

AFR

Neutral Citation No. - 2025:AHC:43599-DB

RESERVED

Court No. - 3**Case :-** WRIT - C No. - 15023 of 2024**Petitioner :-** M/S Anandeshwar Agro Foods Private Ltd**Respondent :-** State Of Up And 3 Others**Counsel for Petitioner :-** Sr. Advocate, Utkarsh Prasad**Counsel for Respondent :-** C.S.C.**Hon'ble Anjani Kumar Mishra, J.****Hon'ble Jayant Banerji, J.****(Per: Hon. Jayant Banerji, J.)**

1. This writ petition has been filed seeking quashing of the demand notice/ order dated 19.2.2024 and the order cancelling the mining lease dated 27.2.2024 both passed by the District Magistrate, Kanpur Dehat. Also under challenge is the order of 18.4.2024 passed by the Special Secretary, Geology and Mining, U.P. in Revision No. 33(R)/G&M/(U.P)/2024, M/s. Anandeshwar Agro Foods Pvt. Ltd. vs. District Magistrate, Kanpur Dehat (Annexure-1 to the writ petition) filed by the petitioner whereby his revision has been rejected. A further prayer seeks direction to the respondents not to demand any monthly installments specified in the lease deed for the months of October, November and December, 2023, and, January and February, 2024.

2. An advertisement/auction notice dated 3.12.2018 was issued by the District Magistrate, Kanpur Dehat for grant of mining leases of sand/morrum under Chapter IV of the U.P. Minor Mineral (Concession) Rules, 1963¹ by e-tender cum e-auction for a period of five years for all vacant mining areas in Kanpur Dehat district. The bid of the petitioner, in respect of plot No.58 measuring 08.275 hectares at Village-Bilaspur Kachhar, Tehsil-Sikanda, District-Kanpur Dehat, of Rs.264 per cubic meter, being the highest bid, was approved by the District Magistrate and a Letter of Intent was issued to the petitioner on 5.2.2019. The petitioner applied for a mining plan which was sanctioned by the competent authority and thereafter the petitioner applied for obtaining an Environment Clearance Certificate, which was granted to the petitioner on 15.1.2021. Thereafter, a lease-deed was executed in favour of the petitioner on 12.3.2021 for a period of five years permitting winning of 1,10,057 cubic meters per annum of sand/morrum with the installments (excluding the security amount) for the first year totaling Rs.2,90,55,048.00 and for each successive year, the royalty payable would be increased by 10% on the royalty payable in the previous year. An amount of Rs.2,20,31,460.00 was deposited by the petitioner as security.

3. It is stated that the petitioner had carried out mining operations and paid the entire installments due upto 30.6.2023 as per the payment schedule specified in the lease-deed. A notice dated 2.6.2023 was issued by the Additional District Magistrate (Administration), Kanpur Dehat directing the petitioner to get the pre-monsoon and post-monsoon replenishment study done of his mining area. The petitioner got the replenishment study of pre-

¹ Rules, 1963

monsoon done on 25.6.2023. It is stated that even after post-monsoon, the leased area was completely submerged and, hence, it was not possible to carry out post-monsoon survey and no mining operations were possible and, therefore, the petitioner moved an application on 5.10.2023 before the District Magistrate requesting him not to compel the petitioner to deposit the lease amount post-monsoon till the replenishment study was done. It is stated that the post-monsoon survey was done on 29.10.2023 and a combined report of pre-monsoon and post-monsoon was submitted before the District Magistrate. The Mines Officer issued a demand notice dated 25.11.2023 demanding the installment of October and November 2023. The petitioner moved an application dated 28.11.2023 stating that the entire leased area is submerged and a very small patch of surface was seen which belonged to the restricted area. Again, a request was made by the petitioner to the District Magistrate to waive off the installment for the period starting from 1.10.2023 till actual commencement of the mining operations.

4. Again, the Mines Officer issued a demand notice to the petitioner on 4.12.2023 demanding the due installments. The petitioner sent an application dated 11.12.2023 to the District Magistrate requesting him to waive off the installments for the period with a further request that the petitioner be allowed to get the leased area re-assessed by the competent agency for proper compliance and verification of the actual mineable reserve.

5. By a letter dated 21.12.2023, the District Magistrate rejected the aforesaid applications of the petitioner on the ground that it is the responsibility of the petitioner to pay the installments stated in the lease-deed. The petitioner again on 8.1.2024 got the leased area re-inspected for post-monsoon replenishment study for assessing the

quantity of available mineral. It is stated that the new replenishment study report of 08.01.2024 reflected no significant replenishment of river bed mineral and the replenished mineral on the leased land on that date was 16,380 cubic meters. The opinion in this replenishment study was that the mineral quantity may increase in future once the water recedes.

Thereafter, the petitioner moved an application dated 27.1.2024 indicating his willingness to initiate mining operations provided the installments for the disrupted period from 1.10.2021 till the actual commencement of mining operations be waived and further installments be 're-evaluated' as per the actual mineral recharge/replenished quantity as found in the post-monsoon replenishment study report. This application of the petitioner was rejected by the District Magistrate by means of a demand notice/order dated 19.2.2024. It is stated that the impugned order dated 27.2.2024 was received by the petitioner on 29.2.2024 by email canceling the mining lease of the petitioner. The petitioner then filed a revision before the State Government which was dismissed by the impugned order dated 18.4.2024.

