Item No. 01 & 02

BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)

Original Application No. 48/2020

Khanan Grasth Sangharsh Samiti — Applicant (s)

Versus

Union of India & Ors — Respondent(s)

With

Original Application No. 75/2020

Khanan Grasth Sangharsh Samiti & Ors — Applicant (s)

Versus

Union of India & Ors — Respondent(s)

Date of completion of hearing and reserving of order: **09.02.2022**
Date of uploading of order on the website: **22.02.2022**

CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant (s): Mr. Rahul Choudhary, Adv

For Respondent(s): Mr. Rohit Kumar Tuteja , Adv
Mr. Om Shankar Shrivastava, Adv
Mr. Rohit Sharma, Adv
Mr. Yadvendra Yadav, Adv
Mr. Shoeb Hasan Khan, Adv
Ms. Sapna Agarwal, Adv

ORDER

1. A common question of law and fact have been raised in both the applications thus, are being decided by this common order.

A. Facts of O.A No. 48 of 2020

2. The present application is filed under Section 15 and Section 17(3) read with Sections 18 and Section 20 of the National Green Tribunal Act, 2010, seeking compensation, restitution of the property damaged because of the mining activity undertaken in the villages of Shuklavas, Pichani, Pavana, Bhuchara and Dhudhavas located in Tehsil Kotputli, District Jaipur, Rajasthan.
3. The Members of the applicant organisation are from of Shuklavas, Pichani, Pavana, Bhuchara and Dhudhavas located in Tehsil Kotputli, District Jaipur, Rajasthan. The issue raised by the applicant organisation pertains to the above five villages located in Tehsil Kotputli, District Jaipur, Rajasthan, where the residential houses and agricultural field of individuals, common structures like public health centre, schools, water bodies and water sources are getting affected and being damaged because of uncontrolled mining. There are about 15 mines where the members of the applicant organisation resides, which are engaged in mining activity by use of explosives and also engaged in deep hole blasting.
4. The Respondents No. 7 to 21 are mining leases operating in the villages of Shuklavas, Pichani, Pavana, Bhuchara and Dhudhawas and are jointly liable for damaging the residential houses and agricultural field of individuals, common structures like public health centre, schools and depleting the water bodies and the water sources.
5. That most of the mining leases are in very close proximity to human habitation and agricultural fields. The mining lease holders that are operating the aforementioned 15 mines in close proximity to human habitation are carrying out mining activities by the method of deep hole blasting, that is not permitted close to human habitation, as per

the provisions of the Rajasthan Minor Mineral concession Rules, 2017. Since the said mines are located within 50 to 200 meters from habitation, this is causing heavy structural damage to the houses of the people residing in the villages of Shuklavas, Pichani, Pawana (Ahir), Bhuchara and Dhudhawas, and large cracks have appeared in the walls ceilings of these structures, causing the affected villagers to live in constant fear of their houses collapsing.

6. Further, the deep hold blasting that is being carried out by the aforementioned 15 mining lease holders is also in close proximity to the Rajkiya Madhyamik Vidyalaya, located in Shuklavas village and Moolchand Prabhu Dayal Senior Secondary School that is located in pawana Vilrage and this has resurted in large cracks in the wars and ceiling of the school buildings as well' The said Government Middle School in Shuklavashas about 300 students from the surrounding villages and the compromised structural integrity of the school buildings due to the blasting being carried out by the mining operators puts the lives of such a large number of students at great risk. Similarly, the said blasting has also damaged to Health Care Centre and Hospital located in Shuklavas. Further the senior secondary school in Pawana is also affected by the mining activity and the students studying there are in danger.
7. The Assistant Mining Engineer vide Notice dated 26.07.2019 had directed the l5 mining lease operating in the above five villages, that in case of short hole that a distance of 100 meters, should be maintained from Human habitats. Further the Notice also directed that in case of deep hole blasting the mining leases is to maintain a distance of 300 meters from Human habitats.
8. That these mining activities carried out by the aforementioned 15 mining operators are in violation of Rule 28(1)(vi) of the Rajasthan Minor Mineral Concession Rules, 2017 which states as follows –

"(vi) The lessee or licensee shall not carry on his operations in a manner that injure injure or prejudicially effect &t any buildings, works, property or rights of other persons and no land will be used by the lessee or licencee for surface operations which is already occupied by persons other than the Government for works or purposes not included in the mining lease;"

Further Rule 34(2) (ix) of the Rajasthan Minor Mineral concession Rules, 2017 also states that –

"ix) take all mitigative measures during the mining operations to ensure that the buildings or structures in the nearby areas shall not be affected due to blasting;"

9. That there is no fixed timing for blasting in the 15 mines surrounding the villages of shuklavas, Pichani, Pawana (Ahir), Bhuchara and Dhudhawm. The deep hole blasting takes place day and night, causing earthquake like tremors in the above five villages. Further, due to the blasting activity happening day and night the residents of the structurally weakened houses, remain outdoor due to fear that their house might collapse. The villagers of Shuklavas, Pidrani, Pawana (Ahir), Bhuchara and Dhudhawas have done the self-assessment of the damages done to their homes by the 15 mining leases operating in the villages.

10. **Rule 34(2) of the Rajasthan Minor Mineral Concession Rules, 2017** states that –

"(xii) undertake to ensure minimum losses to the agriculfure crops and undertake to contribute suitably for compensation to the loss or damage to the crops;"

The 15 mining lease operators have taken no measures whatsoever to ensure that the losses to the agricultural crops of the villagers of the villages of Shuklavas, Pichani, Pawana (Ahir), Bhuchara and Dhudhawas are kept to a minimum and thus are in clear violation of the provisions of the Rajasthan Minor Mineral Concession Rules, 2017.

11. The above stated facts have also been confirmed by a **newspaper report titled *"stones falling in the field after blasting"*, published in Navjyoti, dated 24.08.2019**, which states that the authorities have failed to take any action against the mining activities even after stones, from blasting are falling in the agricultural fields, Further the report States that the mutual agreement reached on 24.07.2019, between the protesting villagers of Shuklavas and the officials of the Rajasthan Government has not been executed.

12. The mining activities have caused serious cracks leading to structural damages to the Government High School in Shuklavas. The High School is attended by nearly 300 shrdents every day, from all of the surrounding villages including Shuklavas, Pichani, Pawana (Ahir), Bhuchara and Dhudhawas.

13. The Principal of Rajkiya Madhyamik Vidyalaya, Shuklavas, wrote a letter, dated 29.03.2019, to the authorities including the Chief Secretary, of the State of Rajasthan regarding blasting in the mines near the school. The letter of the Principal also pointed out that mining activities have caused structural damages to the school buildings and if not stopped there is a possibility of collapse of the school building and harm to life, It is pertinent to note that no action was taken by the authorities against the mining done near the Government Middle school, Shuklavas, even after the letter sent by the Principal.

14. Students studying there are always under threat of their life and security, since blasting happens during school hours at disbnce of less than 50 meters. It is pertinent to note that the deep hole blasting taking place at distance less than 50 meters, makes it impossible for the student to attend classes. The said deep hole blasting has not only put the lives of the students are risk but also makes it impossible for the students to concentrate on their classes, due to the constant loud

noise and tremor-like vibrations coming from the explosions in the nearby mines.

15. The Principal of the school recently had written a letter dated 11,09.2019, to the mining engineer of District Jaipur and Assistant Mining Engineer, Kotputli, stating that heavy blasting has caused cracks in the school building. The letter also states that during rainy season water leaking through the cracks is causing huge inconvenience to the students, Further, the Principal also requested for funds for the renovation of the school to be released from the fund of the District Mineral Foundation, Rajasthan, which is a non-profit body, in those districts affected by the mining works, to work for the interest and benefit of persons and areas affected by mining related operations. It is funded through the contributions from the holder of major or minor mineral concession in the district as may be prescribed by the central or State Government.

16. The mining activity happening has caused serious cracks leading to structural damages to the primary health care centre located in village, Shuklavas. The day and night blasting activities by the surrounding mines are also putting the patients visiting the primary health care centre in grave danger. Several cracks have appeared on the walls and ceilings of the Health Care Centre building, and it is clear to see that the structural integrity of the building has been compromised.

17. The uncontrolled blasting happening day and night is also causing difficulty for the doctors, nurses and other staff of the primary health care centre and affecting the working of the primary health care centre. The constant risk of a possible collapse and the incessant tremor-like vibrations emanating from the explosions in the nearby mines makes it very hard for the doctors and other health care staff to provide adequate treatment to their patients.

B. <u>Joint Committee Report</u>

18. The matter was taken up on 28.08.2020 and the committee consisting Collector and representative of State Pollution Control Board, Rajasthan was directed to visit the site and submit a factual and action taken report. The members of the Committee visited the site and submitted the report as follows:

<u>सुयंक्त निरीक्षण रिपोर्ट</u>

माननीय राष्ट्रीय हरित अधिकरण भोपाल बैंच, द्वारा ओरिजिनल एप्लीकेशन संख्या 75/2020 (सी.जेड), खनन ग्रस्त संघर्ष समिति बनाम यूनियन ऑफ इंडिया व अन्य में पारित आदेश दिनांक 28/08/2020 की अनुपालना में याचिका में वर्णित 15 खनन ईकाईयों तथा इन खनन ईकाइयों द्वारा की जा रही ब्लास्टिंग से हो रहे कथित नुकसान के संदर्भ में जिला कलेक्टर के आदेश दिनांक 29/01/2021 द्वारा गठित दल द्वारा दिनांक 11/02/2021 को क्षेत्र का निरक्षण किया गया। उल्लेखनीय है कि उक्त दल में उपनिदेशक खान सुरक्षा निदेशाल खनन एवं सुरक्षा, अजमेर को विशेष रूप से आमंत्रित किया गया था परन्तु वे निरीक्षण के दौरान उपस्थित नहीं हुए। गठित दल के अन्य सदस्यों ने निरीक्षण के दौरान यह पाया कि खनन पट्टा संख्या 16/98, 131/2006, 43/2003, 41/2003, 41/2003, 619/93, 122/2006, 621/93, 28/2006, 618/93, 620/93, 62/2006, 12/95, एक Cluster में ग्राम–पिचानी में स्थित हैं तथा खनन पटटा सं 24/2006 एवं 293/2003 दूसरे Cluster में ग्राम शुक्लाबास में स्थित हैं। उक्त खनन पट्टों की सम्मति वैद्यता तथा संचालन संबंधित विवरण परिशिष्ट – 'अ' पर संलग्न है। निरीक्षण के दौरान खनन ईकाईयों में ब्लास्टिंग तथा खनन कार्य होता नहीं पाया, परन्तु जे.सी.बी. मशीनों द्वारा ट्रकों में पत्थर लोडिंग का कार्य होता पाया गया। खानों में लगभग 125 फीट गहराई तक में अधिकतम खनन किया जाना पाया गया तथा निकट ग्राम पिचानी में खनन पिट तल में एक स्थान पर पानी एकत्रित होना पाया गया। खनन ईकाईयों के प्रतिनिधि द्वारा बताया गया कि यह पानी वर्षा से एकत्रित हुआ है तथा उनकी खनन ईकाईयों में खनन से भूजल स्तर को intersect नहीं किया गया है, क्योंकि उक्त क्षेत्र का भूजल स्तर लगभग 300–400 फीट गहराई पर होना संभावित है, तथापि वास्तविक भुजल स्तर के संदर्भ में भूजल विभाग से जानकारी लिया जाना उचित होगा। निरीक्षण के दौरान कोई ड्रीलिंग की गतिविधि नहीं देखी गई। खनन पट्टा धारकों द्वारा गाडीयों के आवागमन से मार्ग में उड़ने वाली धूल को राकने के लिए पानी के छिड़काव हेतु टेंकरों की व्यवस्था से मार्ग में

उड़ने वाली धूल को रोकने के लिए पानी के छिड़काव हेतु टेंकरों की व्यवस्था कर रखी थी। खनन पट्टा धारकों ने उनके द्वारा किये गये विभिन्न स्थानों पर वृक्षारोपण की जानकारी दी।

कथित स्थानों में से निरीक्षण दल ने राजकीय उच्च माध्यमिक विद्यालय, शुक्लाबास का मौका–निरीक्षण किया। निरीक्षण के दौरान विद्यालय के एक अध्यापक जिन्होने स्वयं का नाम श्री नरेन्द्र कुमार गुप्ता बताया, उन्होने पुष्टि की कि खनन पट्टा धारकों द्वारा विद्यालय में 300 वृक्षों का पौधारण किया है। तत्पश्चात ब्लास्टिंग से कथत नुकसान के संदर्भ में श्री नरेन्द्र कुमार गुप्ता ने बताया की ब्लास्टिंग से विद्यालय प्रांगण में कंपन होता है, जिससे विद्यालय भवन में पट्टियों में जगह–जगह दरारें आ गयी हैं। पूछा जाने पर बताया कि विद्यालय भवन का निमार्ण लगभग 50 वर्ष पुराना है। उनके द्वारा भवन में पट्टियों में आई दरारों का निरीक्षण दल को मौका दिखाया गया, जो कि संभवतः भवन पुराना होने से निर्माण दोष के कारण भी हो सकते है।

उल्लेखनीय है कि माननीय राष्ट्रीय हरित अधिकरण के समक्ष एक अन्य प्रकरण संख्या 48/2020 पूर्व में दायर हुआ था, जिसमें वर्णित बिन्दु प्रकरण संख्या 75/2020 के समान हीं हैं। दोनों प्रकरणों में खनन ईकाईयों में ब्लास्टिंग से कथित नुकसान के संदर्भ में उल्लेख है। प्रकरण संख्या 48/2020 में भी दिनांक 06/01/2021 को जिला कलेक्टर, राजस्थान प्रदूषण नियंत्रण मण्डल तथा खान विभाग के प्रतिनिधियों द्वारा समान क्षेत्र का निरीक्षण किया गया था। उक्त संयुक्त निरीक्षण प्रतिवेदन के अनुसार

''किसी वैज्ञानिक अध्ययन (Seismic Study) के बिना ब्लास्टिंग द्वारा कथित नुकसान की पुष्टि नहीं की जा सकती है तथा खनन ईकाईयों को ब्लास्टिंग की अनुमति निर्देशालय खान एवं सुरक्षा (DGMS) द्वारा दी जाती है जो कि ब्लास्टिंग हेतु दिशा निर्देशे तय करते हैं तथा दिशा निर्देशों की अनुपालना सुनिश्चित करते हैं। अतः DGMS से भी इस प्रकारण में ब्लास्टिंग से निकट ग्रमों/खेतों/भवनों पर पड़ रहे प्रभावों के संबंध में रिपोर्ट लिया जाना उचित होगा।''

अतः उपरोक्तानुसार लेख है कि भवन में दरारों तथा नुकसान का कारण ब्लास्टिंग का होना अथवा न होना निर्धारित करने हेतु ब्लास्टिंग से कंपन की कंपन अध्ययन (Seismic Study) व उसके प्रभाव पर रिपोर्ट आवश्यक है अतः DGMS प्रतिनिधि को ब्लास्टिंग के प्रभाव बाब्त रिपोर्ट दिए जाने हेतु निर्देशित किया जाना उचित होगा।

19. A perusal of report reveals that:

i. Inspite of the direction of Collector, in compliance of the order of this Tribunal, the authorities as mentioned in the report, not attended the proceedings.

ii. There was blasting. The mining was done upto the minimum depth of 125 ft.

iii. The intersection of water level has been affected or not, the report is not clear.

iv. There is no report with regard to the plantation.

v. There is a damage to the buildings specially school building due to blasting.

vi. The effect of blasting on human health and building has not been calculated.

