded after 16.12.2002 and in spite of this order, Shri Harish Vyas, the Applicant herein, has been permitted to do mining in Tonk District of Rajasthan, filed the Writ Petition. It was further stated in the letter of the CCF (Central) that the said mines may be immediately stopped and the list of officers responsible for issuing illegal orders may be submitted to the MoEF, Regional Office (Central). Accordingly, initially the cause of action for filing of the aforesaid four Writ Petitions is based upon the aforesaid letter of the CCF (Central) and subsequent correspondence made/orders issued by the Divisional Forest Officer (DFO), Tonk, Director, Mines and Geology, Government of Rajasthan, Udaipur, Assistant Mining Engineer, Tonk and Member Secretary, Rajasthan State Pollution Control Board.

3. In the Writ Petitions the Applicant made the following prayer :

O.A. N. 56/2014 (WP No. 1445/2011)

- To set aside the impugned letter of the DFO, Tonk dated 20.12.2010 addressed to the Asst. Mining Engineer, Tonk and letter dated 20.01.2011 ordering Shri Harish Vyas, the Applicant herein, to stop the mining.

O.A. No.106/2014 (WP No.16526/2010)

- To quash the impugned show cause notice dated 19.11.2010 issued to the Applicant Shri Harish Vyas by the Member Secretary, Rajasthan State Pollution Control Board.

O. A. No. 156/2014 (WP No. 12940/2010)

- To stay the impugned order dated 03.05.2010 issued by the DFO, Tonk.

O.A. No. 310/2014 (WP No. 2195/2008)

- To quash the impugned orders dated 12.09.2009 of the CCF (Central) MoEF, Regional Office, Lucknow, letter dated 10.01.2008 issued by the DFO, Tonk; letter of Director, Mines & Geology, Government of Rajasthan, Udaipur dated 12.02.2008 and order dated 14.02.2008 issued by the Assistant Mining Engineer, Tonk to the Applicant Shri Harish Vyas.

4. The contention of the Applicant is that Mining Lease bearing ML No. 16/1966 for mining the mineral silica sand over an area of 152.66 hectares in Niwai Forest, Tonk Forest Division was registered in his favour for a period of 20 years commencing on 23.07.1969. Accordingly, he did the mining in the area for 20 years without any irregularities. The Applicant stated that he had applied for renewal of the ML after expiry of the 20 years lease period in 1989 and that renewal was granted for a further period of 10 years by the Mines & Geology Department, Government of Rajasthan with effect from 23.07.1989. Subsequently, he applied for renewal vide application dated 31.03.1998 with regard to permission for diversion of forest land to the extent of broken up area and additional area for approach road, in all measuring 8.45 hectares and when the application was pending

under the Forest (Conservation) Act, 1980, he applied for second renewal on 15.07.1998 for 7.82 hectares of forest land.

5. While dealing with the Writ Petition No. 1445/2011 (O.A.No. 56/2014) on 04.02.2011, the Hon'ble High Court of Rajasthan, after having heard the Counsel for the Petitioner, passed the following order:

*"Counsel inter-alia submits that it is almost 5<sup>th</sup> writ petition for the self same mining lease granted to him and in almost all the petitions, notices have been issued and interim orders were passed and in either of petitions, no reply has been filed on behalf of the State but the Respondent State authorities are in regular process of passing orders one after the other which has compelled the Petitioner to challenge subsequent orders by way of separate petitions. Four interim orders have been passed by the Court in separate writ petitions regarding self same mining lease. In such circumstances, Counsel submits that passing further orders by State Government without taking note of interim orders earlier passed by the Court cannot be held to be justified.*

*Heard. Admit. Issue notice of writ & stay petition, alongwith a copy of this order, to respondents. Notices be given Dasti, if desired. PF & notices be filed within seven days, failing which stay order shall stand automatically vacated.*

*In the meanwhile, operation of order dtd. 20.01.2011 (Annex. 26) shall remain stayed till further orders.*

*List after service along with CWP 2195/08, 8953/2009, 12940/2010 & 16526/2010".*

6. As would be evident from the above order, the Hon'ble High Court on the basis of the submissions made before it, passed an interim order staying the operation of the impugned order dated 20.01.2011 issued by the DFO, Tonk. After the notices were served and replies filed, the Respondents submitted 3 applications under Article 226 (3) of the Constitution of India through the Divisional Forest Officer, Tonk for vacation of the *ex parte* order dated 04.02.2011. After having heard the Counsel for the Petitioner and the Additional Government Counsel and the Conservator of Forests (Central), MoEF Regional Office, Lucknow, the Hon'ble High Court was inclined and