6. It is contended by the learned counsel for the petitioner that the cancellation of the mining lease and the rejection of the revision of the petitioner is without consideration of the evidence and against the statutory provisions. It is stated that once an area is declared by the State Government to be leased out by e-tender/e-auction/e-tender cum e-auction, the District Officer is mandated to get that declared area evaluated for the quality and quantity of mineral for fixing minimum bid or offer which is to be done by the Director, Geology and Mining, Uttar Pradesh or by an officer authorised by him; that the replenishment study is required to be conducted as per the orders

of the National Green Tribunal²; that it was incumbent on the State Government to make available the quantity of mineral required for excavation on the basis of which the petitioner would pay the installments of lease amount, otherwise the petitioner would be entitled for refund or remission of the installments; that if the State Government fails to provide mineral for excavation, then no lease instalment amount is payable; and that the notice issued under Rule 59 of the U.P. Minor Mineral (Concession) Rules, 2021³ is required to be issued by the District Magistrate and not by the Mines Officer. In this view of the matter, it is contended that the District Magistrate having given the last notice on 19.2.2024, and the order canceling the lease having been passed on 27.2.2024, there is violation of Rule 59 of the Rules, 2021 which mandates 30+15 days notice.

In support of his contentions, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in **Dharmendra Kumar Singh vs. State of Uttar Pradesh**⁴; a judgment dated 10.4.2018 passed by the Supreme Court in the case of **M/s. Planet Steel Pvt. Ltd. vs. The State of Haryana & Ors.**⁵; a decision of a coordinate Bench of this Court dated 11.1.2021 in the case of **Vipul Tyagi vs. State of U.P. & 6 Ors.**⁶ and a decision of this Court dated 24.10.2019 in the case of **Ranjana Singh vs. State of U.P. & Ors.**⁷.

7. A counter affidavit has been filed on behalf of the respondents stating that the lease-deed was executed on 12.3.2021 in respect of the leased area for excavation of 110057 cubic meters of sand/morrum per annum at the rate of Rs.264/-. The amount of security, the annual amount payable and the installments due and

² NGT

³ Rules, 2021

⁴ (2021) 1 SCC 93

⁵ Petition for Special Leave to Appeal (C) Nos.19619-19620/2017

⁶ Writ-C No.17258 of 2020

⁷ Writ-C No.32486 of 2019

payable were specified in the lease-deed itself. It has been stated that material facts have been concealed in the instant writ petition inasmuch as Writ-C No.9186 of 2022 was filed by the petitioner before the Lucknow Bench of this Court seeking the following reliefs:-

“1. issue a writ, order or direction in the nature of certiorari quashing the Government Order dated 9.11.2022 issued by the State Government i.e. Respondent no.1, contained as Annexure No.1 to this writ petition.

2. Issue a writ, order or direction in the nature of mandamus directing the respondents to waive of the liability of deposit of the royalty amount of the month of October 2022 & November 2022 so far it relates to the mining lease of the petitioner and do not compel to the petitioner to deposit the royalty amount for the aforesaid two months as no mining activity has taken place in the aforesaid months.

3. to issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

4. to award cost of the petition to the petitioner.”

In response to aforesaid petition, a counter affidavit was filed by the respondents opposing the writ petition and that petition is pending before the Lucknow Bench of this Court.

8. It is stated in the counter affidavit to the present petition that the notices dated 25.11.2023 and 4.12.2023 as well as the notices dated 21.12.2023 and 19.2.2024 were issued to the petitioner; that the representations filed by the petitioner were rejected on 21.12.2023 on the ground that nine months' time was available to the petitioner for mining for excavating the annual quantity of sand and sell it as per the market rate available and accordingly upload Form eMM-11 to the extent of the carried forward quantity in the preceding month that could not have been mined; that the pre-monsoon and post-monsoon replenishment study reports are

contradictory and cannot be relied upon for any purpose by this Court; that post-monsoon replenishment report reflects a quantity of 16380 cubic meters of mineral available for mining which may further increase in future; that the amount of mineral could be excavated by the petitioner but he chose not to carry out any mining operations; that a surrender application for surrendering the mining lease as per Rule 30 of the Rules 2021 could have been filed by him but no such application was filed; that the petitioner has not brought on record the inspection report dated 13.2.2023; that illegal mining was being done in violation of Rule 42h(1) of the Rules, 2021, whereafter a notice dated 21.2.2023 was given to the petitioner imposing a penalty of Rs.5 lacs which notice has not been replied by the petitioner. In paragraph nos.18 and 19 of the counter affidavit, it is stated as follows:-

“18. That it is humbly submitted before this Hon'ble Court that in case the lease holder is unable to extract the quantity of sand in a particular month then upon payment of the royalty amount the quantity not excavated is carried forward on the portal of the department automatically. It is also submitted herein that the practice and procedure is that in case the lease holder is to extract an additional quantity of sand, that he is unable to in a particular month, he has to pay the royalty amount of the succeeding month and extract the carried forward quantity (that was not extracted) of sand to be excavated in the next month. The said amount of sand has to be excavated keeping in view the annual quantity of sand to be extracted as per the amount mentioned in the Environmental Clearance Certificate.

19. That in the facts of the present case the amount of sand that could have been extracted in a particular year by the petitioner herein is 1,10,0057 cubic meter (*sic*, 110057) and 12,228.55 cubic meter per month. If the amount of 12,228.55 cubic meter could not be extracted by the petitioner in a particular month then the left over amount could be carried forward by him in the next month and extracted accordingly. The petitioner herein from Jan. 2023 to June 2023 has extracted sand in excess of 12,228.55 cubic meter and the generated EMM-11 form alongwith the

production quantity bearing lease ID No. 313623 bearing Lease ID No. 313623090133 is being brought on record and is being filed herewith and marked as Annexure No.CA-9 to this Affidavit.”

