

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
THE HON'BLE SRI JUSTICE RAMESH CHANDRA KHULBE

Date of hearing : 30.08.2022

Date of Judgment : 02.01.2023

WRIT PETITION (PIL) NO. 168 OF 2019

Between:

Devendra Singh Adhikari Petitioner

and

State of Uttarakhand& others Respondents

Counsel for the petitioner : Mr. Dushyant Mainali and Mr. V.K. Shukla, learned counsels

Counsel for the respondents : Mr. A.S. Rawat, learned Special Counsel with Mr. C.S. Rawat, learned Chief Standing Counsel and Mr. B.P.S Mer, learned Brief Holder for the State

: Mr. Rakesh Thapliyal, learned Assistant Solicitor General assisted by Mr. Pankaj Chaturvedi, learned Standing Counsel for the Union of India

: Mr. Aditya Pratap Singh, learned counsel for respondent No. 3

: Mr. D.S. Patni, learned Senior Counsel assisted by Mr. Dharmendra Barthwal, learned counsel for Respondent Nos. 5 & 6

The Court made the following:

JUDGMENT: (per Hon'ble The Chief Justice Sri Vipin Sanghi)

This writ petition has been preferred in public interest by the petitioner, who is a resident of village

Dalipur, Kotdwar, Pauri Garhwal, Uttarakhand-246169, raising grievances regarding the environmental pollution caused by the setting up and running of the stone crusher unit of Respondent No. 5 i.e. M/s Shri Sidhballi Stones, by Respondent No. 6.

Gist of Pleadings of the parties:

2) The Petitioner states that he is a permanent resident of the Dalipur Village, Kotdwar, Pauri Garhwal, Uttarakhand-246169. He is affected by the running of the stone crusher of Respondent no. 5, by Respondent no. 6. He is espousing the cause of the public as per requirements of Rule 4(2) of the Rules notified by this Court titled "*Writs in the Nature of Public Interest Litigation under Article 226 of the Constitution of India*". The Petitioner states that Respondent No. 6 had been issued a licence, as per the Office Memorandum dated 04.07.2015, to establish/operate a stone crusher at village Bhuvdevpur, Kotdwar, Pauri Garhwal, Uttarakhand for a period of 3 years in terms of the Uttarakhand Stone Crusher, Screening Plant and Pulveriser Permit Policy of 2011, which has been renewed from time to time, and it continues in force even now.

3) The Petitioner enlists the several violations of environmental norms, apart from the violation of conditions of licence, by Respondent Nos. 5 & 6. The Petitioner states that the Respondent No. 5 and 6 are operating their stone crusher unit in violation of conditions stipulated in O.M. dated 04.07.2015, namely Clause 3- which stipulates that the unit would have a boundary wall of 15 feet in height, and Clause 9- which mandates the stone crusher to grow trees in three rows of 7 to 10 meters width for checking spread of dust particles. It is further contended that the Stone Crusher is operating almost 18 to 20 hours a day, which is more than the permitted number of hours, and producing more than 1000 tons per day of crushed stone, which is in violation of the stipulated limit of 400 tons per day.

4) The Petitioner further states that Respondent No. 5 Stone Crusher has been dumping the waste-water into the Ravasan River. It is further stated that Respondent No. 5 Stone Crusher is illegally extracting the raw material/stones from the Sigaddi Sotra, which was actually a *Nalla*, but now looks like a dry river. The waste-water from the Respondent No. 5 Stone Crusher is directly discharged into the Sigaddi Nalla/Ravasan River. This has caused widespread health concerns

among the resident of the adjacent villages. It is also contended that on account of the illegal excavation of raw materials by Respondent 5 from the river, the course of the Sigaddi River has got altered.

5) It is the contention of the petitioner that Respondent no. 5 and 6 are not complying with the relevant provisions of the Water Act, 1974, the Air Act, 1981 and Hazardous Wastes (Management, Handling and the Transboundary Movement) Rules, 2008, as mandated by the Consolidated Consent to Operate and Authorization (CCA) dated 03.05.2018 granted to Respondent no. 5 by Respondent No. 3 - Uttarakhand Environment Protection and Pollution Control Board.

6) According to the petitioner, the stone crusher is located at a terrestrial distance of 3.39 KM from the actual boundary of the Rajaji National Park, and is, therefore, operating within the 10 KM of the Eco-Sensitive Zone (ESZ) of Rajaji National Park which is strictly prohibited in light of the judgment of the Supreme Court in "**T.N. Godavarman v. Union of India**" WP (Civil) No. 202 of 1995, dated 11.12.2018, in which it was, *inter alia*, directed that "*under the circumstances, we direct that an area of 10 KMs around*

these 21 National Parks and wildlife sanctuaries be declared as Eco-sensitive zone."

7) The petitioner has also relied upon the order passed by the National Green Tribunal in "***Nandan Singh Bora v. Union of India & Ors.***" in OA No. 88/2016 and 367/2016 dated 17.12.2018, in which it was held that no stone crusher shall operate within 10 KM of the Nandhaur Wildlife Sanctuary. The petitioner has also relied upon the order passed in Review Application No. 54 of 2018 filed in OA No. 367/2016 in "***M/s LSC Infratech Ltd. v. Union of India & Ors.***" dated 04.01.2019 by the NGT, wherein it held that "***we, therefore, direct that, as prayed for by the applicant in O.A No. 367/2016, all the cases of mining and stone crushers operating within the 10 KM of Nandhaur Wildlife Sanctuary and within the ESZ, if so notified, will be referred to the National Board of Wildlife. Till it is approved by the NBWL such operations will be stayed.***"

(emphasis supplied)

The Petitioner submits that Respondent Nos. 5 & 6 have not been granted clearance by the National Board for Wildlife (NBWL), as its case has not been

placed before the said board for approval. Respondent Nos. 5 & 6 have never applied to the NBWL for its approval.

8) The Petitioner has also relied upon the judgment of this court in WP(PIL) No. 65 and 76 of 2014 "**Ayub v. State of Uttarakhand & Ors**", wherein this Court by its order dated 13.06.2018, had directed the respondent State to ensure that no mining activity is carried out within the radius of 10 KM from the boundaries of all National Parks.

9) The Petitioner further states that the 31st Expert Committee Meeting held on 14.09.2018 of the Government of India, Ministry of Environment, Forest and Climate Change (MoEFCC), for the Declaration of the Eco-Sensitive Zone (ESZ) around Wildlife Sanctuaries/ National Parks, has categorically stated that ESZ is extended from 01 KM to 20 KM in the district of Haridwar and Pauri Garhwal. It is further contended that Respondent no. 5 Stone Crusher's site is within the buffer zone of the Rajaji National Park.

10) With these averments, the petitioner seeks the following reliefs in the present Public Interest Litigation: -

1. *Issue a writ, order or direction in the nature of mandamus commanding the respondents to take all immediate and effective steps to stop operation of the Stone Crusher of respondent no.5 which is operating in violation of orders passed by this Hon'ble Court, Hon'ble Apex Court and Hon'ble NGT and also in violation of UK Stone Crusher, Screening Plant, Pulveriser, Mobile Stone Crusher Permit Policy.*
2. *Issue a writ, order or direction, directing the respondent Nos. 2 to 4 to conduct an enquiry into the matter regarding illegalities being committed by Respondent No. 5 & submit the report before this Hon'ble Court.*
3. *Issue a writ, order or direction, directing the respondent Nos. 1 to 4 to assess the damage caused to the environment and direct the respondent Nos. 5 & 6 to deposit the same with the Respondent No.3 for the restoration of the environment.*
4. *Issue order or direction, directing the Respondent State to provide police protection to the petitioner and other villagers who have signed and filed complaint against the respondent Nos.5 & 6, who has openly threatened the petitioner and others of dire consequences and to implicate them in false criminal cases if they do not withdraw complaint against them."*

11) The Respondent No. 5 Stone Crusher, through its proprietor Respondent no. 6, have filed their counter affidavit dated 14.11.2019, wherein they state that Respondent No. 5 is an industrial undertaking and had been permitted to establish and operate the stone

crusher for a period of three years by the State of Uttarakhand vide Govt. Order dated 04.07.2015. Thereafter, the said permission to operate was renewed on 05.03.2019 for a period of 5 years. It further states that between 05.07.2018 to 07.03.2019, Respondent No. 5 was not in operation. It further states that the stone crusher is operating as per the Stone Crusher Policy, 2016.

12) Respondent Nos. 5 & 6 further state that they are not engaged in mining, which involves excavation of river bed material. They further state that Respondent No. 5 buys boulders and gravels from individuals/firms that are mined well beyond the distance of 10 KM from any reserve including the Rajaji Tiger Reserve. To buttress this submission, a list of individuals and firms, from whom Respondent No. 6 buys raw materials, and procures boulders and gravel, has been annexed.

13) Respondents No. 5 & 6 further state in their counter affidavit, that the Stone Crusher is situated at terrestrial distance of about 13 KM from the core zone of Rajaji National Park, and at a distance of 6.4 KM telescopically from the core zone of the Rajaji National Park.

14) Respondent Nos. 5 & 6 further state that there is no judicial pronouncement which prohibits the operation of a stone crusher within 10 KM of any National Park in the country. They further state that the order of NGT dated 17.12.2018 in OA No. 88/2016 & OA No. 367/2016 in "***Nandan Singh Bora v. Union of India***" is with respect to the Nandhaur Tiger Sanctuary only, and not in respect of the Rajaji National Park. It is the further submission of Respondent Nos. 5 & 6, that no permission is required to be obtained from the NBWL by the Petitioner.

