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Writ Petition No. 9416 (M/B) of 2010

Mohd. Kausar Jah vs. Union of India and others

AND

Writ Petition No.10025 of 2010 (M/B)

Shyam Bahadur Sakhya

Vs.

Union of India & Ors.

Appearance:

For the petitioner: Mr. R.N. Trivedi, Sr. Advocate assisted by
Mr. Akhilesh Kalra, Advocate.
Mr. Mohd. Arif Khan, Sr. Advocate assisted by
Mr. Gaurav Mehrotra, Advocate.

For the respondents: Mr. S.P. Singh, Sr. Advocate assisted by
Ms. Pushpila Bisht, Advocate.
Mr. J.N. Mathur, Addl. Advocate General &
Dr. Ashok Nigam, Addl. Solicitor General of India.

Hon'ble Ferdino I. Rebello, Chief Justice.
Hon'ble Devi Prasad Singh, J.

(Delivered by: Justice Ferdino I. Rebello, CJ)

Both the writ petitions are being disposed of by a common judgment as the relief and challenges are inter-connected. We may first set out and deal with the facts and issues of Writ Petition No.9416 (M/B) of 2010.

The petitioner has moved this Court complaining of violation of Notification No. S.O. 1533, dated 14.09.2006 issued by the Ministry of

Environment and Forest, Government of India, in exercise of powers under sub-section 1 and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (hereinafter referred to as 'Environment Act') read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 (hereinafter referred to as 'Environment Rules'), which was issued in supersession of the earlier Notification No. S.O. 60 (E) dated 27th January, 1994. The allegation is that the State of U.P. and its authorities have failed to carry out the directions as contained in the notification.

2. It is the petitioner's grievance that the authorities of the State of U.P., in abuse of their statutory powers, are permitting and encouraging illegal mining activity by grant of mining leases without any conditions for obtaining prior environmental clearance before commencement of mining operations, in contravention of Central as well as the State Acts and the Rules. Thus, it is submitted that the continuation of illegal mining (mining without prior environmental clearance) is in teeth of the Hon'ble Supreme Court's judgments dated 18.3.2004 and 8.5.2009 in Writ Petition (Civil) No. 4677 of 1985 (**M.C. Mehta vs. Union of India and others**) wherein it has been held that no mining, including mining of minor minerals under any lease, permit or grant, can be allowed without prior environmental clearance.

3. A decision was taken for protection of environment and ecology considering India's participation and adoption of the Stockholm Declaration, which was taken at the United Nation Conference on Human

Environment, Stockholm in June, 1972. Pursuant to that, the Environment Act had been enacted, so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property. Petitioner then refers to various provisions of the Environment Act and the Rules. It is the petitioner's contention that Notification No. S.O. 1533 dated 14.9.2006 is applicable also to mining of minor minerals and there can be no renewal or grant of fresh licence after the Notification of 14.9.2006 without having prior environmental clearance. In the State of U.P., it is set out, that leases have been issued in utter disregard and violation of the notification. Though, the petitioner had been representing the issue, no action has been taken to protect the environmental degradation. The petitioner has made one such representation on 27.8.2010.

4. Petitioner states that the concept of "Mining" within the Principle of Sustainable Development comes within the concept of "Balancing" whereas mining beyond the Principle of Sustainable Development comes within the concept of "Banning". It is a matter of degree. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development. They are parts of precautionary principle.

5. The petitioner points out that in State of Uttar Pradesh in district Saharanpur alone, a number of leases have been granted by the District authorities after the issuance of notification dated 14.9.2006 without adhering to the requirement of obtaining prior environmental clearance

before commencement of mining operations from the statutory authorities, such as, State Level Environment Impact Assessment Authority (EIAA) or the Central Government, as the case may be. The petitioner sought information from the district Administration, Saharanpur to find out as to whether the clearance from the State Level EIAA or the Central Government had been obtained. The petitioner was given information about the grant of mining lease in respect of various areas and that the same were granted for excavation of minor mineral after 14.9.2006 for the period 2008-2012. So far as the Information regarding environmental clearance is concerned, the petitioner was informed that there is only one person who has obtained the environmental clearance on 20.08.2007, and that about 29 other Mining Projects located in Saharanpur district of U.P. have been in process in MOEF. It is the case of the petitioner, therefore, that these Mining Projects of minor minerals do not have environmental clearance as on date, and thus, as these Projects do not have the requisite environmental clearance, cannot be made operational, as the same is contrary to the provisions of the Environment Act and the Rules and the Notification.

6. It is not necessary to refer to the other pleadings and the grounds raised. The petitioner has prayed for the following reliefs:-

- (i) “Issue a writ, order or direction in the nature of Mandamus, directing the opposite party no. 2 to consider and decide the representation dated 27.8.2010 made by the petitioner and is contained in Annexure No. 2 to this writ petition, at the earliest.

(ii) Issue a writ, order or direction in the nature of Mandamus, directing the opposite parties to immediately stop the mining activities in all the Districts of Uttar Pradesh and particularly Saharanpur, till the grant of Environmental Clearance as per the Ministry of Environment and Forest's Notification No. S.O. 1533, dated 14.09.2006; including the 36 minor mineral leases operating in the District of Saharanpur without the required environment clearance.”

7. On behalf of the State, a counter affidavit was filed by Sri Amar Nath, Under Secretary, Government of Uttar Pradesh, Industrial Development Department, Geology and Mining Section. It is set out therein that mining leases for excavation of minor minerals, exclusively found in river-beds, have been granted in favour of persons, whose names have been mentioned in Annexure-19 to the petition, under the provisions of the Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as the Act, 1957) read with the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the Rules, 1963), after obtaining 'No Objection Certificate' from the concerned Divisional Forest Officer of the Forest Division. It is next stated that Notification No. 1533 dated 14.9.2006, issued by the Government of India, Ministry of Environment and Forests is not applicable to minor minerals especially in the areas, which are situated on the river-beds. It is stated that the petitioner, though, has filed the P.I.L., has not impleaded the parties likely to be affected and as such, the P.I.L. as filed is not maintainable. Such a petition, as set out, lies at the instance

of the third party only when it is shown that the affected persons are unable to approach the Hon'ble Court. Reference is made to a judgment in **Jayant Achyut Sathe vs. Joseph Bain D'Souza and others dated 04.09.2008 (MANU/SC/3966/2008)**.

An objection was also raised to the Lucknow Bench hearing the petition by setting out that the formal orders have been issued by the District Officer, Saharanpur, which has been challenged by the petitioner. This objection, in our opinion, has no merit and hence rejected at the threshold. The counter affidavit further sets out that mining leases of minor minerals for areas measuring above 5 hectares have been granted or renewed without getting clearance of the Environmental Authority. Generally, the minor minerals, which are exclusively found on the river-bed surface, the areas are 5 hectares or above; and in respect of other mineral minerals, the mining lease areas are below the limit of 5 hectares. Mining leases of the river bed for minor minerals are being granted for the last 5 decades and all the areas, which have been granted on mining leases are not covered by the definition of new areas, as required vide notification dated 14.9.2006 for obtaining prior clearance from the Environmental Authority. The difference between 'minerals' and 'minor minerals', it is contended, has been explained by the Supreme Court in a number of cases. Reliance is placed on the judgement of the Supreme Court in **D.K. Trivedi and others vs. State of Gujarat, 1986 (Supp) SCC 20**.

8. In respect of the second query of the Court about the implementation of the procedure, as laid down in the notification dated 14.6.2006, it is submitted that it is only applicable to mining leases of minerals, which are granted under the provisions of The Mineral Concession Rules, 1960. Reliance has been placed on a judgment in **Cochin Company vs. Commissioner of Income Tax, Kerala**, (MANU/SC/0098/1967) wherein the Supreme Court observed that the word 'new' is not defined in the Income Tax Act. The word 'new' means 'not existing before, now made, or brought into existence, for the first time'. The expression 'new' must, therefore, be construed in this sense and in a contra distinction and antithesis to the word 'used'. It is submitted that in view of the aforesaid, the State Government granted the mining leases of minor minerals in those areas, where the mining operations were going on traditionally since a long time. Hence, the EIA notification dated 14.9.2006 is not applicable. The respondent-State has otherwise contested the contentions as raised on behalf of the petitioner and has relied upon various authorities.