*prima facie* agreed with the submissions made on behalf of the Respondents through the Conservator of Forests, MoEF and taking note of the respective submissions as well as the reply filed on behalf of the Respondents, vide order dated 10.02.2012 vacated the stay order dated 04.02.2011 and as such the ban which had been imposed by the DFO, Tonk in his order dated 20.01.2011 (Annexure-26), was re-invoked by the Hon'ble High Court. The order dated 10.02.2012 reads as follows :

*“This matter comes up on an application under Article 226(3) of the Constitution of India moved by the Divisional Forest Officer, Tonk for vacation of the ex parte stay order dated 04.02.2011.*

*This Court while admitting the writ petition had directed that the operation of the order dated 20.01.2011 (Annexure 26) shall remain stayed till further orders. Vide order dated 20.01.2011 the Divisional Forest Officer had required the Petitioner to forthwith desist from carrying out non-forest (mining) activities in the reserved forest block, Niwai, where-under the Petitioner was mining the mineral silica sand.*

*The issue relevant for the determination of the application under Article 226 (3) of the Constitution of India is as to whether the Petitioner was granted the requisite permission for diversion of the forest area for undertaking mining activities with regard to the second renewal of his mining lease commencing 23.07.1999 to 22.07.2019. It is not disputed that in view of the provisions of the Forest (Conservation) Act, 1980 and the Forest Conservation Rules, 2003, the guidelines and clarifications of the Government of India, Ministry of Environment & Forests with regard to the manner of grant of permission for diversion and various orders of the Hon'ble Supreme Court in the case of T.N.Godhavarman V/s Union of India & Ors. in PIL No. 202/1995 no mining lease in a forest area can be operational without a subsisting approval for diversion of forest area for non forest activities.*

*The case of the Petitioner is that under permission letter dated 23.09.2002 the Ministry of Environment and Forests, Regional Office (Central Zone), Lucknow had granted approval for diversion for the purposes of second renewal of mining lease in the area which is admittedly situated in the reserved forest area of Niwai, District Tonk and also falls in the Aravali Hills.*

*Mr. S.M.Mehta, Sr. Advocate submits that condition No. 10 of the said permission dated 23.09.2002 makes the permission for diversion co-terminus with the period of the second renewal which*

ends on 22.07.2019. It is submitted that the State Government is on record before the Hon'ble Supreme Court in stating that the mining lease of the Petitioner was fully compliant with law and was valid till 2019. It is submitted by the Senior Counsel that the permission for diversion of forest area as a rule, is granted only prospectively and the permission dated 23.09.2002 issued by the Ministry of Environment and Forests cannot be construed to be ex-post facto retrospective permission for the first renewal of the Petitioner's mining lease for the period 23<sup>rd</sup> July, 1989 till 22<sup>nd</sup> July, 1999. He submits that the permission for diversion of forest thus having been granted vide letter dated 23.09.2002 and the Petitioner having been granted second renewal of his lease by the State Government valid till 22.10.2019, nothing illegal can be attributed in the mining operations in the forest area by the Petitioner. It is further submitted that subsequently, following the judgement of the Hon'ble Supreme Court in the case of M.C.Mehta Vs. Union of India and others, decided on 18.03.2004 when it transpired that the Environment Impact Assessment Notification dated 27.01.1994 was also applicable to the mining leases, permission was sought under the same Notification and obtained on 17.03.2005. It is thus submitted that the Petitioner has approval for diversion under the Forest Conservation Act, 1980 as also permission under the Notification dated 27.01.1994, apart from valid renewal of the lease from the State Government upto 22.07.2019 and consequently the order passed by this Court 04.02.2011 ought to be confirmed and the Petitioner allowed to enjoy his rights in law.

The case of the Petitioner has been vociferously opposed by the counsel for the Respondent and Mr. Y.K.Singh Chauhan, Conservator of Forest present in person. It has been submitted that the guidelines and the clarifications issued by the Ministry of Environment and Forests, Government of India with regard to the grant of approval for diversion of forest for undertaking non forest activities are absolutely emphatic in stating that all proposals for diversion of areas in the forest for any non forest purpose, irrespective of ownership would require prior approval of the Central Government in the MoEF. It has been submitted that Clause 4.03 of the aforesaid guidelines clearly provides for prior approval of the Central Government in all cases under Section 2 of the Forest Conservation Act, 1980 and states that the proposals seeking ex-post-factor approval for the Central Government under the Act of 1980 are normally not entertained and will not be approval under the Act "unless exceptional circumstances justify condonation" and in all such cases of ex-post-factor approval for diversion, penal compensatory afforestation is to be insisted upon by the MoEF as has been levied on the Petitioner. It has been submitted that the Hon'ble Supreme Court under its order dated 22.12.1996 passed in PIL No. 2020/1995 had directed that subsequent to the coming into force of the Act of 1980 even in respect of renewal of mining leases prior permission of the Ministry of Forest and Environment was required. In view of the said order of the Hon'ble Supreme Court all renewals without prior