15) Respondent Nos. 5 & 6 further state that Respondent No. 5 Stone Crusher is not operating beyond the permitted timing, and is only operative from 09:00 AM to 05:00 PM. They also state that Respondent No. 5 Stone Crusher is not exceeding the crushing capacity of 400 tonnes per day. They also state that the Sigaddi Sotra is a non-perennial river. In fact, it is a Barsati Nala, and Respondent No. 5 Stone Crusher has not done any rock/stock extraction from the said place.

16) Respondent Nos. 5 & 6 further state that the minutes of the 31st Expert Committee Meeting dated 14.09.2018, held by the MoEFCC for the Declaration of

the ESZ, are not legally enforceable. They state that the proposal of extending the ESZ to 20 KM, is subject to placing on record adequate justification therefor and, therefore, the said proposal is not final and is not enforceable.

17) A supplementary counter affidavit was filed by Respondent No. 5 & 6 dated 15.9.2020 which states that MoEF has issued a notification dated 14.09.2006 in the exercise of power conferred under Section 3(2)(v)(i) of Environment Protection Act, 1986, read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986, wherein certain projects and activities have been scheduled, which require prior environmental clearance. The Affidavit further states that the Ministry of Environment, Forest and Climate Change, Govt. of India (MoEFCC) vide letter dated 24.07.2020 has also modified para no. 12.5 of the handbook of the Forest Conservator Act. The said letter provides clarification regarding the projects which requires prior approval of Standing Committee of National Board of Wildlife for the projects falling within the ESZ. Respondent Nos. 5 & 6 submits that stone crusher plants are not included in the list, which requires prior approval from the Standing Committee of National Board of Wildlife. Therefore, there

is no prohibition vis-à-vis a stone crusher plant under the law, even if it is assumed that the stone crusher plant is situated within 10 KM of Rajaji National Park, or within the ESZ. The Affidavit further states that it is incumbent upon the Respondent Nos. 5 and 6 to follow only the provision of the 2016 Stone Crusher policy, under which the licence to the Respondent No. 5 was renewed, and not the subsequent policy.

18) The Respondent authorities have defended the grant of the licence to Respondent Nos. 5 & 6 and the operation of the Stone Crusher by them. Respondent No. 4 - the District Magistrate, (Mining Branch) Pauri Garhwal, Dhara Road, Pauri, Uttarakhand has filed his counter affidavit dated 02.11.2019, wherein he has stated that the stone crusher is not being operated in the night hours. The permission/licence for the operation of Stone Crushers is strictly being given in accordance with the provisions of Uttarakhand Stone Crushers Screening Plant, Mobile Screening Plant, Hot Mix Plant, and Ready mix Plant Licence Policy 2016. The Stone Crusher Owners / Representatives are spraying water regularly over the entire premises of Stone Crushers. The boundary wall has been constructed around the stone crusher premises, and store area.

19) Respondent No. 4 has further stated that Respondent No. 5 Stone crusher plant is situated at a distance of 300 meters from habitation. However, from the side of Sigaddi, the inhabitation is situated at a distance of 120-150 meters, which is not a densely populated area. It is further stated that the Pollution Control Board has been inspecting the area regularly, and none of the residents in the said vicinity have made any complaint of adverse effects on their health.

20) Respondent No. 4 states that on inspection of the raw material and processed material, it was found that the storage in the plant was 2 to 4 feet lower than the height of the boundary wall of the storage area. The height of the boundary wall appears to be 10-12 feet. Respondent No. 4 further states that on the Northern side of the Stone Crusher, the Sigaddi water source/Gadera/Nallah is situated at a distance of 120 meters, and the width of the said water source is 41 meters and, as such, at a total distance of 161 meters from the forest land which falls on the other side of the Sigaddi River/Nallah. The Buffer Zone boundary of Rajaji National Park starts from the other side of the River/Nallah, and from this buffer zone, the distance of

core zones of Rajaji National Park is about 13 KM by road, and 6.5 KM telescopically.

21) The Petitioner, in its Rejoinder affidavit dated 19.11.2019 to the counter affidavit of Respondent No. 4, states that the State has already issued a draft notification to the effect, that there shall be no mining or stone crushing activity within 10/20 KM from the Rajaji National Park. It is further stated that in spite of the judgment of the Supreme Court in "**T.N. Godavarman v. Union of India**" in WP (Civil) No. 202 of 1995, dated 11.12.2018; of this Court in WP(PIL) No. 65 and 76 of 2014 "**Ayub v. State of Uttarakhand & Ors**" dated 13.06.2018; the orders of NGT in "**Nandan Singh Bora v. Union of India & Ors.**" In OA No. 88/2016 & 367/2016 dated 17.12.2018, and; in OA No. 367/2016 in "**M/s LSC Infratech Ltd. v. Union of India & Ors.**" dated 04.01.2019, wherein the courts have held that no mining activity should take place within 10 KM of any National Park, the State Government has illegally issued the renewed licence to Respondent No. 5 Stone Crusher for 5 years in the year 2019.

22) The Petitioner further states that Respondent Nos. 5 & 6 are violating the orders passed by this Court,

and running stone crusher in the night hours in connivance with the officials' respondents. The loading and unloading of boulders from the dumpers in the night creates cracking noise in the vicinity, causing serious problems for old age persons, and school-going children.

23) The Petitioner has further stated that the Respondent No. 5 Stone Crusher is using Katcha/dirt road for the transportation of the crushed material from the site, leaving a vast trail of dirt/air pollution which is affecting the school going children, as the primary school is situated at the distance of 285 meters from the Stone Crusher, violating Clause 7 of the O.M. dated 04.07.2015.

24) The Petitioner has further reiterated that the Respondent No. 5 Stone Crusher is running the highly polluting illegal stone crushing unit, admittedly, at a distance of 160 meters from the boundary of Rajaji National Park, which is prohibited. He relies on the order passed by the Supreme Court in "***T.N. Godavarman v. Union of India***" in WP (Civil) No. 202 of 1995, on 29.07.2019. Vide this order, the Supreme Court restrained the State of Uttarakhand to undertake road development activities within Rajaji Tiger Reserve

without obtaining statutory approvals under Section 38 of the Wild Life (Protection) Act, 1972. Photographs of the incomplete bridge on Sigaddi River, whose work was stopped by the Supreme Court vide order dated 29.07.2019 have been placed on record.

25) By our Order dated 05.11.2019, Respondent No. 3 Uttarakhand Environment Protection and Pollution Control Board, Dehradun was directed to file its counter affidavit. Accordingly, the Respondent No. 3 Pollution Control Board filed its counter affidavit. Respondent No. 3 states in its affidavit that an inspection was carried out by the Board on 30.09.2019. It further states that as per the Joint Inspection Report dated 30.09.2019, the unit is operating in consonance with the criteria as laid down under the Environment (Protection) Rules, 1986. It further states that the unit has installed a wind-breaking wall of 10 feet.

26) The petitioner also filed a supplementary affidavit dated 17.02.2020 in I.A No. 2561 of 2020-seeking interim relief, which states that Department of Industrial Development, Government of Uttarakhand has amended the policy regarding establishment and regulation of stone crushers. It further states that

according to the new Uttarakhand Stone Crusher, Mobile Screening Plants, Pulveriser Plant, Hot Mix Plant Permit Policy, 2019 (hereinafter referred to as the 2019 Policy) the stipulation with respect to the distance between the stone crusher unit and a river has been increased to 3 KM, from the earlier stipulation of 500 meter from perennial rivers, and 50 meter from non-perennial river. It further states that the 2019 Policy has also amended the parameters/stipulations with respect to the Noise Pollution caused by the Stone Crusher. The earlier parameters of 75 db(A) Leq during daytime, and 70 db(A) Leq during Night Time, was amended in accordance with the Noise Pollution (Regulations and Control) Rules, 2000 which are as follows:

Area Code	Category of Area/Zone	Limits in db(A) Leq	
		Day Time	Night Time
(A)	Industrial Area	75	70
(B)	Commercial Area	65	55
(C)	Residential Area	55	45
(D)	Silence Area	50	40

27) By our Order dated 19.2.2020, we directed the Conservator of Forest, Shivalik Circle, Uttarakhand to file a report as to the location of the Respondent No. 5

Stone Crusher, and as to whether it falls within the ESZ. Further, by our order dated 19.02.2020, we also directed the Principal Secretary, Department of Industrial Development, Geology and Mining Unit, Directorate of Industries, Uttarakhand, to file an affidavit stating as to whether the licence for carrying on the stone crusher unit could be renewed under the circumstances.

28) An affidavit was filed on behalf of the Principal Secretary on 18.03.2020, which states that as far as the issue whether the Respondent No. 5 Stone Crusher falls within the ESZ of Rajaji National Park, is concerned, the said distance from Core Zone of Rajaji National Park is 13 KM terrestrially, and the aerial distance is 6.4 KM. Further, the affidavit states that Respondent No. 5 Stone Crusher was accorded sanction vide O.M No. 924 dated 04.07.2015- as per the then existing policy of 2011, for hills. The Respondent No. 5 Stone Crusher was granted renewal permission vide OM No. 445 dated 15.03.2019, after carrying out a joint inspection by the Officials of the State Pollution Control Board, Forest Department and the Geology and Mining Department, under the SDM, Kotdwar. The Affidavit further states that according to the terms of Clause (2) of the Chapter III of the Amended Policy, 2019, the units seeking extension of

their permission have to strictly comply with the terms of the Amended Policy, 2019. However, the Respondent No. 5 Stone Crusher's renewal took place prior to the enforcement of the Amended Policy, 2019 on 02.01.2020.