9. In the enclosure mentioned in paragraph no.19 of the counter affidavit, a table showing the production month, generated eMM-11 form and the production quantity in cubic meters is reflected, which has not been denied in the rejoinder affidavit and is as follows:-

Sr. No.	Lease Name	Holder	Production Month	Generated eMM 11	Production Quantity (Cubic meter)
01	Sunil Kumar Gupta Lease ID-313623090133		January, 2023	711	14750
02			February, 2023	769	15926
03			March, 2023	581	11907
04			April	826	16990
05			May, 2023	707	13864
06			June, 2023	605	12373

It is, therefore, contended that the orders passed by the District Magistrate as well as the State Government are justified.

10. In the rejoinder affidavit, the petitioner has relied upon a Government Order dated 12.11.2021 while stating that the relaxation was granted by the State Government in the payment of the lease amount proportionate to the quantity of mineral which the petitioner could not lift and the Government Order directed that the quantity which could not be lifted could be deducted from the annual quantity.

As regards the table filed alongwith the counter affidavit showing the Form eMM-11 generated by the petitioner and the amount of production of the mineral, it has been stated that the calculations were for the period from January 2023 to June 2023, when there was sufficient mineral available in the mining area and

the petitioner had paid the entire lease amount upto June. It is stated that in the present case, the entire area was submerged and, therefore, there was no occasion for carrying forward the minerals to be excavated. The dispute relates to the period commencing October 2023.

ANALYSIS

11. The emphasis of the petitioner is on the loss being suffered by the petitioner despite his every attempt to bonafide work the mining lease granted to him, due to lack of proper evaluation of the mining area and want of preparation of a District Survey Report⁸ which is mandated to be prepared after a replenishment study is conducted as per the Sustainable Sand Mining Management Guidelines-2016⁹, which was supplemented with the Enforcement and Monitoring Guidelines for Sand Mining-2020¹⁰. It has also been stated that the State Level Environment Impact Assessment Authority, Uttar Pradesh, in its meeting held on 31.12.2022, had directed the Mines Department to ensure that no mining is carried out beyond the quantity mentioned in the replenishment study report.

12. The EMGSM-2020 was formulated by the Ministry of Environment, Forest and Climate Change, Government of India. The Ministry had earlier formulated the SSMMG-2016 which focuses on the management of sand mining in the country. However, while observing in the EMGSM-2020 that apart from management and systematic mining practices, there is an urgent need to have guidelines for effective enforcement of regulatory provisions and their monitoring, the rampant and illegal mining, transportation and storage of minerals were noted with concern. The guidelines focus

⁸ DSR

⁹ SSMMG-2016

¹⁰ EMGSM-2020

on the effective monitoring of sand mining from identification of sand mineral sources, its dispatch and end-use by consumers and the general public. It was felt necessary to identify the minimum requirements across all geographical regions to have a uniform protocol for monitoring and enforcement of regulatory provision prescribed for sustainable sand and gravel mining.

13. After noting various directions issued by the NGT and the Supreme Court from time to time, the EMGSM-2020 narrates the necessity of complying with the directions of the NGT. Though several requirements for monitoring and enforcement are mentioned, however, certain important requirements are extracted below:-

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

iii) Mining Plan is an important document to assist the mine owner to operate the mine in a scientific manner. States have their own format for preparation of mining plan and it is observed that recording of the initial level of mining lease at shorter interval say 25m X 25 m grid interval is not present.

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

v) Environmental Clearance is a process wherein the regulatory authorities after considering the potential

environment impact of mining clearance is granted with a set of specific & standard conditions to carry out mining operations, but often it is observed that letter of intent is granted for a location which has less potential for mining and not feasible for environment-friendly mining. This leads to an unnecessary financial burden on the mine owners and litigations. Thus, Lol should be preferably granted for those locations which have the least possibility of an impact on the environment and nearby habitation.

vi) It is the responsibility of the mine owner to obtain all the statutory clearance and comply with the conditions stipulated in the clearance letter. Mining should be carried out within the mining lease area as per approved mining plan or mining plan concurred by other regulatory authorities.

.....

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

14. The EMGSM-2020 highlights that preparation of the DSR is a very important step and that sustainable sand mining in any part of the country would depend on the quality of DSR. The DSR is required to be prepared under the SSMMG-2016. The guidelines emphasize detailed procedure to be followed for the purpose of identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited. Calculation of annual rate of replenishment, allowing time for replenishment after mining, identification of ways of scientific and systematic mining; identifying measures for protection of environment and ecology and determining measures for protection of bank erosion, bench mark (BM) with respect to Mean Sea Level

(MSL) should be made essential in mining channel reaches (MCR) below which no mining would be allowed. The judgment of the NGT of 8.12.2017 in the matter of **Anjani Kumar vs. State of U.P. & Ors.**¹¹ is referred in the guidelines in this regard, in which judgment/order the following observation was made:

“It states that the main object of preparation of District Survey Report is to ensure identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining area. Thus, the environmental protection requires a strictly regulated mining in terms of area, quantity as well as most importantly replenishment thereof.”

Then, inter alia, the following order/direction was passed:

“The data collection and declared for preparation of DSR shall take precedence over other data and would form the foundation for providing mining lease in terms of Appendix- x to the Notification dated 15th January 2016 must be prepared by the statutory authority stated therein i.e. DEIAA prior to awarding of permits for carrying on mining activity in any part of the State of UP.”

(emphasis supplied)

15. Considering the importance of DSR, for purpose of preparation of comprehensive DSR for sand mining, certain guidelines were formulated, which are encapsulated below :-

- (a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (LoI) by Mining department or department dealing the mining activity in respective states.
- (b) The first step is to develop the inventory of the River Bed Material and Other sand sources in the District. In order to make the inventory of River Bed Material, a detailed survey of the district needs to be carried out, to identify the source of River Bed Material and alternative source of sand (M-Sand).