*permission and approval of diversion subsequent to the year 1980 were rendered illegal and an exceptional situation had thus arisen. Consequently, in terms of the recommendations of the State Government to overcome a universal problem of illegality of all renewals without prior permission under Section 2 of the Act of 1980, the proposals of the State Government for ex-post-facto approval for renewed mining leases were considered. It is in this context that it has been submitted that the proposals for ex-post-facto approval for the first renewal of the Petitioner's mining lease for the period 1989 to 1999 were forwarded and granted. It is submitted that it has been the consistent practice of the Ministry of Environment and Forests to grant proposals for diversion co-terminus with each grant or renewal of mining lease; that a general blanket approval for successive renewals of mining lease is not granted by the Ministry Environment and Forest as is sought to be construed by the Petitioner unjustly to his advantage from the permission dated 23.09.2002. It has been submitted that in special cases such as Balaji Minerals situated in Tonk District, the grant of approvals for diversion does intrude in a limited manner to subsequent renewals of mining leases in the extra ordinary situation of such mining leases being situated in clusters. Reference has been made to Annexure –9 of the guidelines and the Clarification issued by the Ministry of Environment and Forests, New Delhi to state that cluster mining constitutes a category of its own and is to be considered differently. Emphasis has been laid on clause 5 of Annexure 9 aforesaid which provides that “even existing approved leases be included in the proposals so that they can be brought to the same time frame.” It is submitted that the logic is that the evaluation of the impact of diversion which is independently made ordinarily is collectively made in cases of clusters. Counsel for the Respondents had reiterated that Clause 4.16 of the aforesaid guidelines and clarification provides that the approval under the Forest (Conservation) Act, 1980 for diversion of forest land for grant/renewal of mining leases is normally granted for a period co-terminus with the period of mining lease or renewal thereof proposed to grant under the MMDR Act, 1957. It has been further submitted that while recommending any case for diversion, the State Government is required to indicate the period for which the diversion of forest is proposed to be granted. In this context, reference has been made to the form for seeking prior approval submitted by the Petitioner under Section 2 of the Act of 1980 and the attention of the Court has been drawn to the condition No. 10 (ii) of the said form wherein the period of mining lease proposed, the Petitioner himself had indicated the dates as 23<sup>rd</sup> July, 1989 to 22<sup>nd</sup> July, 1999 albeit also for further period as per the Rules. It has been submitted that consequently in the context of the extant Policy and the guidelines, MoEF granted the approval of diversion limited to specific renewal i.e. the first renewal for the period 23.07.1989 to 22.07.1999. The dates in the proposal form clearly indicated that the proposal form of the Petitioner was limited to seeking approval for diversion under the Act of 1980 limited to the first renewal commencing 23.07.1989 ending 22.07.1999. Counsel*

would submit that even otherwise the application for diversion was made on 23.07.1998 and it is not conceivable that a diversion under the Act of 1980 was being sought for 2<sup>nd</sup> renewal which was not in issue at the relevant time.

Mr. Y.K.Singh Chauhan appearing in person has submitted that by letter dated 23.01.2011, the Petitioner was informed that the mining operations being carried out by him were contrary to the Act of 1980 as also the directions of the Hon'ble Supreme Court and the Petitioner would be well advised to apply for diversion for the period of second renewal commencing 23<sup>rd</sup> July, 1999 to 22<sup>nd</sup> July, 2019 but no such application came to be made. It has been submitted that Hon'ble Supreme Court in its various orders in T.N.Godhavarman's case has quite categorically stated that no non-forest activity is to be carried out in the Aravali hills and the reserved forest areas and the mines of the Petitioner fall both within the reserved forest as also the Aravali hills. More specifically it has also been pointed out that the Hon'ble Supreme Court vide its order dated 08.04.2005 had directed that no permission for any mining lease in forest areas be granted whatsoever after 16.12.2002. It is submitted that the mining lease of the Petitioner was renewed vide order dated 02.06.2005 and that quite clearly is beyond the date of 16.12.2002, beyond which the Supreme Court has prohibited mining leases in the forest areas. It has been submitted that even otherwise the permission under the Notification dated 27.01.1994 was sought and granted to the Petitioner on 17.03.2005 which is also against the clear mandate of the Hon'ble Supreme Court in the case of T.N.Godhavarman Vs. Union of India (W.P.(C) No. 202/1995) decided on 12.12.1996, holding that all permissions had to be in place before 16.12.2002 for the purposes of undertaking non-forest activities in the forest areas.