29) In compliance of our order dated 19-2-2020, the Conservator of forest, Shivalik Circle, Tilak Road, Uttarakhand filed a report dated 11.03.2020. We may quote the relevant extract from the said affidavit:

"4. That it is most respectfully submitted that as per directions issued by the Hon'ble Supreme Court and guidelines issued by MoEF, every national park and sanctuary has to notify the Eco Sensitive Zone around the boundary to provide buffer/cushion from highly protected area to less protected areas. The main aim of creating Eco-sensitive Zone around national park is to create some kind of shock Absorber and also acts as a Transition Zone and to regulate certain activities around protected areas so as to minimize the negative impacts of such activities on the fragile ecosystem.

5 . Eco Sensitive Zone around Rajaji National Park has not yet been notified. However, the Hon'ble Supreme Court of India in the matter passed the order that unless and until Eco

Sensitive Zone is around the National Park is notified, 10 KM from the boundary of National Park shall be treated as Eco Sensitive Zone. Hence at present 10 KM from the boundary of the Rajaji National Park falls under the Eco Sensitive Zone.

7. That the aerial distance of the Stone Crusher of the Stone Crusher from the Rajaji National Park is 6.4 KM.

The linear distance of the outermost boundary of the stone crusher from the buffer area of the Rajaji Tiger Reserve is about 161 m.

The linear distance of the outermost boundary of the stone crusher from the river Sigaddi Shot is about 120m."

(emphasis supplied)

30) The Respondent No. 1, the State of Uttarakhand, through its Principal Secretary, filed an Affidavit dated 29.09.2020, which states that the Supreme Court in "***Goa Foundation v. Union of India, Writ Petition No. 460 of 2004***", in its order dated 04.12.2006, referred to its decision dated 21.01.2002 to notify the areas within 10 KM of the boundaries of National Park and Sanctuaries as ESZ, and observed that the States/U.T.'s have not given the importance that is

required to be given to most of the laws to protect environment made after Rio Declaration 1972. Accordingly, the Supreme Court observed that by way of the "**Precautionary Principle**", the areas within 10 KM is to be embarked as ESZ from the boundaries of Sanctuaries and National Parks. Thus, it is clear that various projects and activities affecting wildlife, or their habitat, were not prohibited by the Supreme Court, but the NBWL was authorized to carry out the impact assessment of such projects.

31) The Affidavit filed by Respondent No. 1, the State of Uttarakhand, further states that the MoEF has notified "EIA Notification 2006" dated 14.09.2006. As per the EIA notification, those industries and development projects, which required environment clearance, have been notified in the Schedule. The affidavit states that since stone crushers are not categorized and not listed in the Schedule, therefore, they do not require any such environment clearance.

32) The Affidavit filed by Respondent No. 1 further states the matter related to the establishment of the Stone Crusher etc. was considered by this court in WPPIL No. 799 of 2008 "**Himalayan Yuva Gramin**

Sanstha v. State of Uttarakhand", in its Order dated 16.07.2010, wherein the policy of issuance of licence to the Stone Crushers was specifically dealt with by this court for providing necessary safeguards for protection of environment and public health. The Court directed the constitution of an Expert Committee to examine the matter. The said committee submitted its report, and after due consideration of the objections, the Court has accepted the recommendations of the Expert Committee and directed the State Government to formulate a policy and issue licences to the Stone Crushers, in tune with guidelines provided therein. Para 6(a) of the said guidelines provides that **"A stone crusher would be permitted to be established at a distance of 500 mts. from the boundary of govt. forest."** For hill areas, the distance provided for was reduced by half, and other parameters were also provided with relaxation for screening plants. In furtherance of the aforesaid judgment and order dated 16.07.2010, the State Cabinet took two separate decisions with respect to the hill areas, and plain areas. Accordingly, UK Stone Crushers, Screening Plant and Pulveriser Policy, 2011 came into effect vide O.M. dated 18.11.2011. This policy was subject matter of Writ Petition (PIL) No. 458 of

2008, and Writ Petition (PIL) No. 97 of 2013, wherein vide orders dated 26.06.2012 and 02.06.2014, this Court directed the State Government to revisit its policy. Consequently, as per the aforesaid directions, the Policy of 2015 was introduced vide O.M. dated 31.07.2015, and thereafter, the Policy of 2016 vide O.M. dated 19.11.2016 came into effect. The Policy of 2019 came into effect vide O.M. dated 02.01.2020, and presently, the policy of 2020- which came into effect from 21.07.2020, is in force.

33) The Affidavit has also provided a stock of the judicial pronouncements related to the present subject matter. It states that the Supreme Court in "***T.N. Godavarman v. Union of India***" in WP (Civil) No. 202 of 1995, dated 11.12.2018, directed that: "*Under the circumstances we direct that an area of 10 KM around these 21 National Parks and wild life sanctuaries (in which no proposal was received for declaration of ESZ) be declared as ESZ by the MoEF. The declaration be made by the MoEF at the earliest.*" Thus, this judgment related to those 21 National Parks and Wildlife Sanctuaries, in respect of which, proposals had not been received by the MoEF till that time. The order passed by the NGT, in ***Nandan Singh Bora*** (supra) dated

17.12.2018 was particularly concerned with the Nandhaur Wildlife Sanctuary only. In the Review Application No. 54 of 2018 in "***M/s LSC Infratech Ltd v. Union of India***" the NGT in its Order dated 04.01.2019, while referring to its earlier order dated 17.12.2018 (wherein the word 'mining' was left out), directed that "*all the cases of mining and stone crushers operating within 10 KM of Nandhaur Wildlife Santuary and within ESZ, if so notified be referred to the National Board for Wild Life. Till it is approved by NBWL such operation shall be stayed.*" The Affidavit further states that in "***Saket Agarwal v. State of Uttarakhand***", Execution Application No. 11/2019 in O.A. No. 33/2018 with O.A. No. 297/2019, the NGT vide order dated 01.05.2019 directed that "*we make it clear that in case any stone crusher unit is found violating any of the condition of consent or the order passed by the Tribunal, the State Pollution Control Board shall immediately take action to stop them from operating.*" In this order there was a reference to an earlier order dated 16.01.2019, wherein the tribunal - referring to the case of "***Tejinder Singh Jolly v. State of Uttarakhand***" in O.A. 332 of 2017, has observed that the State Government had laid down its policy on 19.11.2016, and slight amendments were

made on 20.11.2018, with regards to the norms to be followed by the Stone Crushers etc., and thereby the State Government was directed to assess the functioning of units, and in case those were found violating any of the norms of the Policy, then immediate action was to be taken against them for their closure. This shows that the policy of the State Government regarding stone crusher etc. was considered and duly approved by the NGT. The Affidavit further states that this High Court in Writ Petition (PIL) No. 65 of 2015, and Writ Petition (PIL) No. 76 of 2014, "**Ayub v. State of Uttarakhand & Ors.**", vide order dated 13.06.2018, has held "*according to the norms laid down by the NBWL, no mining activities can be carried out within the radius of 10 KMs from the boundaries of all the National Parks*". The Court further observed that:

"It is thus evident from the counter affidavit filed by the respondent No.5 in WPPIL No.65 of 2014 that the respondent-State has taken action against the persons who have not obtained clearance from National Board for Wildlife. The mining activity in the close vicinity of National Parks causes distress to the wildlife. The Contractors deploy heavy machinery causing noise pollution in the area and heavy

vehicles are used to transport the extracted minerals.

...Accordingly, these writ petitions are disposed of with the direction to the respondent-State to ensure that no mining activity is carried out within the radius of 10 km. from the boundaries of all the National Parks including Jim Corbett, Rajaji National Park and other National Parks without obtaining clearance from National Board for Wildlife."

(emphasis supplied)

The Affidavit states that in the above judgment, there is a reference to illegal mining carried out without obtaining clearance from NBWL and, therefore, mining activity after taking clearance from NBWL, is not prohibited.

34) The affidavit states that State Government proceeded under the presumption that since the stone crushing activity does not come under the mining activity, rather it being a processing unit for the process of boulder, by which the stone, grit and dust is produced for developmental and construction activities, thus, the clearance of NBWL would not be required, and it would only be required for the projects and developments

activities, which are specifically covered in the Schedule of EIA Notification 2006.

35) After inspection on 20.09.2020, on account of the failure of the Respondent No. 5 Stone Crusher to comply with the prescribed norms of the policy, the operations of Respondent No. 5 Stone Crusher were suspended till the fulfillment of prescribed norms, on 26.09.2020.

36) The Mining Department, as well as the State Control Pollution Board, have also submitted their reports dated 29.09.2020. The Chief Wildlife Warden, Uttarakhand has also submitted its Report dated 22.09.2020 with respect to the Respondent No. 5 Stone Crusher, reiterating that approval of NBWL would be required, for which the environmental clearance is required under EIA Notification, 2006, for any development activity falling within 10 KM of Sanctuary/National Park, where the ESZ is not notified.

37) Subsequent to the order passed by the Respondent No. 2, the operation of the Respondent No. 5 Stone Crusher was halted on 26.09.2020.

38) By our order dated 09.10.2020, we directed that:

"We are of considered view that even if he fulfills the conditions, as mentioned by the respondent-State, the Stone Crusher unit shall not be allowed to operate until and unless permitted by this Court."

39) The Respondent Nos. 5 & 6 filed an affidavit dated 04.12.2020 - in Misc. Application No. 12048 of 2020, in which it was prayed that they be permitted to operate the stone crusher unit. The affidavit states that on 20.09.2020, an inspection was carried out by the officials of the State Government and the Pollution Control Board, of the Respondent No. 5 Stone Crusher. The Inspection Report dated 29.09.2020 filed by the Chief Secretary, Government of Uttarakhand, revealed certain shortcomings in the Respondent No. 5 Stone Crusher. The affidavit further states that on 27.10.2020, another inspection was carried out by officials of the State Government and Pollution Control Board of the Respondent No. 5 Stone Crusher. The Inspection Report dated 27.10.2020 stated that all the shortcomings have been rectified, and there are no short comings in the Respondent No. 5 Stone Crusher.