C. <u>Proceedings before Tribunal</u>

20. The matter was again taken up on 23.06.2021, and this Tribunal after considering the facts observed as follows :

> "6. Accordingly, we direct the Director of Mines to regularly monitor the illegal sand mining and regulating and enforce the relevant guidelines issued in 2016 and 2020 and also direct to take necessary action. We further direct the Collector to report with regard to the damage to the school building and other buildings due to blasting in addition to the distance from the human habitation (*abadi*) and further State Pollution Control Board is directed to report with regard to violation of Environmental Conditions and extent of its compliance and further the damage also. The Applicant is further directed to submit actual damage caused to the school and human health so that the necessary action may be initiated against the violators of law. Since there is a violation of Environmental Clearance, thus, we deem it fit that notice should be issued to all the respondents and private respondents also with a direction to submit their reply/counter affidavit within four weeks. Put up with complete report on 3rd August, 2021 and list it with connected O.A. 48/2020. The vehicles involved in illegal mining must be dealt with, in accordance with above guidelines issued in the case of NGT Bar Association and Environmental Compensation must be assessed and realized accordingly.

7. The report in the matter be filed by the Committee by email at ngtczbbho-mp@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF."

D. **Reply by Director General of Mines Safety (DGMS), Respondent No. 7**

21. In compliance thereof, the Director General of Mines Safety (DGMS), Respondent No. 7 has filed the reply with the facts that the mining and insurance of safety, health and welfare of workers employed in mines is regulated by the Mines, Act, 1952 and Rules and Regulations framed there under, The Metalliferous Mines Regulations, 1961 and Mines Rules, 1955. The detailed reply and report is as follows:

*"**6**. That, the onus to ensure safety, health and welfare of workers employed in mines rests with the mine owner and agent (person, whether appointed as such or not, who acts or purports to act on behalf of the owner) of the mine, which is clearly laid down in Section l8(1) of the Mines Act, 1952, which quotes that "**The owner and agent of every mine shall each be responsible for making financial and other provisions and for taking such other steps as may be necessary for compliance with the provisions of this Act,** and the Regulations, Rules bye-laws and orders made there-under."*

*Provisions of Sections l8(a) of the Mines Act, 1952, further state that "**The owner, agent and manager of every mine shall each be responsible to see that all operations carried on in connection with the mine are conducted in accordance with the provisions of this Act, and of the Regulations, Rules, bye-laws and orders made there-under.***

9**. That, in response to the paragraph 4 of the petition, this is to submit **that no permission for deep hole drilling and blasting has been issued by this Directorate**. Although Regulation 164 (1-B)(a) of the Metalliferous Mines Regulations, 1961, stipulates that "**In case of an opencast working, where any permanent building or structure of permanent nature, not belonging to the owner, lies within the danger zone, the aggregate maximum charge in all the holes fired one time shall not

exceed two kilograms unless permitted *.." read with Sections 18(4) of the Mines Act, 1952, which stipulates that "****The owner, agent and manager of every mine shall each be responsible to see that all operations carried on in connection with the mine are conducted in accordance with the provisions of this Act, and of the Regulations, Rules, bye-laws and orders made there-under****.*

On 29.07.2021 an officer of this Directorate (Ajmer Region) inspected the mines in the area mentioned in the petition (NGT OA No. 48/2020) to know the factual status of the mines with respect to the points raised in the petition.

E. ***Status of Mines as per report of DGMS***

THE PRESENT STATUS OF MINES ARE AS FOLLOWS:

Sl. No.	*Name of the Mine*	*Name of the Owner*	*Action taken report*
1.	*PICHANI MASONARY STONE MINE (ML NO. 16/98)*	*SMT. TRIPTA SOOD*	*(i) A order under Section 22A(2) of the Mines Act, 1952 was imposed vide this Directorate's letter No.AJR/DMS/Jaipur/2013/5846 idnaaMk 31.7.13 for prohibiting employment in the mine except rectification work as per the terms of the order.* *(ii)* ***Prosecution was launched against*** *the owner for violation of the prohibitory order on 09.04.2015 before the JMFC, Kotputli, Jaipur (Rajasthan).* *(iii) Shri Pandya Jignesh Bhai, 2nd Class Managers Certificate holder has been authorized by this Directorate and which is valid upto 30.06.2022.* *On 29.07.2021, an inspection was made and following observed :-* *(a) Though permanent houses/ structures not belonging to owner of the mine were lying within a distance of 55m to 110 m but it appeared that* ***blasting was being carried out in the mine without obtaining permission under Regulation 164(1-B)(a) of the MMR, 1961. The mine was worked with the use of Heavy Earth Moving Machineries and a system of deep hole blasting without obtaining a permission in writing from this Directorate as required under Regulation 106(2)(b) of the MMR, 1961****.* *(b) Mine was found closed on the day of inspection thus effect of fly rock due to blasting could not be assessed.* *(c)* ***Cracks were observed in the structures located within danger zone (i.e. 300m) may be due to blasting contribution with other causes*** *like Civil*

			engineering parameters. *Action taken by this Directorate :-* *1. Scientific study is recommended to find out the effect of blasting (due to blast induced ground vibrations) on the structures within danger zone. Management was directed to carry out the study through scientific institutions.* *2. Violation letter has been sent to the owner vide this Directorate's letter No. 944 dated 30.07.2021 for stoppage of mine workings.* *3.* ***A letter has been sent to the Department of Mines and Geology, Kothputali , Jaipur district Rajasthan state for stoppage of mine workings vide this directorate's*** *letter No. 945 dated 30.07.2021.*
2.	*PICHANI MASONARY STONE MINE (ML NO. 618/93)*	*Braham Prakash Modi*	*Management made an online application vide ID No. 163642 and requested to obtain an authorization in favour of Shri Jai Prakash Gupta, Ist class Manager's Certificate of competency, which is under process.* *On 29.07.2021, an inspection was made and following observed :-* ***(i)*** *Mine workings were closed during the inspection, but one excavator and one large dia drill machine found at the mine.* ***It appears that the drilling and blasting was carried out in the mine. The villager's complaint about heavy blasting is being carried out every day by the mine owners. Heavy Deep hole blasting is being carried out in the mine without obtaining permission from this Directorate.*** ***(ii)*** *Peer ji ka sthan, Boundary of Government Secondary School, Suklabas and Cow shed were lying at a minimum distance of about 45m to 243m at west side from the lease boundary and habitation were located at a minimum distance of about 120m at South side from the lease boundary i.e.* ***within the danger zone. School building cracks were observed in many rooms as complaint made by villagers.*** *(iii) Though permanent houses/ structures (Schools, Govt. hospital, Panchayat Bhawan and Gaushala) not belonging to owner of the mine were lying within danger zone but it appeared that blasting was being carried out in the mine without complying the conditions of the provisions under Regulation 164(1-B)(a) of the MMR, 1961.* *(iv) Cracks were observed in the structures located within danger zone (i.e. 300m) may be due to blasting contributing with causes like Civil engineering parameters.* *(v) Mine was found closed on the day of inspection thus effect of fly rock due to blasting could not be assessed. Cracks were observed in the structures located within danger zone (i.e. 300m) may be due to blasting contribution with other causes like Civil engineering parameters.*

			Action taken by this Directorate :- *1. Scientific study is recommended to find out the effect of blasting (due to blast induced ground vibrations) on the structures within danger zone. Management was directed to carry out the study through scientific institutions.* *2. Violation letter has been sent to the owner vide this Directorate's letter No. 953 dated 30.07.2021 for stoppage of mine workings.* *3. A letter has been sent to the Department of Mines and Geology, Kothputali , Jaipur district Rajasthan state for stoppage of mine workings vide this directorate's letter No. 954 dated 30.07.2021.*
3.	*PICHANI MASONARY STONE AMALGAMATE MINES (ML NO. 619/93, 621/93, 28/06, 62/06, 122/06 and 12/95)*	*Chhagan Lal Modi*	*Management made an online application vide ID No. 163642 and requested to obtain an authorization in favour of Shri Jai Prakash Gupta, Ist class Manager's Certificate of competency, which is under process.* *On 29.07.2021, an inspection was made and following observed :-* *(i) Mine workings were closed during the inspection, but one excavator and one large dia drill machine found at the mine.* ***It appears that the drilling and blasting was carried out in the mine.*** *The villager's complaint about heavy blasting is being carried out every day by the mine owners.* *(ii) Boundary of Government Secondary School, Suklabas and Cow shed were lying at a minimum distance of about 300 m respectively from the ML No. 619/93 i.e. within the danger zone. School building cracks were observed in many rooms as complaint made by villagers.* *(iii) Though permanent houses/ structures (Schools, Govt. hospital, Panchayat Bhawan and Gaushala, Rihayasi Makan, Purana Pakka Makan) not belonging to owner of the mine were lying within danger zone but it appeared that blasting was being carried out in the mine without complying the conditions of the provisions under Regulation 164(1-B)(a) of the MMR, 1961.* *Action taken by this Directorate :-* *1. Scientific study is recommended to find out the effect of blasting (due to blast induced ground vibrations) on the structures within danger zone. Management was directed to carry out the study through scientific institutions.* *2. Violation letter has been sent to the owner vide this Directorate's letter No. 965 dated 30.07.2021 for stoppage of deep hole blasting in the mine.* *3. A letter has been sent to the Department of Mines and Geology, Kothputali , Jaipur district Rajasthan state for stoppage of deep hole blasting in the mine vide this directorate's letter No. 966 dated 30.07.2021.*
4.	*PICHANI MASONARY STONE MINE (ML NO.*	*SMT. SUNITA MODI*	*Shri Gopalacharya, First Class Manager is appointed as Manager vide this Dirctorte's letter No. 386 dated 12.03.2021 which is valid up to 11.03.2022.* *On 29.07.2021, an inspection was made and following observed :-*

	620/93)		*(i) However, mine workings are closed during the inspection, but one excavator and one large dia drill machine found at the mine. **It appears that the drilling and blasting was carried out in the mine**. The villager's complaint about heavy blasting is being carried out every day by the mine owners. Heavy Deep hole blasting is being carried out in the mine without obtaining permission from this Directorate.* *(ii) Boundary of Government Secondary School, Suklabas and Cow shed were lying at a minimum distance of about 200m and 250m respectively from the lease boundary i.e. within the danger zone. School building cracks were observed in many rooms as complaint made by villagers.* *(iii) Though permanent houses/ structures (Schools, Govt. hospital, Panchayat Bhawan and Gaushala) not belonging to owner of the mine were lying within danger zone but it appeared that blasting was being carried out in the mine without complying the conditions of the provisions under Regulation 164(1-B)(a) of the MMR, 1961.* *Action taken by this Directorate :-* *1. Scientific study is recommended to find out the effect of blasting (due to blast induced ground vibrations) on the structures within danger zone. Management was directed to carry out the study through scientific institutions.* *2. Violation letter has been sent to the owner vide this Directorate's letter No. 956 dated 30.07.2021 for stoppage of mine workings.* *3. A letter has been sent to the Department of Mines and Geology, Kothputali , Jaipur district Rajasthan state for stoppage of mine working vide this directorate's letter No. 957 dated 30.07.2021.*
5.	*PICHANI MASONARY STONE MINE (ML NO. 43/03)*	*SHRI ROHIT GOD*	*(iv) A order under Section 22A(2) of the Mines Act, 1952 was imposed vide this Directorate's letter No. AJR/DMS/Jaipur/2013/5945 dated 06.08.2013 for prohibiting employment in the mine except rectification work as per the terms of the order.* *(v) Prosecution was launched against the owner for violation of the prohibitory order on 09.04.2015 before the JMFC, Kotputli, Jaipur (Rajasthan).* *(vi) Shri Pandya Jignesh Bhai, 2nd Class Managers Certificate holder has been authorized by this Directorate and which is valid upto 30.06.2022.* *On 29.07.2021, an inspection was made and following observed :-* *(a) Peer Ji Ka Sthan existed at a distance of about 100m in South- East direction of the mine workings. Few houses in Northern direction existed as near to 130m to 155m of the mine workings. Other buildings like school etc. existed within a danger zone of 300m in southern direction of the mine workings.* *(b) **Cracks were observed in the***

			structures located within danger zone *(i.e. 300m) may be due to blasting contributing with other causes like Civil engineering parameters.* *Action taken by this Directorate :-* *1. Scientific study is recommended to find out the effect of blasting (due to blast induced ground vibrations) on the structures within danger zone. Management was directed to carry out the study through scientific institutions.* *2. Violation letter has been sent to the owner vide this Directorate's letter No. 938 dated 30.07.2021 for stoppage of mine workings.* *3. A letter has been sent to the Department of Mines and Geology, Kothputali , Jaipur district Rajasthan state for stoppage of mine working vide this directorate's letter No. 939 dated 30.07.2021.*
6.	*PICHANI MASONARY STONE MINE (ML NO. 41/03)*	*ARS Construction Company*	*(i) A order under Section 22A(2) of the Mines Act, 1952 was imposed vide this Directorate's letter No. AJR/DMS/Jaipur/2013/5855 dated 31.07.2013 for prohibiting employment in the mine except rectification work as per the terms of the order.* *(vii) Prosecution was launched against the owner for violation of the prohibitory order on 09.04.2015 before the JMFC, Kotputli, Jaipur (Rajasthan).* *On 29.07.2021, an inspection was made and following observed :-* *(a) Boundary of Government Secondary School, Suklabas and Cow shed were lying at a minimum distance of more than 300 m from the lease boundary. Thus, the effect of blasting being carried out in this mine will be negligible on Cow Shed and school buildings. During inspection of Cow shed (Gaushala), remarkable cracks were not observed.* ***Few fine cracks in old constructed buildings of school were observed*** *but not in new construction.* *(b) A Peer Ji Ka Sthan existed at a distance of about 200m in South-Eastern direction. Few houses existed in north direction at a minimum distance of 110m. Other buildings, hospitals and panchyat bhawan lie at distances more than 300m in southern direction.* *(c) Though permanent houses/ structures not belonging to owner of the mine were lying within danger zone but it appeared that blasting was being carried out in the mine without complying the conditions of the provisions under Regulation 164(1-B)(a) of the MMR, 1961.* *(d) Cracks were observed in the structures located within danger zone (i.e. 300m) may be due to blasting contributing with causes like Civil engineering parameters.* *Action taken by this Directorate :-* *1. Scientific study is recommended to find out the effect of blasting (due to blast induced ground vibrations) on the structures within danger zone. Management was directed to carry out the study through scientific institutions.*

