

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH**

(By Video Conferencing)

Appeal Nos. 25/2021 to 27/2021(CZ),  
Appeal No. 29/2021 to 65/2021(CZ),  
Appeal No. 67/2021 to 72/2021(CZ)

Prabhat Mohan Pandey Appellant

Versus

MP SEIAA Respondent

**WITH**

Appeal No. 02/2021 to Appeal No. 05/2021(CZ)  
(I.A. No. 13/2021)

Prabhat Mohan Pandey Appellant

Versus

Madhya Pradesh State Environment Impact  
Assessment Authority & Anr. Respondent(s)

**WITH**

Original Application No. 96/2020(CZ)

Prabhat Mohan Pandey Applicant

Versus

State of M.P. & Ors. Respondent(s)

Date of completion of hearing and reserving of order: 24.01.2022

Date of uploading of order on the website: 22.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER  
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

**ORDER**

**Per JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER:**

<b>Sr. No</b>	<b>Issues</b>	<b>Page no</b>
<b>A.</b>	<b>Brief facts</b>	<b>2-6</b>
<b>B.</b>	<b>Issues for determination</b>	<b>6-7</b>
<b>C.</b>	<b>Proceedings before the Tribunal</b>	<b>7-9</b>
<b>D.</b>	<b>The findings of the Committee</b>	<b>9-10</b>
<b>E.</b>	<b>OBSERVATION AND RECOMMENDATION OF THE COMMITTEE</b>	<b>10</b>
<b>F.</b>	<b>The Committee found some variation in the area/Khasra No</b>	<b>10-12</b>
<b>G.</b>	<b>MP SEIAA Reply</b>	<b>13-17</b>
<b>H.</b>	<b>Madhya Pradesh Sand Mining Transportation, Storage and Trading Rules, 2019</b>	<b>17-26</b>
<b>I.</b>	<b>Mineral Laws (Amendment) Act 2020, as notified with effect from 10th of January 2020</b>	<b>26-27</b>
<b>J.</b>	<b>Requirement of preparation of District Survey Report</b>	<b>27-31</b>
<b>K.</b>	<b>Notice Inviting Tender (NIT)</b>	<b>31-43</b>
<b>L.</b>	<b><i>Procedure for DSR/EC</i></b>	<b>43-57</b>
<b>M.</b>	<b>Appeal No. 3661-3662 of 2020</b>  <b><i>Supreme Court of India in State of Bihar and Ors vs. Pawan Kumar and Ors</i></b>	<b>57-60</b>
<b>N.</b>	<b>Conclusions</b>	<b>61-65</b>
<b>O.</b>	<b>Conclusion and directions</b>	<b>65-67</b>

1. A common question of law and fact has been raised in all these appeals thus are being decided by a common order.
2. Challenge in all these appeals is the order granting the Environmental Clearance (EC) or transfer of EC in violation of procedure established by law and that while transferring the EC the provision under Clause XI of the EIA Notification 2006 were not followed.

**A. Brief facts:**

Case set out by the appellants is that Madhya Pradesh Sand Mining Rules, 2019 were introduced on 30<sup>th</sup> August, 2019 by the State of Madhya

Pradesh wherein every districts, it was required to have its own contractor or a group of contractors to carry out sand excavation from the declared and demarcated sand queries. Thereafter in the month of October 2019 the notice inviting tenders were floated by the state of Madhya Pradesh in 43 districts of Madhya Pradesh and after acceptance of the technical bid and financial bid, the group contractors/successful tenders were appointed for these 43 districts. Under rule 12 of the Sand Mining policy of 2019, the statutory permissions/formalities for each sand quarry of the group were required to be obtained by the successful tender after which the sand mining operations were to be started in the state of Madhya Pradesh. The statutory permissions include mining plan, environment clearance, consent from the board etc.

3. For grant of fresh environment clearance and the transfer of existing environment clearance, applications were made by the successful tenders before MPSEIAA, which is a body constituted solely for the purposes of considering the environment clearance as per the EIA notification issued by Ministry of Environment, Forest and Climate Change. After an application for grant of fresh environment clearance portal for transfer of the existing environmental clearance is made to MPSEIAA, MPSEAC is required to carry out technical scrutiny of the applications. After the recommendations from the appraisal committee of MPSEAC, the application for EC is referred back to MPSEIAA, which shall have the final authority of granting or rejecting the environment clearance. It becomes pertinent to mention here that the minutes of meeting of MPSEAC and MPSEIAA are available online on the web portal of MPSEIAA and that on analyzing the minutes of meeting and comparing the same with the information of sand quarries mentioned in the tender document, it was realized that out of 409 environmental clearances granted by MPSEIAA to the successful tenderers for excavation of sand from their respective sand

quarries, there are discrepancies in 222 number of environmental clearances.

4. A chart depicting the discrepancy prepared on the basis of the information available online has been filed by the Applicant as Annexure-A1, which highlights the detail of 33 districts wherein the information of fresh environmental clearance and the transferred environmental clearance have been mentioned and number of environmental clearances where discrepancies have also been mentioned as follows:

Sr. No	Name of the district	EC granted (transfer)	EC granted (new)	Total EC granted	Discrepancy in nos. of EC granted till date
1	Chhatarpur	20	Nil	20	19
2	Datia	28	1	29	27
3	Harda	15	Nil	15	15
4	Katni	17	8	25	18
5	Khargon	4	9	13	11
6	Narshhighpur	15	Nil	15	14
7	Singaruli	17	7	24	10
8	Umaria	4	13	17	4
9	Alirajpur	2	10	12	9
10	Annupur	5	Nil	5	3
11	Barwani	2	2	4	3
12	Betul	6	Nil	6	Nil
13	Bhind	18	Nil	18	2
14	Bhurhanpur	Nil	3	3	Nil
15	Chindawada	13	12	25	4
16	Dewas	4	Nil	4	2
17	Dhar	8	5	13	13
18	Dindori	1	Nil	1	Nil
19	Guna	4	Nil	4	3
20	Gwalior	6	Nil	6	6
21	Jabalpur	11	Nil	11	10
22	Mandsaur	9	Nil	9	2
23	Panna	5	1	6	2
24	Raisen	11	Nil	11	9
25	Ratlam	1	2	3	1
26	Seoni	5	Nil	5	Nil
27	Shadol	4	6	10	Nil
28	Shivpuri	Nil	6	6	2
29	Sidhi	6	4	10	3
30	Sihore	6	Nil	6	2
31	Tikamghar	8	8	16	7
32	Vidisha	5	Nil	5	1
33	balaghat	13	36	52	20
<b>Total</b>		<b>273</b>	<b>133</b>	<b>409</b>	<b>222</b>

5. By submitting the Annexure-A3, it is submitted that MPSEIAA has accorded EC over more quantity of sand than mentioned in the tender document. In the case of district Chhatarpur a total number of 48 sand quarries were floated through tender for a total quantity of 15,00,000 cubic meters of sand. Till date, fresh EC/transfer EC has been accorded only in 20 sand quarries out of 48 sand quarries but the environment clearance has been issued for 27,43,633 m<sup>3</sup> of sand. An excess of 12,43,633 m<sup>3</sup> of sand is already granted by MPSEIAA despite the fact that the fresh

EC/transfer of EC is yet to be done for over 28 sand quarries. This is done solely for the purposes of promoting illegal extraction of sand. The tabular showing variation as annexed A-3 is as follows:

Sr. no	Name of district	Environmental clearance						E tender notice of as per NIT		Excess EC granted as compare to NIT	Nos of mines for which EC no issued
		No.s of mines	Cubic mtr transferred	No of mines	C M new	Total		No of mines	CM		
						Nos of mine	CM				
01	Chhatarpur	20	2743633	0	0	20	2743633	48	150000	1243633	28
02	Datia	28	1501608	1	94800	29	1596408	30	700000	896408	1
03	Harda	15	1517500	0	0	15	1517500	16	600000	917500	1
04	Katni	17	919681	8	469500	25	1389181	49	120000	189181	24
05	Khargon	4	166500	9	225000	13	391500	28	300000	91500	15
06	Narsighpur	15	2026404	0	0	15	2026404	36	200000	26404	21
07	Singaruli	17	1433818	7	582360.50	24	2016178.5	58	180000	216178.5	34
08	Umaria	4	374680	13	543881	17	918561	27	850000	68561	10
09	Balaghat	13	979219	39	1939528.7	52	2918747.70	69	150000	1418747.7	17
10	Alirajpur	2	39725	10	66800	12	106525	49	800000	693475	37
11	Anuppur	5	581535	0	0	5	581535	22	700000	118465	17
12	Badwani	2	10745	2	15573	4	26318	24	40000	13682	20
13	Betul	6	106500	0	0	6	106500	47	100000	893500	41
14	Bhind	18	1501480	0	0	18	1501480	75	250000	998520	57
15	Bhurhanpur	0	0	3	120000	3	120000	9	300000	180000	6
16	Chindwada	13	401858	12	276802	25	678660	58	100000	321340	33
17	Dewas	4	450400	0	0	4	450400	28	800000	349600	24
18	Dhar	8	8500	5	8500	13	17000	40	50000	33000	27
19	Dindori	1	117000	0	0	1	117000	4	300000	183000	3
20	Guna	4	16631	0	0	4	16631	23	100000	83369	19
21	Gwalior	6	499960	0	0	6	499960	10	50000	40	4
22	Jabalpur	11	448462	0	0	11	448462	47	600000	151538	36
23	Mandsaur	9	10800	0	0	9	10800	21	35000	24200	12
24	Panna	5	297268	1	18387	6	315655	27	120000	884345	21
25	Raisen	11	840150	0	0	11	840150	56	100000	159850	45
26	Ratlam	1	1640	2	7000	3	8640	14	35000	26360	11
27	Seoni	5	124331	0	0	5	124331	11	400000	275669	6
28	Shadol	4	270000	6	503640	10	773640	50	150000	726360	40
29	Shivpuri	0	0	6	145080	6	145080	15	250000	104920	9
30	Sidhi	6	460781	4	121219	10	582000	24	140000	818000	14
31	Sihore	6	951370	0	0	6	951370	30	220000	1248630	24
32	Tikamghar	8	382462	8	219000	16	601462	22	700000	98538	6
33	Vidhisha	5	23000	0	0	5	23000	16	50000	27000	11

6. On the basis of above ground the OA No. 96 of 2020 was filed with the prayer to refrain MPSEIA and MPSEAC from issuing any further EC without actually carrying out the environmental assessment of the Sand quarry and carrying out the technical scrutiny of the same.

7. During the pendency of the original application, since the EC was granted by the MPSEIAA, thus, (all) appeals have been filed challenging the order

granting the EC on the grounds as mentioned in the Original application in addition to the other grounds.

8. In all the appeals in addition to the above grounds the Appellant/Applicant has raised the issue of failure of the Respondent to strictly follow the mandatory procedure for preparation of a District Survey Report, which is a prerequisite for auction/E-auction/granting any mining lease/Letter Of Intent (LOI) under the provisions of the Environmental Impact Assessment as amended by the MoEF vide notification dated 15.01.2016 and notification dated 25.07.2018. Further that the non-preparation of the DSR contravenes the various decisions passed by this Tribunal as well as the decision of the Hon'ble the Supreme Court of India.
9. Reply in Original Application of 96 of 2020 as submitted by the Respondent, State Mining Corporation, Madhya Pradesh are that there is no mismatch in the quantity mentioned in the EC letter and approved mining plan and that the production capacity mentioned in the EC letter is different from the quantity of sand mentioned in the NIT, because SEIAA processed all the applications as per EIA Notification and thus NIT is not a relevant mandatory document. It is further submitted that Rule 12 of the Sand (Mining, Transportation, Storage and Trading Rules), 2019 (Madhya Pradesh) provides the mining up to mineable quantity fixed in Mining Plan, Environmental Clearance, Water and Air consent.

#### **B. Issues for determination**

10. From the perusal of above facts, the issues for determination of appeals and original applications are as follows:
  - I. Requirement of NIT and description of area and quantity of mining.
  - II. Requirement of Environmental status and transferability of EC.
  - III. Whether the mining can be permitted about the excess quantity of the sand more than mentioned in the environmental clearance.