40) A reply was filed by the Petitioner on 16.03.2021, wherein it was stated that the State is allowing the Respondent No. 5 Stone Crusher to operate, even when the Pollution Control Board has recommended the operation to be stopped immediately. It further states that, on perusal of the Report filed by the Conservator of Forest dated 15.03.2020, it is clear that at present 10 KM from the boundary of Rajaji National Park falls under ESZ.

41) The Petitioner, in his reply, further states that similar issue came up for consideration before the NGT, Principal Branch New Delhi in O.A No. 123 of 2014 in "**Himmat Singh Shekhawat v State of Rajasthan**", wherein all the state governments were reluctant to comply with the MoEF notification, which provided that all the lease holders below 5 hectare will have to take prior Environmental Clearance from the concerned authorities. The NGT held as follows:

"75. The environmental laws are laws enacted for the benefit of public at large. They are socio-beneficial legislation enacted to protect the environment for the benefit of the public at large. It is in discharge of their Constitutional obligation that such laws have been enacted by the Parliament or by other authorities in furtherance to the power of delegated legislation

vested in them. These legislations and directives are incapable of being compared to the legislations in the field of taxation or criminal jurisprudence. These laws have been enacted to protect the Fundamental Rights of the citizens. **Thus, the contention that the existing mine holders would not be required to comply with the requirements of environmental laws, cannot be accepted.** To illustratively examine this aspect, we may take a hypothetical situation, not far from reality. An industrial unit which had been established and operationalized prior to 1974, 1981 and/or 1986, was granted permission under the laws in force and the unit owner had made heavy investments in making the unit operational. The Water (Prevention and Control of Pollution) Act came into force in 1974, Air (Prevention and Control of Pollution) Act in 1981 and Environment (Protection) Act in 1986. All these Acts deal with existing units as well as the units which are to be established in future. These laws granted time to the existing units to take all anti-pollution measures and obtain the consent of the respective Pollution Control Boards to continue its operations. Failure to do so, could invite penal action including, closure of industry under these Acts. **The said Unit should not be permitted to contend that since it was an existing unit, it has earned a right to pollute the environment and cause environmental pollution, putting the life of the others at risk, on the ground that it was an existing unit and was operating in accordance with law. Such a contention, if raised, would have to be noticed only to be rejected.** Similarly, these Notifications or Office Memorandums, having been issued under the environmental laws, would

equally apply to the existing industries as well. The directions contained in these Notifications and Office Memorandums which are otherwise valid, would equally operate to the existing mines as well as the newly undertaken mining activities. All that the law would require, is to give them some reasonable time to comply with the requirements of law, wherever a specific time is not provided under the Act or the Notification. Obviously, these laws strictosensu are not retrospective, as they do not abolish or impair any vested rights under the existing laws. However, these laws impose a new obligation without taking away the vested right. In that sense and somewhat loosely, it can be interpreted as being retroactive in nature, as they do not take away the right of the person to carry on business or his industrial unit, but only impose a new obligation to take Environmental Clearance under the environmental laws. The activity is not prohibited, but, compliance to the environmental laws is made mandatory. Examined from that angle, in so far as we have held, the Notification dated 1st December, 2009, Office Memorandums dated 18th May, 2012, 24th June, 2013 and 24th December, 2013, except to the extent they have been quashed as above by us, are valid and would be enforceable against even the existing mining lease holders. They cannot be permitted to destroy the environment and ecology for their personal gains on the strength of the contention that they are existing units and these Notifications, Office Memorandums would not apply to them.

State of Karnataka has already given a one year time to the existing mine lease holders to comply with the requirements of obtaining Environmental Clearance. Similarly, the State of Rajasthan and Himachal

*Pradesh should also direct the existing mine lease holders to take Environmental Clearance, irrespective of their area of mining. **The Hon'ble Supreme Court in the case of Deepak Kumar (supra) has clearly directed that the miners possessed of mining area of less than 5 hectares cannot operate without taking Environmental Clearance. This would unexceptionally apply to the new units, but, in our considered view, would also apply to the existing mine lease holders as well; except that they would have to be given time to comply with the requirements of law.***"

(emphasis supplied)

Thus, the norms as they presently exist, are applicable and binding even on pre-existing licences, and they cannot take the cover of the fact that their licence was granted, or renewed, under the pre-existing policy/norms.

42) On 21.10.2021, the Division Bench noticed the confusion with respect to the actual distance between the boundary of the Rajaji National Park, and the location of the stone crusher unit. The Court directed the Conservator of Forest, Shivalik Range, Uttarakhand by its order dated 21.10.2021, to inform the Court on the following three aspects:

i. Whether the stone crusher unit is located within the eco-sensitive zone, or not?

ii. Define the terms "aerial distance" and "linear distance", and the basis for calculating the same.

iii. What is the distance of the Stone Crusher not from the buffer zone, or from the core zone, but from the boundary of the Rajaji National Park.

The directions issued by this Court in its order dated 31.10.2021 are as follows:

"There is an utter confusion with regard to the distance between the boundary of the Rajaji National Park, and the location of the concerned stone crusher unit. According to the map furnished by the petitioner (Annexure No. 2), the distance is shown as 3.39 Kms. However, according to the affidavit submitted by the Conservator of Forest, "the aerial distance of the stone crusher from the Rajaji National Park is 6.4 km., the linear distance of the outermost boundary of the stone crusher from the buffer area of the Rajaji Tiger reserve is about 161m."

The affidavit is unclear on the following points :- Firstly, it neither defines the term "aerial distance", nor defines the basis for calculating the aerial distance. Secondly, it does not categorically state whether the distance is being measured from the boundary of the Rajaji National Park, or from its core sector. Thirdly, it neither defines the term "linear distance", nor defines the basis for calculating the linear distance. Fourthly, it does not define the buffer area of the Rajaji Tiger Reserve. The affidavit merely states that the

outermost boundary of the stone crusher from the buffer area of the Rajaji Tiger Reserve is about 161 meters. Most importantly, it does not answer the crucial issue whether the concerned stone crusher unit is located within the eco-sensitive zone, or not? Since the guidelines issues by the Central Government clearly prohibit the establishment of an industry, which causes air or noise pollution, within an ecosensitive zone, it is imperative for this Court to know whether the concerned stone crusher unit is functioning within an eco-sensitive zone, or not?"

Thereafter it was directed by this Court that:

"The present Conservator of Forest, firstly, to go and measure the physical distance between the outer boundary of the Rajaji National Park, and the concerned stone crusher unit. He should also inform this Court whether the stone crusher unit is located within the eco-sensitive zone, or not? He should also define the terms "aerial distance" and "linear distance", and the basis for calculating the same. He is directed to inform this Court the distance not from the buffer zone, or from the core zone, but from the boundary of the Rajaji National Park."

43) In compliance of our order dated 21.10.2021, the Office of Conservator of Forest, filed its Report dated 22.10.2021. Our queries were answered as below:

"Query 1: *Whether the stone crusher unit is within the eco-sensitive zone, or not?*

Reply: *Eco-sensitive zone of Rajaji National Park is yet to be notified. In cases where the Eco-sensitive zone of a National Park is not notified, areas within 10 km, from the boundary of the National Park is treated as eco-sensitive zone. Based on this criteria, the stone crusher unit is located within the eco-sensitive zone of Rajaji National Park.*

(emphasis supplied)

Query 2: *Define the terms "aerial distance" and "linear distance", and the basis for calculating the same.*

Reply. *The term aerial distance used in the present case is the shortest distance between two given points measured using Arc GIS software on the Survey of India toposheet. Linear distance used in this case is the shortest horizontal distance between two points measured along the ground using measuring tape.*

Query 3: *Inform this Court the distance not from the buffer zone, or from the core zone, but from the boundary of the Rajaji National Park.*

Reply: *The aerial distance of the Stone Crusher from the boundary of the Rajaji National Park is 6.4 KM."*

44) A supplementary counter affidavit was filed on behalf of the Respondent No. 5 & 6, in compliance of our order dated 17.11.2021, which states that the Guidelines

for declaration of ESZ around National Park and Wildlife Sanctuaries dated 09.02.2011 are directory in nature. Clause 7 of the aforesaid guidelines provides that *“these guidelines are indicative in nature and the State/Union Territory Governments may use these as basic frameworks to develop specific guidelines applicable in the context of their National Park, Wildlife Sanctuaries important corridors, etc. with a view to minimizing and preferably eliminating any negative impact on protected areas.”* Clauses 1.1.1, 1.1.2 & 1.1.3 raise concern about the purview of ESZ, which might also adversely affect development. Clause 1.3.1 provides that the NBWL had decided that *‘delineation of the ESZ would have to be site specific and relate to regulation rather than prohibition of specific activities’*. The Affidavit further states that Clause 4 of the aforesaid guidelines provides that, as a general principle, the width of the ESZ could go up to 10 KM. The Affidavit further states in the draft Notification issued by the MoEFCC dated 21.05.2018, that the ministry has provided the extent and boundaries of the ESZ, and has also provided the Geo-Coordinates of the Rajaji National Park and its ESZ as follows:

Rajaji National Park is located in the Northern part of the country, lies between Latitudes 29° 51' N to 30°15' N and Longitudes 77°52' E to 77°22' E.

Whereas, the Respondent No. 5 Stone Crusher is having latitude 29° 47' 26.0 N and Longitude 78° 23' 15.9 E

Hence the Respondent No. 5 Stone Crusher does not lie within the boundaries of the Rajaji National Park.