I have considered the rival submissions and I am of the view that in the context of the application for approval of diversion moved by the Petitioner on 23.07.1998 during the currency of the first renewal and the specific averment therein that the proposal was for the period 23.07.1989 to 22.07.1999, Condition No. 10 of the permission granted by the Ministry of Environment and Forest on 23.09.2002 has to be construed in the context of the guidelines and clarifications of the MoEF to be limited to the first renewal ex-post-facto necessitated by the order of the Hon'ble Supreme Court passed on 12.12.1996 in the case of Godhavarman (supra). The Petitioner did not submit any proposal for diversion relating to the second renewal of mining lease for the period 23.07.1999 to 22.07.2019. Consequently, the Petitioner does not have any permission for diversion for the 2<sup>nd</sup> renewal of mining lease for the period 23.07.1999 to 22.07.2019.

For these reasons, I am inclined to allow the application under Article 226(3) of the Constitution moved by the Divisional Forest Officer, Tonk and would vacate the order dated 04.02.2011 passed by this Court.

*Even while the stay order has been vacated, Mr. Mehta is right in expressing his apprehension that now illegal mining activities in the forest area will be commenced and the purpose of the vacation of the stay order to safeguard the forest in terms of the Act of 1980 and in terms of the judgement of the Hon'ble Supreme Court will be defeated.*

*The apprehension of Mr. Mehta is not unfounded in the context of the regular allegations in Court in various matters that where even while formal mining operation is discontinued under the orders of the Court, informal mining activity takes place. Consequently, the Respondents, more particularly, Division Forest Officer, Tonk are directed to ensure that with the closure of the Petitioner's mine, no illegal mining activity is undertaken in the area."*

7. After the aforesaid order dated 10.02.2012 passed by the Hon'ble High Court, the Petitioner submitted an application for amendment of the petition as well as for taking on record the amended petition along with the documents filed with the same. Vide order dated 16.01.2013, the Hon'ble High Court allowed the Petitioner to amend the petition and also ordered for taking on record the amended petition with the supporting documents. Subsequently, the Hon'ble High Court vide its order dated 11<sup>th</sup> February, 2014, ordered transfer of all the aforesaid four Writ Petitions to this Tribunal.
8. On receipt of the cases from the Hon'ble High Court to this Tribunal, notices were ordered to be issued only to the Respondents as Shri Anirudh Vyas appeared before this Tribunal on behalf of his father, Shri Harish Vyas, the Applicant herein on 27.03.2014.
9. On 25.11.2014, after service of notices, the matter was heard, arguments concluded and the judgment was reserved.
10. We have heard Shri R.S.Mehta, Counsel for the Applicant at length in the O.A.No. 56/2014, which was taken up for consideration first, as it was submitted by the Learned Counsel that in case the Petitioner succeeds in the

aforesaid O.A.No. 56/2014 arising out of the Civil Writ Petition No. 1445/2011 originally filed before the Hon'ble High Court of Rajasthan, Bench at Jaipur whereby the impugned order dated 20.01.2011 issued by the DFO, Tonk to stop the mining, (Annexure-26) had been challenged, consideration of the remaining three OAs would be necessitated. However, in case, the order dated 20.01.2011 is upheld, then the necessity of examining of the matter and the issues raised in the remaining three OAs i.e. OA Nos. 106/2014, 156/2014 and 306/2014 would not arise. Accordingly, the O.A.No. 56/2014 is taken up for consideration first.

**Original Application No. 56/2014**

11. As stated above, the facts that gave rise to this petition are that the ML No. 16/1966 for mining Silica sand over an area of 152.66 hectares in Niwai Forest Block of Tonk forest division, was applied for by the Applicant and the lease came to be granted in July, 1969 which was registered on 23.07.1969 for a period of 20 years. On expiry of the lease period on 22.07.1989, the Applicant applied for renewal and was granted the first renewal by the Mines and Geology Department, Government of Rajasthan for a period of 10 years from 23.07.1989 to 22.07.1999. It was submitted that in the meanwhile, the Forest (Conservation) Act, 1980 had been promulgated and had been brought into force and there had been judicial apprehension and order from the Hon'ble Supreme Court with regard to the grant of mining leases in forest areas and in particular the order dated 12.12.1996 passed in T.N.Godavarman's case. It is alleged that despite the aforesaid, the Applicant continued his mining operations in the forest area. However, the Applicant avers that he moved an application on 31.03.1998 seeking permission for renewal of the ML under the Forest (Conservation)

Act, 1980 to the extent of broken up area and some additional area for the approach road, in all measuring 8.45 hectares. It is submitted that while the said application dated 31.03.1998 remained pending, the Petitioner's mining lease became due for second renewal and as such he claims that he applied for the same vide application dated 15.07.1998 and this time only for 7.42 hectares of forest land.