¹¹ Original Application No. 557 of 2017

The source will include rivers, de-siltation of reservoir/dams, Patta lands/Khatedari Land, M-sand etc. It was proposed that for preparation of district survey report, the auditing of rivers needs to be carried out.

(c) District Survey Report is to be prepared in such a way that it not only identifies the mineral-bearing area but also define the mining and no mining zones considering various environmental and social factors.

(d) Identification of the source of Sand & M-Sand. The sources may be from Rivers, Lakes, Ponds, Dams, De-silting locations, Patta land/Khatedari lands.

(e) Defining the sources of Sand/M-Sand in the district is the next step for identification of the potential area of deposition/aggradation wherein mining lease could be granted. Detailed survey needs to be carried out for quantification of minerals. The purpose of mining in the river bed is for channelization of rivers so as to avoid the possibility of flooding and to maintain the flow of the rivers. For this, the entire river stretch needs to be surveyed and original ground level (OGL) to be recorded and area of aggradation/deposition needs to be ascertained by comparing the level difference between the outside riverbed OGL and water level.

(f) The permanent boundary pillars need to be erected after identification of an area of aggradation and deposition outside the bank of the river at a safe location for future surveying. The distance between boundary pillars on each side of the bank shall not be more than 100 meters.

(g) Identifying the mining and no mining zone shall follow with defining the area of sensitivity by ascertaining the distance of the mining area from the protected area, forest,

bridges, important structures, habitation etc. and based on the sensitivity the area needs to be defined in sensitive and non-sensitive area.

(h) Demand and supply of the Riverbed Material through market survey needs to be carried out. In addition to this future demand for the next 5 years also needs to be considered.

(i) It is suggested that as far as possible the sensitive areas should be avoided for mining, unless local safety condition arises. Such deviation shall be temporary & shall not be a permanent feature.

(j) The final area selected for the mining should be then divided into mining lease as per the requirement of State Government. It is suggested the mining lease area should be so selected as to cover the entire deposition area. Dividing a large area of deposition/aggradation into smaller mining leases should be avoided as it leads to loss of mineral and indirectly promote illegal mining.

(k) Cluster situation shall be examined. A cluster is formed when one mining lease of homogenous mineral is within 500 meters of the other mining lease. In order to reduce the cluster formation mining lease size should be defined in such a way that distance between any two clusters preferably should not be less than 2.5 Km. Mining lease should be defined in such a way that the total area of the mining leases in a cluster should not be more than 10 Ha.

(l) The number of a contiguous cluster needs to be ascertained. Contiguous cluster is formed when one cluster is at a distance of 2.5 Km from the other cluster.

(m) The mining outside the riverbed on Patta land/Khatedari

land be granted when there is possibility of replenishment of material. In case, there is no replenishment then mining lease shall only be granted when there is no riverbed mining possibility within 5 KM of the Patta land/Khatedari land. For government projects, mining could be allowed on Patta land/Khatedari land but the mining should only be done by the Government agency and material should not be used for sale in the open market. Cluster situation as mentioned in para k above is also applicable for the mining in Patta land/Khatedari land.

(n) The State Government should define the transportation route from the mining lease considering the maximum production from the mines as at this stage the size of mining leases, their location, the quantity of mineral that can be mined safely etc. is available with the State Government. It is suggested that the transportation route should be selected in such a way that the movement of trucks/tippers/tractors from the villages having habitation should be avoided. The transportation route so selected should be verified by the State Government for its carrying capacity.

(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.

(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.

16. Para 4.2 of the EMGSM-2020 relates to grant of Letter of Intent to those mining leases which are falling in potential mining zones. It reads as under :-

“The State Government shall issue letter of intent as per procedure laid down in their Minor Mineral Concession Rules with due consideration of final district survey report. The State Government shall ensure that all the letter of intent shall have complete details of the mining lease including geo- coordinate of the corner points, the involvement of forest land, distance from the forest land, distance from the protected area, distance from other sites of archaeological importance, details of the cluster situation etc. The demarcation of the boundaries of LoI/Lease area shall be placed in public domain along with LoI/lease deed details.

The LOI should not be granted for mining area falling on both riverbed and outside riverbed. Therefore, in the same lease, both types of area should not be included.

The authority responsible for grant of lease for sand mining shall ensure that annual audit of the sand mining process, production and compliance of the imposed conditions by regulatory authority (Environmental clearance or mine plan) shall be one of the essential condition of the lease agreement. The annual audit report shall be submitted to the district administration, which shall be put in public domain through the district website. Any deviation observed shall be appropriately and in accordance with applicable law shall be dealt by the concerned authority and corrective measures shall also be taken to restoration of ecological/environmental damage, if observed.”

17. Para 4.3 deals with preparation of mining plan which reads as follows:-

“The preparation of Mining Plan is also very important. The mining plan should include the original ground level recorded at an interval not more than 10M x 10M along & across the length of the river. In addition to this levels, outside the mining lease and bank of the river up to meters needs to be recorded. In the mining plan, there should be 3 plates for each year production & development planning (pre-monsoon, monsoon and post-monsoon). The time period of monsoon should be defined in the DSR. At the time of review of the mining plan, the details of the replenishment study conducted for all the years needs to be included in the mining plan. The Mining Plan should include

the certificate from PCCF on forest land, distance from the protected area, past production details for mining leases seeking expansion.”

18. The considerations that are required to be kept in mind for sand/gravel mining for approving mining plan have been specified, relevant provisions of which, for purpose of this case are mentioned below:-

- (i) Parts of the river reach that experience deposition or aggradation shall be identified. The Leaseholder/ Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.
- (ii) The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.
- (iii) Sand and gravel may be extracted across the entire active channel during the dry season.
- (iv) Abandoned stream channels on the terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. Stream should not be diverted to form inactive channel.
- (v) Layers of sand and gravel which could be removed from the river bed shall depend on the width of the river and replenishment rate of the river.
- (vi) The sediment sampling should include the bed material and bed material load before, during and after the extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross-section. Using the historical or gauged flow rating curve, determine the suitable period of high flow that can replenish the extracted volume.

