

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

.....

ORIGINAL APPLICATION NO. 124 OF 2016

IN THE MATTER OF:

Kirti Vardhan Singh
2, B.D. Marg,
New Delhi-110001

Also at:

Makanpur Kot, P.O. Makanpur,
District Gonda, Uttar Pradesh

..... Applicant

Versus

1. State of Uttar Pradesh
Through Principal Secretary
Department of Environment
Room No. 601, Bapu Bhawan Secretariat
Vidhan Sabha Marg, Lucknow-226001
Uttar Pradesh
2. Ministry of Environment, Forest and Climate Change
Through its Secretary
3rd Floor, Prithvi Wing,
Indira Parvayan Bhawan
Jor Bagh, New Delhi-110003
3. Uttar Pradesh Pollution Control Board
Through its Member Secretary
Building No. TC-12V, Vibhuti Khand
Gomti Nagar, Lucknow
Uttar Pradesh-226010
4. State Level Environment Impact Assessment Authority
(SEIAA) through its Director
Directorate of Environment, U.P.
Vineet Khand-I, Gomti Nagar, Lucknow,
Uttar Pradesh-226010
5. Ministry of Railways
Through its Secretary
Room No. 256-A, Rail Bhavan
Raisina Road, New Delhi
Delhi-110001

6. Vinod Kumar Singh @ Pandit Singh S/o Shri Kamal Raj Singh
R/o Village Ballipur, Post and P.S. Nawabganj
Tehsil Tarabganj, Gonda, Uttar Pradesh
7. Narendra Singh S/o Shri Kamal Raj Singh
R/o Village Ballipur, Post and P.S. Nawabganj
Tehsil Tarabganj, Gonda, Uttar Pradesh
8. Central Ground Water Authority
Through its Regional Director
CGWB Bhujal Bhavan, Sector-B
Sitapur Road Yojna, Ram Bank Chauraha
Lucknow-226021 (U.P.)

.....Respondents

COUNSEL FOR APPLICANT:

Amicus Curiae: Mr. Rachit Mittal, Adv.

COUNSEL FOR RESPONDENTS:

Mr. Om Prakash, Advocate for Respondent No. 3.
Mr. Paritosh Kumar Singh, Advocate for Respondent No. 6 & 7.
Mr. Ankit Verma and Mr. V. B. Singh Sr. Advocate with Mr. P. N. Mishra, Sr. Advocate for State of UP.
Mr. Vijay Raj Bahadur, AG with Mr. Abhishek Yadav, Adv. for Uttar Pradesh.
Mr. M.R. Shamshad and Mr. Aditya Samaddar, Adv. for Govt. Of Uttar Pradesh
Mr. B.V. Niren, Advocate for CGWA, Respondent No. 8.
Mr. Pradeep Misra and Mr. Daleep Dhayani, Advocates for Respondent No. 10
Dr. Abhishek Atrey and Ms. Megha Tyagi, Advs. for MoEF

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE SWATANTER KUMAR (CHAIRPERSON)

HON'BLE MR. BIKRAM SINGH SAJWAN (EXPERT MEMBER)

HON'BLE DR. AJAY A. DESHPANDE (EXPERT MEMBER)

Reserved on: 3rd May, 2017
Pronounced on: 16th May, 2017

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

JUSTICE SWATANTER KUMAR (CHAIRPERSON)