			2. *Violation letter has been sent to the owner vide this Directorate's letter No. 941 dated 30.07.2021 for stoppage of mine workings.* 3. *A letter has been sent to the Department of Mines and Geology, Kothputali , Jaipur district Rajasthan state for stoppage of mine working vide this directorate's letter No. 942 dated 30.07.2021.*
7.	*PICHANI MASONARY STONE MINE (ML NO. 131/06)*	*Naresh Kumar*	*The mine was closed a long time ago, the same was confirmed by Assistant Mining Engineer, Kotputli Department of Mines and Geology, Government of Rajasthan.*
8.	*MASONARY STONE MINE ML NO. 25/06 N/V: SHUKLABAS*	*Jaswant Singh*	*On 29.07.2021, an inspection was made and following observed :-* *(i) Mine workings were found closed during the inspection, but two excavators found at the mine**. It appears that the drilling and blasting was carried out in the mine**. The villager's complaint about heavy blasting is being carried out every day by the mine owners. Heavy Deep hole blasting was being carried out in the mine without obtaining permission from this Directorate.* *(ii) On the east side of the mine, houses were located within danger zone (300m) of blasting. Mine workings extended near to Naya Nirman on the Eastern side of the mine without taking prior permission from this Directorate.* *(iii) Some of the houses located within danger zone of blasting were old. Hairline cracks were observed on walls and ceilings of the houses.* *(iv) Though permanent houses/ structures (houses and high density aabadi area) not belonging to owner of the mine were lying within danger zone but it appeared that blasting was being carried out in the mine without complying the conditions of the provisions under Regulation 164(1-B)(a) of the MMR, 1961.* *Action taken by this Directorate :-* *1. Scientific study is recommended to find out the effect of blasting (due to blast induced ground vibrations) on the structures within danger zone. Management was directed to carry out the study through scientific institutions.* *2. Violation letter has been sent to the owner vide this Directorate's letter No. 950 dated 30.07.2021 for stoppage of mine workings.* *3. A letter has been sent to the Department of Mines and Geology, Kothputali , Jaipur district Rajasthan state for stoppage of mine working vide this directorate's letter No. 951 dated 30.07.2021.*
9.	*MASONARY STONE MINE ML NO. 24/06 N/V: SHUKLABAS*	*Devendra Singh*	*On 29.07.2021, an inspection was made and following observed :-* *(i) Mine workings were found closed during the inspection, but two excavators found at the mine. **It appears that the drilling and blasting was carried out in the mine**. The villager's complaint about heavy blasting is being carried out every day by the mine owners. Heavy Deep hole blasting was being carried out in the mine without*

			obtaining permission from this Directorate. *(ii) On the east side of the mine, houses were located within danger zone (300m) of blasting. Many houses were located within distance of 100m from the workings of the mine.* *(iii) Some of the houses located within danger zone of blasting were old. Hairline cracks were observed on walls and ceilings of the houses.* *(iv) Though permanent houses/ structures (houses and high density aabadi area) not belonging to owner of the mine were lying within danger zone but it appeared that blasting was being carried out in the mine without complying the conditions of the provisions under Regulation 164(1-B)(a) of the MMR, 1961.* *Action taken by this Directorate :-* *1. Scientific study is recommended to find out the effect of blasting (due to blast induced ground vibrations) on the structures within danger zone. Management was directed to carry out the study through scientific institutions.* *2. Violation letter has been sent to the owner vide this Directorate's letter No. 947 dated 30.07.2021 for stoppage of mine workings.* *3. A letter has been sent to the Department of Mines and Geology, Kothputali , Jaipur district Rajasthan state for stoppage of mine working vide this directorate's letter No. 948 dated 30.07.2021.*
10.	*MASONARY STONE MINE ML NO. 293/03 N/V: SHUKLABAS*	*Shri Naveen Kumar*	*The mine was closed a long time ago, the same was confirmed by Assistant Mining Engineer, Kotputli Department of Mines and Geology, Government of Rajasthan.*

22. As per permission under Regulation 34(6), 34(4) and 106(2)(b) of the Metalliferous Mines Regulations, 1961, the manager of the mine should fix the time of blasting and this is to be displayed on the board. The work of blasting should only be done in day light.

23. The manager of the mine shall ensure that fly rock shall not extend beyond 10m from the place of firing and also vibration study shall be monitored by Owner, Manager or Agent of the mine. Although occurrence of fly rock is the rare phenomenon associated with blasting operations and same occurs only when holes drilled for the blasting are either under charged/over charged, improper stemming and not muffling the holes for blasting. Overall operation of blasting is conducted under the supervision of a duly qualified manager and

blasting is conducted by mining mate, foreman or blaster employed in the mine. Safety of the human lives, if any, comes within the danger zone by inadvertence is obviated with a proper signal by a suitable means which is whirled prior to the period of actual blasting as per the provisions of Regulation 164(1-A)(b) of the Metalliferous Mines Regulations, 1961 and responsibility of the same lies with the person conducting blasting such as blaster, mining mate, foreman or manager employed in the mine.

24. The safety of the public structure not belonging to the owner of the mine and in the instant case the structural safety of school shall be protected as per the provisions of Regulation 164 (1-A)(b) & 164(1-B)(a) of the Metalliferous Mines Regulations, 1961 framed under the Mines Act, 1952. The period of blasting during day light hours shall be judiciously fixed by the manager when there is no presence of human beings (students and teachers of the school) and also in mutual consent of the school authorities and nearby villagers. Any inadvertent entry within the danger zone from the place of blasting shall be eliminated following the provisions of aforesaid regulations of Metalliferous Mines Regulations, 1961.

F. **Reply of Respondents**

25. Respondent No. 4 has submitted that the Chief Secretary of the Government of Rajasthan vide circular dated 05th July, 2021 directed the various departments for taking necessary actions to regulate the mines in a separate reply submitted by Respondents Nos.1, 3 and 4, it has been stated that the damage cause to the villagers and the property of the school should be compensated from the violators of law. It is further submitted that mining activities have been permitted within the permissible limits and distance. Respondents No.8 to 12 and Respondents No.14 to 18 have submitted that the mining of Respondents No. 8, 10, 11 and 14 are not working and thus they could not be held liable without their any default and other answering

respondents are carrying out its mining activities with the lease area by complying the conditions of EC and CTO and having valid permissions from DGMS for carrying out controlled blasting with required conditions. It is further submitted that the Rajkiya Madhyamik Vidhyalaya located in Shuklavas and Mool Chand Prabhu Dayal Senior Secondary School located in Pavana is not within the close proximity of the mining area and thus the respondents are liable to pay any compensation as prayed by the applicant.

26. Respondent No.6, Rajasthan, SIEAA has submitted that Environmental Clearance for proposed Mineral Masonry Stone Mines (Minor Mineral) M.L. No. 43/2003, situated near Village- Pichani, Tehsil- Kotputli, District- Jaipur (Raj) over an area of 1.00 Ha., production capacity 200001 TPA, was granted to Rohit Goad vide letter dated 31.08.2015. Project M.L. No. 41/2003, M.L. Area 1.0 ha, Near Village: Pichani, Tehsil- Kotputli, District Jaipur (Raj), Production capacity 3,26,000 TPA, was granted to M/s A.R.S Construction Co. vide letter dated 29.03.2016.

27. It is further submitted that the applicant have not claimed any relief from the R-6. The Original Application has been filed seeking compensation and restitution of the property damaged because of the mining activity undertaken around villages as mentioned in the application and out of these 15 mines, EC has been granted to the M.L. No. 41/2003, M.L. Area 1.0 ha Near Village: Pichani, Tehsil- Kotputli, District Jaipur (Raj) of M/s A.R.S. Construction Co.

G. **<u>Discussions</u>** :

28. Learned counsel appearing for the applicant has submitted that the mines from Sr. No. 8 to 22 (*given in the tabular chart by the applicant*), which is being mentioned below has no permission for deep hole blasting and thus they have violated the rules and are liable to pay compensation. It is argued that in reply dated 12.02.2021 by Respondent No. 7 Director of Mines and Safety has very specifically

recorded in Para 9 and 10 about the violation in the mining lease area with respect to violation of Rule 106 (2) (b) of Metalliferous Mines Regulations, 1961, including violation related to practise of deep hole blasting, use of heavy earth mover machine and mining within 100 meters from the structure not owned by mining company. It is submitted that the violation of the norms with respect to the deep hole blasting, use of heavy machinery and mining within 100 meters of the structures of villagers has caused damage to the properties not only to the houses of the villagers but also to the Government school closed to the mining area. It is further submitted that even otherwise the mining companies are liable to compensate the villagers who property has been damaged by applying no fault liability principle.

29. That a recent inspection was done by the office of the Tehsildar on 27.10.2021 of one of the mining lease 43103. During the inspection it was found that two machines were being used for mining in the deep well and one L&T machine was also found. The inspection report also record that there were 38 open deep well out of which 13 were filled with explosive. It is pertinent to mention here that this mining lease has no permission either for use of machinery or deep hole blasting.

30. That on the basis of information available with the Applicant and inspection reports and reply filed by Respondent, status of mines is tabulated as following:

Respondent No.	Name of the mine	Permissions	Actual position of permission as on December , 2021
8.	M L No. 618/93 and 619/93	No permission for Heavy Earth Movers Machine No permission for deep hole blasting	-Heavy Earth Movers Machine are using -deep hole blasting are continue -Working within 100 meter of permanent structure
9.	ML No. 122/06, 62/06,28/06 ----------	Permission only for Heavy Earth Movers Machine ----------	-Heavy Earth Movers Machine are using -deep hole blasting are continue -Working within 100 meter of

	& 12/95	No permission for Heavy Earth Movers Machine No permission for deep hole blasting	permanent structure
11.	ML No. 620/93 and 621/93	No permission for Heavy Earth Movers Machine No permission for deep hole blasting	-Heavy Earth Movers Machine are using -deep hole blasting are continue -Working within 100 meter of permanent structure
13.	ML No. 43/03	No permission for Heavy Earth Movers Machine No permission for deep hole blasting	-Heavy Earth Movers Machine are using -deep hole blasting are continue -Working within 100 meter of permanent structure On 26 October, 2021 SDM Kotputali visited the area, the abstract of her report says…. *….Opportunity inspection was done in mineral lease number 43/03, two machines were found to be doing mining work in deep well below depth and similarly in mining lease number 43/03, one machine was found doing mining work by L&T machine. In number 43/03, 38 holes were found excavated in which 13 were found filled with explosives for blasting and 25 holes were found empty. This was ready read out at the time.* {Report attached}
14.	ML No. 131/06	No permission for Heavy Earth Movers Machine No permission for deep hole blasting	No work is going on
15.	ML No. 41/03	Permission for Heavy Earth Movers Machine No permission for deep hole blasting	No work is going on
19.	ML No. 24/06	Permission for Heavy Earth Movers Machine No permission for deep hole blasting	-Heavy Earth Movers Machine are using -deep hole blasting are continue -Working within 100 meter of permanent structure

20.	ML No. 25/06	Permission for Heavy Earth Movers Machine No permission for deep hole blasting	-Heavy Earth Movers Machine are using -deep hole blasting are continue -Working within 100 meter of permanent structure
21.	ML No. 16/98	Permission for Heavy Earth Movers Machine No permission for deep hole blasting	-Heavy Earth Movers Machine are using -deep hole blasting are continue -Working within 100 meter of permanent structure
22.	ML No. 293/03	Permission for Heavy Earth Movers Machine No permission for deep hole blasting	No work is going on

31. The self-assessment calculation by the Applicant is not questioned by any of the Respondents. The reply and the reports on the record established the fact that there are gross non-compliance of environment laws by the Respondents which are causing damage to the Applicants.

32. It is argued that compensation be paid applying no fault liability. In the matter of **Manoj Misra vs. Delhi Development Authority and Ors.**, **Original Application No. 65 of 2016**, this Tribunal is mandated to apply the Principle of No Fault Liability as per Section 17(3) of the National Green Tribunal Act, 2010-

> "62. Unlike, the laws of other countries where the Courts or the Tribunals dealing with environmental issues are to determine first whether they could apply the principle of absolute liability or not and, if so, to what extent. In India, the Tribunal is mandated under Section 17(3) of the National Green Tribunal Act, 2010 to apply the principles of no fault. Thus, application of this principle is inescapable. This doctrine imposes an obligation upon the project proponent or body intending to carry on an activity to bear the consequences of its actions. The consequences would obviously include amongst others such as cost of restoration/restitution."

33. Applicant had submitted assessment and calculation of damage due to cracks in the houses, assessment and the calculation of damage because of ground water depletion and calculation of damage to the school building. Damage to the school building as reported is to the tune of Rs. 4,00,0000/-. The assessment of the damage to the school of building was also reported by the Principal, Rajkiya Madhyamik Vidyalaya, Shuklavas Jaipur to the education authorities and the District Collector, copy of which has been attached with the calculation memo.

H. Facts of O.A. No. 75/2020

34. The issue raised in this applications are violation of conditions of the environment clearance (EC) granted under the EIA Notification 2006 and condition of the consent to operate, granted under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. It is alleged that the violations are with regard to the mining of minor minerals taking 2 place around villages Shuklavas, Pichani, Pavana, Bhuchara and Dhudhawas, Tehsil Katputli, District Jaipur, Rajasthan. There are around 15 mines carrying out unscientific and environmentally harmful mining around the villages where members of the Applicant Organization and the other applicants reside. It is submitted that the mining is being carried out by deep hole blasting within a distance of 50-200 meters from the Applicant's houses and fields, which has led to structural and property damage. Further, the Respondent mines have violated several conditions of the environment clearances and consents to operate, granted for the mining which is causing environment pollution and affecting the health of the Applicants.

35. The prayer in this application is to direct the Rajasthan State Pollution Control Board to withdraw the consent to operate and shut down the mines in village Shuklawas, Pichani, Pavana, Bhucharas

and Dhudhawas Tehsil Katputli, District Jaipur, Rajasthan and to direct the Rajasthan, SEIAA to withdraw the EC for violation of environment condition and to impose environmental compensation and penalty on Respondent No.8 to 18 and to ensure that no mining takes place in violation to the conditions and consent to operate granted to the mining leases under the Water (Prevention and Control of Pollution) Act, 1974and Air (Prevention and Control of Pollution) Act, 1981.

36. As per submission of the *applicant the following conditions are being violated by the 15 mines operating in the villages Shuklavas, Pichani, Pawana (Ahir), Bhuchara and Dhudhawas Tehsil Kotputli, District Jaipur, Rajasthan by the mining companies.*

> *"8. The mining operations shall not intersect groundwater table. In case of working below ground water table prior approval of the Central Groundwater Authority shall be obtained;*
>
> *17. Drills shall either be operated with dust extractors or equipped with water injection system;*
>
> *18. As envisaged plantation shall be raised in an area of 33% of total area including green belt in the safety zone around the mining lease by planting the native species around the ML area, 08 dumps, backfiling and reclaimed around water body roads etc. or outside lease area in consultation with the Gram Panchayat or Forest in the coming rainy season. The height of the plant in not less than 7 feet and 1/3 plantation will be done in the first year.*
>
> *19. Regular water sprinkling should be carried out in critical areas prone to air pollution and having high levels of SPM and RSPM such as haul roads loading and unloading points and transfer points. It should be ensured that the ambient air quality parameters confirmed to the norms prescribed by the CPCB".*
>
> *11. That it is submitted that 15 mining leases are operating in violation of condition "8"by intersecting the groundwater table by creating a deep open pit mines, without obtaining any permission from the CGWA. That further, the mines are using drills without any water injection systems in violation of condition "17". As per the*

knowledge of applicants, no wet drilling is being carried out in the 15 mines nor is any dust suppression mechanism being used by the 15 mine owners.

12. *That further no water sprinkling is carried out for dust suppression in critical areas such as on the haul road, loading points & transfer points in violation of the condition "19". All the mining leases in the above five villages do not conform to the ambient air quality parameters prescribed by the Rajasthan Pollution Control Board since no water sprinkling system is in place.*

14. *That the following conditions are being violated by the mines operating in the villages of Shuklavas, Pichani, Pawana (Ahir), Bhllchara and Dhudhawas Tehsil Kotputli, District Jaipur, Rajastiran:*
"5 That your mining mining will not intersect the Ground Water Table Authority shall be obtained for intersection of Ground Water Table/abstraction Ground water, if any and submit a copy of the same to the board;
8. That the drills shall be operated with water injection system i.e. wet drilling be carried out during mining of drills shall be operated with dust extraction.

9. That regular water sprinkling should be carried in critical areas prone to air pollution and having high levels of SPM and RSPM such as on haul road, loading points & transfer points. It should be ensured that the ambient air quality parameters conform to the norms prescribed by the State Pollution Control Board.

11. That the controlled blasting shall be practiced. The mitigative measures for control of ground vibrations and to arrest fly rocks and boulders should be implemented and permission from the Director General Mines Safety and the Director Explosives shall be obtained;

12. That plantation should be developed so as to cover at least 33% of the total land use for mining and allied activities as given in approved mining plan and shall be maintained at all the time to maintain ambient air quality around the mine.