45) In compliance of our order dated 03.08.2022, the Director, Geology and Mining Unit, Directorate of Industries, Government of Uttarakhand, Dehradun filed his affidavit which states that at the time of the issuing licence to the Respondent No. 5 Stone Crusher, the Hill Area Stone Policy of 2011 was in force, and as per said policy the whole area of District Pauri Garhwal - including Tehsil Kotdwar, was categorized as Hill area. The affidavit further states on 31.05.2015, a new policy came into force, and as per point 2अ of 2015 Stone Crusher Policy, the area of Kotdwar Tehsil District Pauri Garhwal was categorized as Plain area. The affidavit further states that the new Stone Crusher Policy came into force on 19.11.2016, and as per point 2ब of the Policy, the area of Kotdwar Tehsil District Pauri Garhwal was categorized as Plain area.

46) The Affidavit of the Director, Geology and Mining Unit further states that, at present, "*Uttarakhand Stone Crusher, Screening Plant, Mobile Stone Crusher,*

Pulveriser Plant, Hot Mix Plant, Ready-mix Plant, Permit Policy, 2021" (herein referred as 2021 Policy) is in force, and as per point 2 of the 2021 Policy, the area of Kotdwar Tehsil District Pauri Garhwal is categorized as Plain area, and M/s Shri Sidhbali Stones Crusher is situated in plain area of Tehsil Kotdwar, District Pauri Garhwal. According to the 2021 Policy in terms of the parameters prescribed for the establishment of stone crusher and screening plants, the minimum distances stipulated are as follows:

क्र०सं०	स्थान	स्टोन केशर	स्क्रीनिंग प्लांट
1	सरकारी वन	100 मीटर	100 मीटर
2	(क) जिला हरिद्वार में गंगा नदी के किनारे से	01 किलोमीटर	01 किलोमीटर
	(ख) अन्य मैदानी क्षेत्रों हेतु नदी (Perennial river) के किनारे से	500 मीटर	500 मीटर
2	(ग) Non-Perennial river (वर्षाती नदी, नाला, गधेरा) के किनारे से	50 मीटर	50 मीटर
3	सार्वजनिक धार्मिक स्थल (मंदिर, मस्जिद, गुरुद्वारा, चर्च आदि)	300 मीटर	300 मीटर
4	स्कूल, शैक्षणिक संस्थान, अस्पताल, या नर्सिंग होम आदि	300 मीटर	300 मीटर
5	आबादी से दूरी	300 मीटर	300 मीटर

Submission of the Parties

47) Mr. Mainali submits that Respondent No. 5 stone crusher is operating in violation of the minimum distance and other parameters as prescribed by the Stone Crusher Policies framed from time to time.

48) Mr. Mainali submits that as per the para 2 of the Draft Notification dated 21.05.2018 issued by the

MoEFCC, Govt of India, the Rajaji National Park has been notified as Rajaji Tiger Reserve vide notification dated 18.04.2015. Mr Mainali submits that the Notification dated 18.04.2015 provides the boundaries of the Rajaji National Park. Mr Mainali further submits that from perusal of the Notification dated 18.05.2015, it is seen that Respondent No. 5 Stone Crusher is located at the southern boundary of Rajaji National Park.

49) Mr. Mainali further submits that the Supreme Court in "***T.N. Godavarman v. Union of India***" 2022 SCC Online SC 716, in its judgment dated 03.06.2022, has directed in paragraph 56.1 that "***each protected forest, that is, national park or wildlife sanctuary must have an ESZ of minimum one kilometer measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9-2-2011 shall be strictly adhered to***".

Mr. Mainali further submits that according to the Director, Rajaji National Park "*the linear distance of the outermost boundary of the stone crusher from the buffer area of the Rajaji Tiger Reserve is about 171 meters*". Mr Mainali submits that the terminology used everywhere is '*from the outermost boundary of the national park and sanctuaries*', and not from the core zone of such park or

sanctuary. Since, the Respondent No. 5 Stone Crusher is, admittedly, at a distance of only 161 meters from the outermost boundary/buffer zone of Rajaji National Park, thus according to the Mr Mainali, the Stone Crusher is operating within the ESZ.

50) He further submits that the actual distance of the stone crusher from the Rajaji National Park is only 161 meters, which falls within the ESZ. No such industrial activity can be undertaken in the ESZ. In this regard Mr. Mainali has placed reliance on the counter affidavit filed by Respondent No. 4, District Magistrate, (Mining Branch) Pauri Garhwal, Dhara Rd, Pauri, dated 02.11.2019, to submit that after 161 metres from the stone crusher, the forest land/buffer zone boundary of Rajaji National Park starts. Mr. Mainali has further placed reliance on the Report dated 21.10.2021 filed by the Conservator of Forest, which reiterates that the stone crusher unit is located within the ESZ of Rajaji National Park. He further submits that the edge of the Sigaddi River, and boundary of the Stone Crusher is common, and thus violative of the prescribed minimum distance of 100 meters according to the 2011 Policy and 50 meters according to the 2016 Policy from the non-perennial river.

51) Mr. Mainali further submits that the stone crusher is creating noise pollution at industrial norms i.e. 75 db(A), and above, in a residential area, against the prescribed limit of 55 db(A) and, thus, violative of the Noise Pollution (Regulation and Control) Rules, 2000. Mr. Mainali submits that Respondent No. 5 Stone Crusher has been permitted to operate in a residential area with Ambient Air Quality Standard in respect of noise pollution at 75 db(A) Leq in the day time, and 70 db(A) Leq in night time, which is permitted only in an industrial area as per the Notification No. 55(1)/XXXVIII-I-21-08(15)2020 dated 09.06.2021.

52) Mr. Mainali has further placed reliance on the research paper titled '*A Study on Noise Pollution at Stone Quarrying Industry Near Dharbad*' published in the International Journal of Advanced Research (IJAR) (2017), wherein the subject matter of the study was noise pollution caused by stone crushers during their operation. Mr Mainali submits that readings of the Noise Levels, as per the study, ranged between 97.0 dB and 116.2 dB. The average noise levels during crushing activity were recorded to be 115.67 ± 7.6 dB. He further submits that continuous exposure to such high noise levels may cause health problems to those in the hearing

range. Since there are no medicines to cure hearing loss, prevention to avert exposure is the only alternative left. Noise from the stone quarrying industry is regarded as a major annoyance, and may lead to hearing loss and, perhaps, even cause adverse physiological and psychological effect. Mr. Mainali has further placed reliance on the judgment of the Supreme Court in ***“Forum for the Prevention of Enviroment& Sound Pollution v. Union of India”*** AIR 2005 SC 313, to submit that freedom from noise pollution is part of right to life under Article 21 of the Constitution of India.

53) Mr. Mainali further submits that Respondent No. 5 Stone Crusher was granted renewal permission vide O.M. No. 445 dated 15.03.2019 for 5 years, in violation of the policy of 2016. Mr. Mainali submits that the stand of the Respondent No. 5, that since the lincese renewal for the stone crusher took place prior to the enforcement of the Amended Policy, 2019 i.e. 02.01.2020, the provisions of the 2019 Policy would become applicable to Respondent No. 5, only at the time of renewal in the year 2024, is fallacious. Mr. Mainali submits that a similar issue came up for consideration before NGT, Principal Bench New Delhi in the O.A. No. 123 of 2014 in ***“Himmat Singh Shekhawat v. State of***

Rajasthan" on 13.01.2015. The NGT held that the pre-existing units cannot be heard to say that they should be permitted to carry out their polluting activity, even when stricter norms have been made applicable. Thus, Respondent No. 5 Stone Crusher cannot be exempted from complying with the latest norms laid down under the environmental laws regime, from time to time and currently in force, as has been contended by the Additional Secretary.

54) Mr. Mainali submits that the Chapter VIII of the *Uttarakhand Stone Crusher, Screening Plant, Mobile Stone Crusher, Mobile Screening Plant, Pulveriser Plant, Hot Mix Plant, Ready-mix Plant Permit Policy, 2019* dated 02.01.2020 provides that '*a pre-existing stone crusher who had the permission to establish but does not fulfill the norms of the present policy or for any other reason wants to shift the plant to a new place and if fulfill the distance parameter along with other parameters, then in reference of the request letter of the plant owner, a committee shall be constituted who may permit the stone crusher plant to operate for the remaining period of licence at a new place. Such stone crusher plant shall not also pay any new fee.*' According to Mr. Mainali, this shows that even the existing stone crushers have to

meet the norms of the currently prevailing policy, irrespective of when the licence was initially granted, or renewed.

55) Mr. Mainali further submits that in the affidavit filed by Chief Secretary dated 29.09.2020, the Chief Secretary has relied upon the EIA Notification 2006; the letter of MoEF dated 16.07.2020; the letter dated 05.08.2020, and the letter dated 10.09.2020 of Chief Wildlife Warden, to suggest that the Respondent No. 5 Stone Crusher does not require prior EC, or approval from NBWL to operate, in view of the EIA notification dated 04.12.2006. Mr. Mainali submits that this is not even the case of the petitioner. The case of the petitioner is that the ESZ Guidelines of MoEF of 2011 prohibit stone crushers in the ESZ. In spite of the said clear and unambiguous stipulation, Respondent No. 5 Stone Crusher is still allowed to operate by the State Government and the State Pollution Control Board.