9. On behalf of the Union of India, a counter affidavit was filed by Ritu Raj Singh, Deputy Conservator of Forest, Regional Office of the Ministry of Environment & Forests, Government of India, New Delhi located at Lucknow. Dealing with the EIA Notification of 2006, it is submitted that the Notification is applicable since 14.9.2006, which requires that prior environmental clearance be obtained under the provisions thereof as per the procedure prescribed for mining of minerals

in respect of all new projects or activities irrespective of the nature of minerals i.e., major or minor, with lease area of 5 hectare and above. The Notification, 2006 categorized the mining projects in two categories namely, Category 'A' and Category 'B' based on the lease area. It is further set out that mining of minor minerals did not require environmental clearance prior to 14.9.2006 and that Ministry of Environment & Forests has issued a clarificatory Circular dated 02.07.2007 clarifying the applicability of EIA Notification, 2006 in respect of mines operating prior to coming into force of the EIA Notification. As such, the State Government can execute the mining lease and only thereafter can any mining operations be carried out. Continuation of mining without requisite environmental clearance as is mandatory under the Notification, 2006 would amount to violation of Environment Act, 1986.

The Ministry of Environment and Forests has prescribed Terms of Reference (TORs) to 31 projects of Saharanpur District and one project from Muzaffarnagar District of Uttar Pradesh relating to river bed sand mining, as per the provisions of the EIA Notification, 2006. The permission to operate the mine merely on the basis of TORs and / or mine lease cannot be automatic unless the proposal has been appraised as per the procedure prescribed under the Notification, 2006 and granted environmental clearance. It is also set out that Ministry of Environment and Forests has not received any application of river bed sand mining for environmental clearance from the State of Uttar Pradesh for which TORs

were prescribed. Thus, insofar as the Union of India is concerned, they are clear that sand mining, though minor mineral, requires environmental clearance under the Notification of 2006.

10. An application for intervention had also been made on behalf of one Shyam Bahadur Sakhya of district Badaun, who also appears to have applied for lease deed for an area namely, Survey No. 2 to 28 measuring 15.28 hectare situate in village Gangwas alias Jafrabad, Tehsil and District Bulandshahr, which was opened for mining by the State Government and thereafter the same has been leased out to others and once again when the area became available for re-grant, the applicant applied for the aforesaid area and the same was leased out in favour of the applicant for a period of 3 years between 1.8.2008 upto 31.7.2011. The intervener has been allowed to intervene and address the Court.

11. From the pleadings in this petition, the issues which arise for consideration are: (i) *Whether the notification of 14.9.2006 as amended by notification dated 1st December, 2009 applies to minor minerals;* (ii) *Whether it applies to renewal of leases in respect of minor minerals which leases have been granted earlier to the issuance of the notification dated 14.9.2006.*

12. At the outset, we may mention that strong reliance has been placed on a judgment of the High Court of Madhya Pradesh, principal seat at Jabalpur, in the case of **Ajay Dubey vs. State of M.P. & others, Writ Petition No. 1574 of 2008**, and other petition decided on 29.9.2010. In that case, in a Public Interest Petition, relief was sought to stop the

operations of all such mines which were being run notwithstanding the fact that closure orders had already been issued by the concerned authorities and for constitution of a High Level Committee to enquire into the matter pertaining to grant of permission for such mining operations. Matters pertained to minor minerals. The learned Bench of the Madhya Pradesh High Court noted Rule 49 of the Madhya Pradesh Minor Mineral Rules, 1996, which contains a non-obstante clause and provides that provisions of Rules 44 to 48 shall not apply to sand and 'bajri' quarrying. The question before the Court was whether, in those circumstances, the notification dated 14.9.2006 issued by the Central Government under Rule 5 (3) of Environmental Protection Rules was applicable in respect of quarrying operation of sand and 'bajri'. After considering the provisions of the MMRD Act and other laws, the Court was pleased to hold that considering Section 15 of the MMRD Act, Rule 49 of the 1996 Rules is a validly enacted provision of law. Reference was made to Rule 44 of the 1996 Rules which provides for protection of environment and control of pollution while conducting quarrying operation, as also Rule 46, which provides for precautions against damage to public places, air pollution and noise pollution and Rule 49, which provides for relaxation from protection of environment.

The Court noted that sub-rule (1) of Rule 49 of the 1996 Rules provides that provisions of Rules 44 to 48 of the 1996 Rules shall not apply to sand and 'bajri' quarry. The Court then proceeded to hold that by sub-rule (1) of Rule 49 of the 1996 Rules, the provisions of Air

(Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 and the Rules made thereunder have been made inapplicable in respect of sand and 'bajri' quarry. Considering Section 24 of the Environment Act, the Court was pleased to hold that non-obstante clause contained in Section 24(1) of the Environment (Protection) Act, 1986 does not apply to Rule 49 of the 1996 Rules and, therefore, the contention raised on behalf of the counsel for the petitioners that notification dated 14.9.2006 issued under Rule 5(3) of Environment (Protection) Rules, 1986 will prevail over Rule 49 (1) of the 1996 Rules in view of Section 24 of the Environment (Protection) Act, cannot be accepted.

The Court then observed that the Environment (Protection) Act, 1986, namely, Act No. 29 of 1986 came into force w.e.f. 19.11.1986 whereas Section 15(1A) of the MMRD Act was enacted vide Act No. 37 of 1986 subsequent to Act No. 29 of 1986 and came into force on 10.2.1987. In these circumstances, the Court was pleased to hold that the legislative intent or mandate is that the rule framed by the State under Section 15(1A) of MMRD Act should prevail over all previous enactments on the subject and for this reason, was pleased to dismiss the petition.

Learned counsel for the respondents informs us that the Special Leave Petition against the said judgment has been dismissed.

13. Insofar as this judgment is concerned, we may point out that in the State of Uttar Pradesh, there is no similar rule like Rule 49 as in force in

the State of Madhya Pradesh. Secondly, the Environment (Protection) Act, to that extent, is a special Act dealing with the protection of environment and ecology. The MMRD Act, on the other hand, is in respect of development and regulation of minerals. Though attention of the Court was invited to the judgment in **M.C. Mehta (supra)**, yet it did not consider the paras 52 and 53 which directly dealt with the issue of applicability of the provisions of the Environment Act of which Section 24 reads as under:-

“24. **Effect of other laws.-** (1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.”

The State Government acts as delegate under the MMRD Act. The provision of the Rules are to be read into the Act, but yet it is subordinate legislation. Both are Central Legislations. In our opinion, however, these are two special legislations, which may both be general legislations in their respective fields. Section 24 would have to be given its due meaning. It will have overriding effect. If under the Environment Act, provisions have been made for environmental clearance, it will not be

open to a delegate under the provisions of MMRD Act to exclude the applicability of such provision by making subordinate legislation to the same or similar effects. The provisions made under the Environment Act and the rules framed thereunder will have to prevail over the provisions of the MMRD Act.

14. On the other hand in **Vijay Bansal and others vs. State of Haryana and others, CWP No. 20134 of 2004, decided on May, 15, 2009**, the petitioner had approached the Punjab and Haryana High Court at Chandigarh in the matter of indiscriminate and callous mining operations in the lower Shivalik hills in District Panchkula. In the various counter affidavit filed by the State, it was set out that all the minor minerals vest with the State Government, who is empowered to make rules for regulating the quarries or other concessions in respect of minor minerals and for the purposes connected therewith. The Environment Department has filed an affidavit setting out that mining contractors are required to get environmental clearance from competent authority prior to the commencement of mining activities. Reference was to notification dated 14.9.2006. The petitioner therein contended that notification has no applicability in the case of minor minerals. Issue no. 3 was whether the mining activities fall within the ambit of notification dated 14.9.2006.