The present application i.e. Original Application No. 124 of 2016 was registered in furtherance to an application received by the Registry from Shri Kirti Vardhan Singh, Member of the Parliament stating that there was illegal sand mining adjacent to the railway track on Mankapur, Faizabad causing serious threat to the environment, ecology as well as to the railway track. There was every likelihood of the track sinking as the high scale illegal mining was unchecked and was a serious threat to the environment. There was clear nexus between the mining mafias and the political leaders who are Respondent No. 6 and 7 in the application. The Writ Petition No. 10537 of 2014 had been filed in the High Court of Allahabad at Lucknow by one Shri Vijay Kumar Paswan, copy of which was subsequently placed on record before the Tribunal. In that Writ Petition, the petitioner had made averments that illegal mining within Kalyanpur and Chak Rasool areas under Tehsil Tarabganj was being carried on which was very close to the railway line, causing great threat to the life of the people. Even a complaint was made against the above activity. On the basis of the complaint, serious protest was raised by various people and news reports published with regard to illegal mining. On 31st January, 2014, the then District Magistrate Dr. Roshan Jacob inspected the area under illegal mining and 14 people were arrested and several machines, trucks and equipments involved in the illegal mining were seized. Departmental action against the negligent officers who were involved in illegal mining was also taken. On 22nd January, 2014, various other areas were raided within the

district and it was found that illegal mining was going on and several machines and equipments were seized. A report was forwarded by the authorities on 7th April, 2014 that illegal mining was taking place within the area without any lease or license for the same.

2. According to the Applicant in the present case, the illegal mining was taking place in Gonda, Uttar Pradesh and near the railway track on Mankapur, Faizabad.

The Tribunal *vide* its order dated 18th March, 2016 issued notice to the various authorities as well as appointed Mr. Rachit Mittal, Advocate as Amicus Curiae. The Amicus filed a memo and notices were issued to 8 respondents who were represented.

3. Different respondents filed their respective replies. During the course of hearing, the District Magistrate and the Mining Officer were directed to be present before the Tribunal. They had appeared and brought to the notice of the Tribunal that there had been instances of illegal mining, unscientific extraction of minerals. An FIR was registered against the offenders and they had also submitted a report in this regard. On 21st February, 2017, the District Magistrate was present before the Tribunal and he was directed to file an affidavit about the illegal and unauthorised mining particularly, mechanical mining being carried on in village Kalyanpur, Pargana Nawabganj, Tehsil Tarabganj, District Gonda. According to the District Magistrate, illegal and unauthorised mining took place in the year 2013 – 2014. The documents on record also showed that illegal mining continued even during the period from 2013 to 2015. The Chief Conservator of

Forest was directed to file a personal affidavit because various officers on behalf of the State of UP had initially stated that no illegal mining was carried on which was contrary to the records of the Tribunal.

4. The Uttar Pradesh Pollution Control Board (for short, "UPPCB") has filed a reply which is very general in terms. It is stated that mining primarily falls in the domain of the State Government and therefore, it is for the State to submit the reply. An affidavit on behalf of the State was filed wherein it was stated that the contents of the letter were correct. However, it is stated that the District Administration took strict and appropriate action on the basis of news articles published on 19th – 20th March, 2016 regarding the illegal mining along Mankapur Faizabad railway track. The District Magistrate, Gonda had taken cognizance and issued directions to the concerned police stations to take stringent action. In furtherance to the letter dated 2nd April, 2016, a joint inspection team comprising of various departments including mining department was constituted for conducting inspection, in which the Senior Divisional Engineer-I, Railway Manager, North Eastern Railways had also participated. The report was submitted on 12th April, 2016 stating that illegal mining had been carried on even near the railway track. It was stated that nearly 100 illegal sand mining cases had been challaned by the District Magistrate and appropriate action had been taken. A reference was made to the inspection report where it was stated that heaps of sand and silt already mined were found on the mining lease. The site has become a pond and the site is situated at a distance of 70 meters from the railway track. It was also stated that the illegal mining had

been carried on by machines. Additional affidavit on behalf of the Railways was also filed on 22nd April, 2017 wherein it was stated that the railways had written a letter dated 23rd November, 2016 to the District Magistrate that the illegal mining was going on repeatedly and that there was risk to the railway track and it was being carried on within 50 meters of the track and the District Magistrate was required to ensure that no illegal mining is carried on.