Calculate the extraction volume based on the sediment rating curve and high flow period after determining the allowable mining depth.

(vii) Mining depth should be restricted to 3 meters and distance from the bank should be $\frac{1}{4}$ th of river width and should not be less than 7.5 meters.

19. Para 5 of the EMGSM-2020 provides for replenishment study, which reads as follows:-

“5.0 Replenishment Study

The need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due to excessing sand extraction. Mining within or near riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on in-stream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore, to minimize the adverse impact arising out of sand mining in a given river stretch, it is imperative to have a study of replenishment of material during the defined period.

5.1 Generic Structure of Replenishment Study

Initially replenishment study requires four surveys. The first survey needs to be carried out in the month of April for recording the level of mining lease before the monsoon. The second survey is at the time of closing of mines for monsoon season. This survey will provide the quantity of the material excavated before the offset of monsoon. The third survey needs to be carried out after the monsoon to know the quantum of material deposited/replenished in the mining lease. The fourth survey at the end of March to know the quantity of material excavated during the financial year. For the subsequent years, there will be a requirement of only three surveys. The results of year-wise surveys help the state government to establish the replenishment rate of the river. Based on the replenishment rate future auction may be

planned.

The replenishment period may vary on nature of the channel and season of deposition arising due to variation in the flow. Such period and season may vary on the geographical and precipitation characteristic of the region and requires to be defined by the local agencies preferable with the help of the Central Water Commission and Indian Meteorological Department. The excavation will, therefore, be limited to estimated replenishment estimated with consideration of other regulatory provisions.

(emphasis supplied)

20. Paragraph 6 of the EMGSM-2020 provides for enforcement. The mining operation and post environment clearance monitoring are being below for purpose of this case :-

“6.1 Mining Operation:

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

6.2 Post Environment Clearance Monitoring:

It's the responsibility of the EC Holder to comply with the Environmental Clearance conditions and upload the six-monthly EC compliance report on the website of the Ministry. For the category, 'A' mines (>100 Ha individual & cluster) Regional Office of the MoEF&CC are entrusted to carry out EC Monitoring and for the Category 'B' Mines by SEIAA. The monitoring shall be carried out as per the procedure/schedule suggested by MoEF&CC from time to time. MOEF&CC vide its notification S.O. 637(E) dated 28.02.2014 has delegated the power to State/Union Territory Environmental Impact Assessment Authority to issue show cause notice to project proponent in case of violation of Conditions of Environmental Clearance issued by the said authority and to issue direction for keeping the said EC in abeyance or withdrawing it. Thus, for category 'B' (0 to 100 Ha) projects SEIAAs are responsible for EC monitoring.

21. Paragraph 8, and particularly Paragraph 8.1 deal with the

general approach to sustainable sand mining and prerequisite for starting sand mining operation and are as follows:-

“8.0 General Approach to Sustainable Sand Mining

8.1 Pre-requisite for starting sand mining operation

- i) All district to prepare a comprehensive mining plan for the district as per the provision of District Survey Report. These reports shall be put on the website of District Administration. No mining shall be allowed in the area which has not been identified in the comprehensive mining plan of the District.
- ii) Replenishment study should be conducted on regular basis.
- iii) All potential rivers mining zone/area shall be identified and put for auction with proper geo-tagged details by the auctioning authority concerned.
- iv) The latitude and longitude of each mining lease shall be clearly mentioned in Letter of Intent issued to the potential mine lease. Such information shall be provided on the website of the district administration.
- v) The provision of these guidelines shall be considered while identifying the potential stretches /locations and boundaries of the leases for the minable area.
- vi) The LoI holder shall seek Environmental Clearance as per the provision of EIA Notification, and the regulatory authority shall ensure that the provision suggested in “Sustainable Sand Mining & Management 2016” and in this documents, as applicable are part of the clearance conditions.
- vii) There shall be no river bed mining operation allowed in monsoon period. The period as defined by IMD Nagpur for each state shall be adhered with.
- viii) The monitoring infrastructures including weighbridge and adequate fencing of the lease area, CCTV, Transport permits, etc, as suggested in this document shall be ensured in order to reduce unrecorded dispatch.
- ix) Regular monitoring of mined minerals and its transportation and storage shall be ensured and all information shall be captured at centralized database so that easy tracking of illegal material can be done.
- x) Annual audit of each mining lease shall be carried out wherein three independent member of repute, nominated by District administration shall also participate.”

22. Thus, perusal of the EMGSM-2020 guidelines reflects that the Central Government has made provisions for undertaking detailed

exercise by taking into account several environmental factors with regard to enforcement and monitoring of sand mining.

23. The concerns of the Central Government as reflected in the aforesaid guidelines also find echo in Rules 10, 17 of Chapter II, Rule 23 of Chapter IV, Rules 35, 36, 37, 38, 41, 42, 45 of Chapter V and other provisions of Rules, 2021. It is pertinent to mention here that the State Government also made the U.P. Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2018.