The learned Division Bench held that every new contract, lease or licence of a mining area or renewal thereof shall amount to the start of a new project or activity, attracting the regulatory measures enumerated by the notification dated 14.9.2006. Issue no. 4 was whether these mining

activities should be banned or allowed to continue till the prior environmental clearance is granted by the Central Government in the Ministry of Environment and Forests. The Court also observed that if the total area where the mining activities are permitted or which can be mined in future, is more than 50 hectares, the mandatory requirement of prior environmental clearance cannot be defeated through artificial means like division of the mining area into different quarries or zones of smaller sizes. The Court further held in Issue no. 5, whether the prior environmental clearance is to be obtained by the State of Haryana or by the contractor/lessee? The Court held that that apart, whenever the State ventures into commercial activities like the conditional sale of its monopolistic proprietary rights over the minerals to improve its fiscal conditions, it shall have to abide by the consequential legal obligations, rather with stricter parameters. The Court, then proceeded to hold that the State Government shall itself incur the entire expenditure in the discharge of its afore-stated legal duties but it shall be entitled to apportion the said expenditure amongst the successful bidders. Thus, the Punjab and Haryana High Court has taken a view that prior environmental clearance is required under notification dated 14.9.2006.

15. In **T.N. Godavarman Thirumulpad vs. Union of India (UOI) and others** (MANU/SC/1726/2009), the Supreme Court was dealing with the issue of mining in the Aravalli Hill Range. The Court was informed that the mines were for excavating major minerals but what was actually being done by the mining operators was extracting minor

minerals from the leased area. The question before the Court was, whether it would be feasible or in the larger interest to allow those mining operators to carry out any mining activities on the basis of the earlier licenses? After considering various contentions, the Court was pleased to observe in paragraph 6, which reads as under:-

“6. Before any mining operations commence, the leaseholders shall obtain all statutory clearances including environmental clearance in terms of MOEF Notification dated 14.9.2006 and also the approval under the Forest Conservation Act.”

Thus, though the issue was directly in question, the Hon’ble Supreme Court even in case of minor minerals, has directed environmental clearance in terms of Notification dated 14.9.2006.

16. The notification dated 14.9.2006 has been issued in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O. 60 (E) dated 27th January, 1994, except in respect of things done or omitted to be done before such supersession. The Notification further directs that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and / or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central

Government or, as the case may be, by the State Level Environment Impact Assessment Authority.

In terms of paragraph 2 of the notification, the projects or activities, which were required prior environmental clearance, have been categorized in group 'A' and 'B'.

Insofar as mines are concerned in respect of area less than 5 hectares and more than 50 hectares, has been categorized in 'B'. In other words, environmental clearance at the State Level by the State Environment Impact Assessment Authority (SEIAA). That notification has been amended by notification dated 1.12.2009.

17. There was some doubt whether the notification would apply to 'renewal'. It appears that the federation of Mining Association of Rajasthan and others had raised concerned regarding applicability of EIA Notification dated 14.9.2006 to mining leases of 5 hectares of major minerals and mining leases of minor minerals which have been in operation before the said notification came into force. It was clarified that mining projects which did not require environmental clearance under EIA notification 1994, would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal, if there is no increase in lease area and or there is no enhancement of products.

18. The matter of renewal under the Forest (Conservation) Act, had come up for consideration in the case of **Ambica Quarry Words etc. vs. State of Gujarat and others**, AIR 1987 Supreme Court 1073. The issue

before the Court was whether the leases for quarrying purposes granted before coming into operation of the Act, would be affected. Renewals were sought thereof. Reference was made to Gujarat Minor Mineral Rules, 1966, which provides for renewals. The said Rule was considered viz-a-viz the Rajasthan Minor and Mineral Concession Rules, 1958. The construction there was of the word 'may'. The Court observed that *'whether the power is one coupled with a duty must depend upon the facts and circumstances of each case and must be so decided by the Courts in each case. Lord Blackburn observed in the said decision that enabling words were always compulsory where the words were to effectuate a legal right'*.

Coming to issue of renewal, the Court observed that the rules dealt with a situation prior to the coming into operation of 1980 Act and considering the concept that power coupled with the duty enjoined upon the respondents to renew the lease stood eroded by the mandate of the legislation as manifest in 1980 Act in the facts and circumstances of these cases. The Court then observed that *'The primary duty was to the community and that duty took precedence, in our opinion, in these cases. The obligation to the society must predominate over the obligation to the individuals.'*

The Court further observed that all interpretation must subserve and help implementation of the intention of the Act and prior permission was required before the lease was renewed.

19. We may now consider the judgment in **M.C. Mehta Vs. Union of India & Ors.**, AIR 2004 S.C. 4016. The Supreme Court was considering the issue of mining activity in an area upto 5 kilometers from the Delhi Haryana border on the Haryana side of the ridge and also in the Aravalli hills and whether it causes environment degradation and what directions are required. Under consideration was the notification dated 27.1.1994, the earlier notification. The contention sought to be urged was that a holder of a mining lease does not require clearance under the Environmental Laws. To answer the issue, we may reproduce para 52 of the judgement, which reads as under:-

“52. The grant of permission for mining and approving mining plan and the scheme by the Ministry of Mines, Government of India by itself does not mean that mining operation can commence. It cannot be accepted that by approving Mining Plan and Scheme by Ministry of Mines, Central Government is deemed to have approved mining and it can commence forthwith on such approval. Section 13 of the MMRD Act and the Rules made in exercise of powers under the said section, deal, inter alia, with the aspect of grant of mining of lease and not commencement of mining operations. Rules made under Section 18, however, deal with commencement of mining operations and steps required to be taken for protection of environment by preventing or controlling any pollution which may be caused by mining operation. A mining lease holder is also required to comply with other statutory provisions such as Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution)

Act, 1974, Forest (Conservation) Act, 1980. Mere approval of the mining plan by Government of India, Ministry of Mines would not absolve the lease holder from complying with the other provisions.”

Thus, it would be clear that the holder of a mining lease by merely holding a lease cannot commence operations. He has also to comply with the other salutatory provisions including the Environmental Laws. Paragraph 53 of the said judgment is also relevant, which reads as under:-

“**53.** Rule 31 to 41 contained in Chapter V of the Mineral Conservation and Development Rules, 1988 framed under Section 18 of MMRD Act deal with the measures required to be taken by the lessee for the protection of environment from any adverse effect of mining or irreversible consequences thereof. These Rules, inter alia, provide that every holder of a mining lease shall take all possible precautions for the protection of environment and control of pollution while conducting mining operations in the area, shall, wherever top soil exists and is to be excavated for mining operations, remove it separately and utilize for restoration or rehabilitation of the land which is no longer required for mining operations. The holder is also required to take steps so that the overburden, waste rock, rejects and fines generated during prospecting and mining operations or tailings, slimes and fines produced during sizing, salting and beneficiation or metallurgical operations shall be stored in separate dumps which shall be properly secured to prevent escape of material therefrom in harmful quantities which may cause degradation of environment. Wherever possible, the waste rock, overburden etc. shall

be back-filled into the mines excavation with a view to restoring the land for its original use as far as possible and wherever it is not feasible during mining operation, the waste dumps shall be suitably terraced and stabilized through vegetation or otherwise. It is also required that the phased restoration, reclamation and rehabilitation of lands affected by mining operation shall be undertaken which work shall be completed before the conclusion of mining operations and the abandonment of mine. Air pollution due to fines, dust and smoke or gaseous emissions during mining operations and related activities shall be controlled and kept within 'permissible limits' specified under various environmental laws of the country including the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 by the holder of mining lease. Further, noise arising out of such operations shall be abated or controlled by the lessee at the source so as to keep it within the permissible limit. The mining operations shall be carried out in such a manner so as to cause least damage to the flora of the area and nearby areas. Every holder of mining lease shall take immediate measures for planting in the same area or any other area as selected by the authorized officer and not less than twice the number of trees destroyed by reason of any mining operation and look after them during the subsistence of the licence/lease and restore, to the extent possible, other flora destroyed by mining operations."