5. Another affidavit on behalf of the State of UP was filed where reference was made to the Notification dated 14th September, 2006 which shows that various restrictions and conditions are required to be placed for granting Environmental Clearance (for short, "EC") for mining operations. The proposal for grant of EC for mining are dealt with in accordance with the said Notification by SEIAA. The mining leases are granted by the Mining Department and District Administration only when there is prior EC granted to the project.

6. Respondent nos. 6 and 7 have filed their collective reply stating that Respondent no. 6 is a responsible minister in the State of Uttar Pradesh and has been in public life for the past several years. Respondent no. 7 is his brother and the Applicant Mr. Kirti Vardhan Singh, Member of Parliament is a political rival. The application is filed for political rivalry and the detailed inspection was conducted by the District Administration and allegations against them have been found to be false. Four different affidavits were filed by Officers (Assistant Geophysicist, Geologist, Mine Officer and Mine Inspector) on different dates in furtherance to the order of the Tribunal dated

21st November, 2016. In these affidavits, it has been stated that one officer was holding the responsibility of 12 districts in addition to the geological mineral prospecting work and was also attending to the complaints of illegal mining transportation in District Gonda. The Officers claimed that they had taken effective measures to prevent any illegal mining as and when it took place. The officer conducted several checks and took appropriate action against the defaulters, which is evident from the various challans issued during the period from September to November 2015. It is stated that with reference to the letter of the Railways dated 29th November, 2014, the area in which the mining activity was being carried on was far away from the railway track and the district administration, Gonda has been vigilant towards illegal mining and has carried out periodic surprise checks.

It is also stated in these additional affidavits that a Joint Inspection Team comprising of different officers and SDM, Tarabganj was directed to submit a report of their visit at the alleged area on 21st December, 2016 and 2nd April, 2016, where they did not notice any illegal mining activity. *Vide* letter dated 28th March, 2016 issued by the Senior Divisional Engineer, Northern Eastern Railway, DM was requested to take affirmative steps with regard to the risk posed by sand mining activity near the railway track between Mankapur and Katra railway station. Pursuant to the order of the DM, the Joint Inspection report was submitted on 12th April, 2016, in which it was noticed that the land of the Revenue Department is quite close to the land of the Railway Department. Earlier sand mining was going on in that area and the land was approved for mining. No activity of mining

by machines was found within the restricted area of 50 meters as mentioned above. It has also been stated in these affidavits that in the Joint Inspection dated 3rd November, 2016, it was found that illegal sand mining of ordinary sand of 2800 cubic meters in Gata No. 238, 241 & 242, was committed in collusion with the land owners and also that show cause notices to these ten land owners were issued. On the basis of Joint Inspection Report, action was requested to be taken *vide* letter dated 17th November, 2016 for loss of land, revenue to the Government due to the mining activity. However, in some other inspections it was found that illegal mining is not being carried on in that area. The FIR was registered and even the complaints have been filed under the relevant laws in the Court of CJM Gonda for illegal mining and its transportation. Even the material was seized during the period between 30th April, 2016 and 19th November, 2016.

The Ld. Amicus Curiae has filed a rejoinder placing on record certain photographs and a CD showing that the illegal mining had been going on even as in July 2016 and the underground sand strata is being extracted with the use of suction pumps in the said area and close to the railway track. This is destroying the ecology of the area as well as causing serious danger to the railway tracks. The Google earth images showing the change in the land from the year 2003 to 2014 have also been placed on record. Reference has also been made to the reports submitted by the Lekhpal Nagwa on 7th April, 2014 and 9th August, 2014 regarding illegal sand mining taking place in the Gata Nos. 425, 437, 359ka, 360ka, 362, 363, 373 and 378 of village Kalyanpur, Paragna Nawabganj, Tehsil Tarabganj District Gonda. The

report submitted had clearly mentioned that the mining activity is being carried on, on a very large scale and that too by using suction machine tied on the boats and the report has also requested for penal action against the offenders.