- IV. Whether the mining can be permitted in excess of the area (Khasra and rakba) more than mentioned in the tender documents or in environment clearance.
- V. Whether the mining can be permitted in excess of the quantity mentioned in the tender document.
- VI. The quantity of sand which has already been excavated over a sand quarry which was belonging to the previous lease holder has not been subtracted while transferring the environment clearance in favour of the successful tender.
- VII. The details of Sand quarry are not mentioned in the tender document but EC has been granted by MPSEIAA in some cases.
- VIII. Whether the issuance of Notice Inviting E-Auction of mining areas without the preparation of a valid District Survey Report, is a direct and serious contravention of the mandatory procedure stipulated under the MOEF Notification dated 15.01.2016 and the Sustainable Mining Management Guidelines, 2016 and & Enforcement Monitoring Guidelines for Sand Mining, 2020?
- IX. Whether the decision of the Hon'ble Supreme Court on 10.11.2021 in Civil Appeal No. 3661 of 2020 in State of Bihar Vs Pawan Kumar and this Court in the case of Anjani Kumar v. State of UP 2017 SCC Online NGT 979 is directly applicable to present case.
- X. Whether the Respondents are bound to prepare a District Survey Report as per the provisions of the Notification dated 15.01.2016 & 25.07.2018, the Guidelines framed by the Central Government in 2016 and 2020.

### **C. Proceedings before the Tribunal**

11. In Original Application No. 96/2020 (CZ), this Tribunal constituted a Joint Committee comprising members from CPCB, MPPCB and MPSEIAA. The meeting was held and the Committee examined some files randomly after detailed discussion and going through the files, it was

decided by the Committee to re-examine all concerned files to find out if there is any mismatch in details of the mines i.e. area, Khasra, production, etc. the report of the Committee is as follows:

“Since, the main issue raised by the applicant in the present case is regarding the mismatch in area and quantity of sand mentioned in the EC letter and the tender document; detailed explanation was given by SEIAA regarding the procedure followed while dealing with the EC applications and the list of documents that are replied upon.

#### **SUBMISSIONS BY SEIAA**

1. Being an authority constituted by the Central Government to decide the applications filed for obtaining Environmental Clearances, SEIAA follows the procedure laid down in the Environment Impact Assessment Notification, 2006 dated 14.09.2006. The list of documents relied upon while deciding the EC applications are enclosed.
2. That the tender process is the preliminary process carried out by the State mining corporation as per the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 for allotting sand quarries to successful bidders. It is an independent process adopted by the Mining Corporation. The mining lease is then transferred in favour of the successful bidder. Thereafter, the application is filed before SEIAA for obtaining EC along with the copy of all required documents including the mining plan approved by the competent authority in light of the EIA notification, 2006, SEIAA OM dated 20.06.2019 and 14.01.2020.
3. That, it has also been provided in Rule 12 (4) of the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 as under:-  
'Rule 12 (4) Permissible Quantity — The mining shall be permitted upto mineable quantity fixed in the mining plan, environmental clearance, water and air consent (whichever is less)."
4. This rule gives further clarity in the matter as the documents required to be relied upon for determining the permissible quantity are mining plan, EC and Air/Water consent. The tender document is not relevant document as per the Rule 12(4) while determining the permissible mineable quantity.



5. SEIAA briefed that all the application for fresh / transfer ECs are processed as per the EIA notification 2006 & its amendments. SEIAA does not consider the quantity of sand mentioned in Notice Inviting Tender [NIT] so there may be mismatch in the production capacity mentioned in issued/transferred EC with the quantity of sand mentioned in Notice Inviting Tender [NIT].

As decided by the committee in its 1st meeting dated 31.03.2021, the committee examined all the cases mentioned by the applicant in OA no. 96/2020 wherein ECs have been issued / transferred by SEIAA. A tabular chart was put up before the Committee indicating the case wise details of the ECs/transferred by SEIAA from December, 2019 to October, 2020. The details of mining lease area, Khasra no. production capacity as per approved/revised mining plan etc were provided in the tabular chart.

In order to verify the list prepared by SEIAA, the original case files of 4 districts, namely, Jabalpur, Narsinghpur, Harda & Chhatarpur, were checked by the committee for all the ECs granted / transferred by SEIAA in these districts. These districts were picked up on random basis.

#### **D. THE FINDINGS OF THE COMMITTEE:-**

1. During the scrutiny, committee found that the production capacity mentioned in EC's issued/transferred by SEIAA is as per the mining plan and replenishment plan approved by the competent authority and there is no mismatch in quantities mentioned in the EC letter and approved mining plan. **Although the production capacity mentioned in the EC letter is different from the quantity of sand mentioned in NIT because SEIAA processed all the application as per EIA notification 2006 & its amendments and SEIAA OM dated 20.06.2019 and 14.01.2020 wherein NIT is not a relevant/mandatory document.**
2. In transfer cases, the production capacity mentioned in the EC transferred by SEIAA is same as per the original EC issued by SEIAA and approved Mining Plan and Replenishment Plan, in compliance with the provisions laid down under Para 11. Transferability of Environmental Clearance (EC) of MoEF&CC notification issued on 14.09.2006.
3. It was also found that the Mineral Resource Department (MRD), GoMP has issued the individual lease sanctioned/transferred order of each mine by mentioning the area and khasra no. and there is no disparity regarding area & khasra in EC issued/transferred by SEIAA with the individual lease transfer order of MRD, GoMP. **However, in**

**some cases, the committee found that there is a slight variation in the area / Khasra No. mentioned in the EC letter and in the mining plan/ lease transfer order. This appears to be a typographical error and shall be rectified by SEIAA in its upcoming meeting.**

**E. OBSERVATION AND RECOMMENDATION OF THE COMMITTEE :-**

1. It has been observed by the committee, that the discrepancy (as highlighted by the applicant) arises due to the difference in the quantity of sand mentioned in the notice inviting tender issued by the mining department and the mining plan approved by the mining department. Once the mining plan is prepared and approved by the mining department, the application is submitted before SEIAA in prescribed format. The quantity of sand in ECs issued/transferred by SEIAA is as per the mining plan and replenishment plan approved by the competent authority.
2. It has been recommended by the committee that, SEIAA shall rectify the typographical errors found by the committee in its upcoming SEIAA meeting.

**F. The Committee found some variation in the area/Khasra No. which is reproduced as below:**

**“Table 1: In Compliance of the order of Hon’ble NGT dated 02.03.2021 in O.A. No. 96/2020 list of cases need rectification in SEIAA meeting**

S. No.	District	Case No.	As per Lease Sanctioned/MRD letter				As per Mining Plan			As per EC issued by SEIAA					Remarks (mismatched if any)
			L. No.	Date	Area (ha.)	Khasra No.	Area (ha.)	Khasra No.	Production Capacity (cum/year)	L. No.	Date	Area (ha.)	Khasra No.	Production Capacity (cum/year)	
1.	Katni	3441/15	651/132/20/12/1/	07.02.2020	13.350	391,415	13.350	319,415	106800	4589/SEIAA/20	25.02.2020	13.350	319,415	106800	Khasra no. in earlier issued EC, mining plan and transferred EC is 319,415, although it is 391,415 in MRD letter
2	Balaghat	7060/20	2436/132/2020/12/1	11.06.2020	4.00	164	4.50	164	51300	649/SEIAA/20	06.06.2020	4.50	164	51300	Area in MRD letter is 4.0 ha although in rest of the documents including Ekal Praman Patra & approved Mining Plan , it is 4.50 ha
3.	Chhatarpur	7246/2020	1187	29.02.2020	2	2/2	2	2/2	57000	1499	30.06.2020	2	2/2	57000	In Lease order, Mine plan and other documents Khasra no. 2/2 mentioned but in Lol Khasra no. 2/1

4.	Chhatarpur	7251/ 2020	1185	29.02.2020	4	472/2	4	472/2	114693	1487	30.06.2020	4	472/2	114693	In Lease order, Mine plan and other documents Khasra no. 472/2 mentioned but in Lol Khasra no. 472/1
5.	Tikamgarh	4194/ 2015	1304	04.03.2020	5.066	1	5.066	1	43000	5279	23.03.2020	5.666	1	43000	EC Transfer letter issued in an area of 5.666 but in mine Plan & Lease order area is 5.066 ha
6.	Datia	6919	1157	02.03.20	4.6	765,2222	2.3	765(MP) 2222 (MP)	27000 27000	5024	09.03.20	4.6	765,2222	54000	PC of MP & EC not matched
7.	Raisen	2881	1313	4.3.20	0.405	317	0.405	317	12150	5301	23.3.20	0.405	317	12150	PC of MP & EC not matched
8.	Vidisha	6987	717	11.02.20	5	1,29,220	5	1,29,220	3000	5307	23.02.20	5	1,29,220	3000	Khasra no. 129,239 mentioned in all order but MP/EC mention 129,220

**G.** Madhya Pradesh State Environment Impact Assessment Authority (MP SEIAA) has submitted the reply which is almost same in all the Appeals. We deem it necessary to mention the reply submitted in one of the Appeal (Appeal No. 5/2021) which is as follows:-

“4. That, two main contentions have been raised by the appellant in the present appeal. The first contention is regarding the mismatch in the quantity of sand tendered **and in the production capacity mentioned in EC letter and the second contention is regarding the validity of EC.**

5. That, the answering respondent, being an authority constituted by the Central Government to decide the applications filed for obtaining Environmental Clearances, duly follows the procedure laid down in the Environment Impact Assessment Notification, 2006 while deciding the EC applications.

6. That, the para 11 of the notification is of utmost importance while dealing with this appeal as it pertains to **“Transferability of Environmental Clearance (EC)”** and it reads as under:-

**“Transferability of Environmental Clearance (EC):**

*A prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written "no objection" by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases."*

7. That, answering respondent has followed the requirements of para 11 of the EIA Notification in its true letter and spirit while deciding the applications filed for the transfer of mining leases. While dealing with the cases of the transfer of EC and para 11 of the EIA Notification, the most important environmental concern is that, there should be no change in the terms and conditions under which the prior environmental clearance was initially granted, and transferred EC

shall also be valid for the same terms and conditions and validity period. The same has been ensured by the answering respondent while deciding the applications.

8. That, the applications for the transfer of EC are filed along with the letter from the State mining department regarding the transfer of the mining lease, notarized affidavits of the previous and new project proponent revised approved mining plan with replenishment plan and revised EMP [Environment Management Plan].

9. That, the sand quarry in the instant case was auctioned by the State Mining Corporation after issuing notice inviting tender in terms of the new sand policy, 2019 and was allotted to the Respondent NO, 2. The said mine was transferred in favor of the Respondent No. 2 vide letter dated 16.12.2020 [and corrigendum dated 24.12.2020], also stating that the mining lease shall be valid upto 30.06.2023.

10. It is pertinent to note that the tender process is the preliminary process carried out by the State mining corporation as per the New Sand Policy 2019 for allotting sand quarries to successful bidders. It is an independent process adopted by the Mining Corporation. The mining lease is then transferred in favor of the successful bidder. Thereafter, the application is filed before SEIAA for obtaining EC.

11. That, as per the EIA Notification 2006, the documents that are relied upon by SEIAA include the approved mining plan, no objection certificates issued by the forest department, gram panchayat, environment management plan, replenishment plan etc. The complete procedure followed by SEIAA while issuing/ transferring EC including the details of all supporting documents has been enclosed herewith as **Annexure R-01**. The Office Memorandum dated 20.06.2019 and 14.01.2020 issued by SEIAA enumerating the list of documents to be submitted has been enclosed herewith as **Annexure R-02**.

12. It is clear from the above-mentioned documents that, the primary document in the entire process is the mining plan that is approved by the mining department. In the present case also, the revised mining plan has been submitted by the respondent no. 2 wherein the proposed production capacity is 1,16,500 cum/yr and not 60,000 cum/yr as shown in the tender document. The copy of the relevant extract of revised mining plan has been enclosed herewith as **Annexure R-03**.

13. That, it has also been provided in Rule 12 (4) of the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 as under:-

Rule 12 (4) Permissible Quantity — The mining shall be permitted upto mineable quantity fixed in the mining plan, environmental clearance water and air consent (whichever is less).

This rule gives further clarity in the matter as the documents required to be relied upon for determining the permissible quantity are mining plan, EC and Air/Water consent. The tender document is not relevant document as per the Rule 12(4) while determining the permissible mineable quantity.

14. The second contention raised by the appellant is regarding the validity of the EC. As stated above the validity of EC cannot be changed while transferring the EC. The transferred EC shall be valid for the same period as that of the original EC. In the present case it was stated that the EC shall be valid upto the validity of the lease period. As per the lease transfer letter dated 16.12.2020, the mining lease is valid upto 30.06.2023 therefore the EC shall also be deemed to be valid upto 30.06.2023.