24. It is pertinent to mention here that a defining moment for environmentally sustainable and socially responsible mining of sand and gravel occurred when the Supreme Court expressed its opinion in this regard in the case of **Deepak Kumar & Ors. vs. State of Haryana & Ors.**¹² wherein a direction was issued to the State Governments to follow the guidelines issued by the Central Government by framing appropriate rules. Pursuant to the order in **Deepak Kumar**, after extended deliberations and study, a draft Notification¹³ was issued by the Ministry of Environment, Forest and Climate Change on 15.1.2016 bearing S.O. 141(E) under the provision of sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986. This draft Notification of 2016 was for the express purpose for making certain amendments to the Environmental Impact Assessment Notification, 2006 issued vide number S.O. 1533(E) dated 14.9.2006 which was published under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 vide number S.O. 2588(E) dated 22.9.2015. The aforesaid Notification was also issued in compliance of certain observations made by the National Green Tribunal vide its order dated 13.1.2015 in the matter of sand mining wherein a direction was issued for

¹² (2012) 4 SCC 629

¹³ Notification of 2016

making a policy on environmental clearance for mining leases in cluster for minor mineral.

25. It is important to note that in the case of **Deepak Kumar** (supra), a Committee was directed by the Supreme Court to examine whether there had been an attempt to flout the aforesaid Notification dated 14.9.2006 by breaking the homogeneous area into pieces of less than 5 hectares, and that whether the activities going on in that area had any adverse environmental impact.

The Supreme Court recorded a finding that it was without conducting any study on the possible environmental impact on/in the river beds and elsewhere, the auction notices had been issued. The Supreme Court was of the considered view that when faced with a situation where extraction of alluvial material within or near a river bed has an impact on the river's physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it was not an answer to say that the extraction (of sand etc.) was in blocks of less than 5 hectares, separated by 1 km., because their collective impact may be significant, hence necessity of a proper environmental assessment plan.

26. In the case of **Deepak Kumar** (supra), the issues and recommendations made by the Ministry were considered which provided for, inter alia, that the States and Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime after taking into account the various factors. For evolving model guidelines, draft Model Guidelines regarding Environmental Aspect of Quarrying and of Minor Minerals was sent by a communication from the Ministry of Mines, calling for inputs. Accordingly, directions were issued to the Central and States Governments regarding compliance to the recommendations made

by the Ministry in its report of March 2010 and the Model Guidelines framed by the Ministry of Mines.

27. By the Notification of 2016, an amendment was sought to be incorporated in the Notification of 2006 regarding preparation of DSR for sand mining or river bed mining and mining of other minor minerals. An elaborate procedure prescribed for preparation of DSR for sand mining or river bed mining and mining of other minor minerals\ has been given in Appendix X thereof.

Needless to state that the Notification of 2016 issued by the Ministry is binding on the State Government.

28. In view of the aforesaid background, after a declaration has been made by the State Government under sub-rule (1) of Rule 23 of the Rules, 2021, the District Officer is mandatorily required to get the area or areas so declared evaluated for quality and quantity of minerals for fixing the minimum bid or offer by the Director, Geology and Mining, Uttar Pradesh or by an officer authorised by him before the date fixed for e-tender/e-auction/e tender-cum-e auction. Such an evaluation is mandatory and has to be done after taking into account the various factors mentioned in Rule 10 of the Rules, 2021. The guidelines in the EMGSM-2020 for preparation of DSR are also factors for such evaluation.

29. As stated above, pre- & post- monsoon replenishment studies are mandated in the EMGSM-2020 guidelines and the same are an extension of the survey, demarcation and evaluation of the area or areas declared under Rule 23. The purpose of the survey and the evaluation that are requisites under the provisions of Chapter II and Chapter IV of the Rules, 2021 are to inform the prospective bidders at the auction/tender mining leases for minor minerals (sand and

morrum in this case) so that the prospective bidders are well aware as to the quantity and quality of the minerals available in the declared area before they place their bids. The State Government cannot put the onus on the prospective bidders by stating that it is the bidders who should undertake an inspection of the area and satisfy themselves as to the quality and quantity of the minerals available at the area proposed to be leased, when the Rules, 2021 and the EMGSM-2020 guidelines require the State Government to undertake that exercise.

30. The guidelines contained in the SSMMG-2016 and in the EMGSM-2020 have been framed taking into account the judgments of the Supreme Court, the High Courts and the NGT. These guidelines appear to have been issued by the Central Government in purported exercise of power to issue directions under Section 20-A of the Mines and Minerals (Regulation and Development) Act, 1957¹⁴. The importance of the survey/evaluation by the State authorities in the interest of the ecology and environment in respect of the areas proposed to be leased under the Rules, 2021 cannot be over-emphasized. It is the only available and prescribed manner by which the State Government can make a realistic assessment as to the extent to which mining can be permitted in the leased area after taking into account the fragility of the ecology, the flora and fauna and the rivers, as well as the impact on the environment.

31. As mentioned above, both a pre-monsoon survey and a post-monsoon survey were got done by the petitioner as per the instructions received from the State authorities. Without getting the replenishment studies done, the petitioner could not re-commence mining operations. As a matter of fact, the petitioner had submitted a

¹⁴ Act, 1957

second post-monsoon replenishment study report on 8.1.2024 that reflected replenished minerals on the said lease as 16380 cubic meters. It was also stated in that replenishment study report that this mineral quantity may increase in future once water recedes down (*sic*). The State-respondents, in their counter affidavit, have sought to dismiss a replenishment study report by a baseless statement, in their counter affidavit, that analysis and conclusion of the replenishment study report dated 29.10.2023 that no mining activity can be done at all, is unworthy of being relied upon.

32. It is is not the case of the respondents that the replenishment studies that were got done by the petitioner were by an agency not accredited to NAPET/QCI, or that the agency was not empanelled as an Exploration Agency by the Department, or that the replenishment studies were made contrary to guidelines. It has also not been stated that the DSR/ evaluation for the leased area was available for being accessed by the petitioner. As a matter of fact the EMGSM-2020 guidelines reflect that often it is observed that letter of intent is granted for a location which has less potential for mining and not feasible for environment-friendly mining; that this leads to unnecessary financial burden on the mine owners and litigations; that thus, letter of intent should be preferably granted for those locations which have the least possibility of an impact on the environment and nearby habitation.