15. *That the 15 mines are operating in violation of condition "5" by intersecting groundwater table by creating a deep open pit mines, without obtaining any permission from the CGTWA. The drills in the 15 mining leases are also operating without any sort of water injection systems in violation of condition "8".*

16. *That no water sprinkling is carried out for dust suppression in critical areas such as on haul road, loading points & transfer points in violation of the conditions "9". All the mines in the above five villages do not conform to the ambient air quality parameters prescribed by the Rajasthan Polllution Control Board since no water sprinkling system is in place.*

17. *That as per the applicant, deep hole blasting is being practiced by all the 15 mines in gross violation of the condition "11". The uncontrolled blasting has also caused serious damage to the residential houses, school and hospitals in the above five villages.*

18. *That uncontrolled and unscientific blasting by the miners has also led to fly rocks, entering the houses and fields of the villagers. It is submitted that the condition in the consent clearly states that "mitigative measures for control of ground vibrations and to arrest fly rocks and boulders should be implemented and permission from the Director General Mine Safety and the director Explosives shall be obtained". However, no mitigative measures have been taken.*

20. *That the condition of having a plantation to cover 33% of the total land use for mining as per the condition "12" of the Consent The lack of plantation in the mining lease area has also increased the impact of the mining activity by damaging the houses and other structures including schools and hospitals.*

21. *It is submitted that Section 21(4) of the Air (Prevention and Control of pollution) Act, 1981 states that the consent can be cancelled if the conditions are not fulfilled:*
"(4) Within a period of four months after the receipt of the application for consent referred to in sub-section(1), the State Board shall, by order in writing, and for reasons to be record in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:
Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled.

22. *"That this Honble Tribunal in the matter of Paryavaran Suraksha Samiti & Anr. v. Union of India and Ors., Original Application No. 593/2017 directed the CPCB to "assess and recover compensation for damage to the environment". Thereafter, the CPCB developed a formula for*

imposing environment compensation based on the "polluter pays principle"

"The Environmental compensation shall be based on the following formula

EC _=P x N x R x S x LF

Note :

a. *The industrial sectors have been categorized into Red, Orange and Green based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80,50 and 30 may be taken for calculating the Enviornmental compensation for Red, Orange and Green categories of industries, respectively.*
b. *N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.*
c. *R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.*
d. *S. should be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.*
e. *LF could be based on population of the city/town and location or of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town following factors (LF) may be used :*

S.N.	*Population* (million)*	*Location Factor (LF)*
1	*1 to < 5*	*1.25*
2	*5 to < 10*	*1.5*
3	*10 and above*	*2.0*

1.4.2 When Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/Agency. The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short term actions, compensation towards loss of ecology, etc. and will be utilized exclusively for the purpose at specific site, based on the detailed investigations by the Expert Organizations/agencies."

24. It is submitted that since no action was taken by the concerned authorities against the violations, the affected villagers started a peaceful protest in the village of Shuklavas in the month of January, 2019. The said protest continued for a period of 6 months, and the authorities including the Subdivision Officer, Kotputli SME Vigilance Jaipur, DYSP Kotputli, Mine Engineer Jaipur, Mining

Envineer Kotputli and SHO Kotputli, finally met with the protesting villagers on 24.07.2019. the villagers agreed to stop the protest after the authorities agreed to all the demands put fort by the protestors, including stopping of the mining activities and to provide compensation to the mining affected villagers.

25. The Assistant Mining Engineer, Mining and Geology Department, Kotputli based on the agreement reached between protesting villagers in Shuklavas and the government officials, issued a notice, dated 24.07.2019, to some of the Respondents with the following conditions :

1. "In the mining lease area, mining should be done as per the Director General of Mine Safety from the donors and as per the rules of RMMCR017.
2. Do not do mining work within a distance of 45 meters from the populated areas and public places.
3. Through short hold blasting no mining work should be done from a distance of less than 100 meters from the population.
4. Through deep hold blasting there should be no mining work from a distance of less than 300 meters away from the population.
5. The security of minig workers should be fully taken care of.
6. No mining work should be done at night."

26. That in the present case it is clear that the Assistant Mining Engineer had given the notice in accordance with Rule 28(3) (ix) of the Rajasthan Minor Mineral Concession Rules, 2017, but none of the Respondents have complied with the directions of the Assistant Mining Engineer and thus the mining leases are liable to be cancelled in accordance with Rule 28(3) (x) of the Rajasthan Minor Mineral Concession Rules, 2017. The non compliance of the above direction is also violation of the conditions under the Consent to Operate under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.

27. That the Superintendent Mine Engineer, Mining and Geology Department Jaipur wrote a letter, dated 26.07.2019 to the Assistant Mining Engineer, Mining and Geology Department, Kotputli regarding the protests being carried out by the villagers in Shuklavas and concerns being raised by the villagers that were being ignored by the state government officials, without compliance of the agreement entered into by the villagers and the state government officials on 24.07.2019. The aforementioned letter states as follows :

"It was found that unsafe mining work in the area and mining work is being carried out near human habitation. Further, the blasting and mining work was being carried out without the requisite permissions and without the use of scientific methods. In this some minig lese

holders were found who were issued notice by you on 24.07.2019. But not all the leaseholders have been issued which shows discriminatory action taken from your end. Please send information after taking full action as per rules."

28. The Assistant Mining Engineer, Mining and Geology Department, Kotputli was also directed to submit a detailed site inspection report about the mining activities. This clearly shows that the Superintendent Mining Engineer took not of the fact that mining and blasting activites were being carried out in violation of the concerned laws and in close proximity to the houses in the villages Shuklavas, Pichani, Pawana (Ahir). Bhuchara and Dhudhawas, in violation of the earlier agreement that was reached. Despite the earlier notice sent by the Assistant Mining Engineer on 24.07.2019, these illegal activities were still continuing unabated. That till date no action has been taken against the respondents."

37. This case was also taken by this Tribunal and a joint committee consisting of representative of the Collector, representative of Pollution Control Board and the Mining Department was constituted and the report was submitted by the Joint Committee which is enumerated in the facts of O.A. NO. 48/2020. Though, the committee has submitted the separate report but the facts are the same.

Reply of the Respondents

38. Respondent no. 4 /Rajasthan State Pollution Control Board has submitted the reply with the facts that out of the total 15 mining leases, 14 mining leases having consent to operate from the answering respondent except ML No. 131/2006, and out of the total mining lease 13 are operation and 02 are not operational. To verify the damage and other facts the Joint Committee was constituted, which has submitted the report and the copy of the report has been with reply of the RSPCB. The conditions which have been put by the RSPCB in addition to the conditions mentioned in the EC are enumerated as follows:

(i) *They will be provided proper safety wearing and equipments such as hand gloves safety boots, helmets, and lifeline etc.*

(ii) *Proper benches will be formed. Apart from this all safety precaution will be taken as per Act, Rules Regulation and Byelaws made there under.*

(iii) *Human Settlement*

The Iocal inhabitant will be protected during blasting operation.

(iv) *Recreational Facility*

No impact will take place on the recreational facilities and hence no management plan is proposed.

PROGRAMME FOR PLANTATION

The area falls is semi arid zone and there is a shortage of water so a large-scale plantation is not possible. The rains are also scanty hence it is essential that the sapling of plant should be such which required minimum water and hence it is proposed to plant 20 trees per year of the following : l Babool 2.Vilayati Babool 3.Khejari 4.Amal Tas 5. Perkin Sonia 6. Neem 7. Nilgiri 8. Sitafal.

As per norms one hectare area is required for planting 40 trees/year. Each year an area of 80sq m. will be used in plantation work.

S.N.	Year of Plantation	Target of Plantation	Assumed survival	Replenishment of Casualties	Total
1	First year	40	32	-	32
2	Second year	40	32	8	40
3	Third year	40	32	8	40
4	Furth year	40	32	8	40
5	Fifth year	40	32	8	40

Eco-Friendly Mining Association and the Association shall Schedule of plantation for the next five year.

Place of proposed plantation: - The plantation shall be done at the following places:

1. Nearby area of the School
2. At the Dump
3. At the govt. waste land provided by the Govt..
4. At Own Private Land
5 . nearby State Highway road

Post Plantation Care:

(i) **Protection from Grazing**

Protection from grazing will be done by erecting suitable boundary in the plantation area, As such in this area lessee will elect stonewall. This will protect plants from grazing.

(ii) Watering during Dry Spell

Though these trees will required very less water however, in the first year from March to July, the watering will be done daily and September to February Thrice a week by water tanker/Over head tank in the plantation area. Thereafter each year watering will be done alienate day from January to June and once in Five day September to February. After five years no watering will be required.

(iii) Manuring

The manuring will be done while plantation work is taken up, for this purpose goat Dung will be dumped in the pit only once, because once the Goat Dung manuring is given it will last for live years. No other manuring is required for the proposed plantation.

(iv) Protection from pest like white aunt etc. will be done during the plantation and in the proposed pit 10gms of BSC powder will be

given before plantation. After a few months liquid pesticide mixed with 100 times water will be spread near the planted sapling.

(v) **Replenishment of Casualties** - The loss of each year will be counted and in subsequent plantation casualties will be again planted at same place. This way in the end of 5 years 100 healthy trees will remain in the area giving proper density.

39. **Respondents No. 2, 3, 5, 6 & 7 has submitted the reply** as follows:

> *"5. It is submitted that the Assistant Mining Engineer, Kotputli and Dy. Director, Mines Protection, Ajmer conducted the joint inspection on 29.07.2021 of mines operating in the aforesaid villages, during inspection, the Dy. Dir4ector, Mines Protection, Ajmer directed not to operate the Mines unit the appointment of managers as per the Regulation 34 of the Metaliliferous Mines Regulation, 1931. In pursurance of the said direction, the Assistant Mining Engineer, Kotputli vide letter dated 30.07.2021 directed all the mines holders not to operate mines until appointment of managers as per the Regulation 34 of the Metalliferous Mines Regulation, 1961 and also directed the to submit the reply within the period of 30 years with regard to the illegalities pointed out during the course of inspection on 29.07.2021. In addition to that the Dy. Director, Mines Protection, Ajmer also issued warning letters to the mining leased holder on 30.07.2021 with the direction not to operate the mines. Thereafter the mining lease holders No. 618/93,619/93,620/93,621/93,28/06,62/06,122/06 and 24/06 appointed the managers in accordance with the Regulation 34 of the Metalliferous Mines Regulation, 1961, therefore the aforesaid mining leases holders were allowed to operate the mines. Further, in pursuance to the letter*

dated 30.07.2021 the mining leases holders Nos. 618/93,619/93,620/93,621/93,28/06,62/06,122/06 and 24/06 timely submitted their reply and in order to find out the genuineness of the contention made in the reply dated 23.09.2021 the Mineral Director was also directed to verify the same. However, the Mining lease holder Nos. 41/03,43/03,26/06,293/06,131/06 and 12/1995 was not submitted their reply within the time frame, therefore the Superintendent Mining Engineer, Jaipur vide order dated 06.09.2021 deactivated the E-Rawanna from the department website of the aforesaid lease holders. Thereafter, in pursuance to the letter dated 23.09.2021 issued by the Assistant Mining Engineer, Kotputli, the Mineral Director conducted the spot inspection of Mining leases No.s 618/93, 619/93, 620/93, 621/93, 28/06, 62/06, 122/06 and 24/06 and during inspection found that the aforesaid mining lease holders are complying all the norms while conducting the mining.

6. *Further, during inspection the deep hole mining was found only upto 125 feet and dome of the mines were found filled with water. The mining lease holders also deployed the tankers for sprinkling of waters on road in order to stop the dust blowing due to moving of vehicles. No water intersect was found due to mining in the aforesaid five villages because the ground water level in the aforesaid five village is of 300-400 feet.*
7. *……It is submitted that on receiving the complaints of loss caused in the agricultural fields due to falling of stones, the Collector Jaipur vide letter dated 26.08.2019 directed the Additional Collector, Kotputli and Mining Engineer,*

Jaipur to implement the agreement arrived between villagers and officials. In pursuance to the said letter, the Mining Engineer, Jaipur vide letter dated 23.09.2019 directed the Assistant Mining Enginer, Kotputli to make ensure the compliance to the agreement arrived between the villagers and officials and in compliance to the said letter of Mining Engineer, Jaipur the Surveyor of the office of Assistant Mining Engineer, Kotputli on 24.09.2019 after doing marking through yellow colour directed the mining lease holder not conduct the mining within the 45 meter or 100 meter of the populated and public place.

8. *That, so far as the contention raised by the applicants in para 24 to 29 that in-spite of bringing into the knowledge of the respondent authorities about the illegal mining activities in the aforesaid five villages no action was taken by the respondent authorities. The answering respondents herein submits that the said contention of the applicants are misconceived and hereby denied. The answerging respondents herein submits that after receiving of the complaints from the villagers, the Additional Collector, Kotputli vide letter dated 11.06.2019 constituted the Joint Committee comprises of officials of Revenue Department, Public Works Department and Mining Department for the purpose of conducting inspectin of the mines operating in the aforesaid five villagers. In the meanwhile the applicants as well as villagers further submitted complaint before Collector, Jaipur on 05.07.2019. Thereafter, the officers comprises of SDO , KOTPUTLI, Superintendent Mining Engineer, Jaipur, Dy. Superintendent of Plice, Kotputli Mining Engineer, Jaipur Thana In-charge, Kotputli and Assistant Mining Engineer, Kotputli conducted the spot*

inspection of the 16 mines operating in the aforesaid 5 villages, during the course of inspection the applicant no. 1 viz. Radeshyam was also present. During inspection the consensus was arrived that the mining lease holders will not conduct the mining activities within 45 meters of public places, mining will be conducted as per the permission granted by the DGMS, no short hold blasting will conducted within the 100 meter and deep hold blasting will conducted within 300 METERS. Thereafter, the Assistant Mining Engineer, Kotputli vide letter dated 24.07.2019 directed all the mines operating in the aforesaid 5 villagers to make compliance of the consensus arrived during the inspection on 23.07.2019.

9. *That, with regard to the contention raised by the applicants that the 15 mines not operating the mines as per the agreed terms as arrived on 23.07.2019. The answering respondent herein submits that the said contention of the applicant s is misconceived and hereby denied reason being after letter dated 24.07.2019 issued by the Assistant Mining Engineer, Kotputli to all the mines operating in the village directing compliance of the agreement arrived on 23.07.2019, the Superintendent Mining Engineer vide letter dated 26.07.2019 directed the Assistant Mining Engineer, Kotputli to make compliance of the agreement arrived between villagers and officials on 23.07.2019, in pursuance to the said direction Surveyor of the office of the Assistant Mining Engineer Kotputli conducted the inspection on 30.07.2019 and found that mining lease holders operating the mines in accordance with the consensus arrived on 23.07.2019.*

10. *That, so far as the contention raised by the applicants that the mining activities are intersecting the water level by*

doing the deep hole in the lands. The answering respondent herein submits that the said contentin of the applicnatss is misconceived and hereby denied reason being the Senior and Junior Ground Water Scientist of the Ground Water department, Jaipur along with Mining Department conducted the Spot Inspection of the area on 29.09.2021 in order to ascertain the ground water level in the lands falls within the aforesaid five villages, wherein it is found that the maximum length of the pit happens due to mining is 38.12 meter whereas ground water level in the area is of 48.31 meter."

40. Rajasthan SEIAA has submitted separate reply with the facts that EC were granted in accordance with the procedure and specific conditions were put to the lease holders not to violate the law and take necessary permissions from the competent authority for blasting or deep blasting and so far as the payment of compensation is concerned the Joint Committee has submitted the report for which the violators of law are responsible on principles of polluter pay.