The Court then in para 73 of the judgment addressed itself with the issue that the notification is prospective, but whether it would be applicable when the aspect of renewal comes up for consideration after

the issue of notification. The Court held that the grant of renewal is a fresh grant and must be consistent with law and consequently held that the leases, which come up for renewal after the notification dated 27.1.1994 would also have to have environmental clearance.

20. We may also refer to some other material on the effect of sand mining. An inspection report on mining of minor minerals in areas of district Saharanpur in the State of Uttar Pradesh, was carried out pursuant to the directions by this Court dated 6.3.2009 in Writ Petition No. 1580 (M/B) of 2009 (**Noor Mohammad vs. State of U.P. and others**). The following are the conclusions and recommendations of the said report:-

- “1. The locations mentioned in areas fall in parts of Yamuna river basin.
2. Mining activities in all the working areas as indicated to the extent given report have been carried out in irregular, uneven, sporadic pits in unsystematic manner.
3. The mining activity was not going on within the lease area during the inspection in most of the cases but it is observed outside the granted areas. The use of JVC etc. are not seen for mining but the JVC Machines are observed at the crushing sites. Mining is carried out by manual means using simple hand tools like spades, pickaxe, pans and screens.
4. Mining activities in the gaps between the two consecutive leases and beyond their respective legally granted mining lease areas have been observed in all the areas covered under inspection on 24th & 25th November 2009.

5. Irregular, uneven and unsystematic mining operations which are spread over the large area in number of pits of varied dimensions may cause the damage to the river course and near by agricultural land.
6. In all the inspected lease areas boundary pillars have not been observed. The permanent boundary pillars need to be erected and maintained as per the demarcation of leased areas done by the State Govt.
7. Mining leases should be granted over the continuous stretch in blocks to one particular lessee so that unsystematic mining activities in the form of several small size, sporadic pits will be ruled out.
8. Mining should be carried out from one and in systematic manner with depth restriction upto 3 meters. Mining work should be strictly kept at safer distance from the riverbank. Mining leases where the river course has not sufficient width should not be granted. Mined out areas after the completion of the mining activities should be restored back to its original shape and use. Wherever river banks have already been damaged due to mining activities should be identified and corrective measures to minimize further damage may be taken by constructing of wire created retaining walls.
9. Deployment of heavy machinery for extraction, loading and transportation of mineral should not be allowed without the prior permission of DGMS/DM.
10. Restoration, reclamation or rehabilitation of the mined out area may be carried out.
11. The condition of the village approach roads indicated over loading of mineral in vehicles which ply over the kutchra road is also causing air pollutions.

12. The mining in the private land particularly agricultural level should only be allowed after obtaining the NOC from the respective land owners.
13. There is need for revision of cadastral (Khasra) maps which are very old hence the land use and topography of area has changed.
14. Modern scientific tools should be used for demarcation of lease area.
15. There is need for granting the lease as per Survey of India map and leased area should be demarcated by coordinates (latitude and longitude).
16. In order to ensure systematic mining by forming regular faces, the lessee may be allowed to win all type of material including soil/sand.
17. Assessment of quantity of mineral proposed to be dispatched from leased area should be done scientifically and accordingly the lessee may be given MM-11.
18. The manpower needs to be enhanced for effective control of illegal mining.
19. There is possibility that illegal mining is being done not only by the authorized lessee but also by persons whom leases have not been granted. Therefore, all the mineralized area needs to be kept under strict surveillance by the concerned Executive authorities.
20. However, subletting of leases cannot be ruled out.
21. Involvement of local authorities at village level for providing information to the district authorities regarding illegal mining should be considered.
22. The mining leases of 5 hectares and more are operating without obtaining environment clearance from the MOEF. It is violation of Environment Act which calls closure of these mines.

The inspection indicates violation of statutory provisions before granting lease and during the mining operation as observed by the committee.”

21. The Government of India, Ministry of Environment & Forests, New Delhi has issued the report of the Group on Environmental Aspects of Quarrying of Minor Minerals. This was in the context of report regarding adverse impacts on lakes, river beds and groundwater due to quarrying / mining of minerals. The Group considered the various aspects as also the definition of minor minerals and submitted its report.

Based upon the Report and Recommendations, the Ministry of State (Independent Charge) Environment & Forests, Government of India addressed through letter dated 1st June 2010 to all the Chief Ministers setting out some key recommendations of the group, requesting that these recommendations be incorporated in the Mineral Concession Rules for mining of minor minerals, which reads as under:-

- Minimum size of mine lease should be 5 ha.
- Minimum period of mine lease should be 5 years.
- A cluster approach to mines should be taken in case of smaller mine leases operating currently.
- Mine plans should be made mandatory for minor minerals as well.
- A separate corpus should be created for reclamation and rehabilitation of mined out areas.
- Hydro-geological reports should be prepared for mining proposed below groundwater table.
- For river bed mining, leases should be granted stretch wise, depth may be restricted to 3m

/ water level, whichever is less, and safety zones should be worked out.

- The present classification of minerals into major and minor categories should be re-examined by the Ministry of Mines in consultation with the States.

I would request you to examine the report and issue necessary instructions for incorporating the recommendations made in the report in the Mineral Concession Rules for mining of minor minerals, framed by your Government under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.”

22. Parliament enacted The Mines Act, 1952 with an object to regulate the mining operations of natural resources. “Minerals” has been defined under Section 2 (jj) to mean all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulic, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum;). It will thus be clear that all substances, which can be obtained from the earth by various process of mining, digging etc. are defined as “Minerals”. Section 3 then sets out that Sections 7, 8, 9, 40, 45 and 46 shall not apply to any mine engaged of various substances as set out therein. Sections 7, 8 and 9 are excluded, which pertain to inspections by the authorities as set out therein. Section 40 pertains to employment of persons below eighteen years of age. Section 45 pertains to prohibition of the presence of persons below

eighteen years of age in a mine and Section 46 pertains to employment of women in a mine. Apart from that, all the other provisions are applicable.

Power has been conferred in the Central Government to make regulations and rules. Rules have been framed, which are known as the Mines Rules, 1955 (hereinafter referred to as the Mines Rules). The said Rules are not necessary for consideration of the controversy, which is the subject matter of the present petition.

23. The Mines and Minerals (Regulation & Development) Act, 1957 (hereinafter referred to as the 'MMRD Act') is the other legislation which we have to consider. Entry 54 of the List I-Union List speaks of regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in the public interest. There is another entry being Entry 23 of List II, which provides for regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union. Thus, this List confers powers to the State Legislature to legislate as regards regulating of mines and mineral development, subject to legislation made by the Parliament under Entry 54, List I. Parliament, under List I Entry 54 has enacted the MMRD Act.

24. Under Section 3 (a) of MMRD Act, minerals have been defined to include all minerals except mineral oils. Mining lease has been defined under Section 3 (c) to mean a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such

purpose and mining operations have been defined under Section 3 (d) to mean any operations undertaken for the purpose of winning any mineral.

Next relevant provision is Section 3 (e), which defines Minor Minerals, reads as under:-

“(e) “minor minerals” means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;”

Section 18 then confers a duty to the Central Government to take steps for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for that purpose to make rules.

25. Under the MMRD Act, Rules have been framed known as the Mineral Concession Rules, 1960. Rule 22 sets out that an application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I. Rules then provide for various procedural steps. Rule 24A provides for renewal of mining lease.

26. It may be pointed out that minerals under the MMRD Act have been categorized into various groups. The application for a mining lease and or renewal has to be made to the State Government then after following certain procedural steps, the decision taken by the State Government for grant of mining lease of the area of mining lease has to

be forwarded to the Central Government. Rule 27 sets out the conditions which every mining lease shall be subject to.