15. It has been wrongly alleged by the appellant that, as per the EC letter the validity of EC is upto 31.03.2021. For the sake of further clarity following paras of the EC letter must be analysed :-

- a. In the EC letter dated 01.01.2021, the minutes of the 652"SEIAA meeting dated 30.12.2020 have been reproduced verbatim, wherein it has been written that "the applicant M/s R. K Transport & construction has submitted following documents in support of his request"
- b. Thereafter in point no (ii) it has been provided that "(ii) No objection letter received from the main lessee, MPSCMC vide letter dated 30.12.2020 and 10.06.2020 mentioning that the mine is operating by contractor and has validity upto 31.03.2021"
- c. Thereafter in point no, (vii) it has been provided that "Lease transfer order issued by Mineral Resource Department to M/s R.K. Transport & constructions ltd 65-A Transport Nakar

Korha, Dist. Korha (CG) vide letter no. 5527/132/2020/12/1 dated **16.12.2020** and 5662/132/2020/12/1 dated 24.12.2020.

- d. Whereas, the last para of the EC letter is the relevant para by virtue of which the transfer of EC has been approved. The last para reads as under :-

Hence, it was decided to transfer the EC in the name of M/s R. K. Transport & constructions ltd, 65-A Transport Nagar Korba, Distt. Korba (CG) with the same terms and conditions under which prior Environmental Clearance was initially granted and **for the same production capacity and validity period.**

16. It is pertinent to note that the document mentioned in point no. (ii) is the NO Objection Certificate issued by the OIC of the mining department being the main leasee stating that since the mine has been transferred to the new contractor, they have no objection in the transfer of EC in favour of new contractor.

Whereas, the document referred in point no. (vii) is the lease transfer order by virtue of which the mining lease has been transferred in favor of new contractor and also states the validity of the mining lease period. The lease transfer document is the relevant document to ascertain the validity of the lease period and not the NOC issued by the OIC of mining department. And in case there is a difference in the validity of the mining lease period, like it present case, the lease transfer order shall prevail.

17. Now for determining the validity of EC following points are required to be relied upon:-

- a. As per the EC letter dated 01.01.2021 the EC shall be valid upto the same period as provided in the original EC granted to M/s A.D. Agro Pvt Ltd dated 02.03.2017 enclosed herewith as **Annexure R-09.**
- b. As per the original EC dated 02.03.2017, The EC shall be valid upto the validity of the lease period.



- c. *As per the lease transfer letter dated 16.12.2020, the mining lease is valid upto 30.06.2023 therefore the EC shall also be deemed to be valid upto 30.06.2023.”*

**H. Madhya Pradesh Sand Mining Transportation, Storage and Trading Rules, 2019**

12. Learned Counsel for the MP SEIAA has taken help of provisions contained in Madhya Pradesh Sand Mining Transportation, Storage and Trading Rules, 2019, the relevant provisions are quoted below:-

*“3. Restrictions.-*

*The following restrictions shall be applied with regard to mineral sand,-*

*(1) No vehicle shall cause to be transported the mineral sand from the sanctioned quarry or storage place without prescribed transit pass.*

*(2) No vehicle shall cause to be transported without substantial entry in Transit Pass (as quantity of mineral, date/time of transport, time to be taken to reach to destination place, etc.).*

*(3) No person, except the valid contractor, shall be permitted to store mineral sand for commercial purpose or for use in commercial construction, quantity more than the quantity specified in these rules.*

*(4) The vehicles engaged in sand transportation without GPS or establishing of machine of equivalent technique as prescribed, shall be prohibited after the date of notification by the State Government.*

*(5) Extraction and removal of sand from the following area shall be prohibited as provided in sustainable sand mining guidelines, 2016 issued by Government of India,-*

- (a) within 200 meters from any bridge;*
- (b) within 200 meter upstream and downstream areas of any water supply scheme or water resources scheme;*
- (c) within 100 meter from edge of national highway and Railway line;*
- (d) within 50 meter from any canal, reservoir or building;*
- (e) within 50 meter from edge of state highway and 10 meters from edge of other village road;*
- (f) within fixed distance from any areas which has been built to control the flood;*
- (g) within 200 meter distance from the place of cultural, religious, historical, and archaeological importance or within the distance as provided in the Act/Rule;*
- (h) such areas which have been declared prohibited by Collector due to environmental or other reasons: Provided that, on receipt of representation, permission to grant for mining within the limit of prohibited area*

*may be considered, after getting NOC/Consent from the concerned administrative department.*

*(6) There shall be complete ban on mining, loading and storage of sand by machines from the sanctioned quarries in river Narmada. Sand mining, loading and storage from quarries having area up to 5.00 hectare situated on other rivers shall be done by the committee of local labourers and quarries having area more than 5.000 hectare, local labourers shall be given priority for sand mining, loading and storage. The use of machines for sand mining in other rivers may be given depending upon the requirement and approval in mining plan and environmental clearance.*

*5. (1) Demarcation of sand quarries*

*The Collector, shall identify new sand bearing areas in rivers or on other places of the State. D.G.P.S. survey shall be carried out and its location on revenue map alongwith Latitude and Longitudes shall be marked:*

*Provided that the sand quarries demarcated and declared prior to the commencement of these rules, may be amended by following the same procedure as required.*

*(2) Declaration of sand quarries*

*The sand quarry identified as per sub-rule (1) above shall be declared by the Collector, after making such inquiry as he deems fit, on receipt of information/application/proposal. Prior to declaring sand quarry, opinion from the concerned Gram Panchayat/Urban Body shall be obtained and for this purpose a formal order shall be issued:*

*Provided, if no opinion/advise of the concerned Gram Panchayat/Urban Body is received within a period of 15 days, the Collector, by presuming that there is no objection, shall declare new sand quarries in non-scheduled areas only:*

*Provided further that, if any objection is received from concerned Gram Panchayat/Urban Body within stipulated period, the Collector by disposing off the objections on merit shall take appropriate decision regarding declaration of quarry: Provided further that, prior to declaration of sand quarry consent/no objection of Gram Sabha shall be mandatory in scheduled areas: Provided also that, the declaration of such sand bearing areas shall not be necessary separately which are operational or have been auctioned earlier.*

*(3) Making of group of the sand quarry.-*

*(a)The Collector shall make the group of sand quarries and send proposal to the Director along with details of area, boundary, revenue map, Khasra-Panchsala, Latitude-Longitude for each quarry included in group.*

*(b) The group shall be constituted on the basis of geographical location and revenue boundary (Tehsil, District) as for as possible.*

(c) While making the group, total area of sand quarries included in the group and approximate available quantity of sand shall be taken into consideration.

(d) The proposal of constituted group sent by the Collector shall be finalised by Director.

## 12. Statutory Permissions

The statutory permissions/formalities for each sand quarry of the group may be obtained/completed, as per rule. **All the statutory permissions (e.g. Mining Plan, Environmental Clearance, Water and Air Consent etc.) required for the operation of the sand quarry shall be obtained by the successful tenderer.** The successful tenderer may start mining operation only after obtaining the statutory permissions as per rule 14. Excavation without statutory permission or excavation in excess quantity than permitted quantity in statutory permission, in such condition 100% cost of the excavated mineral **and amount of compensation towards environmental damage shall be recoverable from the contractor.** The statutory permission are as follows:-

### (1) Mining Plan-

(a) The successful **tenderer shall submit mining plan for approval** to the Collector within a period of one month from the date of issuance of letter of intent. The Mining Plan shall be prepared by the Recognised Qualified Person (R.Q.P.), authorised by the Director.

(b) The mining plan shall consist of the location (latitude/longitude) of the **mines, quantity of mineable sand** available in the sand quarry and other issues, as provided for in Madhya Pradesh Minor Mineral Rules 1996.

(c) The Collector shall approve the mining plan on the basis of recommendations of the technically qualified officer (Post Graduate Degree Holder in Geology/Applied Geology) of the department posted in the district and in case if in any district technically qualified officer is not posted, in such case concerned Regional head or Director shall approve the mining plans.

(d) The mining plan shall be prepared only on the basis of actual quantity available/estimated and all the Mining operations shall be carried-out in accordance with the approved mining plan.

(2) Environmental Clearance- The successful tenderer after getting approved mining plan, within a maximum period of 15 days, shall submit application before the competent authority to obtain Environmental Clearance in accordance with notification issued by Ministry of Environment, Forest and Climate Changes.

(3) Water and Air Consent- The successful tenderer after getting environmental clearance within a maximum period of 7 days, shall submit application before the competent authority for obtaining the consent under the Water (Prevention of pollution and control) Act, 1974 and the Air (Prevention of Pollution and Control) Act 1981.

(4) **Permissible Quantity-The mining shall be permitted up to mineable quantity fixed in mining plan, environmental clearance, water and air consent (whichever is less).**

(5) **The annual contract amount shall not be reduced in any case if there is reduction in mineable quantity in approved mining plan, environmental clearance, water and air Consent.**

(6) *All the above statutory permissions shall be obtained within a time limit. The corporation shall supervise for the permissions being taken for each group by the group contractor. In case of any delay, carelessness or lack of interest proceedings for cancellation of letter of intent may be initiated.*

#### 14. Commencement of the Mining Operations.—

(1) *The successful tenderer, after execution of agreement and registration but prior to commencement of the mining operation, shall inform to the Collector about such intention. After Commencement of the mining operation the objection regarding available quantity of mineral in quarry, approach road and other related issues shall not be acceptable.*

(2) *On the condition of depositing the contract amount of the group on the prescribed date as mentioned in the agreement, the mining operation of the quarry may be started as and when the statutory permission is received. It shall not be compulsory to obtain statutory permission for all the quarries of the group simultaneously.*

#### 26. Provisions for transition period.—

(1) *After commencement of these rules, there may be delay in complete execution of these rules, and due to nonoperation of sand quarries, deficiency in supply of sand may result, hence these provisions are being made. Some of the sand quarries which were auctioned previously and are in operation, the **period of those quarries is up to March 2022**. Besides this, some quarries which have been handed over/allotted to Gram Panchayat under provision of Madhya Pradesh Sand Rules 2018 are also in operation at present, the contractors of the group shall start immediately proceedings of transfer of permissions under environmental rules of such quarries.*

(2) **Other sand quarries transferred to panchayat in which operations have been started after the completion of formalities, all such quarries may remain date of start of operation be operated by Panchayat/Urban Bodies till 31st March 2020** or by the new group contractor from after execution of agreement, whichever is earlier.

(3) *From the date of commencement of these rules, the contractors of the auction quarries, may surrender the quarries. Surrender of such sand quarries shall be accepted, giving exemption in condition of agreement and security amount shall be refunded as per eligibility.*

(4) *Such quarries which have been surrendered or the period has been expired, shall be deemed to be included in the group which have been identified at the time of inviting tender. The*

*contractor of the group shall complete all the statutory formalities for operation of such included quarries. In respect of this new quarry included additionally in the group, the amount of royalty as calculated per cubic meter shall be paid on the basis of the highest tender amount received for that group. The period of new quarry included shall be up to the period of expiry of contract.*

*(5) If during the period of operation of contract, any proposal for new quarry is received to the Collector, the Collector after such enquiry, as deems fit may include quarry in the nearest suitable group. The period of new quarry shall be the period of expiry of contract. The contractor of the group for despatch of sand from such new quarry shall deposit the amount on the basis of the highest tender amount received at the rate of per cubic meter for that group. Maximum of 25% of total permitted quantity for the group contract shall be allowed to be added in case of new quarry.*

*(6) The group or" quarries of the group remained vacant temporarily under the provisions of this rule or due to other reasons may, in public interest, be operated by the department or by the corporation for ensuring availability of sand."*

13. Bare reading of the provisions contained under Section 26 of the Act provides that it is a transition period and since there may be delay in completion of execution of these rules, the provisions of sand quarries has been made by formulating the rules. Learned Counsel for the appellant has raised the question that in absence of lease there cannot be transfer of the EC and in reply thereof learned Counsel for the respondent had submitted that the word used in section 26 is sand quarries and it is stated that due to non-operation of sand quarries, deficiency in supply of sand may result, hence these provisions are being made. The intention of the legislature was to make the balance between the supply and demand of the sand which is essential part of the development of the building constructions. It is further argued that the legislative intent is beneficial and should be interpreted in this way. It is to be noted that the above provisions should be read in light of the Sustainable Sand Mining Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020 issued by the MoEF&CC.

14. Further, Clause 11, Transferability of Environmental Clearance which was added in the EIA Notification, 2006 should be read in light of the Mineral

Law Amendment Act, 2020 which was notified with effect from 10.01.2020 which enacted a new Section- 8B relating to the provision for transfer of statutory clearance, after which MoEF&CC issued a Notification dated 27.03.2020 and amended the Environment Impact Assessment Notification, 2006. The Notification states that it is lawful for the new lessee to continue mining operation on the land in which mining operation were being carried out by the previous lessee for a period of two years from the date of commencement of main lease, as per the terms and condition of Environmental Clearance granted to the previous lessee on the said lease area **for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier provided that the successful bidder would apply and obtain prior environmental clearance from the Regulatory Authority within a period of two years from the date of grant of new lease.** The grounds as raised by the appellants may be classified in three categories.