41. **Respondent No. 9, 10, & 11 has filed the reply as follows**:

"That the content of Para no. 3 is not admitted as stated. In this Para the answering respondents no. 9, 10 and 11 are carrying out its mining activity with in the lease area by complying the conditions of EC and CTO. In lease No. 122/06, 62/06 & 28/06 there are valid permission from DGMS for carrying out blasting with required conditions. All conditions are being complied by the answering respondents. Answering respondents are adopting all safety and precautionary measures while carrying out controlled blasting in the lease areas andno damage has been caused to any structure or any property as alleged. Petitioner has also got the Reports of Scientific Study of Experimental Deep Hole Blasting from the Authorized agency for aforesaid mining lease areas. No specific allegations have been leveled against the answering respondents no. 9, 10 and 11. Answering respondents have

been granted valid and effective consent to operate by the RSPCB. Answering respondents have been granted valid and effective permissions of blasting from DGMS Ajmer. It is true that answering respondent/ non-applicant have been allowed to carry out mining activities as per law and answering respondents/ non-applicants is continuously following the rules and regulations and there was no complaint at any point of time. The answering respondents / non-applicants have got the Environmental Clearance and have got valid consent to operate."

42. It is further submitted that Respondent nos. 9, 10 and 11 are carrying its mining activities outside the abadi area with valid and effective permissions from the DGMS, Ajmer and doing controlled blasting with all safety measures and after complying the conditions stipulated by the DGMS. It is further submitted that an expert report has been called for the cause of damage and damage, which have been filed with the reply and it has been stated that due to mining activities conducted by the respondents no. 9, 10 and 11 there was no damage and thus no violation has been done by the respondent no. 9, 10 and 11.

I. <u>Issues for determination</u>

43. On the basis of contentions following issues emerges for determination :

1. Whether the applicants of O.A NO. 48/2020 are entitled for amount of compensation as prayed, and if yes, the tune of amount which is payable to applicants.
2. The responsibility of the respondents to pay the compensation.
3 whether the respondents/mine holders have violated the environmental norms and relief as prayed is maintainable and necessary directions are required to be issued for regulating the mining.
4 Damage to the environment and responsibility to pay.

Issue No. 1 and 2

44. Learned Counsel appearing for the applicant argued that there are different water bodies in the five villages where rainwater from the surrounding Aravali hill area gets collected and recharges the ground water. People of the above five villages use the water from the water bodies for all domestic purposes and also for raising their cattle. Due to mining activity, the flow in the seasonal streams feeding the water bodies in the villages have drastically reduced or completely vanished, creating water scarcity in the above five villages. The villages raised their voice before the authorities concerned regarding the heavy blasting done by the 15 mines of Masonry Stones in the surrounding villages. The representation was also placed before the authorities for compensation caused due to blasting in the residential areas but nothing was done and later on officials of the Rajasthan Government including the Sub-Divisional Officer, Kotpuli Police Department and Assistant Mine Engineer visited the protesting villagers and assured that the mining activities will only be done at a distance from the school and the residential areas and after that letter was sent to the Collector who constituted a Joint Committee and later on second representation was moved through the Chief Secretary and assurance was given from the authorities but no action was taken. Later on in the month of July, 2019 the authorities visited the villages and considering the problems raised by the applicants Assistant Mining Engineer, Mining and Geology Department issued certain directions and conditions for mining which are as follows:

1. *"In the mining lease area, mining should be done as per the DGMS from the donors and as per the rules of RMMCR017.*
2. *Do not do mining work within a distance of 45 meters from the populated areas and public places.*
3. *Through short hole blasting no mining wok should be done from a distance of less than 100 meters from the population.*

4. *Through deep hole blasting there should be no mining work from a distance of less than 300 meters away from the population.*
5. *The security of mining workers should be fully taken care of.*
6. *No mining work should be done at night"*

45. Learned Counsel for the applicant has submitted that there are violation of rules 28(3) (ix) and 28(3)(x) of the Rajasthan Minor Mineral Concession Rules, 2017 states that –

> *"(ix) The Mining Engineer or Assistant Mining Engineer concerned may issue directions in respect of mining method, removal and disposal of over burden, stacking of mineral payment of royalties and other connected matters;*
> *(x) If the licensee commit breach of any terms of the licence or any provision of the rules or fails to comply with the directions given by the Mining Engineer or Assistant Mining Engineer concerned within the period specified by him, the Mining Engineer or Assistant Mining Engineer concerned may after giving thirty days notice to remedy the breach or to comply the directions, may impose penalty up to rupees Ten Thousand or may cancel the licence after obtaining prior approval from Superintending Mining Engineer concerned and forfeit the security deposits sand licence fee:*
> *Provided that decision of termination of licence on breaches other than dues shall be taken by the Director on the recommendation of a committee comprising Additional Director Mines (HQ), Deputy Legal Remembrance and Superintending Mining Engineer (HQ), concerned.*
> *Provided further that decision of termination of licence shall be taken only if the licensee has failed to remedy the breach, after serving of a thirty days notice"*

In the present case it is clear that the Assistant Mining Engineer has given a notice to the 15 mining lease operators in accordance with Rule 28(3Xix) of the Rajasthan Minor Mineral concession Rules, 2017, as elucidated earlier, but none of the 15 mining lease operators have complied with the directions of the Assistant Mining Engineer and thus the mining leases are liable to be cancelled in accordance with Rule 28(3)(x) of the Rajasthan Minor Mineral Concession Rules' 2017.

46. The Superintendent Mine Engineer, Mining and Geology Department, Jaipur, wrote a letter, dated 26.07.2OLg to the Assistant Mining Engineer, Mining and Geology Department, Kotputli regarding the protests being carried out by the villagers in Shuklavas and the concerns being raised by the villagers that were being ignored by the state Government officials, without compliance of the agreement entered into by the villagers and the State Government officials on 24.07.2018. The aforementioned letter states as follows –

"It was found that unsafe mining work in the area and mining work is being carried out near human habitation. Further, the blasting and mining work was being carried out without the requisite permission and without the use of scientific methods. In this some mining leases holders were found who were issued notices by you on 24.07.2019. But not all the leaseholders have been issued, which shows discriminatory actions taken from your end. Please send information after talking full action as per rules"

The Assistant Mining Engineer, Mining and Geology Department, Kotputli was also directed to submit a detailed site inspection report about the mining activities' This clearly shows that the Superintendent Mining Engineer took note of the fact that mining and blasting activities were being carried out in violation of the concerned laws and in close proximity to the houses in the villages of shuklavas, Pichani, Pawana (Ahir), Bhuchara and Dhudhawas, in violation of the earlier agreement that was reached. Despite the earlier notice sent by the Assistant Mining Engineer on 24.07.2019, these illegal activities were still continuing unabated.

47. Learned counsel for the applicant has further argued that the claim for compensation is maintainable in accordance with the provisions contained in Schedule-II of the National Green Tribunal Act, 2010, which lists down heads under which compensation or relief for damage can be claimed are as follows:

(e) Damages to private property…

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and deco-systems;

(l) Loss and destruction of any property other than private property

48. It is further argued that the matter of payment of compensation on the principle of polluters pay was taken up in **Forward Foundation, A charitable Trust and Ors. Vs. State of Karnataka and Ors., Original Application No. 222 of 2O14,** judgment dated 04,05.2015, this Tribunal has affirmed the mandatory application of the Polluters Pay Principle in every matter adjudicated upon by this Tribunal as per Section 20 of the National Green Tribunal Act, 2010 –

"59. Section 20 of the National Green Tribunal Ad, mandates that while passing any order or decision or award the Tribunal, shall apply the Principles of Sustainable Development, the Precautionary Principles and the Polluter Pays Principles.

60. Therefore applying Polluter Pays Principle and the settled guidelines settled in the decisions of the Hon'ble Supreme Court and that of the this Tribunal referred to earlier, Respondent No. 9 and 10 who caused environmental degradation are liable to pay the environmental compensation as have been already found in the main judgement"'

49. In ***Glanrock Estate (p) Ltd. Vs, State of Tamil Nadu, reported in (2010) 10 SCC 96,*** the Hon'ble Supreme court has reiterated the established principle of law that the Polluter Pays Principle and the Precautionary principle form a part of the Right to Life enshrined under Article 21 of the Constitution

"29.....The precautionary principle and the polluter pays principle flow from the core value in Article 21"

In the present case the excessive mining and blasting have caused structural damages to the residential buildings, Hospital and School, of the above five villages, putting the villagers under a constant threat to their life and thus denying the core value of Article 21.

50. In **Research Foundation for Science (18) vs. Union of India & Another, reported in (2005) 13 SCC 186**, the Hon'ble Supreme Court has clarified that the Polluter Pays Principle includes the cost of avoiding any further pollution, and not just remedying damage that has already been caused-

"29. The polluter pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case."

51. ***Rule 28 (3)(x) of the Rajasthan Minor Mineral Concession Rules, 2017*** states that the failure to comply with the directions of the Assistant Mining Engineer under Rule 28(3Xix), would render the mining leases liable to be cancelled. In the present case, the Assistant Mining Engineer has made clear and categorical directions to all the 15 mining lease operators in and around the aforementioned 5 villages through his notice dated 24.07.2019, and yet the mining lease operators have failed to comply with the above directions. Hence the mining leases of all the aforementioned 15 mining lease operators are liable to be cancelled.

52. The material placed on record by the Applicant herein clearly shows that the 15 mining lease holders in and around the villages of

Shuklavas, Pichani, Pawana (Ahir), Bhuchara and Dhudhawas have failed to ensure that their mining activities do not affect the structural integrity of any nearby buildings, work or properties and are thus in violation of Rules 28(1Xvi) and 34(2)(ix) of the Rajasthan Minor Mineral Concession Rules, 2017 which states as follows-

"(vi) The lessee or licensee shall not carry on his operations in a manner that would injure or periodically effect any buildings, works, property or rights of other persons and no land will be used by the lessee or licencee for surface operations which is already occupied by persons other than the Government for works or purposes not included in the mining lease.

(ix) take all mitigative measures during the mining operations to ensure that the buildings or structures in the nearby area shall not be affected due to blasting;

53. ***Rule 34 (2) (xii) of the Rajasthan Minor Mineral concession Rules, 2017*** states that all mining lease holder will-

"(xii) Undertake to ensure minimum losses to the agriculture crops and undertake to contribute suitably for compensation to the loss or damage to the crops;"

However it is clear from the above stated facts and material put on record by the Applicant herein that the 15 mining lease operators have made taken no measures whatsoever to ensure that the losses to the agricultural crops of the villagers of the villages of Shuklavas, Pichani, Pawana (Ahir), Bhuchara and Dhudhawas are kept to a minimum and thus are in clear violation of the pro visions of the Rajasthan Minor Mineral Concession Rules, 2017.

54. In the matter of **Manoj Misra vs. Delhi Development Authority and Ors., Original Application No. 65 of 2016**, this Tribunal has ruled that the Tribunal is mandated to apply the principle of No Fault Liability as per Section 17 (3) of the National Green Tribunal Act, 2010-

"62. Unlike, the laws of other countries where the Courb or the Tribunats deating with environmenbl issues are to determine fiEt whether they could apply the principle of absolute liability or not and, if so, to what extent. In India, the Tribunal is mandated under Section 17(3) of the National Green Tribunal Ad, 2010 to apply the principles of no fault. Thus, appliation of this principle is inescapable. This doctrine imposes an obligation upon the proled prorynent or body intending to any on an adivity to bear the consequences of iB actions. The consequences would obviously include amongst otherc such as cost of restoration/restitution,"

55. **In the matter of Srinagar Bandh Aapda Sangharsh Samiti vs. Alaknanda Hydro Power Company Ltd. Original Application No. 3 of 2014,** this Tribunal has applied the Principle of No Fault Liability under section 17(3) of the National Green Tribunal Act, 2010 and adjudged liability upon the Project Proponent even when the accident was a sudden or unintended occurrence –

'46. Even assuming the disaster of June, 2013 as the one involving fortuitous or sudden or unintended occurrence the injury that has resulted from such occurrence, to the human habitation needs to be regarded as the one resulted while handling the said plant or the process leading to manufacturing of power and, therefore, it is an "accident" within the meaning of said definition under Section 2 (a) of the NGT Act, 2010. In the given facts and circumstances, therefore, the principle of No Fault Liability under Section 17(3) of the NGT Act 2010 makes the respondent no.1- Alaknanda Hydro Power Co. Ltd. liable to pay compensation for the injury caused to the human habitation."

56. **Rule 28 (1) (xi) of the Rajasthan Minor Mineral Concession Rules, 2017** states that-

xi) The lessee or licencee shall pay such compensation as may be assessed by lawful authority in accordance with the law or rules or order in force on the subject for all damages, injuries or disturbances

which may be done by him and shall indemnify and keep indemnified fully and completely, the Government against such damages, injury or disturbances and all cut and expenses in connection therewith;"

Despite the repeated representations sent by the Khanan Grasth Sangarsh Samiti, and directions issued by the Assistant Mining Engineer, none of the Respondent Mining Lease Operators have complied with the required directions as per the Rajasthan Minor Mineral Concession Rules, 2017 and no compensation whatsoever has been given to the affected villagers in Shuklavas, Pichani, Pawana (Ahir), Bhuchara and Dhudhawas villages.

57. The applicant has categorised the damage on following three points;

1. **Assessment/calculation of damage due to cracks on the house**

   That the mining companies use explosives for the purpose of mining which has caused sacks in the house of the villagers of the Applicant organization. Because of the impact of blasting the many a times it is felt that entire foundation of the house is shaking and the wall and roof of the house will collapsed and this result in developing crack in the roof and the wall. In the rainy season the water enters through the cracks and further damage to the structure. If the crack is in the roof of the structure then entire roof is required to be replaced and cannot be repaired and if it is not done properly then there is a danger to the person living in that house. The Applicants are only able to do the assessment of the visible cracks and are not able to do assessment of the damage done to the foundation of the house. The Applicant has consulted architectural consultant to do the assessment with respect to the repair of the damage done to the structures. The assessment is done by the consultant named "Creative Associates" (Architectural

Consultants, Valuers, Interior Designers & Surveyors), office at: Old Sabji Mandi (Chauraha), National Highway No. 8, Kotputli - 303108, after inspecting the house which has developed cracks. The cost for repair of one square meter wall/roof which include removal of damage portion, disposal of construction waste and constructing new wall and roof including material and labour charges has come to Rs. 930/-. That on the basis of estimates given by the consultant the Applicant organisation has calculated the cost of repair for the house damaged in the villages of Shuklavas, Pichani, Pavana, Bhuchara and Dhudhawas.

2. **Assessment/calculation of damage because of ground water depletion**

That because of the unregulated blasting and mining the ground water level has considerably depleted in the area in question which has resulted in non-functional boring pump of the residents. There is no process of repair of boring in case it is damaged by blasting or the water level has depleted. The only option is to have fresh boring done for the purpose of setting up tube well and hand pump. The two residents who have suffered the loss are Gyarsi Lal Yadav and Mamraj Gujar of village Shuklavas. Their estimate is at serial no.124 and 255 respectively of the list of assessment of village Shuklavas. Further, the assessment of the cost of fresh boring has been calculated as Rs. 4,00,140/- by Manath Tubewells Company near Sr. School, Narehda, Kotputli, laipur, Rajasthan.

3. **Assessment/Calculation Of Damage To The School Building**

That the mining activity has caused serious cracks in the school building of village Shuklavas. The school is attended by 300 students from the villages of Shuklavas, Pichani, Pavana, Bhuchara and Dhudhawas. The damage done to the school

building put the lives of the students and teachers in danger. The cost of repair of the crack is estimated to be around Rs. 40,00,000/- which is listed at serial no. 138 of the list of assessment for the village Shuklavas. The Principal of the school has also written a letter 04.03.2021 to the Collector giving the estimate of Rs. 40,00,000/- for the repair work of the school.