33. In the counter affidavit, the respondents have also stated that the petitioner could have surrendered the lease under the provisions of Rule 30 of the Rules, 2021 which it did not do. In our opinion, such objections and defences cannot be taken by the respondents to gloss over their inability in producing any evidence before this Court that a survey and evaluation was undertaken in respect of the area

granted for mining lease to the petitioner and a DSR relating to the area of mining lease to the petitioner was made by the respondents in compliance of the Notification of 2016/SSMMG-2016 / EMGSM-2020 which DSR was accessible to the petitioner prior to submitting its bid.

34. Moreover, the notice of the Officer Incharge, Mines dated 2.6.2023 that is enclosed as Annexure No. 6 to the writ petition gives a categorical direction to the petitioner to get the requisite replenishment studies done and submit the same, failing which legal proceedings would be initiated against the petitioner. It is not demonstrated by the respondents that the petitioner did not intend to work the mines under the mining lease.

35. In paragraph 39 of the writ petition, the petitioner has stated that without the replenishment study report, no mining can be conducted in the mining area after monsoon and, moreover, the first post-monsoon replenishment study report clearly showed that the mining area was submerged.

Further, in paragraph 40 of the writ petition, it has been stated that the revisional authority as well as the District Magistrate had failed to consider that the quantity of mineral to be excavated during the period of lease is fixed by the State Government and the petitioner has no control over the quantity and, therefore, it is the State Government which fixes the quality and quantity to be excavated by the lease-holder during the period of lease.

36. In reply to the aforesaid paragraphs of the writ petitions, the respondents have referred to the statutory provisions referred elsewhere in the counter affidavit and the conditions of lease-deed as well as the obligation of the lease-holder to perform his part of the contract. It has been stated that the petitioner cannot change or alter

the terms of the lease-deed according to his own convenience thereby causing loss to the State exchequer.

Moreover, this Court finds that in the reply, references have only been made to the Rule 29 of the Rules, 1963 and to Rule 30 of the Rules, 2021. Rule 29 of the Rules, 1963 deals with the execution of the lease-deed, while Section 30 of the Rules, 2021 deals with surrender of the mining lease. We fail to understand how this meets the submissions made on behalf of the petitioner. The respondents allege that the petitioner is trying to “*wriggle out of a contract at his own mood swings, inasmuch as according to the own replenishment report to the petitioner at one place he says that no amount of sand is available for mining purposes and on the other hand in the second report estimates 16380 cubic meter is available for mining purposes*”. Such a statement, in our opinion, is misplaced, uncalled for and without proper understanding of the EMGSM-2020.

37. In paragraph 44 of the writ petition, it is stated as follows:-

“44. That, in the above-mentioned guidelines it was clearly stated that the object and purpose of DSR was to identify a minable area and thereby assessment of the minable quantity and quality of the minerals, which was supposed to be ascertained prior to the invitation to offer (E-auction/E-tender /Advertisement) which was not acted in compliance by the respondent authority.”

38. In reply thereto, it has been stated in the counter affidavit as follows:-

“32. That the averments made in paragraph no. 43, 44, 45, 46, 47, 48, 49 and 50 of the writ petition are legal in nature and hence need no specific reply however it is humbly submitted that the said cases as cited by the petitioner are not applicable in the facts and circumstances of the present case and shall be duly distinguished at the time of hearing of the present writ petition. The principles laid down in the writ petition are based on mis-appreciation of facts and the legal

principles and do not provide for and shall suitably be distinguished at the time of hearing of the present writ petition.”

39. It is pertinent to mention here that it has not been stated in the counter affidavit filed by the respondents that any DSR was prepared after due survey and evaluation of the area sought to be auctioned. No DSR has been produced. Therefore, we cannot but conclude that the State Government has failed to demonstrate preparation of the DSR in due compliance of the Notification of 2016/SSMMG-2016 and EMGSM-2020 guidelines. Moreover, the respondents have openly rejected the first post-monsoon replenishment study report submitted by the petitioner without ascribing any cogent reason for such rejection.

40. The object of preparation of DSR is to ensure identification of areas of aggradation/deposition where mining can be allowed; identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited; and calculation of annual rate of replenishment and allowing time for replenishment after mining in the area. Thus, environmental protection requires strictly regulated mining in terms of area, quantity of mineral as well as, and very importantly, replenishment thereof.

41. The mining lease was granted in the land described in Part-I of the Schedule to the lease deed, in Village-Bilaspur Kachhar, Plot No.58 area 8.275 hectares for which the security amount was deposited. The boundaries of Plot No.58 are shown as follows:-

North	- Remaining part of Plot No.58, river Yamuna
South	- Border of Plot No.58 thereafter river Yamuna in village -Bichhavali

- | | |
|------|--|
| East | - Remaining part of Plot No.58, thereafter agricultural land of Plot Nos.42 to 56 and Plot No.57 |
| West | - Remaining part of Plot No.58, river Yamuna |

Though the map has not been enclosed alongwith the photocopy of the mining lease, it appears from the boundaries that mining area under the lease granted to the petitioner may include the river bed of the Yamuna river.

Given the EMGSM-2020 guidelines, it is not only the availability of mineral after its replenishment as would be reflected in the post monsoon replenishment study, but also the fact that at which part of the river bed/bank, has the replenishment occurred.