7. From the above narrated facts that have been placed on record by the respective parties including the official respondents, it is evident that illegal mining has been going on right from 2004 onwards till 2016. The officers of the department have tried to take shelter on flimsy excuses and have even submitted incorrect facts before the Tribunal. In the earlier affidavits filed, it was categorically stated that there is no illegal mining whatsoever, in the entire area falling under District Gonda. However, in furtherance of the order of the Tribunal dated 10th November, 2016, SDM and Mining Officers were present but they could not provide any satisfactory answers and therefore, they were granted last opportunity to visit the site, take appropriate action and submit the report to the Tribunal. *Vide* order dated 21st November, 2016, the show cause notice was issued, as to why they be not directed to pay environmental compensation and their salary/pension not be attached. Thereafter, detailed replies were filed and even the Dy. Commissioner and SDM were directed to be present before the Tribunal *vide* order dated 3rd February, 2017. DM, Gonda appeared before the Tribunal on 21st February, 2016 and he was directed to file a personal affidavit with regard to the unauthorised, illegal, mechanical mining being carried on in village Kalyanpur, Pargana Nawabganj, Tehsil Tarabganj, District Gonda. It was directed that the records be produced and all aspects be covered in the

affidavit. Similarly, the Chief Conservator of Forest was also directed to file similar affidavit along with the Member Secretary of the Uttar Pradesh Pollution Control Board.

From the above status reports and the affidavits that have been filed subsequently, it is evident that the illegal mining of minor minerals has been carried on mechanically and also through suction pumps put into the water body quite near to the railway track. Ld. Amicus Curiae filed affidavit as well as CD and photographs which were taken on and around 30th July, 2016. These photographs were even taken with the newspaper of that date. As per the photographs, from the water body the minerals are being extracted through pumps which have been fixed on the boat and through pipeline. The JCBs are being used for extraction of minerals, causing huge violations in and around the water body. There are a large number of trucks standing for collecting all these minerals right near the water body/river. The photographs which have been placed on record along with affidavit of Mr. Ajit Kumar Pandey, Mines Inspector state that no mining activity was going on, no machine for mining was found, no heap of sand or extracted mineral material had been found during spot inspection. According to the photographs, complete hillocks of minerals are seen along with the suction pumps and throwing of the extracted minerals. There is a long line of trucks which are being used for transportation and excavation of minerals. Google earth images of 2003-2004 show that the water body and surrounding area are full of minerals and that the area was green at that period of time. While the images of 2014 clearly demonstrate destruction of greenery

and the banks of the water body to the extent that the damage to the environment and ecology is clearly evident. It is certainly not a mere co-incidence that the places captured in photographs are similar to the places filed by the Ld. Amicus Curiae. There is a complete contrast between the photographs and it is evident that the photographs annexed to the affidavit of the mining officer have been taken after due notice to the illegal miners and the land owners.

In the inspection report of 12th April, 2016, the Joint Team is stated to have conducted detailed enquiry and it was found that the mining activity was being carried on quite near to the railway line. It was also noticed that in the lease mining land, heaps of sand/soil and silt are present. The pits like pond were found to be present. It was stated that no illegal mining was going on. It needs to be noticed at this stage that the Ld. Amicus Curiae had taken the photographs in July, 2016 and none of the inspection report or documents have been placed by the official respondent on record to show that illegal mining activity and mechanical extraction were not going on in that period. The railway authority *vide* its letter dated 28th March, 2016 clearly stated and informed the Dy. Commissioner Gonda that heavy machinery is being used for extraction of minerals and even mining was being carried on which was not visible at the ground level because of such massive mining. The railway track can suddenly collapse leading to serious accident and that even the photographs and map were annexed to that letter on which they claim to have taken action. It is commonly conceded case that official respondents have registered various FIRs on/around 17th November, 2016 and