27. Under the MMRD Act, Rules have also been framed, namely, the Mineral Conservation and Development Rules, 1988 (hereinafter referred to as the Conservation Rules, 1988). Chapter-V deals with the Environment. Rule 31 sets out that every holder of prospecting licence or a mining lease shall take all possible precautions for the protection of environment and control of pollution while conducting prospecting, mining, beneficiation or metallurgical operations in the area.

28. With this background is sand a minor mineral? In **Som Datt Builders Ltd. vs. Union of India (UOI) and others**, (2010) 1 SCC 311, the issue before the Supreme Court was whether “ordinary earth” used for filling or levelling purposes in the construction of embankments, etc. is a “minor mineral”. After noting the definition of Mineral most specifically Section 3 (e) of the MMRD Act, the Supreme Court was pleased to consider various judicial pronouncements as to what is a mineral. Reliance was placed on an earlier judgment in the case of **Bhagwan Das vs. State of U.P. and others**, (1976) 3 SCC, 784, where the issue was whether the brick-clay is a minor mineral within the meaning of MMRD Act. We may quote the following passage from the judgment:-

“...In the context of the Mines and Minerals (Regulation & Development) Act, we have no doubt that the word 'mineral' is of sufficient amplitude to include, 'brick-earth'. As already observed by us, if the expression

'minor mineral' as defined in the Act includes 'ordinary clay' and 'ordinary sand', there is no earthly reason why 'brick-earth' should not be held to be 'any other mineral' which may be declared as a 'minor mineral'. We do not think it necessary to pursue the matter further except to say that this was the view taken in *Laddu Mal v. State of Bihar*, *Amar Singh Modilal v. State of Haryana* and *Sharma & Co. v. State of U.P.* We do not agree with the view of the Calcutta High Court in *State of West Bengal v. Jagdamba Prasad*, that because nobody speaks of 'ordinary earth' as a mineral it is not a minor mineral as defined in the Mines and Minerals (Regulation & Development) Act.”

The Court then held that 'ordinary earth' was a 'minor mineral'. Reference was also made to Black's Law Dictionary (Eighth Edition), which reads as under:-

“**mineral**, n. 1. Any natural inorganic matter that has a definite chemical composition and specific physical properties that give it value “most minerals are crystalline solids”. [Cases: *Mines and Minerals* 48. C.J.S. *Mines and Minerals* “4, 140-142.] 2. A subsurface material that is explored for, mined, and exploited for its useful properties and commercial value. 3. Any natural material that is defined as a mineral by statute or caselaw.”

It will, thus, be clear that even 'ordinary earth' for the purposes of the MMRD Act is a 'mineral'.

29. In **D.K. Trivedi & Sons and others vs. State of Gujarat and others**, 1986 (Supp) Supreme Court Cases, 20, the expression 'mineral' had come up for consideration. We may gainfully reproduce the following observation from paragraph 29 of the judgment, which reads as under:-

“29. The term “minerals” is defined by clause (a) of Section 3 as including “all minerals except mineral oils”. This definition would thus include minerals which are minor minerals as also minerals other than minor minerals. The term “minor minerals” is, however, separately defined by clause (e) because the power to make rules in respect thereof is vested by Section 15(1) in the State Governments while the power to make rules with respect to minerals other than minor minerals is vested in the Central Government. The word “minerals” in different sections of the 1957 Act is used with the meaning assigned to it by clause (a) of Section 3, that is, as denoting “all minerals except mineral oils”, unless the context requires otherwise, and where the Act wishes to make a distinction between minor minerals and minerals other than minor minerals, it does so expressly.”

We may also refer to the following observation from paragraph 33 of the judgment, which reads as under:-

“33. ...The particular matters in respect of which the Central Government can make rules under sub-section (2) of Section 13 are, therefore, also matters with respect to which under sub-section (1) of Section 15 the State Governments can make rules for “regulating the grant of

quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith”. When Section 14 directs that “The provisions of Sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals”, what is intended is that the matters contained in those sections, so far as they concern minor minerals, will not be controlled by the Central Government but by the concerned State Government by exercising its rule-making power as a delegate of the Central Government. Sections 4 to 12 form a group of sections under the heading “General restrictions on undertaking prospecting and mining operations”. The exclusion of the application of these sections to minor minerals means that these restrictions will not apply to minor minerals but that it is left to the State Governments to prescribe such restrictions as they think fit by rules made under Section 15(1). The reason for treating minor minerals differently from minerals other than minor minerals is obvious. As seen from the definition of minor minerals given in clause (e) of Section 3, they are minerals which are mostly used in local areas and for local purposes while minerals other than minor minerals are those which are necessary for industrial development on a national scale and for the economy of the country. That is why matters relating to minor minerals have been left by Parliament to the State Governments while reserving matters relating to minerals other than minor minerals to the Central Government.”

30. In **M/s S.S. & Company vs. Orissa Mining Corporation Limited**, AIR 2009 Supreme Court, 461, the issue was in the matter of

notice inviting tenders (NIT). The issue was pertaining to experience required as an eligibility criteria in the operation of mines. In that context, the Court considering a contention that distinction between minor and major minerals was illusory and hence, the exclusion of any past experience of working any minor minerals was quite unreasonable and arbitrary and it had no relation to the object that was claimed to be achieved. After noting the contentions and the reply on behalf of the respondents, a contention was raised that there is difference between minor and major minerals placing reliance of a judgment in the case of **D.K. Trivedi (supra)** where it was observed that the term “minor minerals” came to be defined in a statute for the first time by clause (e) of Section 3 of the 1957 Act. Then considering the definition of minor minerals, the Court observed that they are minerals which are mostly used in local areas and for local purposes while minerals other than minor minerals are those which are necessary for industrial development on a national scale and for the economy of the country and that is why matters relating to minor minerals have been left by Parliament to the State Governments while reserving matters relating to minerals other than minor minerals to the Central Government.

31. From this discussion, it would be clear that 'sand / silica' is a minor mineral, both within the meaning of the Mines Act and the MMRD Act.

32. The need for environmental protection and sustainable development is now reflected both in our constitutional philosophy as

well as municipal legislations. The protection and improvement of human environment are major issues which affect the well-being of peoples and economic development throughout the world. In the State of Uttar Pradesh, inflow the two most important rivers, the Yamuna and the Ganga, arteries for sustenance of life in this heart land. These rivers, which have been nourishing and sustaining life along its embankment, are now facing environmental degradation. Sand mining on the river beds and embankment is one such activity, the consequence of which has not yet been fully realized. The report of the Committee appointed by this Court pursuant to its order dated 06.03.2009 in **Noor Mohammad Vs. State of U.P.** (supra) and the report of the Board constituted by the Ministry of Environment and Forest and its recommendations, which have subsequently been forwarded to the various State Governments, is itself an acknowledgment of what thoughtless mining on the river beds and embankments can do. At this point, in our history, we must shape our actions with more prudent care for environmental consequences. Our ignorance and indifference should not result in irreversible harm and damage to the environment and ecology, which sustain life on this planet. We must use nature to build and create a better environment rather than destroy it and endanger the future of human race on this planet.

33. The India has shown its concern for environmental protection by participating in all major Conferences on human environment. Indian participated in the Stockholm Conference in June, 1972 and thereafter has taken steps to implement decisions insofar as they relate to protection

and improvement of environment and the prevention of hazard to human beings and other living creatures. India also participated in the Conference held at Rio de Janeiro on environment and development in June 1992, which reaffirmed the Declaration of the United Nations Conference on Human Environment adopted at Stockholm. Principle 11 of the Rio de Janeiro Declaration reads as under:-

“States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.”

34. Learned counsel Sri Singh appearing for the respondents, also brought to our attention the judgment in **Cochin Co. vs. Commissioner of Income Tax**, (1968) 67 ITR 199 for the purpose of making a distinction between the new and renewal. In the matter of pertaining to depreciation, the issue was whether the assessee was entitled to depreciation on certain machines. It is in that context that the expression “new” was considered. On facts, the machinery purchased was to recondition “Jackstone Junior Frosters Mark II” and it was sought to be contended that they are new machines. In our opinion, it is not necessary for us to consider that judgement considering that was considered in the

context of the I.T. Act. Considering the judgment in **M.C. Mehta (supra)**, we need not address ourselves to that issue.