12. The Petitioner has based his claim on the letter dated 23.09.2002 written by the Deputy Conservator of Forests, MoEF, Regional office, Central, Lucknow to the Secretary, Forests, Government of Rajasthan on his application which was recommended by the state government vide dated 23.07.1998. The letter dated 23.09.2002 is reproduced below for ready reference:

कृपया राज्य सरकार के पत्रांक प. 1(38) वन / 98 दिनांक 23.07.1998 मध्ये का संदर्भ ले जिसके द्वारा केन्द्र सरकार से वन (संरक्षण) अधिनियम 1980 के तहत स्वीकृति मांगी गयी थी। नोडल अधिकारी ने अपने पत्र दिनांक 29.08.2002 के द्वारा सैधान्तिक स्वीकृति आदेश में निहित शर्तों के अनुपालन की सूचना प्रेषित की है।

राज्य सरकार के प्रस्ताव पर ध्यानपूर्वक विचारोपरान्त, मुझे यह सूचित करने का निर्देश हुआ है कि केन्द्र सरकार जनपद टोंक के वन खण्ड निवाई में सिलिका सैंड के खनन हेतु श्री हरीश व्यास के पक्ष में 8.45 हे. वन भूमि क प्रत्यावर्तन की स्वीकृति निम्न शर्तों पर प्रदान करती है :

01. वन भूमि की वैधानिक स्थिति में कोई परिवर्तन नहीं होगा।
02. वन विभाग द्वारा लीजधारक के व्यय पर 8.45 है. गैर वन भूमि पर क्षतिपूर्क वक्षारोपण एवं उसका रख रखाव किया जाएगा तथा उसे संरक्षित वन घोषित कर अधिसूचना की एक प्रति इस कार्यालय को उपलब्ध करायी जायेगी।
03. वन (संरक्षण) अधिनियम, 1980 के उल्लंघन के दण्ड स्वरूप वन विभाग द्वारा लीज धारक के व्यय पर 7.0 हे. अवनत वन क्षेत्र पर दण्डात्मक वृक्षारोपण एवं उसका रख-रखाव किया जाएगा।
04. लीजधारक के व्यय पर स्थल पर खनन लीज क्षेत्र का सीमांकन आर.सी.सी खम्बो (४ फीट) द्वारा किया जाएगा जिसपर क्रम संख्या, बियरिंग तथा निकटतम खम्बो से दूरी अंकित की जाएगी।

05. सुरक्षा जोन की देख-रेख व संरक्षा की जाएगी तथा सुरक्षा जोन क्षेत्र के डेढ गुने अवनत वन क्षेत्र में अन्यत्र वृक्षारोपण किया जाएगा ।
06. वन क्षेत्र में खनन कार्य स्वीकृत खनन योजना के अनुसार ही किया जाएगा तथा लिजधरक के व्यय पर खनिज क्षेत्र का उद्धारण खनन की प्रक्रिया के साथ साथ किया जाएगा ।
07. प्रत्यावर्तित वन भूमि का उपयोग किसी भी जन्य प्रयोजन के लिए नहीं किया जाएगा ।
08. यदि लागू हो तो पर्यावरण प्रभाव आकलन अधिसूचना, 1994 के तहत पर्यावरण एवं वन मंत्रालय, नई दिल्ली से पर्यावरण संबन्धी प्राप्त की जाएगी।
09. यदि लागू हो तो, वायु तथा जल अधिनियम के तहत राज्य प्रदूषण नियंत्रण बोर्ड की स्वीकृति खनन कार्यों के शुरु होने से पहले प्राप्त की जाएगी तथा प्रत्येक वषे उसका नवीनीकरण कराया जाएगा । नियमानुसार, राज्य प्रदूषण नियंत्रण बोर्ड / राज्य पर्यावरण विभाग के परामर्श के अनुसार लीजधरक द्वारा समी सुरक्षा उपायों का अनुपालन किया जाएगा।
10. चूंकि खनन लीज की अवधि पहले ही समाप्त हो चुकी है । अतः वन भूमि के प्रत्यावर्तन की अवधि राज्य सरकार के खनन नियमों के अनुसार नवीनीकृत लीज की अवधि के समस्पर्शी होगी । केन्द्र सरकार द्वारा वन (सुरक्षण) अधिनियम 1980 के तहत पुर्वानुमति के बिना लीज का पुनः नवीनीकरण नहीं किया जाएगा ।
11. लीज क्षेत्र के अंदर व आस-पास के क्षेत्र की वनस्पतियों एवं जीव-जंतुओं की सुरक्षा हेतु राज्य सरकार द्वारा समय समय पर लगाई गयी अन्य शर्तों का अनुपालन किया जाएगा ।□

13. Subsequent to the aforesaid letter dated 23.09.2002 of the MoEF, Government of India, Regional Office, Central Region, Lucknow the renewal agreement was made with Assistant Mining Engineer, Tonk on 24.06.2005 for a further period of 20 years with effect from 23.07.1999. A copy of the renewed lease agreement has also been submitted by the Applicant which is filed as Annexure – 5 to the original Writ Petition.