56) Mr. Mainali further submits that the NGT, in Review Application No. 54 of 2018, in in "***M/s LSC Infratech Ltd v. Union of India***", order dated 04.01.2019, while dealing with a similar matter wherein it was contended that the stone crusher unit does not

require EC in terms of the EIA Notification dated 14.09.2006, held that in the ESZ Guidelines a broad list of activities has been mentioned, which can be allowed, or prohibited, in the ESZs, and one of the activities causing pollution (water, air, land, noise etc.) - which is prohibited, is the activity of setting up and running a stone crusher. Mr Mainali submits that NGT further noticed, that it is an admitted fact that stone crusher units cause severe air and noise pollution and, therefore, they cannot be permitted within the ESZ around the National Parks and Wildlife Sanctuaries.

57) Mr. Mainali further submits that the Respondent No. 5 Stone Crusher is violating various conditions of O.M dated 04.07.2015. Mr. Mainali submits that according to the O.M dated 04.07.2015, the unit has to obtain permission from Central Ground Water Authority (CGWA) for extracting ground water for industrial use. Mr. Mainali submits that according to the RTI information given by Ministry of Water Resources, Dehradun, Respondent No. 5 never applied for NOC for ground water abstraction. Mr. Mainali further submits that as per conditions of the O.M dated 04.07.2015, the solid waste generated from the industry has to be disposed of in such a manner, that contamination of

surface water bodies, ground water, and soil, does not take place. Mr. Mainali submits that the waste generated by the Respondent No. 5 Stone Crusher is being released in the river Sigaddi, which is at the boundary of Respondent No. 5 Stone Crusher.

58) Mr. Mainali submits that under Section 17(1)(h) of the Air (Prevention and Control of Pollution) Act, 1981, the State Pollution Control Board has a statutory obligation to advise the Govt. with respect to the suitability of any premise or location for carrying on any industry which is likely to cause air pollution. Mr. Mainali submits PCB failed to discharge its obligation before granting licence dated 04.07.2015. Mr. Mainali further submits that even the State Govt. did not seek advise from the PCB before granting the said licence.

59) Mr. Mainali submits that the Respondent No. 5 Stone Crusher and the State Government have placed reliance on the EIA notification dated 04.12.2006, to contend that Respondent No. 5 Stone Crusher does not require prior Environmental Clearance (EC), or permission from NBWL, to operate. Mr. Mainali submits that this argument is misplaced, since the EIA Notification of 2006 deals with only those activities/

projects, which require prior EC, whereas, ESZ Guidelines have been issued by the Central Govt. in the year 2011 to protect National Parks and Wildlife Sanctuaries from certain activities. Mr. Mainali submits one of the conditions of the Consent to Operate (CCA) dated 03.05.2018, and CCA dated 19.03.2020, is that the stone crusher shall operate in accordance with to the Rules for the time being in force under the Environment (Protection) Act, 1986. Mr. Mainali submits that exercising the powers conferred under Section 3 of the Environment (Protection) Act, 1986 and Section 5(1) of the Environment Protection Rules, 1986, the Govt. of India, MoEF & CC has issued guidelines for declaration of Eco-Sensitive Zones around National Parks and Wildlife Sanctuaries, which are being violated by the R-5 Stone crusher.

60) Mr. Dharmendra Barthwal learned counsel for Respondent Nos. 5 & 6 submits that Respondent No. 5 Stone Crusher was granted permission to establish/operate the stone crusher by the State of Uttarakhand vide O.M. dated 04-07-2015 for a period of three years under the Hill Area 2011 Permit Policy. Mr. Barthwal submits that a Joint Inspection Report dated 18-05-2018 was furnished by a 4-members Committee,

consisting of a Pollution Board representative, D.F.O. Kotdwar, Deputy Geological and Mining Unit, and A.D.M Kotdwar in which the stone crusher was found to fulfill all the parameters.

61) Mr. Barthwal further submits that after the complaint was filed by the Petitioner, a Joint Inspection was carried out by the officials. According to the Joint Inspection Report dated 30.09.2019, everything was found in order, and the complaints were found baseless. Mr. Barthwal further submits that Point Nos. 1 to 12 of the Joint Inspection Report reveals that all the requirement under the State Policy of 2016 dated 18.11.2016 are complied with, especially the parameters of distances from population and non-perennial river.

62) Mr. Barthwal further submits that the Petitioner has relied on paragraph no. 8 of the Affidavit filed by District Magistrate, Pauri Dated 04.11.2019 to contend that population is residing at a distance of 120-150 meters. Mr. Barthwal submits this may be due to inadvertence or translation error, as it is crystal clear from the Joint Inspection Report dated 30-09-2019 that distance of population is 300 meters, and Sigaddi Sotr of water is 120 meters. Mr. Barthwal further submits that

in paragraph no. 8 of the Affidavit filed by the District Magistrate, Pauri, it is stated that the Material was stored 2-4 meters below the height of the boundary wall. He further submits that paragraph No.11 of the said Affidavit states, that the storage of raw/crushed materials were found in accordance with the Policy, and the height of boundary wall of stone crusher is about 15 feet.

63) Mr. Barthwal submits that after the filing of this PIL, an inspection was conducted on 15-10-2019 by a 4-member Committee, wherein the non-perennial drain, namely, Sigaddi Sotra was found to be 120 meter, and the distance from the buffer zone was found to be 161 meter, while the distance of the core zone of Rajaji National Park was found to be 13 KM.

64) Mr. Barthwal further contends that the judgment of the Supreme Court in "***T.N. Godavarman v. Union of India***" Writ Petition (Civil) No. 202 of 1995, dated 11.12.2018, in which it was, *inter alia*, directed that "*under the circumstances, we direct that an area of 10 KM around these 21 National Parks and wildlife sanctuaries be declared as Eco-sensitive zone*" was only in respect of the 21 National Parks and Wildlife

Sanctuaries mentioned in the order. Mr. Barthwal submits that Rajaji National Park did not find mention in the list. Thus, the said judgment cannot be of any aid to the Petitioner.

65) Mr. Barthwal submits that the NGT order dated 17.12.2018 in *"M/s LSC Infratech Ltd. v. Union of India"* (Supra) is a conditional order. Mr. Barthwal submits that by order dated 04.01.2019, the NGT has held that Mining and the Stone Crushers within the ESZ be referred to NBWL. He further submits that the said Stone Crusher i.e. L.S.R. Infra Tech Ltd. which was, admittedly, operating within 10 KM of Nandhaur Wildlife Sanctuary, has already been cleared for operation by the Chief Wildlife Warden, Uttarakhand and the State Board for Wildlife. After the said order, the A.D.M. Nainital vide order dated 16.02.2021 has permitted the said Stone Crusher i.e. L.S.R. Infra Tech Ltd. to operate and run the said Stone Crusher. He further submits that the directions of the NGT dated 17.12.2018 are limited to the Nandhaur Wild Life Sanctuary, and are not attracted vis-à-vis Rajaji National Park.

66) Mr. Barthwal submits that the Respondent No. 5 Stone Crusher has been granted Consolidated Consent

to Operate and Authorization (CAA) dated 3-5-18, and last CCA dated 28-12-2021 under Section 25 of the Water (Prevention and Control of Pollution Act) 1974, and under Section 21 of Air (Prevention and Control of Pollution) Act, 1981 and Authorization under Rule 6(2) of the Hazardous & Other Wastes (Management and Transboundary Movement) Rules 2016. This approval is valid upto 31-03-2024. Mr. Barthwal further submits that an inspection was conducted by a 3-member Committee consisting of DFO Lansdowne, Chief Pollution Officer, and; Joint Director, Geological and Mining Department on 20-09-2020. In the said inspection, Respondent No. 5 Stone Crusher was found to be complying with the prescribed parameters. Relevant extracts from this report are quoted below:

" 14. Regular sprinkling of water on the ground by the plant owner to remove dust in the entire area of the Grover premises. Whether arrangements have been made to do or not?

Yes (Through tanker.)

15. Developed a green belt of trees of such species which stop dust particles around the plant has been developed or not?

-A single row green belt has been developed.

16. Whether water sprinkler / sprinkler installation has been done by the plant owner on the entire Crushing area, conveyor etc. on the dust-borne points?

-Partially done

17. Concentration of noise pollution on the spot (noise pollution should be less than 75 dB (A) Leq during day time and 70 dB (A) Leq. in night time) (Value of noise pollution at the site) :- (Annexure 10)

-Is as per standards.

18. Air quality monitoring report -(Annexure 11)

-Conforms to the standards."

67) Mr. Barthwal further submits that as per the letter dated 10-09-2020 written by the Chief Wild Life Warden, Uttarakhand, to the Chief Secretary Forest and Environment Department, stone crushers are not included in the category of development work within 10 KM of the National Park/Sanctuaries and, as such, do not require prior permission/sanction from the NBWL. Mr. Barthwal further submits that as per joint meeting held on 18-09-2020, it was concluded that there is no determination of ESZ as far as Rajaji National Park is concerned; the running of a stone crusher does not come within the definition of 'mining operation' and, as such, the Respondent no. 5 stone crusher does not

require prior sanction from NBWL. Mr. Barthwal submits that MoEF issued the Notification dated 14-09-2006, which lays down the requirement of obtaining prior EC from the concerned authority, for matters falling in the Schedule. Since Stone Crushers are not listed in the Schedule, as such, the said project is not covered in EIA Notification 2006. Therefore, no approval is required for such development Project and activity. Mr. Barthwal has further placed reliance on the Clause 3 (ii) of the MoEF Notification dated 20-08-2020, which is quoted below: -

"(ii) Proposals involving activity/project located within 10 kms. Of National Park/Wildlife Sanctuary wherein ESZ has not been finally notified and listed in the Schedule of the EIA Notification 2006 and requiring Environment Clearance, prior clearance from Standing Committee of the National Board for Wildlife will be required."