15. Cases in which EC has been transferred without considering the present environmental status of the area of mining or presently available quantity of sand, which can be mined sustainably. The quantity allowed in EC is much higher than the quantity described in NIT or finally bided. Respondent R-1, MPSEIAA has contended that it has observed the provision contained in para 11 of EIA Notification 2006. According to para 11, a prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written “no objection” by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such

cases. MPSEIAA has very conveniently ignored the subsequent requirements contained in amendments introduced by MOEF &CC vide EIA Notifications dated 15th January 2016 as well as Notification dated 25<sup>th</sup> July 2018, **which prescribes the requirement of preparing District Survey Report before according Environmental Clearance** and also lay down the processes to prepare District Survey Report. The main objective of the preparation of District Survey Report (as per the Sustainable Sand Mining Guideline 2016) is to ensure the identification of areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area. In absence of these details mining cannot be done in sustainable manner. MoEF &CC has come out with Sustainable Sand Mining Guidelines 2016 as well as Enforcement and Monitoring Guidelines for Sand Mining 2020 in consultations with the States for strict implementation. Transfer of EC without taking the environmental considerations into account is brazen breach of law and abetment of destructive practices of sand mining. Hon'ble the Supreme court in case of Goa foundation vs union of India 2014 (6) SCC,738 has observed that **before transferring EC, environmental status of the quarry has to be ascertained as follows :-**

*"9. We also find that in **Samaj Parivartana Samudaya and Others v. State of Karnataka and Others, (2013) 8 SCC** this Court has held in Paragraph 20:*

*"20. The permissible annual production for the mining lease would be based on:*

- a. the mineral reserves in the lease area;*
- b. area available for overburden/waste dumps, sub grade iron ore and other land uses;*
- c. existing transport facilities in relation to the traffic load of the mining lease; and*
- d. overall ceiling on the annual production from all the mining leases in the district (as dealt with*

earlier)."

10. We are, therefore, of the view that a Committee of experts must conduct a Macro EIA Study on what should be the ceiling of annual excavation of iron ore from the State of Goa considering its Iron Ore resources and its carrying capacity keeping in mind the principles of sustainable development and inter-generational equity and all other relevant factors. For such Macro EIA Study, we constitute an Expert Committee comprising:

1. An ecologist
2. A geologist
3. A mineralogist
4. An expert on Forestry
5. A representative of Department of Mines, Government of Goa to be nominated by the Chief Secretary, Goa.
6. A representative of Ministry of Environment & Forests, Government of India to be nominated by the Secretary, Ministry of Environment & Forests, Government of India.

16. It is submitted by the MPSEIAA that mining leases of 19 districts have been cancelled and/or handed over in Chattarpur, Hosangabad and Panna District. Therefore, out of the 50 appeals filed by the appellants, 31 appeals falling under these districts have become infructuous as 17 cases are from Chattarpur district and 8 cases are from Hosangabad district wherein the leases have been cancelled and 6 cases are from Panna district wherein the lease has been handed over. The list of district where the leases have been surrendered or cancelled has been communicated vide letter dated 07.01.2022 which are as follows:

Sl. No.	District	Handed Over/Cancelled	Handed Over/Cancelled date
1	Bhopal	Cancelled	31.12.2021
2	Raisen	Cancelled	05.04.2021
3	Hosangabad	Cancelled	31.12.2021
4	Ratlam	Handed over	30.09.2021
5	Dhaar	Cancelled	24.06.2021
6	Alirajpur	Cancelled	05.04.2021
7	Khargon	Cancelled	31.12.2021
8	Badwani	Cancelled	31.12.2021
9	Shivpuri	Cancelled	20.07.2021
10	Jabalpur	Cancelled	31.12.2021
11	Bhind	Handed over	30.06.2021
12	Damoh	Cancelled	31.12.2021



13	Chattarpur	Cancelled	24.06.2021
14	Panna	Handed over	30.06.2021
15	Tikamgarh	Cancelled	31.12.2021
16	Mandsaur	Cancelled	05.04.2021
17	Reewa	Cancelled	24.06.2021
18	Rajgarh	Cancelled	24.06.2021
19	Saajapur	Cancelled	25.10.2021

17. It is further argued that State has initiated the compliance of Sustainable Sand Mining Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020 and nominated an agency to submit the district survey plan in accordance with the rules.

18. On the basis of above facts, it is submitted by the MPSEIAA that the appeals relating to the following districts, which have been challenged in the appeals mentioned in the list have become infructuous as the sand mining contracts awarded in these districts have either been cancelled or handed over. The list is as follows:

Sr. No	Appeal	District	Reason
1	Appeal No. 25/2021	Chhatarpur	Contract cancelled
2	Appeal No. 27/2021	Chhatarpur	Contract cancelled
3	Appeal No. 31/2021	Chhatarpur	Contract cancelled
4	Appeal No. 37/2021	Chhatarpur	Contract cancelled
5	Appeal No. 60/2021	Chhatarpur	Contract cancelled
6	Appeal No. 49/2021	Chhatarpur	Contract cancelled
7	Appeal No. 48/2021	Chhatarpur	Contract cancelled
8	Appeal No. 30/2021	Chhatarpur	Contract cancelled
9	Appeal No. 42/2021	Chhatarpur	Contract cancelled
10	Appeal No. 39/2021	Chhatarpur	Contract cancelled
11	Appeal No. 45/2021	Chhatarpur	Contract cancelled
12	Appeal No. 69/2021	Chhatarpur	Contract cancelled
13	Appeal No. 29/2021	Chhatarpur	Contract cancelled
14	Appeal No. 50/2021	Chhatarpur	Contract cancelled
15	Appeal No. 36/2021	Chhatarpur	Contract cancelled
16	Appeal No. 41/2021	Chhatarpur	Contract cancelled
17	Appeal No. 35/2021	Chhatarpur	Contract cancelled
18	Appeal No. 32/2021	Hosangabad	Contract cancelled
19	Appeal No. 02/2021	Hosangabad	Contract cancelled
20	Appeal No. 05/2021	Hosangabad	Contract cancelled

21	Appeal No. 38/2021	Hosangabad	Contract cancelled
22	Appeal No. 34/2021	Hosangabad	Contract cancelled
23	Appeal No. 33/2021	Hosangabad	Contract cancelled
24	Appeal No. 03/2021	Hosangabad	Contract cancelled
25	Appeal No. 04/2021	Hosangabad	Contract cancelled
26	Appeal No. 51/2021	Panna	Handed over
27	Appeal No. 53/2021	Panna	Handed over
28	Appeal No. 57/2021	Panna	Handed over
29	Appeal No. 54/2021	Panna	Handed over
30	Appeal No. 64/2021	Panna	Handed over
31	Appeal No. 55/2021	Panna	Handed over

I. Mineral Laws (Amendment) Act 2020, as notified with effect from 10th of January 2020 has enacted a new section 8 (B) which is relating to the provisions for transfer of statutory clearances. After which the MoEF&CC issued a notification dated 27th March, 2020 and amended the Environmental Impact Assessment Notification 2006. The Notification states that it shall be lawful for the new lessee to continue mining operations on the land in which mining operations were being carried out by the previous lessee for a period of 2 years from the date of commencement of the new lease. The notification dated 27th March, 2020 is as follows :-

*“Now therefore in exercise of the powers conferred by Sub Section (1) and Clause (v) of Sub Section (2) and Section 3 of the Environment (Protection) Act 1986 (29 of 1986) read with Sub - Rule (4) of Rule 5 of the Environment (Protection) Rules 1986, the Central Government after having dispensed with the requirement of notice under Clause (a) of Sub Rule (3) of the Rule 5 of the said rules in public interest and in supersession of the Notification No. S.O. 4307 (E) dated 29th November 2019 hereby makes the following further amendments in the EIA Notification 2006 namely –*

*(i) In paragraph 11 after sub-paragraph (2) the following subparagraph shall be inserted namely –*

*(3) The successful bidder of the mining leases expiring under the provisions of Sub-Section (5) and (6) of section 8A of the Mines and Minerals Development and Regulation Act 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made there under shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee **for a period of two years, from the date of commencement of new lease** and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee **on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier :***

*Provided that the successful bidder shall apply and obtain prior environmental clearance from the regulatory authority within a period of two years from the date of grant of new lease.”*

#### **J. Requirement of preparation of District Survey Report**

19. Consequent upon the decision taken at the United Nation Conference on Human Environment held in Stockholm, the Parliament enacted the Environment (Protection) Act, 1986 in September, 2006. The parent EIA Notification dated 14.09.2006 was issued by the MoEF & CC under Section 3 of the EP Act with an endeavour to provide a substantive legal framework and comprehensive procedural mechanism for evaluation, assessment and monitoring of the Environmental Impact on the land, air and water due to various projects undertaken by person in all sectors throughout the territory of India. The EIA Notification dated 14.09.2006, regulated certain activities including mining of minor mineral as laid down in the schedule therein and provided that a prior environmental clearance is mandatory for such regulated and specific projects across all sectors. The notification

provided for constitution of central and state level environmental impact assessment authorities, SEIAA manned by professional, experts and technical individuals that shall screen, scope and appraise projects from an environmental prospective and further monitor the same from time to time, in order to achieve much desired goals of sustainable development. The MoEF & CC issued notification dated 15.01.2016 which amended the EIA Notification, 2006 by introducing clause 7 (III) (A) which mandated for the preparation of DSR for sand mining or River Bed Mining and mining of other mineral. Vide another notification dated 20.01.2016, the MoEF & CC constituted the DEIAA and the DEAC. The DEIAA comprised of 04 members and headed by District Magistrate whereas DEAC comprised of 11 members, who were mostly the government officer's bureaucrats. Further, MoEF & CC issued the Sustainable Sand Mining Management Guidelines, 2016 with an endeavor to ensure that sand and gravel mining is done in an environmentally sustainable and socially responsible manner, and to further ensure the conservation of river equilibrium and its natural environment by protection and restoration of the ecological system. One of the key and nodal objectives enumerated in the SMMG, 2016 was the preparation of the DSR report that would identify the areas of aggradations/deposition where mining can be allowed, and identification of areas of erosion and proximity to infrastructural structures and installation wherein mining should be prohibited.

20. This Tribunal, in the case titled Anjani Kumar v. State of U.P. 2017 SCC Online NGT 979 vide its Judgment dated 8.12.2017 held that a **District Survey Report (DSR) is a pre-requisite and conditional precedent before the grant of any mining leases of sand and bajri**. The Relevant portion is extracted below:

*“31. From the extracted portion, it could well be understood that to begin with the process prescribed for preparing of survey document mapping the status of the sand sources in a District is an integral*

*but an essential part. The Survey has to be conducted and report be prepared for each District. It must also be noticed that while taking into consideration the fact that rivers cut across districts and States and every river is an ecosystem in itself but keeping in mind the fact that district is a most established unit of administration conduct of survey, planning and monitoring can be ensured effectively, the scheme proposed that every district will prepare this document (District Survey Report) taking river stretch in that district as an ecological and inventorising other sources of sand in the district...*

*65. Thus there is merit in the contention of the applicant that the District Survey Report is not only an important act but it should be conducted prior to sanctioning of the permission/concession.*

*71. In other words it is evident that absence of the factual District Survey Report after due inspection grant of mining lease will be in conflict of the environmental laws as sand mining lease could be granted in an area only when aspect of replenishment of miner mineral especially in river sand is clearly established.*

*96. It is true that under the Mining Policy, Rules the State is empowered to conduct survey for the purpose of inviting bids opine. The preparation of DSR and obtaining if Environmental Clearance is also a conditional precedent to carrying on mining activity. It is for the State Government to ensure that there is no conflict between two and they are balanced so as to ensure that neither there is scope for illegal mining nor there should be environmental degradation.*

21. State of Madhya Pradesh in its rules named Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 has provided the procedure for procurement of mining leases in State with the statutory permissions in accordance with the environmental rules as contained in

Chapter-6 Section 12 which has been quoted above. In addition to above, the MoEF & CC, in supplement and addition to the Sustainable Sand Mining Management Guidelines, 2016 issued the Sustainable Sand Mining Management Guidelines, 2020 giving importance to the DSR and monitoring mechanism. The guidelines issued in 2020 in point no.4.1.1 (A) requires that DSR 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 in the mining activity in the respective state. The DSR is to be prepared in such a way that it not only identified the mineral bearing area but also define the mining and no mining zones considering various environmental and social factors. The State Government shall issue Letter of Intent as per procedure laid down in there Mine and Mineral Concession Rules with due consideration of final DSR and that all districts have been required to prepare a comprehensive mining plan as per the provisions of District Survey Report and these report shall be put on the website of district administration. No mining shall be allowed in the area which had not been identified in the comprehensive mining plan of the district.