14. In the meanwhile on 20.12.2010, the Chief Conservator of Forests, MoEF, Regional Office, Central Region, Lucknow has written a letter (Annexure-23) to the DFO, Tonk and Assistant Mining Engineer, Tonk, Rajasthan, drawing their attention to the condition No. 10 of the aforesaid letter dated 23.09.2002. It has been stated as follows in the letter dated 20.12.2010.

*“.....the lease period of mines has already been expired therefore the diversion of forest land period is co-terminus with lease renewal period. Further, mining lease cannot be renewed without prior approval of diversion of forest land under the Forest (Conservation) Act, 1980 from the Central Government.”*

After quoting the aforesaid Condition No. 10, the CCF, Regional Office, Lucknow in his above letter dated 20.12.2010 further stated that

*“The Hon’ble High Court Rajasthan, Jaipur Bench, Jaipur in S.B.Civil Writ Petition No. 2195/2008 (Harish Vyas Vs. Union of India and Others) order dated 27.05.2008 clearly mentioned that – “Considering the above mentioned submission, I am of the view that the Petitioner be allowed to operate the mining operation in the area which is neither prohibited by the Supreme Court nor is part of the forest land this order will be subject to the decision of Supreme Court passed in IA Nos. 1310, 1331, 1332 etc. ordered accordingly.”*

*..... The Hon’ble High Court of Rajasthan, Jaipur Bench, Jaipur in SB Civil Writ Petition No. 8953/2009 (Harish Vyas Vs. Union of India & Ors) order dated 14.09.2009 again mentioned the order dated 27.05.2008 in Writ Petition No. 2195/2008 is applicable. However the Hon’ble High Court of Rajasthan, Jaipur Bench in SB Civil Writ Petition No. 12940/2010 (Harish Vyas Vs. Chief Conservator of Forests & Ors) order dated 04.10.2010 again permitting the Petitioner to mining operation in the area which is neither prohibited by the Supreme Court nor is the part of the forest.*

*Thus, from the above description, it is crystal clear that after 22.07.1999, the mining on 8.45 hectare of reserve forest in Niwai Block, District Tonk is carried out without diversion proposal and with violation of Forest (Conservation) Act, 1980, the Apex Court order in I.A.No. 1310, 1331, 1332 dated 08.04.2005 restraining the mining activities the area falling in Aravali Hills and forest and further permission granted by Hon’ble High Court of Rajasthan, Jaipur Bench, Jaipur in Writ Petition No. 2195/2008 (Harish Vyas Vs. Union of India & Ors) order dated 27.05.2008, Writ Petition No. 8953/2009 dated 14.09.2009 and Writ Petition No, 12940/2010 dated 04.10.2010 has not permitted the mining operation in forest area or the area falling in Aravali Hills, the mining operation is carried out after 22.07.1999 without diversion of forest land in connivance with the forest and mining department officers/staff and the minerals extracted from the forest area comes in category of the forest produce.*

*Therefore, as per Hon’ble Supreme Court order, and Hon’ble High Court orders as well as per the relevant Rules of Forest (Conservation) Act, you are hereby directed to stop all mining operation in forest area of Niwai Reserve Forest Block and file*

*cases in the competent court against the owner Harish Vyas for extracting forest produce after 22.07.1999. The action taken in the matter may be informed to this office for taking further necessary action'.*

15. It is in this background that the DFO, Tonk issued the impugned letter dated 20.01.2011 to the Applicant asking him to stop the mining operations in the forest land as per the order of the MoEF, Regional Office, Central Region, Lucknow dated 20.12.2010 which has been challenged by the Applicant. As has been stated above, the Hon'ble High Court vide order dated 10.02.2012, while considering the application for vacation of the interim order dated 04.02.2011, has dealt with the contention of the parties in detail and *prima facie*, came to the conclusion that under the initial application submitted by the Applicant in 1998, the same pertained only to the period of the subsisting lease up to 22.07.1999 only and thereafter, the permission granted vide letter dated 23.09.2002 by the MoEF, Government of India and Condition No. 10 thereof must be construed as pertaining to the period from 23.07.1989 to 22.07.1999 only in the light of the fact that in 1980, the (Forest Conservation) Act had come into force and it was therefore incumbent at the time of granting renewal in 1989 to seek the permission of the MoEF in accordance with the provisions of (Forest Conservation) Act 1980 and rules made thereunder.
16. We are in agreement with the aforesaid view expressed by the Learned Single Judge of the Hon'ble High Court, Rajasthan contained in the order dated 10.02.2012 which was reproduced above. However, the Learned Counsel for the Applicant on the basis of the submission made in the amended petition and the documents incorporated with the same in accordance with the permission granted by the Hon'ble High Court, has



contended that while considering the application submitted by the Applicant, the MoEF in its noting dated 24.09.1998 had recorded as follows:

*“.....in view of the above position explained by the Nodal Officer vide letter dated 07.09.1998(P-70/C), it is submitted that the Ministry may like to approve the proposal of the State Government for diversion of 8.45 hectare of forest land in question for mining of silica sand in favour of Shri Harish Vyas subject to the following conditions :*

- (i) x x x
- (ii) x x x
- (iii) x x x
- (iv) x x x
- (v) x x x
- (vi) *The period of diversion of forest land shall be co-terminous with the period of 1<sup>st</sup> renewal of mining lease i.e. up to 22.07.1999 and subsequent 2<sup>nd</sup> renewal as per the Mining rules.*

*Submitted for kind consideration and necessary orders.*

24.09.1998

(M.B.Lal)  
CCF (Central)

17. On the basis of the above, the submission of the Learned Counsel for the Applicant is that as per his original application submitted on 31.03.1998, recommendation as per Clause (vi) was for renewal also and the stand of the MoEF, Regional Office Lucknow vide their letter dated 20.12.2010 interpreting Condition No. 10 of the letter dated 23.09.2002 as *“the lease period of mines has already been expired therefore the diversion of forest land period is co-terminus with lease renewal period. Further, mining lease cannot be renewed without prior approval of diversion of forest land under the Forest (Conservation) Act, 1980 from the Central Government”* is a misreading of the Condition No. 10 imposed in the letter dated 23.09.2002 read with the aforesaid recommendation made in the noting on the file of the MoEF.

18. We are afraid that we cannot persuade ourselves to agree with the aforesaid submission of the Learned Counsel for the Applicant. At the time when the

application was submitted in March, 1998, it was only a question of grant of *ex-post facto* sanction for the period of the renewal from July 1989 to July 1999. Though, the Learned Counsel for the Applicant has contended that in the said application it was mentioned “*for subsequent period as per rules*”, it is clear that grant of permission under the Forest (Conservation) Act, 1980 under letter dated 23.09.2002 particularly under Condition No. 10 which stated that permission was being granted to be co-terminous with the period of lease and that no renewal would be made of the Mining Lease without prior permission from the Central Government under the Forests (Conservation) Act, 1980. The view expressed by the Conservator of Forests, MoEF, Regional Office, Lucknow under the letter dated 23.07.2010 as well as in the letter dated 20-12-2010 based upon the Condition No. 10 as contained in the letter dated 23.09.2002, in our opinion, has been correctly interpreted and no fault can be found on the basis of the same so as to be interpreted as granting permission to the Applicant for the period beyond July, 1999 also.

19. In our view, after 1989, in fact there was no valid renewal of ML till the time the letter dated 23.09.2002 was issued as Forest (Conservation) Act came into force in 1980 itself. From the documents placed on record, it is evident that the renewal of the ML was made on 24.06.2005 when the lease was executed. A perusal of the aforesaid document goes to show that as per letter dated 02.06.2005 of the Director of Mines and Geology, Government of Rajasthan, Udaipur, renewal for a period of 20 years with effect from 23.07.1999 in accordance with the Mineral (Concession) Rules, 1960, has been approved. It has further been stated that an area of 7.89 hectares for mining and an area of 0.56 hectares for approach road (total 8.45 hectares)

being the forest land required to be diverted in accordance with the letter dated 23.09.2002. Thus, it was clearly visualised that for subsequent renewal with effect from 23.07.1999, 8.45 hectares was again required to be diverted and therefore, the contention of the Applicant that the MoEF letter dated 23.09.2002 giving permission for renewal of the lease on the basis of the diversion of 8.45 hectares of forest land was sufficient and applies to the period from 23.07.1999 to 22.07.2019, is incorrect and it is nothing but misinterpretation by the Director, Mines and Geology in this regard.

20. Initially diversion of forest land measuring 8.45 hectares is related to the period from 23<sup>rd</sup> July 1989 to 22<sup>nd</sup> July 1999 only. Thereafter consideration for continuity of diversion of the forest land and sanction of the proposal in that behalf by the Central Government was required to be sent in case of subsequent renewal post 22.07.1999 even assuming that the Applicant in his application submitted in March 1998 may have requested to grant consent under the Forest (Conservation) Act, 1980 for subsequent renewal post 22<sup>nd</sup> July 1999 also. This has been made amply clear in the letter of the Government of India, MoEF, Regional Office, Central Region, Lucknow dated 23.07.2010 addressed to the Principal Secretary, Mines and Geology, Government of Rajasthan wherein after quoting the various conditions including Condition No. 10 contained in the letter dated 23.09.2002, it has been stated as follows:

*“Thus, from the above description, it is crystal clear that the State Government / lessee has submitted proposal for diversion of forest land for regularization of violation of Forest (Conservation) Act, 1980 for the period from 23.07.1989 to 22.07.1999 and the Government of India has also accorded the diversion of forest land for the above mentioned period but the State government has illegally renewed the mining lease of Shri Harish Vyas for a period of 20 years in the year 2005 vide order dated 02.06.2005 from 23.07.1999 to 22.07.2019 without submitting diversion proposal of forest land to the Government of India as per the provisions of Forest (Conservation) Act, 1980*

*therefore the approval accorded is not in accordance with the Forest (Conservation) Act, 1980 and therefore the order of the State Mining Department is illegal.”*

21. It is not at all the case before us that any proposal for diversion of 8.45 hectares of forest land in respect of the subsequent renewal with effect from 23.07.1999 up to 22<sup>nd</sup> July 2019, was submitted by the State Government or by the lessee to the Central Government as required under the provisions of the Forest (Conservation) Act, 1980. Therefore, we are in agreement with the views expressed by the Learned Single Judge in the order dated 10.02.2012 and the order of the MoEF and the order of the DFO (Annexure-26) dated 20.01.2011 does not call for any interference and in our view, it was rightly upheld by the Learned Single Judge. Therefore, we are in agreement with the aforesaid views expressed in the said order and also on the grounds mentioned hereinabove in respect of the submissions made by the Learned Counsel for the Applicant on the basis of the amended petition and the accompanying documents. We may also add that the Applicant cannot claim any right on the basis of the interpretation given by the Learned Counsel for the Applicant to the noting on the file of the Ministry dated 24.09.1998 as the views expressed do not support the contention of the Applicant. As on 24.09.1998 the question of renewal beyond 22.07.1999 had not at all arisen and the case under consideration was only for the period from 1989 to 1999. Moreover, it is a settled law that notes on the file are for the internal working of the Department only and whatever is the decision taken, it is on the basis of the order finally issued which in question is the order dated 23.09.2002 containing the Condition No. 10 which is explicit and makes it necessary for the Applicant to have sought permission for subsequent renewal with effect from 23.07.1999 based upon

the provisions of the Forest (Conservation) Act, 1980 requiring diversion of forest land in accordance with the provisions of law notwithstanding the fact that the applicant may have sought permission for renewal for subsequent period also but that would require separate consideration on the facts and merits and subsequent developments. The Hon'ble Supreme Court of India on 08.04.2005 in I.A.Nos. 828, 831, 833, 834, 1310, 1331, 1332 has ordered for restraining mining in any area of Aravali Hills falling in the State of Rajasthan where permissions have been accorded after 16.12.2002 and therefore as the ML period has already expired on 22<sup>nd</sup> July 1999 and there is no subsequent renewal of the ML and since it was not under subsistence as on the cut off date fixed by Supreme Court i.e. 16.12.2002 and since the above order of the Hon'ble Supreme Court is applicable in this case as the ML site is falling in Aravali Hills the question of renewal of ML does not arise and the issue requires independent consideration.

22. Accordingly, we would hold that the renewal agreement made on 23.06.2005 as per the order dated 02.06.2005 of the Director, Mines & Geology, Rajasthan for granting renewal for the claimed 2<sup>nd</sup> extension period of 20 years from 23.07.1999 to 22.07.2019 is bad under law and *non est* and no rights whatsoever would accrue in favour of the Applicant / Petitioner from 23.07.1999. In that view of the matter, the directions contained in the order of the Hon'ble Supreme Court in the cases of T.N.Godavarman and M.C. Mehta pertaining to prohibition of mining in the Aravali Hills contained in the Order dated 08.04.2005 in IA No. 828, 831, 833, 834, 1310, 1331 and 1332 are applicable in this case as there was no valid renewal of mining lease in favour of the Applicant after 23.07.1999.

23. Accordingly, the Original Application No. 56/2014 filed by the Applicant challenging the order dated 20.01.2011 of the DFO, Tonk, is hereby disposed of.
24. Since, the Original Applications No. 106/2014, 156/2014 and 310/2014 are the offshoot of the main petition (O.A. No. 56/2014) and as the main petition having been disposed of and the order dated 20.01.2011 of the DFO, Tonk having been upheld, no interference is called for in any of the Original Applications and accordingly Original Applications No. 106/2014, 156/2014 and 310/2014 also stand disposed of.
25. At the closing of the hearing Learned Counsel Shri Mehta prayed that in the event of the application being dismissed on merits it may be observed that, if the Applicant submits a fresh application for consideration of renewal and grant of Forest Clearance for the period from 1999 to 2019 the same may be considered. As far as the above prayer is considered at present, it is hypothetical. Nonetheless, it is observed that in case any application is submitted the same may be considered in accordance with law.
26. In the end all the four Original Applications stand dismissed. There is no order as to costs.

Bhopal:  
15<sup>th</sup> December, 2014

**(Mr. Justice Dalip Singh)**  
**Judicial Member**

**(Mr. P.S.Rao)**  
**Expert Member**