68) Mr. Barthwal submits that the Director, Geological & Mining Unit, Dehradun, vide his letter dated 22.09.2020 had provided the inspection report of the Respondent No. 5 Stone Crusher. Mr. Barthwal submits that from a the perusal of the said inspection report, it is *prima facie*, evident that the Respondent Stone Crushing unit fulfils all the requisite parameters as required under all the pollution norms, and it is working within the

permissible limits. Hence the contention of the petitioner regarding violation of noise pollution norms is misconceived. He further submits that Respondent No. 5 Stone Crusher has implemented Rain Harvesting Systems within its premises.

69) Mr. Barthwal further submits that Ministry of Jal Shakti (Department of Water Resources River Development and Ganga Rejuvenation) has issued a Notification dated 20-09-2020, notifying the guidelines to regulate and control Ground Water extraction in the Country. Clause 1.0(v) of the said notification provides for the exemptions from seeking NOC for the Micro and Small Enterprises, drawing ground water less than 10 cum/day. It is contended by Mr. Barthwal that Respondent No. 5 Stone Crushing unit falls under Clause 1.0 (v), wherein there is exemption from seeking NOC, as the Ground Water drawn is less than 10 cum/day and the unit is a Micro and Small Enterprises.

70) Mr. Aditya Pratap Singh, learned counsel for Respondent No. 3 Uttarakhand Environment Protection and Pollution Control Board submits that there is a procedure prescribed for giving Consent to Establish and Consent to Operate to the concerned Stone Crusher

Units as per the relevant policy. Mr. Singh further submits that no Consent to Establish can be granted by the State Pollution Control Board, until and unless the concerned unit has a valid licence/grant (Anugya) from the concerned department, which is generally valid for 5 years or, in some cases, 3 years. It is further submitted that the said licence has to be in accordance with the prevalent Stone Crusher and Mining Policy.

71) Mr. Singh further submits that once the Unit is established in accordance with the norms laid down in entry 37 of Schedule I of the Environment (Protection) Rules, 1986, then after due inspection by the Board Officials the Consent to Operate is granted to the said Unit. The said Consent to Establish and Operate, to the concerned stone crusher unit, is granted in accordance with Section 21 of The Air (Prevention and Control of Pollution) Act, 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. Mr. Singh further submits that any person aggrieved by an order which is made by the State Board under Section 21 of the Air Act, or Section 25 of the Water Act, are subject to appeals as prescribed under Section 31 of the Air Act, 1981, and under Section 28 of the Water Act, and the said appellate authority is comprised of,

generally, three members, as the State Government may think fit to constitute.

72) Mr. Singh further submits that subsequent to the grant of licence dated 04-07-2015, the Respondent No. 5 Stone Crusher applied for Consent to Establish. An inspection was carried out by the concerned regional office, which filed its inspection report dated 03-02-2018. He further submits that on 20-02-2018 the Consent to Establish was granted by the Board to Respondent no. 5 Stone crusher. Subsequent to the above, another detailed report, along with response to queries of the Regional Officer was prepared on 02-05-2018, which records each in every aspect in regard to the compliance of Consent to Establish.

73) Mr. Singh further submits that on 03-05-2018, the Consent to Operate under the relevant sections of the Air and Water Act was granted to the respondent no. 5 Stone Crusher which was valid till 31-03-2019.

74) Mr. Singh submits that on 07-09-2019, another report was prepared by the Regional Officer in regard to the Respondent no. 5 Stone Crusher, wherein the site observation during the inspection dated 20-07-2019 have been recorded, and further on 22-09-2019

the comments of the regional officer are also reflected in the inspection report, wherein they have also addressed the public complaint which was received by the Board.

75) Mr. Singh submits that on 04-10-2019, fresh Consent to Operate was granted by the Board to the Respondent No. 5 Stone crusher, subject to compliance with all the relevant conditions, and the same was valid till 31-03-2020.

76) Mr. Singh submits that, in the meanwhile, after the consent was granted, the present writ petition was filed by the Petitioner on 10-10-2019, with the prayer to stop the operation of the Respondent No. 5 Stone Crusher.

77) Mr. Singh submits that in compliance of the orders of this Court, during the pendency of the present writ petition, various affidavits were filed by the State Officers, including the District Magistrate and also by the Respondent no. 3, along with which copy of the joint inspection report dated 30-09-2019 was also brought on record.

78) Mr. Singh further submits that on the directions of this Court, an affidavit was filed by the then

Chief Secretary, and a meeting was called by him on 18-09-2020, wherein the officers of the concerned departments were invited to discuss all the aspects of the matter. Mr. Singh submits that it was the opinion of the board:

"1. Operation of the Stone Crusher should be stopped immediately.

2. National Board for Wild Life clearance may be sought or Mining Department may approach the to appropriate Court to review orders."

(emphasis supplied)

79) Mr. Singh further submits that the permit policy for stone crushers and screening plants is under the exclusive domain of the State Government, and as a matter of fact, in the new policy which is applicable in the State from 11.11.2021, it has been made clear that even in the joint inspection which is done by the State Government before grant of licence, there is no representation of any offices of the Pollution Control Board.

80) Mr. Singh further submits that in compliance of the directions passed by us, a detailed joint inspection

was carried out on 20-09-2020 and 27-10-2020. Mr. Singh submits that from a perusal of the above-mentioned reports, the only shortcoming noticed was in with respect to the height of the stone crusher walls and the same was, subsequently, rectified. It is further submitted that the ambient air quality and noise level were also recorded by the team of four officers of the Board, which were within the prescribed parameters.

81) Mr. Singh further submits that as far as the noise levels are concerned, the State of Uttarakhand has notified the Silence, Residential, Commercial and Industrial Zone vide notification dated 09-06-2021, and an industrial area is defined as an area notified under the relevant rules by industries department, or where the land use may have been converted for industrial units. Mr. Singh submits that from perusal of the licence of the respondent no. 5, granted by the State Government, which is a part of affidavit by the State of Government dated 16-03-2020, condition no. 8 of the licence clarifies that the noise level of the stone crusher units is as per industries standard.

82) Mr. Singh further submits that the Respondent No. 5 Stone Crusher again applied for the renewal of the

consent before the Board. The CCA renewal and the consent renewal were granted up to 31-03-2024, subject to the final adjudication of the present writ petition and, as of now, the Respondent No. 5 Stone Crusher has valid consent to operate till 31-03-2024.

83) Mr. Singh further submits that although the Board is an autonomous body, it cannot transcend into policymaking of the State Government. Nevertheless, Mr. Singh submits as far as the pollution aspect is concerned, the board has presented all the relevant reports including the air quality and noise quality reports which are within the prescribed parameters.

Discussion and Decision

84) We have heard learned counsels for the petitioner and the respondents. They have also submitted written submissions of the arguments advanced by them. We have considered their submissions and the record of the case.

85) The first, and foremost, issue which arises for consideration is as to which policy would govern the licence granted to the Respondent No. 6. The submission of Mr. Barthwal, learned counsel for Respondent Nos. 5

& 6, is that, since the stone crusher permission/licence was granted, and thereafter renewed, under the erstwhile policies, they need not comply with the conditions/norms of the new/amended policies issued thereafter, from time to time. On the other hand, the Petitioner has placed reliance on the order of the NGT, Principal Branch New Delhi in O.A No. 123 of 2014 in "**Himmat Singh Shekhawat v State of Rajasthan**" dated 13.01.2015, to submit that the contention that the existing permit/licence holder would not be required to comply with the requirements of subsequently amended environmental laws/policies, cannot be accepted.

86) We find force in the submission of Mr. Mainali on this issue. It cannot be the case of the Respondents, that they will not comply with the Amended/new Stone Crusher Policy, because their licence was granted and renewed under the earlier prevailing policy. Environmental laws and norms are framed, and updated from time to time, keeping in view the evolving situation with regard to the prevailing levels of pollution as it develops; due to the changing standards; the upgradation of technology; the scientific discoveries which may be made, and the like. These laws/norms are framed to tackle the alarmingly growing scourge of

pollution due to greater industrial and developmental activity, and growing population, which is putting ever increasing strain on our natural resources. These norms are not static. No person can claim a right to continue to cause higher pollution- only because the level of pollution that he is causing was permissible, when he was granted permission to carry out his polluting activity. He must adapt and comply with the new norms, or close down his polluting activity. Larger public interest, in such matters, takes precedence over personal interests. To protect the future generations, and to ensure sustainable development, it is imperative that pollution laws are strictly enforced as they exist. Under no circumstances can industries, which pollute beyond permissible limits, be allowed to operate unchecked, and degrade the environment.

87) In this regard, we may also take note of the fact that the State of Uttarakhand notified the Stone Crusher Policies time and again, the first being notified in 2008. The policies that we are concerned with were framed in 2011, 2016 and 2021. The latest policy was notified by the Govt. of Uttarakhand called 'Uttarakhand Stone Crusher, Screening Plant, Mobile Stone Crusher, Pulveriser Plant, Hot Mix Plant, Ready-mix Plant Permit

Policy, 2021', on 11.11.2021 (herein referred to as 2021 Policy). Clause 6(7) of the 2016 policy states as follows:

“6(7). स्टोन केशर/स्क्रीनिंग प्लान्ट द्वारा स्टोन कशर स्थापित करने हेतु पर्यावरण संरक्षण अधिनियम, 1986 के अधीन केन्द्र सरकार एवं राज्य सरकार द्वारा समय-समय पर जारी आदेशों/अधिनियम में इंगित दिशा निर्देशानुसार सभी मानक अनिवार्य रूप से पूर्ण करने होंगे।”

Similarly Clause 22(8) of the 2021 Policy provides as follows: -

“22(8) पूर्व से स्थापित मोबाईल स्टोन केशर/स्क्रीनिंग प्लांट पर इस नीति के विनियमितकरण प्रावधान उपरोक्तानुसार लागू होंगे।”

Thus, even the policies framed by the State Government clearly stipulate that the licencees are obliged to comply with the norms, as framed from time to time. Respondent Nos. 5 & 6 having availed of the benefits of these policies, cannot be heard to say that they are not bound by the conditions of the policy after the initial grant, or renewal of the licence.