22. The present litigation consists of cases where EC has been accorded without DSR and the quantity allowed in EC is much higher than the quantity given in the NIT. MPSEIAA has responded in its reply that the procedure adopted by mining department for allotment of mining lease by issuing Notice Inviting Tender (NIT) is a preliminary process and is not a concern of SEIAA. Once the mining lease is allotted and mining plan is prepared and approved by the mining department, the EC application is filed before SEIAA for grant of EC. It has further mentioned that as provided in Rule 12 (1)(d) of the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019 the mining plan shall be prepared only on the basis of actual quantity available/estimated and all the mining operations shall be carried out in accordance with the approved mining plan. It has further been provided in Rule 12 (4) of the Madhya Pradesh Sand (Mining,

Transportation, Storage and Trading) Rules, 2019 that the mining shall be permitted upto mineable quantity fixed in the mining plan, environmental clearance, water and air consent (whichever is less). MPSEIAA argues that this rule gives further clarity in the matter as the documents required to be relied upon for determining the permissible quantity are mining plan, EC and Air/Water consent. The tender document is relevant document as per the Rule 12(4) while determining the permissible mineable quantity. The above mentioned provisions also clarify that the approved mining plan is the basis on which further permissions and approvals are given. The procedure adopted prior to the preparation of mining plan is relevant for SEIAA while dealing with the EC applications. Obviously MPSEIAA in defending its stand and is misinterpreting the Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019.

#### **K. Notice Inviting Tender (NIT)**

23. The rules provide for a conservative estimation of the permissible quantity and in no way discounts the importance of NIT or accord primacy to mining plan. NIT is primary document and it is the constitutional requirement to give level playing field to all the bidders as held in *Manohar Lal Sharma vs Principal Secretary (SC) 2014 all SCR 3470* as follow:-

49. ....The constitutional philosophy about law making in relation to mines and minerals and List I Entry 36 (Federal Legislative List) and List II Entry 23 (Provincial Legislative List) in Schedule VII of the Government of India Act, 1935 which correspond to List I Entry 54 (Union List) and List II Entry 23 (State List) in our Constitution has been noticed by this Court in ***Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1***. Speaking through one of us (R.M. Lodha, J., as he then was) in ***Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1***, this Court has noted the statement of the learned Solicitor General in the House of Commons made in the course of debate in respect of the above entries in the Government of India Bill that the rationale of including only the "regulation of mines"

and "development of minerals" and that, too, only to the extent it was considered expedient in the public interest by a federal law was to ensure that the provinces were not completely cut out from the law relating to mines and minerals and if there was inaction at the Centre, then the provinces could make their own laws. Thus, power in relation to the mines and minerals was accorded to both, the Centre and the States. The Court in **Monnet Ispat and Energy Ltd. v. Union of India and Ors., (2012) 11 SCC 1** said:

"130. .... The management of the mineral resources has been left with both the Central Government and the State Governments in terms of List I Entry 54 and List II Entry 23. In the scheme of our Constitution, the State Legislatures enjoy the power to enact legislation on the topics of "mines and minerals development". The only fetter imposed on the State Legislatures under Entry 23 is by the latter part of the said entry which says, "subject to the provisions of List I with respect to regulation and development under the control of the Union". In other words, the State Legislature loses its jurisdiction to the extent to which the Union Government had taken over control, the regulation of mines and development of minerals as manifested by legislation incorporating the declaration and no more. If Parliament by its law has declared that regulation of mines and development of minerals should in the public interest be under the control of the Union, which it did by making declaration in Section 2 of the 1957 Act, to the extent of such legislation incorporating the declaration, the power of the State Legislature is excluded. The requisite declaration has the effect of taking out regulation of mines and development of minerals from List II Entry 23 to that extent. It needs no elaboration that to the extent to which the Central Government had taken under "its control" "the regulation of mines and development of minerals" under the 1957 Act, the States had lost their legislative competence. By the presence of the expression "to the extent hereinafter



provided" in Section 2, the Union has assumed control to the extent provided in the 1957 Act. The 1957 Act prescribes the extent of control and specifies it. We must bear in mind that as the declaration made in Section 2 trenches upon the State legislative power, it has to be construed strictly. Any legislation by the State after such declaration, trespassing the field occupied in the declaration cannot constitutionally stand ".....

83. Two recent decisions viz., (1) **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** and (2) **Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1** directly deal with the question of auction as mode for the disposal or allocation of natural resources. But before we consider these two decisions, reference to some of the decisions of this Court, which had an occasion to deal with disposal of natural resources, may be of some help in appreciating this aspect in correct perspective.

84. P.N. Bhagwati, J. in **Kasturi Lal Lakshmi Reddy & Ors. v. State of J&K & Anr., (1980) 4 SCC 1** had said that where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging setting up of industries within the State, the State was not bound to advertise and tell the people that it wanted a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. It was also observed that if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose.

85. In **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295** this Court had observed that ordinary rule for disposal of State-owned or public-owned property, was by way of public auction or by inviting tenders but there could be situations where departure from the said rule may be necessitated but then the reasons for the departure must be rational and should not be suggestive of discrimination and that nothing should be done which gives an appearance of bias, jobbery or nepotism.

86. The statement of law in **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295** was echoed again in **Haji T.M.**

**Hassan Rawther v. Kerala Financial Corporation, (1988) 1 SCC 166**, wherein this Court reiterated that the public property owned by the State or by an instrumentality of State should be generally sold by public auction or by inviting tenders. It was emphasised that this rule has been insisted upon not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities and to obviate the factors like bias, favoritism or nepotism. Clarifying that this is not an invariable rule, the Court reiterated that departure from the rule of auction could be made but then it must be justified.

87. The above principle is again stated by this Court in **M.P. Oil Extraction & Anr. v. State of M.P. & Ors., (1997) 7 SCC 592**, in which this Court said that distribution of largesse by inviting open tenders or by public auction is desirable but it cannot be held that in no case distribution of such largesse by negotiation is permissible.

88. In **Netai Bag & Ors. v. State of West Bengal & Ors., (2000) 8 SCC 262** this Court said that when any State land is intended to be transferred or the State largesse is decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people as that would be a sure method of guaranteeing compliance with mandate of Article 14 of the Constitution but non-floating of tenders or not holding public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner.

89. In **Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors., (2009) 7 SCC 561** the matter before this Court related to the selection of contractor for development of the port of Pondicherry without floating a tender or holding public auction. The Court said that where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging development of the port, the State was not bound to advertise and tell the people that it wanted development of the port in a particular manner and invite those interested to come up with proposals for the purpose.

90. There are numerous decisions of this Court dealing with the mode and manner of disposal of natural resources but we think it is not necessary to refer to all of them. Having indicated the view taken by this Court in some of the cases, now we may turn to **2G case, Centre for Public Interest**

***Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1.*** In that case, the two-Judge Bench of this Court stated that a duly publicised auction conducted fairly and impartially was perhaps the best method for alienation of natural resources lest there was likelihood of misuse by unscrupulous people who were only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. Court laid emphasis that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.

91. The above view in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** necessitated the reference by the President of India to this Court under Article 143(1) of the Constitution. The first two questions ? Question 1 and Question 2 ? referred to this Court for consideration and report read as under:

<p>“Question 1</p>	<p>Whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions?</p>
<p>Question 2</p>	<p>Whether a broad proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to several judgments of the Supreme Court including those of the larger Benches?</p>

92. The Constitution Bench which dealt with the above reference observed that the answer to the following three questions would provide comprehensive answer to the parent question, viz., Question 1:

- (i) Are some methods ultra vires and others intra vires the Constitution of India, especially Article 14?
- (ii) Can disposal through the method of auction be elevated to a constitutional principle?
- (iii) Is this Court entitled to direct the executive to

*adopt a certain method because it is the "best" method? If not, to what extent can the executive deviate from such "best" method?*

93. The Constitution Bench clarified that the statement of law in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction was confined to the specific case of spectrum and not for dispensation of all natural resources. The Constitution Bench said that findings of this Court in **(2G Case) Centre for Public Interest Litigation & Ors. v. Union of India & Ors., (2012) 3 SCC 1** were limited to the case of spectrum and not beyond that and that it did not deal with the modes of allocation for natural resources other than spectrum.

94. The Constitution Bench while dealing with the aspect of disposal of natural resources other than auction, divided the consideration of this aspect under two heads, viz., "Legitimate deviations from auction" and "Potential of abuse". Under the head "Legitimate deviations from auction" the Court considered the earlier decisions of this Court in **Kasturi Lal Lakshmi Reddy & Ors. v. State of J&K & Anr., (1980) 4 SCC 1**, **Sachidanand Pandey & Anr. v. State of West Bengal & Ors., (1987) 2 SCC 295**, **Haji T.M. Hassan Rawther v. Kerala Financial Corporation, (1988) 1 SCC 166**, **M.P. Oil Extraction & Anr. v. State of M.P. & Ors., [(1997) 7 SCC 592]**, **Netai Bag & Ors. v. State of West Bengal & Ors., (2000) 8 SCC 262** and **Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors., (2009) 7 SCC 561**, which we have briefly noted above, and it was held that there is no constitutional mandate in favour of auction under Article 14. In the main judgment (paras 129 to 131, pg. 92), the Constitution Bench stated as under:

"129. Hence, it is manifest that there is no constitutional mandate in favour of auction under Article 14. The Government has repeatedly deviated from the course of auction and this Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. Essentially whenever the object of policy is anything but revenue maximization, the Executive is seen to adopt methods other than auction.

130. A fortiori, besides legal logic, mandatory auction may be contrary to economic logic as well. Different

resources may require different treatment. Very often, exploration and exploitation contracts are bundled together due to the requirement of heavy capital in the discovery of natural resources. A concern would risk undertaking such exploration and incur heavy costs only if it was assured utilisation of the resource discovered; a prudent business venture, would not like to incur the high costs involved in exploration activities and then compete for that resource in an open auction. The logic is similar to that applied in patents. Firms are given incentives to invest in research and development with the promise of exclusive access to the market for the sale of that invention. Such an approach is economically and legally sound and sometimes necessary to spur research and development. Similarly, bundling exploration and exploitation contracts may be necessary to spur growth in a specific industry.

131. Similar deviation from auction cannot be ruled out when the object of a State policy is to promote domestic development of an industry, like in *Kasturi Lal's case*, discussed above. However, these examples are purely illustrative in order to demonstrate that auction cannot be the sole criteria for alienation of all natural resources."

95. While dealing with the argument that even if the method of auction was not a mandate under Article 14, it must be the only permissible method due to the susceptibility of other methods to abuse, the Court under the head "Potential of abuse" held that a potential for abuse cannot be the basis for striking down the method as ultra vires the Constitution. The Court noted two decisions of this Court in **R.K. Garg v. Union of India & Ors., (1981) 4 SCC 675** and **D.K. Trivedi & Sons & Ors. v. State of Gujarat & Ors., 1986 Supp SCC 20** and held that neither auction nor any other method of disposal can be held ultra vires the Constitution merely because of a potential abuse. The Constitution Bench (para 135, pgs. 93-94) stated as under:

"135. Therefore, a potential for abuse cannot be the basis for striking down a method as ultra vires the Constitution. It is the actual abuse itself that must be brought before the Court for being tested on the anvil of constitutional provisions. In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an unconstitutional methodology either. These drawbacks include cartelization, "winners curse" (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or

where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licenses for exploitation of more resources than he can pragmatically execute), etc. However, all the same, auction cannot be called ultra vires for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximization is a priority. Therefore, neither auction, nor any other method of disposal can be held ultra vires the Constitution, merely because of a potential abuse."