35. Having considered the various aspects, the notification of 14.9.2006 would be applicable insofar as mining of sand is concerned. Considering the judgment in **Som Datt Builders Ltd. (supra)**, we are clearly of the opinion that both under the provisions of the Mines Act and MMRD Act, silica/sand are 'minerals' for which purpose, a mining lease would be required.

36. Consequent thereupon, the next question would be whether the notification is applicable to a renewal of a mining lease for minor mineral. We have already referred to the judgment in **M.C. Mehta (supra)** and the order dated 8.10.2009 in **T.N. Godavarman Thirumulpad (supra)**, which sets out that apart from the necessary permissions under the Mines / MMRD Act, the provisions of the Environment (Protection) Act, 1986 and other legislations setting out there under is required. Once that be the case, the notification issued by the Central Government in exercise of its power under Section 3 of the Environment Act and other provisions, the notification of 14.9.2006 would also be applicable to mining leases in respect of sand / silica. The settled law is that a grant of renewal is a fresh grant and must be consistent with law. [See **M.C. Mehta (supra)**, para 76]. When there is a renewal, in fact, what is being done is to grant a fresh mining lease in respect of the same subject matter to be give to the same person, who had

earlier held the lease. In **Ambica Quarry Works (supra)**, and **M.C. Mehta (supra)**, which we have earlier referred, leaves no manner of doubt that the notification will not apply only if the lease is subsisting at the time the notification of 14.9.2006 was issued. If subsequent to the notification a fresh lease or a lease is renewed, then in the matter of renewal also, the notification would apply.

37. In **M. I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu and others**, (1999) 6 S.C.C. 464, the Supreme Court was considering the applicability of the public trust doctrine. We may gainfully reproduce the following observations from paragraph 50 and 51, which reads as under:-

“...When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by this Court in *Span Resort case*. Public trust doctrine is part of Indian law. In that case the respondent who had constructed a motel located at the bank of River Beas interfered with the natural flow of the river. This Court said (at SCC p. 413, para 35) that the issue presented in that case illustrated.

“the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered in violate to change”.

51. In the treatise *Environmental Law and Policy; Nature, Law, and Society* by Plater Abrams Goldfarb (American Casebook Series, 1992) under the Chapter on Fundamental Environmental Rights, in Section 1 (*The Modern Rediscovery of the Public Trust Doctrine*) it has been noticed that “long ago there developed in the law of the Roman Empire a legal theory known as the 'doctrine of the public trust' ”. In America public trust doctrine was applied to public properties, such as shore lands and parks. As to how that doctrine works it was stated:

“The scattered evidence, taken together, suggests that the idea of a public trusteeship rests upon three related principles. First, that certain interests 'like the air and the sea' have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership. Second, that they partake so much of the bounty of nature, rather than of individual enterprise, that they should be made freely available to the entire citizenry without regard to economic status. And, finally, that it is the principal purpose of a Government to promote the interests of the general public rather than to redistribute public goods from broad public uses to restricted private benefit...”

With reference to a decision in *Illinois Central Railroad Co. v. Illinois* it was stated that

“the Court articulated in that case the principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable scepticism upon any

governmental conduct which is calculated either to reallocate the resource to more restricted uses or to subject public uses to the self-interest of private parties”.

This public trust doctrine in our country, it would appear, has grown from Article 21 of the Constitution.”

38. Thus, it flows that in America the public trust doctrine has been applied to shore lands and parks. This doctrine has been accepted in our country as flowing from Article 21 of the Constitution. It is in furtherance of this public trust doctrine considering environmental and ecological aspects that the Parliament enacted several legislations to protect environment and ecology. Courts thus as protector of the Constitution have enforced the public trust doctrine, which is a part of the principle of sustainable development, which is also a part of the right to life.

39. We may now set out a few facts from Writ Petition No. 10025 of 2010 (M/B). The petitioner is holder of mining lease in respect of Survey Nos. 2 to 28 measuring 15.28 hectare in village Gangwas alias Jafrabad, Tehsil and District Bulandshahr for the period 01.08.2008 to 31.07.2011. Pursuant to that, he has been carrying on the mining operations. The petitioner states that the officers from the Directorate of Geology & Mining and office of the District Magistrate, Bulandshahr have been verbally asking him to obtain clearance from the competent authority under the notification dated 14.09.2006. The petitioner apprehends that

the mining operations in respect of his mining lease would be stayed and, hence, the present petition.

The reliefs prayed for by the petitioner in Writ Petition No. 10025 of 2010 (M/B), to the extent necessary, are being reproduced as under:-

“1. Issue a writ, order or direction declaring the Environment Protection Act, 1986 and Rules framed thereunder as ultra vires to the Constitution of India, so far as it envisages within itself the power to be made applicable on land and water, as it is beyond the competence of Parliament to legislate in respect of land and water.

2. Issue a writ, order or direction in the nature of certiorari quashing the notification dated 14.09.2006 as contained in Annexure No.1 to the writ petition.

3. Issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to implement the notification dated 14.09.2006 upon the mining lease granted to the petitioner on 1.8.2008 in respect of area namely Survey No.2 to 28 measuring 15.28 hectare situate in Village Gangwas alias Jafrabad, Tehsil and District Bulandshahr.”

40. In support of the first prayer clause, it is contended that Parliament did not have the competence to make the law, namely, the Environment (Protection) Act, 1986 (hereinafter referred to as the 'Environment Act'), as it is the State Assembly, which has the competence to legislate in respect of land and water under Entry 17 and Entry 18 of List-II of the Seventh Schedule.

41. In support of the second prayer clause, it is contended that the process operation of an industry can be restricted in an area, and in order to restrict the same, an area has to be identified, and reasons have to be assigned for imposing such restrictions. The word 'an area' cannot mean the entire country, but 'an area within the Union of India'. The notification dated 14.09.2006 does not indicate an area or areas on which it is applicable and no reason for imposing restrictions has been assigned. It appears that the Central Government has notified the entire country to be covered under the notification dated 14.09.2006 and, as such, it suffers from manifest illegality, as it presumes the entire country to be an area and no reason has been assigned for presuming so, which is mandatory in order to impose restrictions in respect of certain industries, projects, operations processes etc. in an area. It is also contended that in the impugned notification, the word 'mining project' has been mentioned, whereas the lease granted to minor minerals cannot be said to be a 'project', as the mining lease of river beds is granted for a period of three years and the word 'project' in the impugned Environment Impact Assessment Notification is referable to 30 years' period. Further, the impugned notification refers to new projects, whereas the word 'new' relates to new areas, which cannot be said to be in respect of those areas for which leases had already been granted or have been renewed. The notification dated 14.09.2006 is applicable only to new projects or activities or expansion or modernisation of existing projects or activities listed in the Schedule to the notification.

42. It is next set out that the notification dated 14.09.2006 has been amended vide amendment dated 01.12.2009, and a clarification has been given for expansion and modernisation of existing projects, wherein it has been specifically provided that the expansion and modernisation of existing projects would only require clearance if there is change in technology or process of manufacture and not otherwise. The petitioner's project, it is submitted, is not a new project, as mining had started for the first time prior to notification dated 14.09.2006. This aspect has been dealt with earlier while discussing the issue of renewal of mining lease.

43. At this stage, it may also be pointed out that the petitioner has contended that, after the Mines and Minerals (Regulation & Development) Amendment Act, 1986, the Central Government, in exercise of its power under Section 18 of the Mines and Minerals (Regulation & Development) Act, 1957 (hereinafter referred to as the 'MMRD Act'), has framed the Mineral Conservation and Development Rules, 1988 (hereinafter referred to as the 'Rules 1988'), in respect of all minerals other than minor minerals.