58. Learned counsel appearing for respondent had submitted that the respondents are not responsible for the payment of compensation for the reasons that the mining or blasting was not direct effect of the cracks or damage to the school building or the residential building of the farmers. They have further submitted that it is not any act which comes within the category to be compensated. On the other hand Learned Counsel for the applicant has submitted that where there is a Tortious Act such as trespass, nuisance, negligence committed by anyone then he may be liable to the damages for the malicious deliberate or injurious wrong doings. There is just a tort which has been called misfeasance in a public and its includes malicious abuse of power, deliberate mismanagement and perhaps also other unlawful acts causing injury to others. The applicant or very poor farmers and they cannot contest to the level of High Court and Court at Delhi. They are living in position of below poverty line and in the condition when their crops are damaged and have no source of income, they are struggling for their existence and struggling for their survival. The water for agricultural farmers is source of life and source of livelihood. An ordinary citizen and a common man are hardly equipped to match the might of the mighty and the State instrumentalities. It is provided by the rule of law, it is called check on arbitrary and capacious exercise of power and function of the authorities. A person if functions in such a way and acts maliciously are oppressively and the exercise of power results in harassment and agony that it is not an exercise of

power and good management. No law provides protection against it. Who is responsible for it, must suffer for it. Compensation or damages may rise even when the act of the respondents is not bona-fide or he acted negligently and carelessly and coming into the definition of deliberate mal-administration, it is called misfeasance. Harassment of a common man by the mighty powers is socially abhorring and legally impermissible. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning of the mighty officers instead of standing against it. Therefore, the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing the social evil. It may result in improving the work culture and help in changing the outlook.

59. In a case reported in **AIR 1999 SCC (p.2468) M.I. Builders Pvt. ltd. Vs. Rahdey Shyam Sahu & Ors**., it was held that "a Country should not be ruled by man but should be ruled by law. It means that that the State action must confirm to its statuary provisions. The power must flow from rules, regulations, and statutory provisions. In absence of power conferred by the statutory provision, State or its instrumentalities cannot divest a person from his or her property or abridge or dilute the right protected by Article 14 and Article 21 of the Constitution of India safeguarding life, liberty livelihood or equality of law. It was held in 2005(6) SCC (P 344) Salem Advocates Bar Association vs. Union of India that where there is abuse of process of law or litigants suffer for no fault on their part, then court must impose cost.

60. The Tribunals or Courts constant endeavour must be to ensure that everyone gets just and fair treatment. The Court or Tribunal while rendering justice must adopt a pragmatic approach and in appropriate cases realistic cost and compensation be ordered in order

to discourage dishonest litigation. When a person or institution is involved in commercial activities then any injury or damage caused by the act of these commercial activities must be compensated.

61. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters, a common who has neither the any background nor the financial strength to match the inaction in public oriented department gets frustrated and it erodes the credibility of the system. The consumer must not be made to run from pillar to post. Where there has been capacious, arbitrary or negligent exercise or non exercise of power by the authorities or instrumentalities, the forum must be provided in the department itself to hear the grievances and take a decision to redress the public grievance. In a welfare State there should be immediate attention to public grievance in case some injury is caused, the government and its instrumentalities should not hesitate to compensate the sufferers and punish the wrong doers. The individual welfare as well as the welfare of the society should be balanced and the person should not be compelled to knock the door of the Courts or Tribunals more so, when it is cumbersome process to approach the Court for payment of compensation subject to payment of court fees or lawyer fees with regard to misfeasance by the authority concerned.

62. Learned Counsel appearing for respondent had submitted that it is the natural act or act of god and the residences or the building of the school was damaged or cracks were found due to technical defect and if it come within the category of natural effect or Act of God, the respondents are not said to be negligent and not responsible for Act of God. On the other hand, Learned Counsel for the applicant had submitted that it is not Act of God, but direct effect of Mining and

blasting. The similar matter was taken up in the case of **Original Application No.119/2016 (CZ)**, where it was discussed as follows:

> *28. The Privy Council in the case of Eastern and South African Telegraph Company, Limited v. Cape Town Tramways Companies Limited, reported in (1902) AC 381, has held that the principle of Rylands v. Fletcher, is not inconsistent with the Roman law. It imposes a liability on a proprietor which is measured by the non- natural user of his own property, not by that of his neighbour. It also applies to a proprietor who stores electricity on his land if it escapes therefrom and injures a person or the ordinary use of property.*
>
> *29. In the case of Corporation of The City of Glasgow v. Taylor, reported in (1922) 1 AC 44, the House of Lords have held that in the case of child eating poisonous berries, the proprietors and custodians of the garden are liable.*
>
> *30. In the case of Paine v. Colne Valley Electricity Supply Co., Ltd. And British Insulated Cables, Ltd. reported in (1938) 4 All. E.R. 803, it was held that as there was no efficient screening of the dangerous parts in accordance with the provisions of that Act, there was breach of statutory duty by the first defendants and they were held liable.*
>
> *31. In the case of Yachuk& another v. Oliver Blais Co., Ltd., reported in (1949) 2 All. E.R. 150, the Privy Council has held that when employee has given an explosive substance to a boy with a limited knowledge in respect of the likely effect of the explosion, the boy having done the act which the child of his years might be reasonably expected to do. This would not be a case of contributory negligence.*
>
> *32. In Madhya Pradesh Electricity Board vs. ShailKumari and others, AIR 2002 SC 55,1 it was held as follows:*
>
> *"8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by*

taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

9. The doctrine of strict liability has its origin in English Common Law when it was propounded in the celebrated case of Rylands v. Fletcher (1868 Law Reports (3) HL 330). Blackburn J., the author of the said rule had observed thus in the said decision:

"The rule of law is that the person who, for his own purpose, brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril; and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape."

10. There are seven exceptions formulated by means of case law to the doctrine of strict liability. It is unnecessary to enumerate those exceptions barring one which is this. "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply". (vide Page 535 Winfield on Tort, 15th Edn.)

11. The rule of strict liability has been approved and followed in many subsequent decisions in England. A recent decision in recognition of the said doctrine is rendered by the House of Lords in Cambridge Water Co. Ltd. v. Eastern Counties Leather Plc.
{1994(1) All England Law Reports (HL) 53}. The said principle gained approval in India, and decisions of the High Courts are a legion to that effect. A Constitution Bench of this Court in CharanLalSahu v. Union of India and a Division Bench in Gujarat State Road Transport Corporation v. RamanbhaiPrabhatbhai had followed with approval the principle in Rylands v. Fletcher. By referring to the above two decisions a two Judge Bench of this Court has reiterated the same principle in Kaushnuma Begum v. New India Assurance Co. Ltd.(2001) 2 SCC 9}."

33. The plea of an inevitable accident or an act of God advanced at the stage of hearing, cannot come to

the aid of the opposite parties. While considering the question of inevitable accident or an act of God, it will be useful to reproduce a passage from the Law of Torts, 22nd Edition, by Justice G. P. Singh, which reads thus:

"All causes of inevitable accidents may be divided into two classes:
(1) those which are occasioned by the elementary forces of nature unconnected with the agency of man or other cause; and (2) those which have their origin either in the whole or in part in the agency of man, whether in acts of commission or omission, non-feasance or mis-feasance, or in any other causes independent of the agency of natural forces. The terms 'act of God' is applicable to the former class."

34. In the case reported in https://indiankanoon.org/doc/121920906: Yashpal Singh Vs. State of UP, Miscellaneous Bench No. 6929 of 2014 in the case of injury through electric wire it was held:

"An inevitable accident is an event which happens not only without the concurrence of the will of the man, but in spite of all efforts on his part to prevent it. It means, an accident physically unavoidable something which cannot be prevented by human skill or foresight. We have already referred to the report of the expert (Director) which indicates that the department was at fault for not taking safety measurements. Had the Board exercised proper care and supervision, it could have taken proper and prompt steps to cover the naked wire near human living or by taking other steps, the like situation would have been avoided. Thus, it cannot be said that the Uttar Pradesh State Electricity Board could not have prevented the incident by exercise of ordinary care, caution and proper supervision. Thus, it is not a case where the accident took place in spite of all efforts on the part of the Uttar Pradesh State Electricity Board to prevent it. In other words, it can be said that the accident was solely due to lack of care and caution on the part of the Uttar Pradesh State Electricity Board and its functionaries. Thus, it follows that the plea of an inevitable accident is wholly misconceived and cannot come to the aid of the opposite parties for getting out of its liability.

An 'act of God' is an inevitable or unavoidable accident without the intervention of the man; some casualty which the human foresight could not

discern and from the consequence of which no human protection could be provided. This is not a case where the incident was due to unexpected operation of natural forces free from human intervention which no reasonable human foresight could be presumed to anticipate its occurrence or to prevent it. On the contrary, the material on record clearly indicates that but for indifference and inaction -- negligence of the Uttar Pradesh State Electricity Board in not making nuke wise steps near human living, the incident may not have occurred."

35. As a reference was made to the case of Rylands v. Fletcher (186S- LR 3HL 330) (supra), the same may be dealt with briefly. In that case, the defendants had constructed a reservoir upon their land, in order to supply water to their mill. On the site that was chosen for the reservoir, there existed some shafts of a coal mine which was not in use. However, the passages also led to the adjoining mine which was owned by the plaintiff. This, however, was not discovered at the time of construction with the result that when the reservoir was filled, the water went down to the shaft and flooded the plaintiff's mine. Under these facts, the plaintiff instituted a suit for damages and succeeded. Dismissing the defendants' appeal, it was held by the House of Lords:

"The question of law therefore arises, what is the obligation which the law casts on a person who, like the defendants, lawfully brings his land something which, though harmless while it remains there, will naturally do mischief if it escapes out of his land? It is agreed on all hands that he must take care to keep in that which he has brought on the land and keep there, in order that it may not escape and damage his neighbours; but the question arises whether the duty which the law casts upon him under such circumstances is an absolute duty to keep it at his peril or is, ... merely a duty to take all reasonable and prudent precautions in order to keep it in, but no more ...

We think that the true rule of law is that the person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep in at his peril, and if he does not do so is prima facie

answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default; or, perhaps, that the escape was the consequence of 'vis major' or the act of God; but as nothing of this sort exists here, it is unnecessary to enquire what excuse would be sufficient."

36. We have also to consider what would be just compensation. The Court has power to award the compensation above the amount claimed, so as to award compensation which was just. In this regard the following observations of the Supreme Court in State of Haryana vs. JasbirKaur reported in (2003) 7 SCC 484, are worth noting:-

"7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, thedetermination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just" denotes equitability, fairness and reasonableness, and non-arbitrary. if it is not so it cannot be just. (Helen C. Rebello v. Maharashtra SRTC (1999(1) SCC 90)".

37. It has been held by Supreme Court in Yadava Kumar Vs. Divisional Manager National Insurance Co. Ltd. Reported in (2010) 10 SCC 341 as under:

"14. While assessing compensation in accident cases, the High Court or the Tribunal must take a reasonably compassionate view of things. It cannot be disputed that the appellant being a painter has to earn his livelihood by virtue of physical work. The nature of injuries which he admittedly suffered, and about which the evidence of PW-2 is quite adequate, amply demonstrates that carrying those injuries he is bound to suffer loss of earning capacity as a painter and a consequential loss of income is the natural outcome.

15. It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a `just compensation'. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of `just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field. Both the Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable (Mrs. Helen C. Rebello and others Vs. Maharashtra State Road Transport Corpn. and another - AIR 1998 SC 3191).

16. It was also held that in the determination of the quantum of compensation, the Court must be liberal and not niggardly in as much as in a free country law must value life and limb on a generous scale (HardeoKaur and others Vs. Rajasthan State Transport Corporation and another - (1992) 2 SCC 567).

17. The High Court and the Tribunal must realize that there is a distinction between compensation and damage. The expression compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of

injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation."

38. The learned counsel for the applicant had submitted that the National Green Tribunal Act, 2010 is a beneficial legislation to protect the environment and to compensate the person who has sustained injuries due to non-maintenance of environment and on the principle of 'Polluter's to Pay',the applicant may be compensated. The beneficial legislation was interpreted in the New India Assurance Co. Ltd. vs. Ramesh Kalita And Others in (1989) ACC 248, the point of discussion in this case was the payment of compensation in the case of accident in motor is in Tribunal and in this reference, the relevant paras are as follows:

"13. Shri P.K. Das, learned Counsel for the claimant respondent has of course cited Oriental Fire and General Insurance Co. v. Smt. Shantabai S. Dhume AIR 1987 Bombay 52. The main consideration in giving Section 92-A retrospective operation appears to have been that the provision constitute a beneficial piece of legislation and the legislative intendment appeared clear. It was observed in Para 5:

The legislative intendment appears thus clear and what was apparently meant is to provide for compensation in all accident cases involving motor vehicles where death or permanent disablement occurred, the question as to whether the accident was due to the fault of the driver of the vehicle, or of the victim, or due to a mechanical failure, or to force majoure, being entirely irrelevant and immaterial. The legislative intendment is manifesly to give some relief to those who have the misfortune of meeting with such accident or to their families. Section 92-A embodies and is, as such, a piece of welfare legislation which requires a liberal interpretation so as its benefits may be extended to all victims of accidents or their families, especially when

nowhere in the said provision of law it is postulated that the benefit is given prospectively only and on the contrary it would appear from its wording that the said benefit is to be given in all cases where an accident occurred and as a result thereof, a death or a permanent disablement was occasioned. The Statement of Objects and Reasons of the Amendment Act to some extent corroborates this view for it particularly indicates that the intention of the Legislature was to remove the evil and mischief that people who suffered the accident had to face, being sometimes unable to prove the negligence or rashness of the driver or the owner of the vehicle and, therefore, unable to get the compensation they were entitled to.

14. The following portion of statement of objects and reasons of the Amending Act of 1982 was noted:

Having regard to the nature of circumstances in which road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what are known as "hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitable to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown.

It was further held-

They thus indicate the background and the reasons for introducing a particular piece of legislation and serve the purpose of helping in the search for the intendment of the Legislature in enacting an Act. Section 92-A is intended to provide social justice by giving compensation without proof of fault or negligence by the driver or owner of the vehicle and as such in my view it is manifest that the question as to whether the cause of action arose prior to its coming into force or not becomes irrelevant for the material consideration for the purpose of awarding compensation under the said

provision of law being whether the case giving rise to that liability is still pending.

15. The learned Counsel for the respondent has cited American Home Products Corporation v. Mac Laboratories where it was observed that construction leading to manifest absurdity, futility, palpable injustice or absurd inconvenience or anomaly should be avoided.

16. B. PrabhakarRao v. State of Andhra Pradesh was also cited where it was held that:

While it is a general rule of law that statutes are not to operate retrospectively, they may so operate by express enactment, by necessary implication from the language implied or where the statute is explanatory or declaratory or where the statute is passed for the purpose of protecting the public against some evil or abuse or where the statute engrafts itself upon existing situations etc etc. But it would be incorrect to call a statute 'retrospective', "because a part of the requisites for its action is drawn from a time antecedent to its passing". Vide R. v. St. Mary White chapel (Inhabitants) (1848) 12 QB 120. We must further remember, quite apart from any question of retrospectively, that, unlike in the United Kingdom here in India we have a written Constitution which confers justiciable fundamental rights and so the very refusal to make an Act retrospective or the non-application of the Act with reference to a date or to an event that took place before the enactment may, by itself, create an impermissible classification justifying the striking down of the non- retroactivity or non application clause, as offending the fundamental right to equality before the law and the equal protection of the laws.

17. It is significant that by necessary implication from the language or where the statute is passed for the purpose of protecting the public against some evil or abuse or where the statute engrafts itself upon existing situations etc. etc., the retrospective effect to a statute may be considered, to let of operate retrospectively.