these FIRs were registered against different parties, for instance FIR number under Case Crime No. 0624 was registered against fourteen persons. In the said FIR, it was stated that all accused mentioned therein belong to a gang and accused No. 1 is the leader of that gang. The said gang was involved in illegal mining activity and shifting of minor mineral (balu) and had committed offences mentioned in the FIR. Large numbers of FIRs were registered under Section 120 B IPC and Section 4 and 21 under Mines and Mineral (Development & Regulations) Act, 1957 (hereinafter, referred to as the 'Act of 1957') against a number of persons, however, most of them were common. FIR under Crime Case No. 0617 was also registered on 5th November, 2016 against ten land owners on the same basis. They relate to the offences committed during November, 2016.

In the affidavit of Mr. Ram Sanjeevan Maurya, Sub-Divisional Magistrate Tarabganj, District Gonda, it has been specifically stated that after passing of the order by the Tribunal, he had issued directions to the SHO of the police station and inspector for taking stringent action against the persons involved in the illegal mining and transportation as well as conduct videography. That on 22nd September, 2016, 28th September, 2016, 3rd October, 2016, 7th October, 2016, 13th October, 2016, 16th October, 2016 and 3rd November, 2016 enquiries have been conducted and it had appeared that illegal sand mining had been done in Gata nos. 238, 241 and 242. Notices were immediately issued to the owners for indulging in illegal mining and show cause notices were issued to various persons. On 3rd November, 2016, a joint inspection was conducted in village

Kalyanpur and Chak Rasoolpur, Tehsil Tarabganj, District Gonda and it was found that illegal mining had been carried on. Reference has also been made to the case that has been registered. This stand is also confirmed by the other official respondent.

Another important aspect is that Gata nos. 743, 744, 742M, 339/2, 309, 308, 310, 312, 314M, 798 and 313/2 have been declared and stated in the revenue records as 'reserve forest' and thus, no mining activity could be carried in that area. We may notice that once the entry was made in the revenue records, it apparently appeared to be a forest area. That in terms of the judgment of the Hon'ble Supreme Court of India in the case of *T.N. Godavarman v. Union of India & Ors.*, (1997) 2 SCC 267, this would be a forest or deemed to be a forest and therefore, mining activity could not be carried on in this area.

The DM in affidavit dated 22nd April, 2017 admitted all the above facts and referred to the detailed report of 5th November, 2016. Of course, he stated on 19th November, 2014 that illegal mining was not being carried on in that area. He stated that no damage has been done to the railway track, however, illegal mining had been carried on in the past. In his affidavit, he reiterated that illegal mining, particularly, in plot no. 238, 241 & 242 was being carried on. According to this affidavit, FIR bearing crime case no. 621 of 2016 and 622 of 2016 was lodged on 17th November, 2016 against Smt. Nasimmunisa and nine others under Sections 379/120 B IPC read with Section 4 and 21 of Minor Minerals (Regulation of Development)

Act, 1957 (in short, 'Act of 1957') and under Section 26 of the Indian Forest Act, 1927 and which clearly shows that the illegal mining had been carried out. There were certain gangsters and anti-social elements who were carrying on such activity and a case under the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 was also registered against them. The report dated 12th April, 2016 has also been relied upon in support of the affidavit. *Vide* order dated 16th February, 2017 the DM, Gonda had directed attachment of their properties and had also passed other orders in relation to the land under the Gangsters Act.