96. In **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]** the Constitution Bench, in the main judgment, thus, concluded that auction despite being a more preferable method of alienation/allotment of natural resources cannot be held to be constitutional requirement or limitation for alienation of all natural resources and, therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate. The Court also opined that auction as a mode cannot be conferred the status of a constitutional principle. While holding so, the Court held that alienation of natural resources is a policy decision and the means adopted for the same are, thus, executive prerogatives. The Court summarised the legal position as under:

"146. To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-a-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is

*patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.*

*147. Finally, market price, in economics, is an index of the value that a market prescribes to a good. However, this valuation is a function of several dynamic variables: it is a science and not a law. Auction is just one of the several price discovery mechanisms. Since multiple variables are involved in such valuations, auction or any other form of competitive bidding, cannot constitute even an economic mandate, much less a constitutional mandate.*

*148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.*

*149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."*

*97. J.S. Khehar, J., while concurring with the main opinion has stated that auction is certainly not a constitutional mandate in the manner expressed, but it can be applied in some situations to maximise revenue returns, to satisfy legal and constitutional requirements. In his view, if the State arrives at a conclusion, in a given situation, that maximum revenue would be earned by auction of the particular natural resource, then that alone would be the process which it would have to adopt. In the penultimate para of his opinion, J.S. Khehar, J., observed," there can*

be no doubt about the conclusion recorded in the "main opinion" that auction which is just one of the several price recovery mechanisms, cannot be held to be the only constitutionally recognised method for alienation of natural resources. That should not be understood to mean, that it can never be a valid method for disposal of natural resources ".

98. In **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]**, the Constitution Bench said that reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). In the main judgment, with reference to Article 39(b), the Court stated as follows:

"113. The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on "distribution" built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing "distribution" is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word "distribution". Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately sub-serve the "common good".

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115. It can thus, be seen from the aforequoted paragraphs that the term "distribute" undoubtedly, has wide amplitude and encompasses all manners and methods of distribution, which would include classes, industries, regions, private and public sections, etc. Having regard to the basic nature of Article 39(b), a narrower concept of equality under Article 14 than that discussed above, may frustrate the broader concept of distribution, as conceived in Article 39(b). There cannot, therefore, be a cavil that "common good" and "larger public interests" have to be regarded as constitutional reality deserving actualization.



116. *The learned counsel for CPIL argued that revenue maximization during the sale or alienation of a natural resource for commercial exploitation is the only way of achieving public good since the revenue collected can be channelized to welfare policies and controlling the burgeoning deficit. According to the learned counsel, since the best way to maximise revenue is through the route of auction, it becomes a constitutional principle even under Article 39(b). However, we are not persuaded to hold so. Auctions may be the best way of maximizing revenue but revenue maximisation may not always be the best way to subserve public good. "Common good" is the sole guiding factor under Article 39(b) for distribution of natural resources. It is the touchstone of testing whether any policy subserves the "common good" and if it does, irrespective of the means adopted, it is clearly in accordance with the principle enshrined in Article 39(b).*

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119. *The norm of "common good" has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional yardstick?it would depend on the economic and political philosophy of the Government. Revenue maximisation is not the only way in which the common good can be subserved. Where revenue maximisation is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method. Where revenue maximisation is not the object of a policy of distribution, the question of auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations.*

120. *Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximisation, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies? Article 14 does not predefine any economic policy as a constitutional mandate. Even the mandate of Article 39(b) imposes no restrictions on the means adopted to sub-serve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/ allocation of natural resources to the highest bidder may not necessarily be the only way to sub-serve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."*

99. In light of the above legal position, the argument that auction is a bestway to select private parties as per Article 39(b) does not merit acceptance. The emphasis on the word "best" in Article 39(b) by the learned senior counsel for the intervener does not deserve further discussion in light of the legal position expounded by the Constitution Bench in **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]** with reference to Article 39(b). We are fortified in our view by a recent decision of this Court (3-Judge Bench) in **Goa Foundation v. Union of India and Others, (2014) 6 SCC 590** wherein following **Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]**, it is stated, "...it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made thereunder and in consonance with the constitutional provisions?".

24. As described in the EMGSM 2020, Mining Plan is an important document to assist the mine owner to operate the mine in a scientific manner. 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. Therefore, granting EC on the basis of Mining Plan is in violation of the Guidelines and against the principles of sustainable sand mining. Considering the importance of district survey report, the Ministry of Environment Forest and climate change, after consultation with experts dealing with mining-related matters, formulated the guidelines for the preparation of comprehensive District Survey Report for sand mining. It accordingly, prescribed that District Survey Report for sand mining should 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. DSR is to be approved at the level of SEIAA with the help of SEAC. It is surprising that MPSEIAA is not

taking DSR or Annual Replenishment Study (ARS) into consideration. Had DSR and ARS taken into consideration the discrepancy between the quantity of sand given in NIT and EC can be easily avoided and sand mining would be sustainable. In addition to that it would also eliminate the chances of misuse of EC for illegal mining.

25. Another category of cases includes those in which the mining areas (Khasra/survey numbers) are not given in NIT but EC are granted even for them. Obviously such EC can lead to illegal mining as well as loss of exchequer to the State. It would also disrupt the system of sustainable mining and escape all kinds of monitoring and supervision, as EC would be available but the mining department would not be looking after them. It is completely out of sync so far as the mining administration in States exists.

**L.** The matter of procedure for DSR was considered by Principal Bench of this Tribunal in O.A. No. 360/2015 vide order dated 26.02.2021 and necessary directions and the method of implementation were discussed in the following manner :-

***“Procedure for DSR/EC***

*13. Vide order dated 14.10.2020 in O.A. No. 40/2020, Pawan Kumar v. State of Bihar & Ors., the issue of preparation of District Survey Report (DSR) by Experts was considered. Vide Notification dated 25.07.2018 issued by the MoEF&CC, under Section 3(2)(v) of the EP Act, 1986 amending EIA Notification dated 14.09.2006, procedure for preparation of DSR for sand mining/riverbed mining was laid down. The DSR is crucial as it contains Environment Management plan, including the replenishment study and other safeguards and is the basis to consider the environment impact of mining based on which decision to grant the Environmental Clearance is taken. The Tribunal held that for such crucial exercise, the Experts should be out of those accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India (NABT/QCCI) in terms of O.M. of MoEF&CC dated 16.03.2010. Verification by the District Magistrate and evaluation*

by the SEAC was also necessary. Accordingly, following directions were issued in relation to a matter arising from the State of Bihar:-

“(ii) As the DEIAA is not functioning as a consequence of the decision of the Tribunal in Satendra Pandey (supra), the DSR shall be prepared through a consultant(s) accredited by the National Accreditation Board of Education and Training/ Quality Control Council of India in terms of O.M. of MoEF&CC dated 16.03.2010.

(iii) The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of the relevant facts pertaining to the physical and geographical features of the district which shall be distinct from the scientific findings based on the parameters prescribed in the SSMMG2016. After such verification, the District Magistrate shall forward the DSR for examination and evaluation by the State Expert Appraisal Committee (SEAC) having regard to the fact that the SEIAA comprises of technical/scientific experts. The SEAC after appraisal of the report shall forward it to the SEIAA for consideration and approval if it meets all scientific/technical requirements.

(iv) While preparing the DSR, the MoEF&CC Accredited Agency/Consultant shall scrupulously follow the procedure and the parameters laid down under the SSMMG-2016 and EMGSM2020 read in sync with each other.”

14. Considering the above, vide order dated 04.11.2020 in O.A. No. 726 of 2018, *Rupesh Pethe v. State of M.P. & Ors.*, the Tribunal directed that the above direction ought to be followed pan India, as follows:-

“5. The above direction may be followed by the State of MP also for the sake of uniformity. Further information required to be furnished is about the extent of illegal mining, extent of action taken, including the compensation recovered, vehicles seized and other coercive measures and impact of such action. The State of M.P. may compile relevant directions on the subject including the binding order of any Courts or Tribunal. This exercise may be undertaken jointly by the Secretary Geology and Mining, Member Secretary State PCB and Member Secretary SEIAA. In light of above, the State may further revise its policy and exercise. Let further compliance status be

*furnished before the next date by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.*

*6. We are of the view that the above directions need to be followed by all other States where the issue of mining is relevant.*

*7. A copy of this order be forwarded to the Chief Secretaries of all the States and UTs by e-mail for compliance.”*

### ***Adverse impact of unscientific/unregulated Sand Mining***

*15. It is undisputed that there is huge degradation of environment on account of unregulated sand mining remains which is otherwise lucrative activity. It poses threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird species, increase saline water in the rivers. It has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand. The Hon'ble Supreme Court (in Deepak Kumar, supra) noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and ground waters. A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3*

*meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. It was noted that in-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.*

16. *In State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, at page 790, it was observed :*

*“32. The policy and object of the Mines and Minerals Act and Rules have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature. The Court cannot lose sight of the fact that adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service Report. As per the contents of the Report, lack of proper scientific methodology for river sand mining has led to indiscriminate sand mining, while weak governance and corruption have led to widespread illegal mining. While referring to the proposition in India, it was stated that sand trading is a lucrative business, and there is evidence of illegal trading such as the case of the influential mafias in our country.”*

*“33. The mining of aggregates in rivers has led to severe damage to rivers, including pollution and changes in levels of pH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal of more than 12 million tonnes of sand a year from Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 cm a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a*

*loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.*

*34. The Report also dealt with the astonishing impact of sand mining on the economy. It states that tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.*

*35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors—beaches themselves. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on instream*

*biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow paths.*

*.....Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand and gravel mining from riverbeds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the streambed and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from riverbeds may also cause the entire stream-bed to degrade to the depth of excavation.”*

26. Mining within the State is required to be regulated not only by the Mining Department but also by the State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and by the MoEF& CC under the Environment (Protection) Act, 1986. The Environmental Laws override other laws and any provision contrary in the Mines Act, 1952 will not stay in the way of enforcing environment norms. The Enforcement and Monitoring Guidelines for Sand



Mining, 2020 (EMGSM-2020) seeks to provide effective enforcement and monitoring from the stage of identification of source to its dispatch and in use which requires environment of all stakeholders, Central Government, State Government, Lease Holders, Mine Owners, Distributors, Dealers, Transporters and Consumers. The guidelines issued from the MoEF&CC makes EC mandatory irrespective of the area of mining lease, followed by monitoring in terms of the Environment Management Plan, using IT and IT enabled services.

27. Dealing the similar matter in O.A. No. 173/2018(EZ) Sudarsan Das Vs State of West Bengal & Ors. vide order dated 04.09.2018 this Tribunal observed as follows :-

*“18. We may note the salient features of the EMGSM-2020, which are supplemental to existing SSMG-2016 and seek to provide effective enforcement and monitoring from the stage of identification of source to its dispatch and end use which requires involvement of all stakeholders viz. Central Government, State Government, Leaseholders/Mine Owners, Distributors, Dealers, Transporters and Consumers (bulk & retail). EMGSM refer to the judgment of the Hon’ble Supreme Court in Deepak Kumar Vs. State of Haryana & Ors. (2012) 4 SCC 629 making EC mandatory irrespective of the area of mining lease, followed by monitoring in terms of the Environment Management Plan, using IT and IT enabled services. Monitoring has to be with reference to quantity of mined material, transportation with a view to promote environmental protection, limit negative physiological, hydrogeological and social impacts underpinning sustainable economic growth. Observations in the order of this Tribunal dated 04.09.2018 in O.A. 173/2018 in Sudarsan Das vs. State of West Bengal & Ors. has also been referred to as follows:*

*“There can be no two views that an effective institutional monitoring mechanism is required not only at the stage when Environmental Clearance is granted but also at subsequent stages”.*

*“The guidelines focus on the preparation of District Survey Report and the Management Plan” ...*

*We are of the view that all the safeguards which are suggested in sustainable sand mining guidelines as well as notification dated 15.01.2016 ought to be scrupulously followed.” ...*

*It is a known fact that in spite of the above-suggested guidelines being in existence, on the ground level, illegal mining is still going on. The existing mechanism has not been successful and effective in remedying the situation.” ...*

*Since there is an utter failure in the current monitoring mechanism followed by the State Boards, SEIAAs and DEIAAs, it is required to be revised for effective monitoring of sand and gravel mining and a dedicated monitoring mechanism be set up.”*

*Further reference has been made to the directions in the order dated 05.04.2019 requiring the 17 States, which were party before the Tribunal viz. West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh, to follow the revised Guidelines and to review their respective monitoring mechanism. It is then stated that with the object of regulating the mining, the sources of sand and steps required are mentioned which provide for District Survey Report (DSR), Mining Plan, replenishment study, consideration of environment impact while granting EC, laying down conditions for EC, monitoring of transportation to the end user to ensure that only legally mined material is transported. There is need to balance between deposition and extraction of sand as per replenishment study, maintaining surveillance, using Unmanned Artificial Vehicles (UAVs)/Drone for reserves estimation, quantity estimation, land use monitoring. Details about all these aspects have been mentioned in the said Guidelines. With regard to post EC monitoring, there is a provision for environment audit, monitoring of sale and purchase by developing online portal and laying down the levels of monitoring i.e. Level 1- Reach/ Stockyard level monitoring, Level 2 - Transportation monitoring, Level 3 - End consumer monitoring/ bulk consumer, Level 4 - Indirect monitoring.*

Reference has then been made to the High-Powered Committee incorporating safeguards to be adopted by the project proponents. There is also provision for assessment of compensation for the ecological damage by the State/ PCB/ any other Authority. Inter District and Inter State boundaries are separately dealt with. The uniform monitoring mechanism stipulates:

**“ 9.4. Monitoring Mechanism**

xxx  
.....xxx.....xxx.....  
.....