18. In GirdhariLal and Sons v. BalbirNath , it was laid down:

The primary and foremost task of a court in interpreting a statute is to ascertain the intention

of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the Rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the, written word if necessary.

19. It is thus significant that it is enjoined on Courts to so interprete a law, having ascertained the intention so as to promote and advance the object and purpose of the enactment.

20. It is further significant that while doing so the Court may even depart from the rule that plain words should be interpreted according to their plain meaning.

21. In Skandia Insurance Co. Ltd. v. KokilabenChandravadan AIR 1987 SC 1184, the principle was laid down-

These must therefore be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life-aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not turned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of

business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to the doctrine of 'reading down' the exclusion clause in the light of the 'main purpose' of the provision so that the 'exclusion clause' does not cross swords with the 'main purpose' highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose.

21. In Craies on Statute Law Seventh Edition at page 396 under the head "Statutes passed to protect the public sometimes held retrospective", it is stated "If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right".

22. Under the head "Statutes virtually retrospective" at the same page it is stated "Sometimes a statute although not intended to be retrospective, will in fact have a retrospective operation. For instance, if two persons enter into a contract, and afterwards a statute is passed, which, as Cockburn C.J. said in Duke of Devonshire v. Barrow, etc., Co., "engrafts an enactment upon existing contracts" and thus operate so as to produce a result which is something quite different from the original intention of the contracting parties, such a statute has, in effect, a retrospective operation".

23. It is also a well recognised principle that a statute is not properly called a retrospective statute because a part of the requisite for its action is drawn from a time antecedent to its passing.

24. In Maxwell on the Interpretation of Statutes, 11th edition at page 204.

Section 4 - 'Retrospective operation', it is said:

Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation.

At page 211, it is stated;

Nor is a statute retrospective in the sense under consideration because a part of the requisite for

its action is drawn from a time antecedent to its passing.

25. The provisions of Section 92-A show that the legislature did not use any express words to give retrospective effect, which it could have provided easily by use of words to that effect and in the 'commencement' clause of the Amendment Act it was said that it shall come into force on such date as the Central Government may notify. As to the commencement, I do not think it to be conclusive of the legislative intendment against retrospective operation because there were other provisions in the Amending Act and it is well known that such stipulation for commencement is made with a view to make preparation etc. for implementation of the provisions and when the Government is about ready to do so the statute is brought into force. I therefore do not consider the said stipulation about commencement as necessarily showing legislature's intendment against retrospective operation of the provisions of Section 92A. As regards the absence or non-existence of express words to give retrospective effect I am inclined to think that this too should not be considered as clinching the matter under consideration, for the reason, that there is nothing in the said provision, either, which may show that it was not intended to cover cases where death or permanent disability had occurred earlier.

26. The language of Section 92 A, that, where the death or permanent disablement has resulted from an accident the owner shall be liable to pay compensation in accordance with the provisions of this Section, in Sub-section (2), the fixed sum of compensation payable and in Sub-section (3) that in any claim for compensation Under Sub-section (1) the claimant shall not be required to plead and establish wrongful act, negligence etc. considered together, could well mean that where the claim could be made, that is where death or permanent disability had occurred and the claim was pending, compensation Under Sub-section (1) of Section 92-A could just be claimed and all that would happen would be that the claimant would not be required to plead or establish any wrongful act, negligence or default etc.

27. It, therefore, appears necessary to determine legislative intendment, underlying Section 92A. As the title of the chapter VII A itself

shows the legislature intended that some compensation should be paid to the victim of a motor accident in case of death or permanent disability, without going into the question of fault. The intention of the legislature was to provide some relief immediately without even pleading or proof of wrongful act, negligence, default etc. as cause of accident.

28. The statement of objects and reasons of the amending Act noted earlier clearly show that the new provision is manifestly a socially beneficial legislation intended to provide some measure of protective relief by way of quick payment of some compensation to the affected persons, in view of the grave risk which the public is exposed or subjected most of the time, with increasing numbers of fast moving motor vehicles on the road.

29. The relief which a claimant of a motor vehicle accident, may expeditiously so obtain is not by any standard very great and I am inclined to think that the effect that it may have on the owner of the insurer's right which may be considered as the only right vested and affected, as compared to the benefit to the claimant or the victim, is not such as may be considered so substantial, that that consideration may or should be allowed to prevail, to disallow application of the provision to a claim made thereunder. It is only on ground of the vested right being affected that the view has been taken that the new provision should not be given retrospective effect. I am inclined to think as shown above from the language of Sub-sections (1) and (3) of Section 92-A that it should not be construed as giving retrospective effect to the provision, but even if it be so considered, I am of the opinion that in considering the operation of a socially beneficial legislation, in the absence of anything to the contrary against retrospective operation, as in the present case, it should be reasonably sound to have comparative consideration of the benefit to the people and the nature and extent of the effect on the vested right. The owner and the Insurer were even before liable for compensation on proof of negligence rashness etc. By the new provision to provide some relief expeditiously the effect on the right I am inclined to think should be considered only marginal, for the number of cases in which claim were pending, and in which the claim under the new law is made and in which

ultimately it may be found that the death or permanent disability had occurred, not due to the wrongful act, etc. of the owner may not be very large and in any case the burden on the Insurer would not be of such magnitude as may outweigh the consideration of relief and little security to the claimant concerned. I, therefore, think that the consideration to the terms of Insurance, as in Andhra Pradesh case (supra) should not be allowed to prevail in giving retrospective effect to the socially beneficial legislation made with a view to protect the general public against the grave risk which they face while on the road.

30. It may also be noted that undoubtedly full compensation was recoverable on proof of rashness or negligence for which the claim was pending when by the amendment a socially beneficial provision extending some immediate relief was engrafted on the law whereunder the claim was pending and, therefore, it may not be even considered as giving retrospective operation to the law. Just because the claim under it, related to an accident that occurred before the law came into force it may also be said that the amendment may not be considered retrospective in the sense under consideration because a part of the requisite for its action is drawn from a time antecedent to its coming into force, that is the death or permanent disability having occurred before the amended provision came into force.

31. For the aforesaid reasons, I am inclined to take the view that in the application of the new provision of Section 92-A in a case where the claim was pending in respect of an accident which took place earlier than the coming into force of the said provision, it should not be considered as giving retrospective effect to it in the sense under consideration, and even if it is to be so considered, being a socially beneficial legislation in such a case, it should be given retrospective effect."

63. Learned Counsel for the respondents have submitted that the damage was caused due to the mining and blasting. In response thereof the learned Counsel for the applicant has submitted that the incident, blasting and it effect and damage to houses, residence and school

building was monitored and seen before two or three years and the matter was placed before the Addl. District Magistrate, In-charge Revenue Department and he visited the site and after that a peaceful protest in the village was started and the officials of Rajasthan Government including the Sub Division Officer, Assistant Mining Engineer will visited the site and updated action was sought by the authorities concerned. The matter was again raised before the competent authority and letter was addressed to Principal Rajkiya Madhyamik Vidyalaya to Chief Secretary that mining was pointing out have caused structural damage to the school building and if not stopped, there is a possibility of collapse of school building and harm to life of the students and Asst. Mining Engineer addressed a letter to the Addl. District Magistrate for enquiring the matter and the matter was published in the local news paper but nothing was done by the authorities concerned. The applicant Samiti moved a representation before the District Magistrate with regard to the illegal mining, blast, potential damage and damage to the house, residences and school building but nothing was done. Again a protest was done and the mining engineer issued certain directions to regulate the mining and not to use blast but the matter was not stopped. The list of assessment for the repair of the school building have been submitted by the applicants which is to the tune of 4 lacs and this estimated has been submitted before the Collector. Nothing has been controverted by the respondents with regard to the damage or amount of compensation for repairing of the school building. Once it is proved by the Learned Counsel for the applicant with regard to the damage and the amount required for repair to the school building, burden shifted to respondents to disprove it. The mining department, the joint committee has confirmed the damage to the building and also blasting by the respondents without due permissions.

64. CPCB developed following minimum distance criteria to be considered for permitting stone quarrying by SPCBs from Residential/Public buildings, Inhabited sites, protected monuments, Heritage sites, National / State Highway, District roads, Public roads, Railway line/area, Ropeway or Ropeway trestle or station, Bridges, Dams, Reservoirs,River, Canals, Lakes or Tanks, or any other locations to be considered by States:

a. 100 meters if blasting is not to be done.
b. 200 meters if blasting is to be done.

65. The regulations for danger zone (500 m) prescribed by Directorate General of Mines Safety also have to be complied compulsorily and necessary measures should be taken to minimise the impact on environment.

66. However, if any state is already having stringent criteria than the above for minor mineral mining (i.e. more prescribed distances than the above), the same shall be applicable.

67. Respondent No.7, the Directorate General of Mines Safety has replied that an officer of the Directorate from Ajmer Region visited the areas on 29.7.21 and during the inspection, permanent houses /structures not belonging to owners of the mine in case of Pichani Masonary Stone Mine were situated within danger zone and **the blasting was carried out without obtaining permission under Regulation 164(1-B)(a) of the MMR 1961. Similarly, Peer Ji Ka Sthan , boundary of Secondary school Shuklabas and cowshed were situated within prohibited distance as well as within danger zone. Cracks were observed in the structure located within danger zone.**

68. **DGMS has clearly mentioned that no permission for deep hole drilling and blasting was issued by the Directorate. Thus blasting has been done without permission as well as without taking prescribed safety measures.**

69. Metalliferous Mines Regulation 1961 prescribes certain precaution and safety measures as under:

(a) Blasting should be done only by the authorized blaster

(b) Blasting will be done in noon time

(c) Horn or whistle should be kept at side to blow before blasting

(d) Blasting material like Nitrate mixture and gelatin should be kept separate and safely and security

(e) Noise level should not exceed 145 DB at time of blasting at 4-meter distance from the point of bursting

(f) A distance of 15 meters surrounding the magazine or store house shall be kept clear of dried grass or bash or flammable materials

(g) Wherein any mine or part it is proposed to work by a system of deep-hole blasting and/or with the help of heavy machinery for its digging, excavation and removal in such manner as would not permit of compliance with the requirement of sub-regulation (1) the owner, agent or manager shall, not less than 60 days before starting such work, give notice in writing of the method of working to the Chief Inspector and the Regional Inspector; and no such work shall commence to be carried out except in accordance with such conditions as the Chief Inspector may specify by an order in writing. Every such notice shall be in duplicate, and shall give the details of the method of working including the precautions that are proposed to be taken against the anger from falls of sides andmaterial. (Rule no. 106(2)(B)

(h) Every magazine, or store or premises, where explosives are stored shall be in charge of a competent person who shall be responsible for the proper receipt, storage and issue of explosives. Rule no. 156 (1)

(i) Explosives shall be issued only to competent persons upon written requisition signed by the blaster or by a official authorized for the purpose, and only against their signature or thumb impression.

Such requisition shall be preserved by the person in charge of the magazine or store or premises. Rule no. 156 (3)

(j) The person in charge of the magazine or store or premises shall maintain, in a bound paged book kept for the purpose, a clear and accurate record of explosives issued to each competent person and a similar record of explosives returned to the magazine or store or premises. Rule no. 156 (4)

(k) The preparation of charges and the charging and stemming of holes shall be carried out by or under the personal supervision of a competent person, in these regulations referred to as a 'blaster'. The blaster shall fire the shots himself. Rule no. 160 (1)

(l) No person shall be appointed to be a blaster unless he is the holder of Manager's, Foreman's Mate's or Blaster's certificate. Rule no. 160 (2)

(m) Provided further that if the shortest distance from the place of firing to any part of such building or structure is less than 50 meters irrespective of the amount of the charge, no blasting shall be done except with the permission in writing of the Chief Inspector or the Regional Inspector and subject to such conditions as he may specify therein. Rule no. (164 (1-B)(a)

70. **Thus timing of blast, strength of blast, number of blasts and mechanism of blasts etc have impact on the nearby structures. Quarries often are in clusters and therefore permission from the DGMS for the blasts must take into account the total number of blasts within permissible duration for all such quarries to restrict the impact on nearby structures and accordingly devise mechanism and pattern of blasts. Thus SEAC and SEIAA should take these things into considerations while according environmental clearances.**

71. Usually DGMS's permissions are granted after the ECs and therefore DGMS cannot absolve its responsibility of considering these parameters and must create coordination with the EC granting authorities while granting permission.

72. Learned Counsel appearing for the 9,10 , 11,13 & 14 have submitted that the necessary permissions have been taken from the Mining Department and he has submitted the Expert Report that the damage to the house, residential building are not direct effect of the mining. In response thereof, Learned counsel for the applicant has submitted that the report submitted by the Director General Mines Safety reveals that none of the applicant has taken permission from the competent authority for deep blasting and the chart which has been narrated above no permission for Deep Hole Blasting has been taken by the respondents and in absence of such permission the blasting was in violation of the rules. It is further contended by the applicant that even if distance criteria is maintained by the PCB/SEIAA while granting the EC, if any damage is caused to building property or the person due to mining activities and blasting, the person whose property or life is damaged is entitled for payment of compensation according to rules. Any permission from the mining department or Pollution Control Board or SEIAA does not permit to cause damage to the person or property of other or villagers. Learned Counsel appearing for the Directorate of Mines has submitted that there are guidelines for blasting and there must be certain interval between two blastings and if more than 15 mines are situated with the cluster area even if that is maintained if 15 mines are using blasting the criteria will never be maintained and the effect could be damage to the property of the residents. Learned Counsel appearing for the respondent had submitted that burden of proof lies on the applicant to prove the damage. The applicants had agitated at several times before the authorities concerned and submitted the relevant document before the authorities and before this

Tribunal causing damage to the property and joint committee report, report of the Mines and reply of the Director Mines reveals that the cause of damage to the property or houses are due to blasting. It is to be made clear that right to business or permission of mining does not in any way directly or indirectly give any right to the mine owners to cause damage to the person or property to others and burden of proof in the case of environmental damage is not like the civil cases.

73. Punitive action, which would include punishment in one form or the other, would normally be for the damage or the wrong done to environment and for its restoration thereto. Therefore, there must be a nexus between befalling of an event, or its likelihood thereof, and its pollution source and the injury apprehended or caused. All these ingredients must be supported by reasonable scientific data, especially in the case of precautionary principle.

74. This brings us to discuss the onus of proof in matters relating to environment. We must, at the very threshold of discussion on this topic refer to the judgment of the Supreme Court in A.P. Pollution Control Board v. Prof. M.V. Nayudu supra, where the Hon'ble Court, while discussing the onus in environmental matters, held as under:

> "31. *The Vellore judgment has referred to these principles briefly but, in our view, it is necessary to explain their meaning in more detail, so that Courts and tribunals or environmental authorities can properly apply the said principles in the matters which come before them.*
>
> *The precautionary Principle replaces the Assimilative Capacity principle.*
>
> *32. A basic shift in the approach to environmental protection occurred initially between 1972 and 1982. Earlier the concept was based on the 'assimilative capacity rule as revealed from Principle 6 of the Stockholm Declaration of the U.N. Conference on Human Environment, 1972. The said principle assumed that science could*

provide policy-makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and it presumed that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to act in order to avoid such harm. But in the 11th principle of the U.N. General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the 'precautionary Principle', and this was reiterated in the Rio Conference of 1992 in its Principle 15 which reads as follows:

> *Principle 15: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage; lack of full scientific certainty shall not be used as a reason for proposing cost effective measures to prevent environmental degradation.*

33. In regard to the cause for the emergence of this principle, Chairman Barton, in the article earlier referred to in Vol. 22, Harv. Envtt. L. Rev. (1998) P. 509 at (p. 547) says:

> *There is nothing to prevent decision makers from assessing the record and concluding there is inadequate information on which to reach a determination. If it is not possible to make a decision with "some" confidence, then it makes sense to err on the side of caution and prevent activities that may cause serious or irreversible harm. An informed decision can be made at a later stage when additional data is available or resources permit further research. To ensure that greater caution is taken in environmental management, implementation of the principle through Judicial and legislative means is necessary.*
>
> *In other words, inadequacies of science are the real basis that has led to the precautionary principle of 1982. It is*

based on the theory that it is better to err on the side of caution and prevent environmental harm which may indeed become irreversible.

34. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (Justified) concern or risk potential. The precautionary principle was recommended by the UNEP Governing Council (1989). The Bomako Convention also lowered the threshold at which scientific evidence might require action by not referring to "serious" or "irreversible" as adjectives qualifying harm. However, summing up the legal status of the precautionary principle, one commentator characterised the principle as still "evolving" for though it is accepted as part of the international customary law, "the consequences of its application in any potential situation will be influenced by the circumstances of each case". (See First Report of Dr. Sreenivasa Rao Pemmaraju, Special-Rapporteur, International Law Commission dated 3.4.1998 paras 61 to 72).

The Special Burden of Proof in Environmental cases:

35. We shall next elaborate the new concept of burden of proof referred to in the Vellore case AIR 1996 SC 2715. In that case, Kuldip Singh, J. stated as follows:

The 'onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.

36. It is to be noticed that while the inadequacies of science have led to the 'precautionary principle', the said 'precautionary principle' in

its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed, is placed on those who want to change the status quo (Wynne, Uncertainty and Environmental Learning, 2 Global Envtl. Change 111 (1992) at p. 123). This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the changes would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a lesspolluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden. (See James M. Olson, Shifting the Burden of Proof, 20 Envtl. Law p. 891 at 898 (1990). (Quoted in Vol. 22 (1998) Harv. Env. Law Review p. 509 at 519, 550).

37. The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment. (See Report of Dr. Sreenivasa Rao Pemmaraju, Special Rapporteur, International Law Commission, dated 3.4.1998, para 61).

38. It is also explained that if the environmental risks being run by regulatory inaction are in some way "ascertain but nonnegligible", then regulatory action is justified. This will lead to the question as to what is the non-negligible risk'. In such a situation, the burden of proof is to be placed on those attempting to alter the status quo. They are to discharge this burden by showing the absence of a 'reasonable ecological or medical concern. That is the required standard of proof. The result would be that if insufficient evidence is presented by them to alleviate concern about the level of uncertainty,

then the presumption should operate in favour of environmental protection. Such a presumption has been applied in Ashburton Acclimatisation Society v. Federated Fanners of New Zealand [1988] 1 NZLR 78. The required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable persons' test. (See Precautionary Principle in Australia by Chairman Barton) (Vol. 22) (1988) Harv. Env. L. Rev. 509 at 549).

75. The normal rule of evidence is that one who pleads must prove before the Court or the Tribunal i.e. the onus of proving, while claiming relief, is on the person who approaches the Court/Tribunal. However, this rule may not be applicable to this Tribunal stricto sensu.

76. This Tribunal has been established both with original and appellate jurisdiction relating to environmental laws. The NGT Act, 2010 was enacted for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal rights relating to environment. In relation to NGT, the legislature, in its wisdom, has specifically excluded the application of the procedure under the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 (for short 'the Evidence Act') in terms of Section 19(1) and 19(3) of the NGT Act. On the contrary, Section 19(2) of the NGT Act empowers the Tribunal to have the power to regulate its own procedure. In terms of its Section 19(5), NGT is a judicial Tribunal. Section 20 of the NGT Act further recognizes the application of the principles of sustainable development, precautionary principle and polluter pays principle by the Tribunal while adjudicating upon disputes on environment.

77. Once the applicability of specific rules of evidence, as prescribed under the Evidence Act, is excluded, the Tribunal has to state its own procedure, including recording of evidence, but the same essentially has to be in consonance with the principles of natural justice. It will

have to be examined on a case to case basis as to when the onus will shift from the applicant to non-applicant. In environmental cases, normally the damage to environment or public health is evident by itself, res ipsa loquitur. The cases of environmental degradation, damage and health hazards are obvious by themselves as a result of some industrial activity or development. In that event and keeping in view the very object of the NGT Act, it will be unacceptable to require the applicant to discharge his primary onus by strict number of events and their details.

78. Once an applicant approaches the Tribunal with a complaint of environmental injury or environmental degradation or health hazards resulting from negligence, or incidental occurrence of emission or discharge of gases or effluents in violation of the prescribed standards, then such an applicant discharges the primary onus by instituting a petition in the prescribed form, supported by an affidavit, which then shifts upon the industrial unit, developer or the person carrying out the activity complained of, to establish by cogent and reliable evidence that it has not caused pollution or health hazards by carrying out its activities; all the expected norms of discharge have been strictly adhered to by that unit; and any harm, if caused, was neither the result of any negligence nor violation of prescribed standards. Upon discharge of such onus, which is certainly much heavier, by the developer/industrial unit, it will then again be for the applicant to establish to the contrary. In other words, heavy onus lies upon the industrial unit or the developer to show by cogent and reliable evidence that it is non-polluting and nonhazardous or is not likely to have caused the accident complained of.

79. The view, we are taking finds strength from the observations stated by the Supreme Court in its judgment in the case of Narmada Bachao Andolan v. Union of India (supra) where the Court, while referring to

the case of Vellore Citizens' Welfare Forum supra and the report of the International Law Commission, held as under:

> *119. It is this decision which was the subject-matter of challenge in this Court. After referring to the different concepts in relation to environmental cases like the 'precautionary principle' and the 'polluter-pays principle', this Court relied upon the earlier decision of this Court in Vellore Citizens' Welfare Forum v. Union of India (MANU/SC/0686/1996 : AIR 1996 SC 2715) and observed that there was a new concept which places the burden of proof on the developer or industrialist who is proposing to alter the status quo and has become part of our environmental law. It was noticed that inadequacies of science had led to the precautionary principle and the said 'precautionary principle' in its turn had led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed is placed on those who want to change the status quo. At page 735, this Court, while relying upon a report of the International Law Commission, observed as follows:*
>
> > *The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution is major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.*
>
> *120. It appears to us that the 'precautionary principle' and the corresponding burden of proof on the person who wants to change the status quo will ordinarily apply in a case of polluting or other project or industry where the extent of damage likely to be inflicted is not known. When there is a state of uncertainty due to lack of data or material about the*

extent of damage or pollution likely to be caused then, in order to maintain the ecology balance, the burden of proof that the said balance will be maintained must necessarily be on the 57 industry or the unit which is likely to cause pollution. On the other hand where the effect on ecology or environment of setting up of an industry is known, what has to be seen is that if the environment is likely to suffer, then what imitative steps can be taken to offset the same. Merely because there will be a change is no reason to presume that there will be ecological disaster. It is when the effect of the project is known then the principle of sustainable development would come into play which will ensure that imitative steps are and can be taken to preserve the ecological balance. Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.

80. Accordingly, damage to the school building to the tune of 4 lacs is proved and the respondents are jointly are separately responsible for the payment of compensation to the tune of 4 lacs rupees to the Rajkiya Madhyamik Vidyalay Shuklavas, Jaipur-II and the amount should be paid through the Jaipur Collector who shall direct the authorities concerned to repair the college building from this fund.

DAMAGE TO THE GROUND WATER

81. The applicant has raised question that unregulated blasting and mining the ground water has considerably depleted in the area in question which has resulted in non functional boring pumps of the residents. There is no process of repair of boring, in case it is damaged by the blasting water level has been depleted. The only option is to have fresh boring done for the purpose of setting up tube well and

hand pump. The two residents who have suffered the loss are Gyarsilal Yadav and Mamraj Gurjar of Village Shuklawas, there estimate which has been produced by the applicant is to amounting to approximately Rs. 4,001,40/- (four lacs one hundred and forty rupees). Accordingly, in above parameter the above damage is also proved and the persons Gyarsilal Yadav and Mamraj Gurjar are entitled for Rs. 4,001,40/- (four lacs one hundred and forty rupees) jointly and the respondents are jointly or separately are responsible for payment of that amount which shall be equally divided between the two persons, the amount shall be recovered from the polluters by the Collector and the remedial measures must be taken according to law by the competent authority or the technical agency.

Assessment/ Calculation of damage due to cracks in the houses of Villagers

82. The applicant had moved this application for payment of compensation to the damage caused by the blasting to hole the residential buildings. A list from Sr. No. 1 to 505 have been submitted with the assessment done by one architect consultant named creative associates which is @ Rs. 913/- per square feet for constructing new wall and roof including material and labour charges. The list which has been submitted separately is more than 500 persons and the amount as claimed by every individual is approximately Rs. four lakhs. It is very difficult to calculate and accept these amounts and to assess the damage. This amount seems to be very high and there are no criteria for fixation of the damage. The criteria as raised by Creative Associates @ Rs. 913/- per square feet is also not practicable for the reasons that it shows only the rate per square feet but the area for repair is not available before this Tribunal. Thus for want of detail of damage or the persons entitled, it is very difficult to proceed with the case. Though there are damages to some of the residences whose photographs have been filed

and whose report have been submitted by the Joint Committee, but the name of all 500 persons has not been included and not assessed by the Joint Committee. Accordingly, we are of the view to direct the Collector to constitute a Committee of Competent Experts including Collector himself or his representative with one expert from Mining Department, Directorate General of Mines Safety, one technical person regarding the architectural structure, one representative from the CPCB and representative from the SPCB and after hearing all the persons aggrieved on the basis of the representation of the application and after perusal of cracks and damage to the building may decide the further cost and payment to the villagers. Accordingly, we direct the Collector to constitute a Committee as aforesaid and decide the matter of damage and representation of the villagers for the payment of reasonable compensation according to the damage caused to the building by the blasting. Amount so calculated shall be payable by the respondents jointly and separately and the Collector shall proceed to realise the amount of compensation from the respondents and disburse the amount to the villagers as per rules after giving an opportunity of hearing to both the parties. Issues are disposed of accordingly.

Issue No. 3 and 4

Violation of Environmental condition

83. Learned counsel for the applicant has submitted that there are violations of environmental condition as the mining has depleted the ground water table and proper permission from the CGWA has not been taken by them. The conditions as laid down and as narrated above has not been followed by the lease holders, there are violation of consent to operate conditions and section 21 (4) of Air, Prevention and Control of Pollution Act where there is provisions for taking necessary permission from the State board in this regard, the condition of having a plantation to cover 33 % of the total land use for mining as per the

condition 12 has not been complied with and there was no Action Plan for the mining. The directions issued by the Eastern Mining Engineer has not been complied and the actions under Rule 28 (3) (IX) of the Rajasthan Minor Mineral Concession Rules, 2017 has been violated. The superintended of Mining Engineer, Mining and Engineer Department, Jaipur vide report and letter dated 26.07.2019 has reported that it was found that unsafe mining work in their area and mining work has been carried out near human habitation . Further the mining and blasting work was being carried out without the requisite permissions and without the use of scientific methods. There was no DSR prepared for minable quantity where mining can be allowed and effect on the residential and other buildings near and within the proximity of the mining area. Grant of environmental clearance without taking the environmental considerations into account is a breach of law and abatement of destructive practices of mining. In the case of Goa Foundation vs. Union of India, 2014 (6) SCC 738, it has been observed that before grant of EC environmental status of the area has to be ascertained by a Competent Committee/ Expert Members. After perusal the records and after hearing the parties, we are of the view that conditions as laid down by the authorities has not been complied with and there are serious violation of environmental laws and blasting were conducted without the authority. Accordingly, the issue is decided in affirmative that the respondents have violated the conditions of EC and necessary actions are required to be taken according to rules. The issues are decided accordingly.

J. Directions

84. (i). O.A. No. 48 of 2020 is partly allowed with cost.

(ii) Rajkiya Madhyamik Vidhayalya Shuklavas, Jaipur is entitled for compensation to the tune of Rs. Forty Lakhs and respondents are jointly and severally liable to pay compensation with interest at the rate of 6 % per annum from the date of application to the date of

payment. The amount shall be realised by the Collector, Jaipur and construction/repair of the school building shall be done by the reputed state agency. The amount of construction shall be paid after satisfactory work certificate issued by the Principal of the school. All the respondents are directed to pay the amount within 30 days from the date of order failing which the collector may proceed to realise in accordance with rules.

(iii) Gyarsilal Yadav and Mamraj Gurjar are entitled for Rs. 4,001,40/- (four lacs one hundred and forty rupees) jointly and the respondents are jointly and severally and responsible for payment of that amount which shall be equally divided between the two persons, the amount shall be recovered from the polluters by the Collector and the remedial measures must be taken according to law by the competent authority or the technical agency.

(iv)For determining the exact amount of compensation and persons entitled out of the list submitted by the applicant (more than 505), we direct the Collector to constitute a Committee as aforesaid (Para-86) and decide the matter of damage and representation of the villagers for the payment of reasonable compensation according to the damage caused to the building by the blasting. Amount so calculated shall be payable by the respondents jointly and separately and the Collector shall proceed to realise the amount of compensation from the respondents and disburse the amount to the villagers as per rules after giving an opportunity of hearing to both the parties.

(v) The applicant is/are entitled for payment of one lakh as cost of litigation payable by respondents.

O.A No. 75 of 2020

(i) O.A. No. 75 of 2020 allowed with cost

(ii) Mine leases of the respondents nine onwards are cancelled in accordance with Rule 28 (3) (x) under Rajasthan Minor and Mineral

Concession Rules, 2017. State Pollution Control Board is directed to proceed, according to law.

(iii) No blasting shall be permitted to be carried out in the mine without obtaining permission under Regulation 164(1-B)(a) of the MMR, 1961, and no mine shall work with the use of Heavy Earth Moving Machineries and a system of deep hole blasting without obtaining a permission in writing from Directorate as required under Regulation 106(2)(b) of the MMR, 1961.

(iv) The regulations for danger zone (500 m) prescribed by Directorate General of Mines Safety also have to be complied compulsorily and necessary measures should be taken to minimise the impact on environment. However, if any state is already having stringent criteria than the above for minor mineral mining (i.e. more prescribed distances than the above), the same shall be applicable.

(v) For timing of blast, strength of blast, number of blasts and mechanism of blasts etc have impact on the nearby structures. Quarries often are in clusters and therefore permission from the DGMS for the blasts must take into account the total number of blasts for all such quarries within a given duration to restrict the impact on nearby structures and accordingly devise mechanism and pattern of blasts. Thus SEAC and SEIAA should take these things into considerations while according environmental clearances.

(vi) RSPCB and SEIAA are directed to reconsider the matter of CTO and EC in light of violation of conditions and regulations as aforesaid and take necessary action for withdrawal of consent within 15 days from the date of receipt of the copy of the order.

(vii) A Committee consisting (a) representative of the Director General of Mine, (b) representative of CPCB, (iii) representative of RSPCB, (iv) CGWA is constituted to determine the amount of damage of environment and further directed to proceed to realise the amount of environmental compensation as per law.

(viii) The applicant is entitled for payment of one lakh as cost of litigation payable by respondents.

(ix) Central Pollution Control Board is directed to revisit its guidelines to include safety consideration of cluster effect of quarries and impact of blasts in deciding siting criteria.

(x) A copy of the order be sent to Chief Secretary and Member Secretary, Rajasthan pollution Control Board to enforce the Environmental Law and Rule of Law on the principle of Sustainable Development and Polluter to Pay and the directions mentioned above.

Both the **Original Applications stands disposed of accordingly.**

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

February 22nd 2022
O.A No. 48/2020 & O.A. No. 75/2020
PU & K