44. Thus, the MMRD Act and the Rules made thereunder have also provided for the protection of the environment and ecology. The relevant provisions of Rules 1988 is reproduced as under:-

“Environment

31. Protection of environment:

Every holder of a prospecting licence or a mining lease shall take all possible precautions for the protection of environment and control of pollution

while conducting prospecting, mining, beneficiation or metallurgical operations in the area.

32. Removal and utilisation of top soil:

(1) Every holder of a prospecting licence or a mining lease shall, wherever top soil exists and is to be excavated for prospecting or mining operations, remove it separately.

(2) The top soil so removed shall be utilized for restoration or rehabilitation of the land which is no longer required for prospecting or mining operations or for stabilising or landscaping the external dumps.

(3) Whenever the top soil cannot be utilized concurrently, it shall be stored separately for future use.

33. Storage of overburden, waste rock, etc.:

(1) Every holder of a prospecting licence or a mining lease shall take steps so that the overburden, waste rock, rejects and fines generated during prospecting and mining operations or tailings, slimes and fines produced during sizing, sorting and beneficiation or metallurgical operations shall be stored in separate dumps.

(2) The dumps shall be properly secured to prevent escape of material therefrom in harmful quantities which may cause degradation of environment and to prevent causation of floods.

(3) The site for dumps, tailings or slimes shall be selected as far as possible on impervious ground to

ensure minimum leaching effects due to precipitations.

(4) Wherever possible, the waste rock, overburden etc. shall be back-filled into the mine excavations with a view to restoring the land to its original use as far as possible.

(5) Wherever back-filling of waste rock in the area excavated during mining operations is not feasible, the waste dumps shall be suitably terraced and stabilised through vegetation or otherwise.

(6) The fines, rejects or tailings from mine, beneficiation or metallurgical plants shall be deposited and disposed in a specially prepared tailings disposal area such that they are not allowed to flow away and cause land degradation or damage to agricultural field, pollution of surface water bodies and ground water or cause floods.

34. Reclamation and rehabilitation of lands:

Every holder of prospecting licence or mining lease shall undertake the phased restoration, reclamation and rehabilitation of lands affected by prospecting or mining operations and shall complete this work before the conclusion of such operations and the abandonment of prospect or mine.

35. Precaution against ground vibrations:

Whenever any damage to public buildings or monuments is apprehended due to their proximity to the mining lease area, scientific investigations shall be carried out by the holder of mining lease so as to keep

the ground vibrations caused by blasting operations within safe limit.

36. Control of surface subsidence:

Stopping in underground mines shall be so carried out as to keep surface subsidence under control.

37. Precaution against air pollution:

Air pollution due to fines, dust, smoke or gaseous emissions during prospecting, mining, beneficiation or metallurgical operations and related activities shall be controlled and kept within 'Permissible Limits' specified under various environmental laws of the country including the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) and the Environment (Protection) Act, 1986 (29 of 1986) by the holder of prospecting licence or a mining lease.

38. Discharge of toxic liquid:

Every holder of prospecting licence or a mining lease shall take all possible precautions to prevent or reduce the discharge of toxic and objectionable liquid effluents from mine, workshop, beneficiation or metallurgical plants., tailing ponds, into surface water bodies, ground water aquifer and usable lands, to a minimum. These effluents shall be suitably treated, if required, to conform to the standards laid down in this regard.

39. Precaution against noise :

Noise arising out of prospecting, mining, beneficiation or metallurgical operations shall be abated or controlled by the holder of prospecting licence or a

mining lease at the source so as to keep it within the permissible limit.

40. Permissible limits and standards:

The standards and permissible limits of all pollutants, toxins and noise referred to in rules 37, 38 and 39 shall be those notified by the concerned authorities under the provisions of the relevant statutes from time to time.

41. Restoration of flora:

(1) Every holder of prospecting licence or a mining lease shall carry out prospecting or mining operations, as the case may be, in such a manner so as to cause least damage to the flora of the area held under prospecting licence or mining lease and the nearby areas.

(2) Every holder of prospecting licence or a mining lease shall

(a) take immediate measures for planting in the same area or any other area selected by the Controller General or the authorised officer not less than twice the number of trees destroyed by reason of any prospecting or mining operations;

(b) look after them during the subsistence of the licence/lease after which these trees shall be handed over to the State Forest Department or any other authority as may be nominated by the Controller General or the authorised officer and;

(c) restore to the extent possible, other flora destroyed by prospecting or mining operations.

45. The State Government, in its counter affidavit, has reiterated its stand that the notification dated 14.09.2006 is applicable to mining of minerals other than minor minerals and the minerals and minor minerals have been defined in Section 2 of the MMRD Act. Reliance has been placed on the judgment of the Madhya Pradesh High Court at Jabalpur, in the case of **Madhya Pradesh State Mining Corporation Ltd. (supra)**.

46. On behalf of the Union of India, a counter affidavit has been filed by Dr. Amit Kumar Gupta, Deputy Director, in the Ministry of Environment and Forest. In the said affidavit, it is set out that the primary concern of the Ministry of Environment and Forest, is to implement the policies and programmes relating to conservation of country's natural resources, including lakes and rivers, its biodiversity, forest and wildlife, ensuring the welfare of animals and prevention and abatement of pollution. The notification 14.09.2006, it is set out, requires prior environmental clearance in respect of all new projects or activities and expansion and modernisation of existing projects or activities irrespective of nature of minerals, i.e. major or minor, with lease area of 5 hectare and above. The notification is uniformly applicable throughout the country irrespective of the area. The Ministry, it is set out, issued a Circular on 02.07.2007 clarifying the position with regard to the mining of minor minerals operating prior to 14.09.2006. Reference is made to an order of the Supreme Court in the matter of **M.C. Mehta Vs. Union of India & Ors.**, AIR 2004 SC 4016, wherein it has been held that for renewal of mining leases granted prior to notification, environmental clearance

would be necessary. In view of the same, it is clear that for every grant of mining lease and its subsequent renewal, environmental clearance would be required and the procedure prescribed in the notification of 2006 would have to be followed. It is also set out that the MMRD Act and the Environment Act are independent to each other. The notification of 2006 requires all mining projects covered under the provisions thereof to obtain prior environmental clearance as per the procedure prescribed thereunder. No relaxation is provided to minor minerals in this regard. The notification applies to all mining projects, irrespective of nature of mineral, i.e. major or minor including river bed sand mining. It is pointed out that the High Court of Punjab and Haryana has upheld the applicability of 2006 to river bed sand mining projects.

47. The challenges may be summed up as under:-

- (i) Parliament had no competence to enact the Environment (Protection) Act, 1986, as the land and water fall under Entry 7 of List II of the Seventh Schedule.
- (ii) The word 'area' has to be given distinctive meaning and must be an area within the Union of India and not the entire geographical area of India.
- (iii) The meaning of sand is not a project.

48. With that background, we may now consider the first contention, i.e. the Parliament did not have the competence to enact the Environment Act. The Environment Act starts with the following Preamble:-

“An Act to provide for the protection and improvement of environment and for matters connected there with.

Whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

And whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;”

In the Statement of Objects and Reasons of the Environment Act, it is set out that 'the world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972. The Government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident. Although there are existing laws dealing directly or indirectly with several environmental matters, it was necessary to have a general legislation for environmental protection'. After setting out some other aspects, it states that 'there is urgent need for the enactment of a general legislation on environmental protection which, inter alia, should enable co-ordination of activities of the various regulatory agencies, creation of

an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health'.

49. Thus, the Preamble and the Statement of Objects and Reasons of the Environment Act, indicate that the Act was enacted to give effect to the Conference on the Human Environment held in Stockholm in June 1972, in which India was a party.