1. All precaution shall be taken to ensure that the water stream flows unhindered and process of Natural river meandering doesn't get affected due to mining activity.
2. River mining from outside shall not affect rivers, no mining shall be permitted in an area up to a width of 100 meters from the active edge of embankments or distance prescribed by the Irrigation department.
3. The mining from the area outside river bed shall be permitted subject to the condition that a safety margin of two meters (2 m) shall be maintained above the groundwater table while undertaking mining and no mining operation shall be permissible below this level unless specific permission is obtained from the Competent Authority. Further, the mining should not exceed nine-meter (9 m) at any point in time.
4. Survey shall be carried out for identifying the stretches having habitation of freshwater turtles or turtle nesting zones. Similarly, stretches shall be identified for other species of significant importance to the river ecosystem. Such stretch with adequate buffer distance shall be declared as no-mining zone and no mining shall be permitted. The regulatory authority as defined for granting Environmental Clearance, while considering the application of issuance of ToR and/or EC for the adjacent block (to non- mining zone) of mining shall take due precaution and impose requisite conditions to safeguard the interest of such species of importance.
5. District administration shall provide detailed information on its website about the sand mines in its district for public information, with an objective to extend all information in public domain so that the citizens are aware of the mining activities and can also report to the district administration on any deviation observed. Appropriate feedback and its redressal mechanism shall also be made operational. The details shall include, but not limited to, lease area, geo- coordinates of lease area and mineable area, transport routes, permitted capacity,

regulatory conditions for operation including mining, environmental and social commitments etc.

6. *A website needs to be maintain to track the movement of centralised sand mining and a Centralised server system should be made to manage the data related to sand mining across India.*
7. *The mineral concession holders shall maintain electronic weighbridges at the appropriate location identified by the district mining officer, in order to ensure that all mined minerals from that particular mine are accounted for before the material is dispatched from the mine. The weighing bridge shall have the provision of CCTV camera and all dispatch from the mine shall be accounted for.*
8. *The mineral movement shall be monitored and controlled through the use of transit permit with security features like printing on IBA approved MICR papers, Unique bar/QR, fugitive ink background, invisible ink mark, void pantographs and watermarks papers or through use of RFID tagged transit permits and IT /IT-enabled services. Such monitoring system shall be created and made operationalised by State Mining department and district level mining officer shall be responsible for ensuring that all legal and operational mines are connected and providing the requisite information on the system. Regular check and associated report shall be submitted to DLTF and uploaded on the website.*
9. **State Government shall constitute a District Level Task Force (DLTF) under the Chairmanship of Deputy Commissioner/District Magistrate/Collector with Superintendents of Police and other related senior functionaries (District Forest Officer, District transport officer, Regional officer- SPCBs, Senior Officer of Irrigation Department, District Mining Officer) with one/two independent member nominated by the Commissioner concerned. The independent member shall be retired government officials/teacher or ex-serviceman or ex-judiciary member.**

**The DLTF shall keep regular watch over the mining activities and movement of minerals in the district. The DLTF shall have its regular meeting, preferably every month to reconcile the information from the mining activity, and other observations made during the month and take appropriate corrective and remedial action, which may include a recommendation for revoking mining lease or environmental clearance. The DLTF may constitute an independent committee of the expert to assess the environmental or ecological damage caused due to illegal mining and recommend recovery of environmental compensation from the miner's concern. The recommendation may also include action under the provision of E(P) Act, 1986.**

10. *The area not identified for mining due to restriction or otherwise are also to be monitored on a regular basis by the DLTF. Any observations of mining activity from the restricted area shall be reported and corrective measures shall be initiated on an urgent basis by the DLTF.*
11. *The dispatch routes shall be defined in the Environmental Clearance and shall be avoided through densely habituated area and the increase in the number of vehicle movement on the road shall be in agreement with the IRC guidelines / carrying capacity of the road. The alternate and dedicated route shall be explored and preferred for movement of mining to avoid inconvenience to the local habitat. The mining production capacity, by volume/weight, shall be governed by total permissible dispatch calculated based on the carrying capacity of dispatch link roads and accordingly, the production should be regulated.*
12. *The movement of minerals shall be reconciled with the data collected from the mines and various Naka/check posts. Other measures may also include a general survey of the potential mineable area in the district which has not been leased/auctioned or permitted for mining due to regulatory or other reasons.*
13. *The location and number of check post requirement shall be reviewed by DLTF on a regular basis so that appropriate changes in location/number could be made as per the requirement. Such review shall be carried out on a regular basis for the district on inter-state boundary or district providing multiple passages between two districts of different states.*
14. ***The district administration shall compile the information from their district of the permitted and legal mined out minerals and other details and share such information and intelligence with the officials of the adjoining district (Inter or/and Intra State) for reconciliation. The information shall include the area of operation, permissible quantity, mined out minerals (production) the permitted route etc., and other observations, especially where the mine lease boundary is congruent with the district boundary. Such coordination meeting shall be held on a quarterly basis, alternatively in two district headquarters or any other site in two districts decided mutually by the District Magistrate.***
15. ***The mining department shall include submission of an annual environmental audit report as one of the conditions in the mining lease agreement. The annual audit for each river bed mining lease shall be carried out and the audit report shall be uploaded on the website of district administration. The audit shall be carried out by an independent team of 3 members nominated by District Collector/Magistrate/Commissioner comprising of Ex- Serviceman, Ex-Government officials of repute, Professor or Person having***

**experience of mining/environment. The guidelines and method of the audit shall reflect adequately the monitor-able parameters and output and reflect the compliance status with respect to the conditions imposed by the regulatory authorities including conditions of Environmental clearance.**

16. *The in-situ and ex-situ environmental mitigative measures stipulated as EMP, CER, CSR and other environmental and safety conditions in mines including the welfare of labours shall properly reflect in the audit report.*

#### **9.5 Suggestive additional requirements are-**

##### **i. The requirement at the Mine Lease Site:**

- a. *Small Size Plot (Up to 5 hectares): Android Based Smart Phone.*
- b. *Large Size Plots (More than 5 hectares): CCTV camera, Personal Computer (PC), Internet Connection, Power Back up.*
- c. *Access control of mine lease site.*
- d. *Arrangement for weight or approximation of the weight of mined out mineral on the basis of the volume of the trailer of vehicle used.*

##### **ii. Scanning of Transport Permit or Receipt and Uploading on Server:**

- a. *Website: Scanning of receipt on mining site can be done through barcode scanner and computer using the software;*
- b. *Android Application: Scanning on mining site can be done using Android Application using a smartphone. It will require internet availability on SIM card;*
- c. *SMS: Transport Permit or Receipt shall be uploaded on the server even by sending SMS through mobile. Once Transport Permit or Receipt get uploaded, a unique invoice code gets generated with its validity period.*

##### **iii. Proposed working of the system:**

*The State Mining Department should print the Transport Permit or Receipt with security features and issue them to the mining leaseholder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferable with pre-fixed quantity, so the total quantity gets determined for the receipts issued. When the Transport Permit or Receipt barcode gets scanned and invoice is generated, that particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.*

**iv. Checking On Route:**

*The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using the website, Android Application and SMS.*

**v. Breakdown of Vehicle:**

*In case the vehicle break-down, the validity of Transport Permit or Receipt shall be extended by sending SMS by the driver in specific format to report the breakdown of the vehicle. The server will register this information and register the breakdown. The State can also establish a call center, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server or call center.*

**vi. Tracking of Vehicles:**

*The route of the vehicle from source to destination can be tracked through the system using checkpoints, RFID Tags, and GPS tracking.*

**vii. Alerts or Report Generation and Action Review:**

*The system will enable the authorities to develop a periodic report on different parameters like daily lifting report, vehicle log or history, lifting against allocation, and total lifting. The system can be used to generate auto mails or SMS. This will enable the District Collector or District Magistrate to get all the relevant details and shall enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle shall be tracked.*

*The monitoring of mined out mineral, environmental clearance conditions and enforcement of Environment Management Plan will be ensured by the regulatory authority and the State Pollution Control Board or Committee. The monitoring arrangements envisaged above shall be put in place. The monitoring of enforcement of environmental clearance conditions shall be done by the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change and the agency nominated by the Ministry for the purpose.*

*Some of the State has followed the SSMMG-2016 and has also improvised or customized on the provisions given therein, and are successfully in operation. Salient provision adopted at different stages of sand mining in the state of Tamil Nadu is given as Annexure VIII.*

**9.6 Actions against illegal excavation and transport**

*Solapur district administration in Maharashtra had adopted a multi-pronged strategy to penalize the persons involved in illegal excavation and transport which resulted in a significant increase in revenue earned by the state. Following rules and procedures as mentioned in these guidelines will add to the costs of PP. Those involved in illegal activities are not required to bear these costs and this will make their supply in the market cheaper (though illegal). This will put the players running their business by following rules and procedures laid down by the government to disadvantage as far as the selling price is considered. Therefore, it is necessary to come down heavily on those involved in illegal excavation/transport, so that there is no incentive for players to abide by the rules.*

**The following action may be taken to achieve this deterrence against illegal business:**

- 1. The action should be taken under all legal options available simultaneously. Thus, after identifying the case of illegal excavation, storage and/or transport of minor minerals (including sand), fine should be levied as per the land revenue laws/code(s) of the state. In addition, FIR should be lodged in the police station under relevant sections of law including sec 379 IPC. In addition, action under the Motor Vehicle Act, 1989 and relevant rules should initiate to cancel/suspend the driving license of the driver and permit of the vehicle. Further, action should be initiated under provisions in the Income Tax Act, 1961 for unaccounted income and under the Central Goods and Services Act, 2017 for nonpayment of GST. (Earlier this was done under the state act pertaining to Value Added Tax/Sales Tax). Habitual offenders should also be taken up under local state laws for externment and/or preventive action. It is clarified that as per law, it is possible to take all actions under various laws simultaneously for one offence. What is prohibited in law is an action under the same law for the same act more than once.*
- 2. The action should be taken against all persons responsible. Often, there is a tendency to penalize only the drivers of the vehicles. The mafia of illegal mining and transport is much bigger and drivers are only one part of the system. It is necessary to identify all those involved in the offence. It is usually not possible to reach the place of excavation without creating a motorable pathway up to the same through land which may be private land. Such role of such landowners needs to be looked into for each offence and proceeded against simultaneously. Further, the role of vehicle owners needs to be probed. Role of the person who allowed his land to be used for illegal excavation and storage should also be examined. Lastly, the person who purchases such sand should also be probed. The legal proceedings stated above needs to be initiated against all of these together. An attempt should*



*be made to fix the financial responsibility in joint and several ways so that recovery is easier.*

3. *There may be discretion available in law about the extent of the penalty to be levied. If such discretion is very wide, then it is advisable that guidelines may be laid down to reduce such discretion in law for levying penalties. For example, in Maharashtra, Land Revenue Code, fine of any amount of penalty up to thrice the value of the sand can be levied. Solapur district administration had instructed Tahsildars and SDMs not to use discretion and levy the fine of three times the value. Availability of discretion makes junior level functionaries susceptible to pressures and it may also lead to corrupt practices.*
4. *It is emphasized that actions, as stated above, are most important to ensure that the IT-based system works. If these exemplary actions are not taken against everyone, it shall create a strong disincentive to those involved in legal excavation and transportation. For IT-based (or any other) legal system to work, it is necessary to ensure that illegal system stops working altogether.”*

**M.** Hon’ble the Supreme Court of India in State of Bihar and Ors vs. Pawan Kumar and Ors etc (Civil Appeal No. 3661-3662 of 2020) decided on **10<sup>th</sup> November, 2021** considered the essentiality and prerequisite of DSR and held as follows:

*“7. It cannot be in dispute that though the developmental activities are not stalled, the environmental issues are also required to be addressed. A balanced approach of sustainable development ensuring environmental safeguards, needs to be resorted to. At the same time, it also cannot be ignored that when legal mining is banned, it gives rise to mushroom growth of illegal mining, resulting into clashes between sand mafias, criminalization and at times, loss of human lives. It also cannot be disputed that sand is required for construction of public infrastructural projects as well as public and private construction activities. A total ban on legal mining, apart from giving rise to illegal mining, also causes huge loss to the public exchequer.*

*8. Taking into consideration these aspects of the matter, we propose to issue certain interim directions.*