8. From the above analysis of the facts on record, it is clear that various persons have been indulging in illegal mining and extraction of minor minerals for a very long period now and probably from 2004 onwards. However, these persons have not been impleaded as respondents before the Tribunal and the Tribunal had also not directed issuance of notices to these persons against whom FIRs have been registered. In light of this, Tribunal at present is not in a position to pass orders affecting these parties. As far as respondent no. 6 and 7 are concerned, except the vague allegations, there are no specific averments against them. It is alleged that they are the king pin of illegal mining. Reliance has also been placed, by them, on the order of the Allahabad High Court in Writ Petition No. 1053 of 2014 titled as *Vijay Kumar Paswan v. Union of India & Ors.*, where respondent nos. 6 and 7 were also the respondents. This Writ was filed by third party, on somewhat similar facts, however, High Court had disposed of that Writ Petition. In these circumstances, we are

also unable to pass any adverse orders against the said respondents at this stage. However, facts which remain to be considered are, illegal mining by impermissible methods such as using suction pumps, mechanical mining are being carried on not only in the land near the railway track but even in the water bodies and rivulets. Extraction of minor mineral, mechanically, in a very heavy quantity and quite near to the railway track is bound to endanger not only the environment and ecology of that area but also enhance the chances of collapsing of the railway track and this cannot be permitted at any cost. Furthermore, under the Act of 1957, there is no law which permits mining through suction pumps from the river and water bodies. This will completely damage ecology, bio-diversity and environment in that area and even the bio-diversity of the water bodies. It is of no relevance that at the time of inspection there were no machines for extraction of minor minerals as there were no surprise inspections and all concerned were well aware of the visit of the Government officials. The evidence placed on record by the Ld. Amicus Curiae is authentic, reliable and can safely be a foundation for passing of appropriate directions by this Tribunal for awarding compensation for damage to the environment, ecology and for restitution. The limitation provided under Section 15 of the NGT Act is 5 years with a further period of 60 days. The Tribunal can deal with the damage that has occurred in the last five years as a result of illegal mining as aforestated.

9. Thus, we dispose of this application with the following orders and directions:

- a. There shall be complete ban on extraction of minor minerals from the river or the river bank by use of suction pumps.
- b. The forest area should be demarcated and be in accordance with the conservation plan, such forest area should be duly protected against illegal, unauthorised and mechanized mining.
- c. There shall be no mining activity within 50 meters from the end of the railway track and 150 meters from railway or other bridges.
- d. We hereby constitute a team consisting of the following officers:
- Deputy Commissioner, Gonda
 - Regional Officer/Senior Officer, Uttar Pradesh
Pollution Control Board
 - Sr. Scientist from CSIR- Institute of Minerals and Materials Technology, Bhubaneswar - 751 013, Odisha.
 - Senior most officer from Department of Geology and Mining, Uttar Pradesh
 - Expert: Representative Officer of MoEF&CC.
- e. The above committee shall make a complete and comprehensive study and submit an exhaustive status report before the Tribunal. In this report, all the persons shall be identified who are or/and have been involved,

directly or indirectly in illegal and mechanical mining or otherwise, with their complete details.

- f. The report will further state the damage caused to the environment, ecology and bio-diversity in village Kalyanpur, Pargana Nawabganj, Tehsil Tarabganj District Gonda and the quantum of money requiring for restoration thereof. It will also state the loss of revenue to the State Government in terms of minerals as well as revenue.
- g. The Committee shall visit sites and preferably without notice to any person. It should be a surprise inspection.
- h. While conducting the investigation/inspections the Committee shall also report to the Tribunal if respondent nos. 6 and 7 in the present application have any role to play and/or are involved in illegal mining activity and/or control said activity, directly or indirectly.
- i. The Committee shall submit its report within four weeks from the date of pronouncement of this judgment which shall also cover a period of five years prior to and from November, 2016. The report should positively be filed without delay and default within the time directed which should then be registered as a separate O.A. and should be placed before the Tribunal for appropriate directions.

10. The above directions shall be strictly adhered to and enforced by all concerned State Governments, its departments and all

stakeholders. In the event of default, the officers/officials/persons responsible for such default, shall be liable to be proceeded against, in accordance with law.

11. The application is disposed of with no orders as to costs.

Swatanter Kumar
Chairperson

Bikram Singh Sajwan
Expert Member

Ajay A. Deshpande
Expert Member

New Delhi
16th May, 2017

NGT