42. Thus, the annual audit envisaged under the aforesaid EMGSM-2020 guidelines and the replenishment study, both pre-monsoon and post-monsoon, assume great importance keeping in view the environment and ecology of the mining area. Mining within or near river-beds has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on in-stream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation **for a given stretch**. Therefore, the EMGSM-2020 guidelines recommends that it is imperative to have a study of replenishment of material during the defined period to minimize the adverse impact arising out of sand mining in a given river stretch. The EMGSM-2020 guidelines provides that the excavation will be limited to estimated

replenishment estimated with consideration of other regulatory provisions.

43. Therefore, the fact that the second post-monsoon replenishment study dated 8.1.2024 reflects replenishment of 16380 cubic meters of sand available for mining purpose has to be read in light of the location where this deposit/replenishment has taken place in the given river stretch. Then, it has to be ascertained in the light of EMGSM-2020, whether such replenishment is minable.

44. The respondents seem to be quite oblivious of the importance of proper replenishment, the mining plan and the DSR when they seek to raise demands and make claims without addressing the ecological concerns that are reflected in the EMGSM-2020 guidelines that also address the aspect of sustainable mining.

45. The respondents have sought to demonstrate the excavation of 85810 cubic meters of sand between January 2023 to June 2023 made by the petitioner during mining operations in the mining lease area only to seek to contend that the petitioner is short by 24247 cubic meters of the total mining of 110057 cubic meters permissible per annum under the terms of the lease which can be made good by the petitioner once the water level of the recedes down. However, such an assertion is made on the presumption that adequate replenishment will take place in the area, without due regard to the ecological aspects that require consideration during mining operations and thereafter as reflected in the EMGSM-2020 guidelines.

46. In case no adequate replenishment takes place even after water of river recedes down, then any advance payment of installments by the petitioner would result in serious loss to it which eventuality is

neither contemplated in the lease deed nor in the Rules, 2021. Therefore the contention sought to be made that payment of installment should be made by the petitioner and eMM-11 forms be uploaded to the extent of carried forward quantity of minerals which could not have been mined in the preceding months till March 2024, is fallacious.

47. There appears to be an effort to extract revenue from mining operations for benefit of the State exchequer without empathy and consideration of ecology, and sustainable mining, which aspects have to be balanced with the imperatives of development and earnings for the State exchequer.

48. No doubt, there is a contract, the lease-deed, entered into between the respondents and the petitioner, the terms of which bind them both. However, the terms of the lease-deed cannot override the aforesaid Notification of 2016, the SSMMG-2016, EMGSM-2020 guidelines and the Act and Rules.

49. It is pertinent to mention here that in the counter affidavit, the respondents harp on the availability of 16380 cubic meter of replenished sand and that the second replenishment study report reflects that after water recedes in the post-monsoon season, the mineral quantity may increase in future once the water recedes down.

Apart from the fact that this statement in the counter affidavit is based upon without fully appreciating the opinion expressed in the post monsoon replenishment study conducted on 8.1.2024 which also stated that no significant replenishment of RBM was found as no turbulent flooding was observed in that year, the post monsoon replenishment study on 29.10.2023 reflects that the entire leased area was submerged under active stream of river Yamuna and a very

small patch of surface was seen which belonged to the replenished area. It was highly recommended that the lease holder shall await receding of water for further survey. Whereafter the leased area could be re-investigated for DGPS data in order to establish replenished sand minerals. It was, therefore, stated that mining activity was, therefore, not feasible in compliance of the recommendation of SSMMG-2016.

50. Due and timely payment of installments under the terms of a mining lease is based on winning existing minerals for which the lease is granted which corresponds to the quality and quantity contemplated in the DSR and the replenishment studies, particularly, the post-monsoon replenishment study. If the post-monsoon replenishment study does not reflect adequate replenishment in the manner and to the extent envisaged in the EMGSM-2020, no mining can be permitted in the area pertaining to the mining lease. As a corollary, for want of adequate replenishment of the mineral or non-availability of mineral in the requisite quantity in various other parts of the area for which lease has been granted, neither can any mining activity be permitted nor, consequently, can any claim for installments be sustained unless there is actual replenishment or availability. It is for these circumstances that preparation of proper DSR and conducting audit assumes importance.

51. In the aforesaid background, we find that the case of the petitioner has merit. The petitioner could not have been forced to mine the relatively meagre amount of 16380 cubic meters of replenished sand that was reflected in the last replenishment study report submitted by the petitioner without ascertaining whether the replenishment that had taken place in the stretch of land/river was such that mining of the same could be permitted in the backdrop of

sustainable mining. There is no DSR shown to have been prepared.

52. As far as filing of Writ-C No.9186 of 2022 by the petitioner before the Lucknow Bench of this Court is concerned, the same is for a different cause of action. However, the petitioner's choosing both the Lucknow Bench of this Court as well as at Allahabad to file different petitions, is not proper. Be that as it may.

53. For the reasons aforesaid, the impugned orders dated 18.4.2024, 27.2.2024 and 19.2.2024 cannot be sustained and are hereby quashed.

54. However, since, by means of an affidavit filed alongwith a stay application on 9.12.2024, we are informed that steps have been taken by the State Government for fresh auction of the mining area that was granted to the petitioner, we direct that the petitioner is not liable to deposit any installment after the stoppage of mining operations for the period from 1.7.2023 onwards. If any amount has been deposited/recovered/confiscated by/against the petitioner, the same shall be refunded within a period of one month from today alongwith simple interest @ 9% per annum calculated from the date of such deposit/recovery/confiscation till the actual payment.

55. Subject to the aforesaid observations, this writ petition is **allowed**.

56. However, before parting, we deem it fit to direct the respondents to ensure preparation of DSR in respect of every area sought to be auctioned for mining of sand/gravel/morrum in compliance of the Notification of 2006, as amended by the Notification of 2016, the SSMMG-2016 and EMGSM-2020.

Order Date :- 26.3.2025
SK