*9. The Tribunal, in the case of Satendra Pandey (supra), has found that the notification dated 15th January 2016, which provided Environmental Clearance to be given by the District Environment Impact Assessment Authority (hereinafter referred to as the “DEIAA”)*

was not in consonance with the judgment of this Court in the case of *Deepak Kumar v. State of Haryana and Others*<sup>2</sup>. The Tribunal therefore in *Satendra Pandey (supra)*, had directed Ministry of Environment, Forest and Climate Change (hereinafter referred to as “MoEF and CC) to take steps to revise the procedure laid down in the notification dated 15th January 2016. It is to be noted that MoEF and CC, in accordance with the directions of the Tribunal, had issued *Enforcement and Monitoring Guidelines for Sand Mining* (hereinafter to referred to as “the 2020 guidelines”) in the month of January 2020. Chapter 4 of the 2020 guidelines deals with identification of possible sand mining sources and preparation of DSR. It will be relevant to refer to Clause 4.1.1 (a), (o) and (p) of the 2020 guidelines:

**“4.1 Identification of possible sand mining sources and preparation of District Survey Report (DSR)**

**4.1.1 Preparation of District Survey Report.**

*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.*

*o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc, shall be avoided. For this, a sub divisional committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as Annexure II. The Sub Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure III. The details of the transportation need to be provided as in Annexure IV.*

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

*siltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure-V. The details regarding cluster and contiguous cluster needs to be provided in Annexure-VI. The details of the transportation need to be provided in Annexure-VII.”*

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

*11. It is further to be noted that Appendix-X of the notification dated 15th January 2016, issued by MoEF and CC also provides for composition of the sub divisional committee:*

*“A Sub Divisional Committee comprising of Sub Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.”*

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

*13. 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. The sub divisional committee consists of various officers from Revenue Department, Irrigation Department, State Pollution Control Board, Forest Department and*

Geology Mining Department of the State Government. They are better equipped to visit the sites and prepare the draft DSR for the concerned district. 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 finalized 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 legalized mining.

14. We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14th October 2020, with the following directions:-

**(i) 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 concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon;

**(ii) 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;**

**(iii) 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.”**

## **N. Conclusions**

### **Issue No. 1**

28. Learned counsel appearing for the MPSEIAA has submitted that the procedure adopted by Mining Department for allotment of mining lease by issuing Notice Inviting Tender (NIT) is a preliminary process and is not a concern of SEIAA. Once the mining lease is allotted and mining plan is prepared and approved by the Mining Department and application is filed before SEIAA for grant of EC. When state land or natural resource is intended to be transferred, resort should be had to public option or transfer by way of inviting tender from the people that would be a sure method of guarantying compliance with the mandate of the Article 14 of the Constitution of India. Duly published auction conducted fairly and impartially is the best method of alienation of natural resources lest there is likelihood of misuse by unscrupulous people, who were only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. The disposal of natural resources is a facet of the use and distribution of such resources.

29. In view of the above, the answer is that where there is transfer of natural resource, the requirement of NIT is necessary and there must be description of area and quantity of mining in the document. If there is any expansion of business in the form of change of area, increasing area or increasing the quantity of sand mining it is within the definition of expansion of business and required fresh EC thus, the description of area and the quantity of mining is essential part to be included in the NIT.

### **Issue No. 2**

30. In light of the settled proposition of law in Goa Foundation vs. Union of India 2014 (6) SCC 738 before transferring EC, environmental status of the sand quarry has to be ascertained. Transfer of EC without taking the

environmental considerations into account is brazen breach of law and abetment of destructive practices of sand mining.

The issue is decided accordingly.

**Issue 3, 4 and 5**

31. The contention of the Applicant/Appellants are that there are discrepancies in the quantity of sand mining sand quarry mentioned in the tender document and that is different in the Environment clearance granted for the specific quarry and the area (Khasra and Rakba) of the sand quarry mentioned in tender document is different in the Environmental Clearance granted for that specific sand quarries and that quantity over which environmental clearance is granted for a specific sand quarry is much above the quantity for which tender was floated over that specific sand quarry. The applicant in Original application No. 96 of 2020 has attached list A-1 (Para-4) which shows the discrepancies in number of mines and list annexure A-3 (Para-5) which shows that excess EC was granted as compared to NIT and there are certain number of mines for which EC was not granted. The list contains 33 numbers including the details of the districts and no detailed reply has been submitted by the MPSEIAA. During the course of hearing of Original Application this Tribunal constituted Committee of Expert members of State Authorities and after examination of some of the records they have filed a detailed chart in which it was found that there were discrepancies in the area of the lease mine and also in the quantity to be excavated. The list attached with the Joint Committee Report (F) shows mismatch not only the area but also in the quantity of sand to be excavated. Considering the discrepancies mentioned in the NIT and the EC granted the state has taken its decision to cancel the contract and a list has been submitted with the detail of 31 appeals/matter (Para 16, 18) relating to district Chhatarpur, Hosangabad and Panna where the lease has been cancelled or handed over and thus it is said that the appeal in these matters are infructuous. Though on the

grounds mentioned above, the appeals no. Appeal No. 25/2021, Appeal No. 27/2021, Appeal No. 31/2021, Appeal No. 37/2021, Appeal No. 60/2021, Appeal No. 49/2021, Appeal No. 48/2021, Appeal No. 30/2021, Appeal No. 42/2021, Appeal No. 39/2021, Appeal No. 45/2021, Appeal No. 69/2021, Appeal No. 29/2021, Appeal No. 50/2021, Appeal No. 36/2021, Appeal No. 41/2021, Appeal No. 35/2021, Appeal No. 32/2021, Appeal No. 02/2021, Appeal No. 05/2021, Appeal No. 38/2021, Appeal No. 34/2021, Appeal No. 33/2021, Appeal No. 03/2021, Appeal No. 04/2021, Appeal No. 51/2021, Appeal No. 53/2021, Appeal No. 57/2021 Appeal No. 54/2021, Appeal No. 64/2021, Appeal No. 55/2021 **stands disposed of** as being infructuous but the points for determination that there is mismatch in the production capacity mentioned in the Notice inviting Tender and the Environmental Clearance and the quantity of sand quarry mentioned in the tender document is different in the Environmental Clearance granted for specific sand quarry and there is Khasra and rakba which were not made clear and there is change in the Khasra no. and also the quantity of the sand mining and all these mining lease where there is change of Khasra no. and increase in the quantity to be excavated are in violation of environmental rules, intended to defeat or defraud the provisions of environmental rules. We direct the MPSEIAA and MPSEAC to refrain themselves from issuing any further EC without actually carrying out the Environment Impact Assessment of the sand quarry and carry out the technical scrutiny of the same.

**Issue No. 6 and 7**

32. The perusal of the record reveals that the quantity of sand which has already been excavated or a sand quarry which was belonging to the previous lease holder has not been subtracted while transferring the environmental clearance in favour of the successful bidder/tenderor and the details of sand quarry has not been mentioned in the tender document and inspite of all these facts the EC has been granted by the MPSEIAA. Madhya Pradesh rules, 2019 provides the Mining Plan which consist the

location of the mines, quantity of mineable sand available in the sand quarry and mining plans shall be prepared only on the basis of actual quantity available/estimated and all the mining operation shall be carried out in accordance with the approved mining plan. The permissible quantity shall be up to the mineable quantity fixed in mining plan and it is required to calculate the mine which has been excavated by the previous lease holder and to reduce and subtract the amount which has already been mined while transferring the EC but the same has not been done by the mining department while proceedings in case of transfer of EC. Accordingly, we are of the view that quantity of sand which has already been excavated over a sand quarry which was belonging to the previous lease holder must be subtracted and in the cases where nothing has been done in accordance with the rules, it is in violation of environmental rules and directly or indirectly result the damage of environment. The issue is decided accordingly. It is further clarified that Section 26 of the MP Rules, 2019 which empowers the operation of the mining till March, 2022 or for two years from date of lease in accordance with the provisions of rule issued under MP Rules, 2019 shall be read with the notification issued by the MoEF & CC as contained in Para 11 Sub Clause 3 which provides the lease in favour of successful bidder, only for two years from the date of commencement of new lease and further provides that it shall be lawful for the new lessee to continue mining operation as per terms and conditions of Environmental Clearance granted to the previous lessee for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance.

**Issue No. 8**

33. Requirement of District Survey Report (DSR), Environmental status of the quarry before transferring EC- As already discussed in above paragraphs, MoEF & CC has issued a guidelines named SSMG, 2016 as well as EMGSM, 2020 and before transferring EC environmental status of the quarry has to



be ascertained and transfer of EC without taking the environmental considerations into account is a brazen breach of law and abetment of destructive practices of sand mining and shall be in violation of Goa Foundation case (Supra). Thus, NIT in absence of any environmental status while transfer of EC should be taken into account in accordance with the sustainable guidelines. The issue is disposed of accordingly.

**Issue No. 9, 10**

34. The applicability of the law laid down by the Hon'ble Supreme Court of India in *State of Bihar Vs Pawan Kumar*.

We have gone through the orders and directions passed by the Hon'ble Supreme Court of India vide order dated 10th November, 2021 in Civil Appeal No. 3661-3662 of 2020 in *State of Bihar Vs Pawan Kumar & Ors*, where in the case of Bihar, certain directions were issued and substituted with reference to preparation of DSR. We deem it appropriate that the guidelines and directions issued by the Hon'ble Supreme Court of India vide order referred above are fully applicable in the present matter and State authorities are directed to act in accordance with direction issued by the Apex Court till the finalization of the DSR. In view of the above reference and in light of the directions issued in Goa Foundation case and the guidelines issued by the MoEF & CC in 2016, 2018 and 2020 referred above, the respondents, the State Authorities and the Mining Department are bound to prepare a District Survey Report.

**O. Considering the facts narrated above, the conclusions and directions are as follows:-**

- I. We direct the State to follow the guidelines issued in Sustainable Sand Mining Guidelines 2016 (SSMG-2016) as well as Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM-2020) and also enforce the mechanism for the preparation of DSR, Environment Management Plan,

Replenishment Studies, Mine Closure Plan, grant of EC, assessment and recovery of compensation, seizure and release of vehicles involved in illegal mining and other safeguards against violation, grievance redressal, accountability of the designated officers and periodical review at higher level of the State.

- II. A mechanism should be developed for periodic inspection by a five-members Committee, headed and coordinated by the SEIAA and comprising CPCB, State PCB and two expert members of SEAC dealing with the subject as directed by this Tribunal in O.A. No. 360/2015.
- III. The Authority constituted/nominated under Section 3(3) of the Environment (Protection) Act, 1986 as envisaged by Hon'ble the Supreme Court in Goa Foundation Vs. Union of India & Ors. and in the matter of T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SSC 61 may take further action. The monitoring must be ensured through the Chief Secretary by holding a meeting and issue the necessary guidelines and actions in accordance with the order passed by this Tribunal in O.A. No. 360/2015.
- IV. 31 appeals relating to 19 districts (Para-18) and the cases as contained in the letter dtd.07.01.2022 (Para-16) issued from the Madhya Pradesh State Mining Corporation Limited whose mining lease have been cancelled or surrendered became infructuous.
- V. The matter relating to 08 cases given in Table-1 (F) & discrepancies and variations as shown in Para 4 and 5, where there is a mismatch of khasra number, area, period or quantity of lease shall be reconsidered by the SEIAA and to take necessary action according to law.

- VI. E-auction/auction/tender should be done in accordance with Sustainable Sand Mining Guidelines 2016 as well as Enforcement and Monitoring Guidelines for Sand Mining 2020 and only where details of approved DSR and Annual Replenishment Study are available.
- VII. EC should be accorded only to the limit of auctioned and sustainably permissible quantity.
- VIII. In cases where ECs are transferred, present status of mining areas should be ascertained through ARS and DSR. ECs which have been transferred without the assessments of present environmental status, damages must be revisited by MPSEIAA before any mining is taken up on the basis of transferred ECs.
- IX. The orders and directions passed by Hon'ble Supreme Court of India vide order dated 10<sup>th</sup> November, 2021 in Civil Appeal No. 3661-3662 of 2020 in *State of Bihar Vs Pawan Kumar* must be complied with and to be effected in the State of Madhya Pradesh also.
- X. The conclusions as drawn in **Para-N** referred above must be complied with by the MPSEIAA and SEAC while dealing with the mining leases.

**Accordingly, all the Appeals and Original Applications stand disposed of.**

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

Dr. Arun Kumar Verma, EM

Dr. Afroz Ahmad, EM

February 22, 2022  
Appeal Nos. 25/2021 to 27/2021(CZ),  
and other connected matters  
PU