Article 253 of the Constitution of India sets out that, notwithstanding anything in the foregoing provisions of Part XI of the Constitution, the Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international Conference, association or other body. Entry 13 of List I of the Seventh Schedule, speaks about participation in international conferences, associations and other bodies and implementation of decisions made thereat. It would, thus, be clear that the Environment Act is based on Entry 13 of List I of the Constitution of India. Once a legislation is made under Entry 13 to implement any treaty, agreement or convention, and considering that Article 253 of the Constitution starts with a non-obstante clause which confers power on the Parliament to make law for the whole or any part of the territory of India, the arguments advanced on behalf of the petitioner that Parliament did not

have competence to enact the legislation, in our opinion, therefore, would have to be rejected.

50. We may also refer to the Constitution (42nd Amendment) Act, 1976, whereby Part IVA was introduced in the Constitution under the heading 'Fundamental Duties'. Clause (g) of Article 51A, reads as under:-

“**51A.** It shall be the duty of every citizen of India -

(a)

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

The same Constitutional amendment, also introduced Article 48A in Part IV of the Constitution, which reads as under:-

“**48A.** The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”

At this juncture, we may note that though various notifications under the Environment Act have been challenged before the Hon'ble Supreme Court and various High Courts, the competence of the Parliament to enact the legislation has never been doubted considering Article 253 and Entry 13 of List I. The competence of Parliament to enact the law thus has to be rejected.

51. With that background, we come to the second contention that an area has to be notified and that cannot include the whole of India but an area within India? The notification itself sets out the requirement of prior

environmental clearance in any part of India. In other words, it is not restricted to a part of the geographical area of India but includes the whole of India. Considering that, we may now consider the argument advanced on behalf of the petitioner, that it was not within the competence of the Central Government to issue notification in respect of a part of India or whole of the India. The argument seems to be based on Section 3(2)(v) of the Environment Act, which speaks about the measures to protect and improve environment, which include – restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.

52. We may reproduce Section 3 of the Environment Act, which reads as under:-

“3. Power of Central Government to take measures to protect and improve environment:- (1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--

(i) co-ordination of actions by the State Governments, officers and other authorities--

(a) under this Act, or the rules made thereunder,
or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials

or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been

empowered by this Act to exercise those powers or perform those functions or take such measures.”

53. It would be clear from a reading of Section 3(1), that the Central Government has power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution. Sub-section (2) of Section (3) is very specific. It speaks that in particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the matters which are set out therein. It is, thus, clear that Section 3 (1) confers a general power, whereas under Section 3(2) specific power has been conferred for the purpose of measures. The language used is 'restriction of areas'. Merely, because the expression used is 'of areas", it does not mean that it has to be only a part of the geographical area of India or of a State and not the entire country. In our opinion, there may be issues relating to State-specific industries, projects, operations processes or in specific areas of State or States. There may also be need for a general measures in respect of whole of India. For that purpose, it is not necessary for the Central Government to issue notifications State-wise or area wise. It is open to the Central Government to issue a notification covering the entire area. As an illustration, the C.R.Z. notification covers the coastlines of India.

We may also refer to the judgment of the Supreme Court in **Gopi Aqua Farms & Ors. Vs. Union of India & Ors., AIR 1997 SC 3519,**

wherein the judgment in **S. Jagannath Vs. Union of India & Ors., (1997) 2 SCC 87**, was sought to be got rid of. A challenge was sought to be made that the C.R.Z. notification dated 19.02.1991 was ultra vires of the Environment Act and also violative of the fundamental rights guaranteed under the Constitution of India. The Supreme Court noted that there was no explanation why the validity of the notification was not challenged at the time when Jagannath's case (supra) was heard, and held that the said judgment is binding on all persons irrespective of the fact whether they were parties in the said proceedings or not. Paragraph 2 of the judgment is quoted herein below:-

“2. On behalf of the writ petitioners, Mr. K.K. Venugopal has argued that the writ petitioners were not parties to the proceedings before the Court in the case of Jagannath (1997 AIR SCW 635) and the decision is not binding upon them. This argument is not acceptable for several reasons. The case of Jagannath had received widest publicity. Various investigations into facts relating to shrimp culture was made, reports were obtained from various sources like NEERI, Central Board for Prevention and Control of Water Pollution and various other authorities. It is difficult to believe that the petitioners were unaware of all these events. A large number of shrimp farmers and organisations representing them appeared in Court and placed their points of view about the dispute.”

Considering the above observations, in our opinion, the second contention will also have to be rejected. The ancillary contention that the

MMRD Act provides for also environmental protection and, therefore, the Environment Act would not be applicable has been rejected in **M.C. Mehta** (supra).

54. The last contention sought to be raised is that the sand mining is not a project and, therefore, would not fall within the notification dated 14.09.2006. We may note that Part II of the said notification uses the expression 'project or activities'. Therefore, even if we accept, for the sake of argument, that the mining of sand is not a project, there can be no dispute that it would be an activity. We may briefly reproduce the meaning of words 'project' and 'activity' as given in The Concise Oxford Dictionary, 9th Edition:-

“**Project** – a plan; a scheme; a planned undertaking; plan or contrive (a course of action, scheme, etc.).

Activity – the condition of being active or moving about, the exertion of energy; vigorous action; a particular occupation or pursuit (outdoor activities).”

The meaning of word 'Project' as given in Murray, J.A.M. Vol. 7, Calarandon Press, is as under:

“**Project-** A plan, draft, scheme, or table of something; a tabulated statement; a design or pattern according to which something is made.

“**Project-** *trans.* To plan, contrive, devise, or design (something to be done, or some action or proceeding to be carried out); to form a project of.

The meaning of word 'Enterprise' as given in Blacks Law Dictionary Fifth Edition 1979, is as under:-

“Enterprise-A venture or undertaking especially one involving financial commitment.

The meaning of word 'Enterprise' is also defined in Murray J.A.E. Vol.3, Calarandon Press, which is as under:-

“Enterprise- *trans.* To take in hand (a work), take upon oneself (a condition), attempt or undertake (a war, an expedition, etc.), run the risk of or venture upon (danger), *arch.*”

Thus a project includes an enterprise. Activity in the context would have wider meaning to include a profession or pursuit.

55. We have, therefore, no hesitation in holding that the notification dated 14.09.2006 would cover mining which, if not project, will fall within the expression 'activity'. The last contention, therefore, must also to be rejected.

56. Having said so, the question that comes for our consideration is whether we should forthwith ban total mining in respect of mining leases who do not have the necessary clearances under the notification dated 14.9.2006. In our opinion, though prior clearance is mandatory, the approach of this Court on the present facts and circumstances while granting reliefs under Articles 226 and 227, must be to sub serve the larger public interest. Public interest also would mean availability of raw material to the public in general at reasonable rates and also not to

deprive the workers, who are working, their right to life, guaranteed under Article 21 of the Constitution. Considering these two aspects, we pass the following directions in Writ Petition No.9416 (M/B) of 2010:

(A). In respect of mining leases whose period expired after coming into force of the notification dated 14.9.2006, as also in respect of new mining leases granted subsequent to 14.9.2006, it is mandatory to obtain environmental clearance under the Notification dated 14.9.2006. Many holders of mining leases from the district Saharanpur have applied for environmental clearance and their applications are pending and as there was some dispute as to whether minor minerals, include sand/silica falling within the definition of mining minerals, we grant time till 30.6.2011 to carry on the mining operations.

(B). The State Government to ensure as on 1.7.2011 that no person anywhere in the State will carry out any mining activity of minor minerals including sand/silica based on the mining leases, which do not have the environmental clearance under the notification of 14.9.2006.

(C) The State to take steps to implement the report of the Committee appointed in **Noor Mohammad vs.**

State of U.P. (supra) pursuant to direction dated 6.3.2009 as referred in para 20 of the judgment and the letter dated 1st June, 2010 from the Ministry of Environment & Forest, Government of India.

The Writ Petition No. 9416 (M/B) of 2010 is accordingly disposed of.

We find no merit in Writ Petition No.10025 of 2010 (M/B) and the same is, accordingly, dismissed. Rule discharged.

Date: 29th April, 2011

RK/-

(F.I. Rebello, C.J.)

(Devi Prasad Singh, J.)