88) We may now examine, whether the stone crusher unit of Respondent Nos. 5 & 6 satisfies the conditions laid down in the 2021 Policy by the State Government.

89) The 2021 Policy has prescribed the parameters for the grant of permission to establish Stone Crusher units within the State. Clause 2 of the 2021 Policy, provides that

“मैदानी क्षेत्र के अन्तर्गत जिला टिहरी गढवाल (तहसील नरेन्द्रनगर का मैदानी भाग), पौड़ी गढवाल (तहसील कोटद्वार का मैदानी भाग), चम्पावत (तहसील पूर्णागिरी का मैदानी भाग), नैनीताल (तहसील हल्द्वानी, कालाढूगी, रामनगर का मैदानी भाग), देहरादून(तहसील ऋषिकेश, डोईवाला, देहरादून, विकासनगर और कालसी का मैदानी भाग), हरिद्वार एवं उधमसिंह नगर का सम्पूर्ण भाग, सम्मिलित है;”

Respondent No. 5-Stone Crusher, being situated at Village Bhuvdevpur, Kotwar, Pauri Garhwal, Uttarakhand, falls in a plain area.

90) According to the Clause 7 of the 2021 Policy, the prescribed parameters for the establishment of a stone crusher unit are as follows:

“दूरी के मानक 7.स्टोनक्रेशर एवं स्क्रीनिंग प्लांट के आवेदन हेतु प्रस्तावित प्लांट के डक स्थल से क्षैतिज दूरी के निम्नलिखित मानक होंगे:-

क्र०सं०	स्थान	स्टोन क्रेशर	स्क्रीनिंग प्लांट
1	सरकारी वन	100 मीटर	100 मीटर
2	(क) जिला हरिद्वार में गंगा नदी के किनारे से	01 किलोमीटर	01 किलोमीटर
	(ख) अन्य मैदानी क्षेत्रों हेतु नदी (Perennial river) के किनारे से	500 मीटर	500 मीटर
	(ग) Non-Perennial river (वर्षाती नदी, नाला, गधेरा) के किनारे से	50 मीटर	50 मीटर
3	सार्वजनिक धार्मिक स्थल (मंदिर, मस्जिद, गुरुद्वारा, चर्च आदि)	300 मीटर	300 मीटर
4	स्कूल, शैक्षणिक संस्थान, अस्पताल, या नर्सिंग होम आदि	300 मीटर	300 मीटर
5	आबादी से दूरी	300 मीटर	300 मीटर

टिप्पणी- (1) पर्वतीय क्षेत्र के स्टोन क्रेशर एवं स्क्रीनिंग प्लांट की स्थापना हेतु Non-Perennial river तपअमत के किनारे से दूरी 25 मीटर, नदी (Perennial river) से दूरी 50 मीटर तथा सरकारी वन से दूरी 25 मीटर होगी। शेष दूरी के मानक मैदानी क्षेत्र के मानकों के समान होंगे।

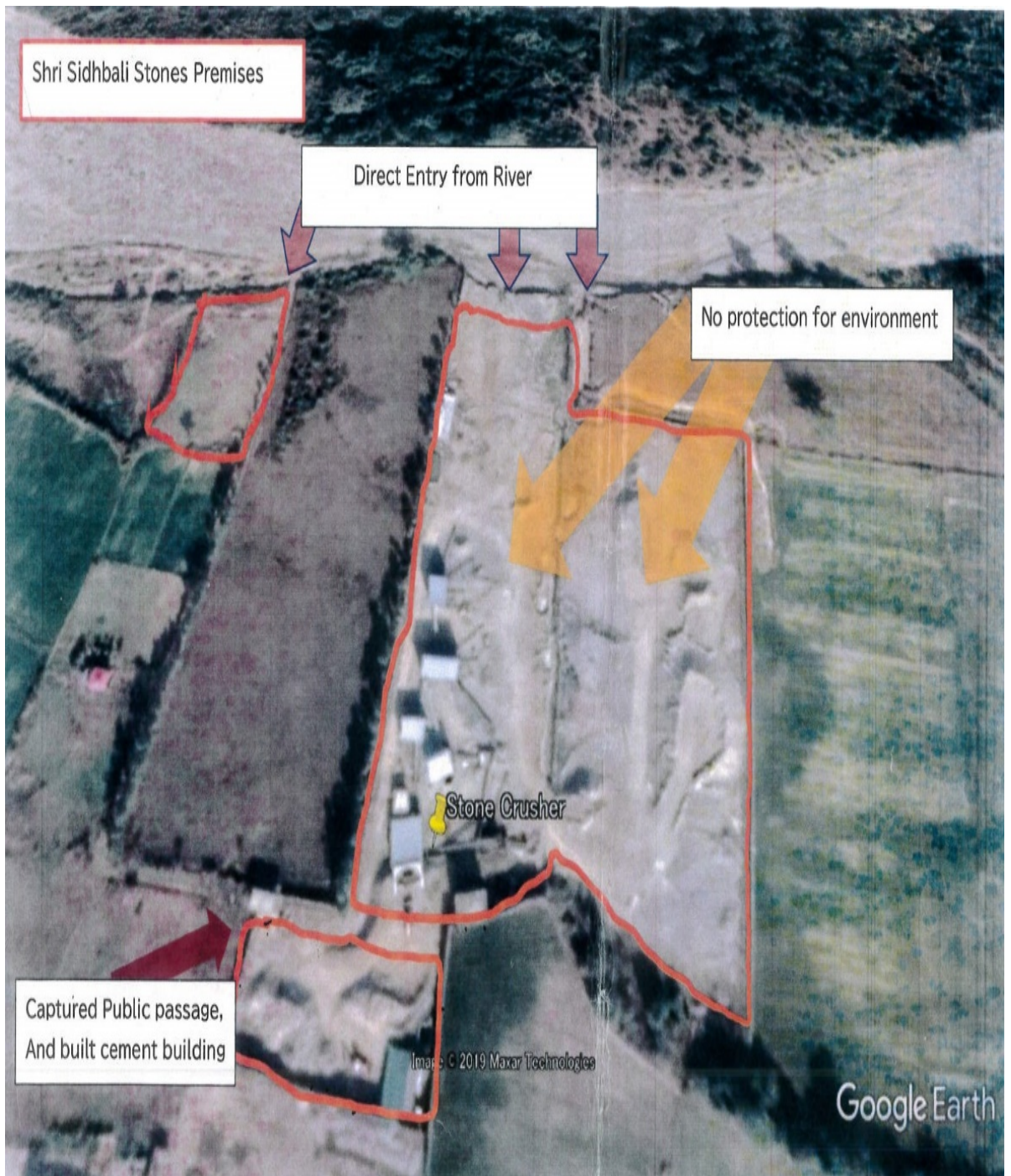
(2) गठित समिति द्वारा संयुक्त निरीक्षण आख्या में प्रस्तावित प्लांट के डक स्थल से निर्धारित क्षैतिज दूरी के मानकों के सापेक्ष मौके पर प्लांट की वास्तविक दूरी का उल्लेख किया जायेगा।

(3) आबादी से 300 मी० के अन्तर्गत स्थित परिवारों / भूस्वामियों की एन०ओ०सी०/ अनापत्ति अपरिहार्य होगी।

(4) आवेदन के उपरान्त यदि कोई धार्मिक स्थल (मंदिर, मस्जिद, गुरुद्वारा, चर्च आदि), स्कूल, शैक्षणिक संस्थान, अस्पताल, या नर्सिंग होम आदि एवं आवासीय भवन एवंपरिवार का एक मकान/ एक से अधिक परिवार का मकान आदि का निर्माण कराया जाता है, तो उनके द्वारा की गयी आपत्ति मान्य नहीं होगी और प्लान्ट के नवीनीकरण / स्वीकृति में भी कोई व्यवधान नहीं माना जायेगा।”

(emphasis supplied)

91) Thus, the distance prescribed for establishment of a stone crusher unit from a non-perennial river in a plain area is 50 meters. The stand of the respondent authorities, taken note of hereinabove, which is, however, disputed by the Petitioner, is that the Sigaddi Nallah is situated at a distance of 120 meters from the boundary of the stone crusher. The Petitioner, however, disputes this position and claims that the boundary of the stone crusher unit is abutting the Nallah. In this regard, the Petitioner places reliance on the following photographs of the stone crusher in question:



Illegal excavation & its loading and unloading



Siggadi Nala

Waste water Outlet



Though the photographs show that the boundary of the stone crusher is nearly abutting the Sigaddi Nallah, in these proceedings, we are not in a position to rule on that aspect as there are contradictory stands placed on record.

92) The petitioner has drawn our attention to the judgment of the Supreme Court in ***T.N. Godavarman Vs Union of India***, Writ Petition (Civil) No. 202 of 1995, dated 11.12.2018, order of this Court in ***Ayub Khan Vs State of Uttarakhand*** (supra); the judgments of the NGT in ***Nandan Singh Bora*** (supra) and in ***M/s LSC Infratech Pvt. Ltd.*** to argue that there exists an ESZ of 10 KM around the Rajaji National Park and, thus, the establishment of the Stone Crusher in this vicinity is strictly prohibited. Though these judgments and orders *per se* do not relate to the Rajaji National Park, the rationale emerging from them are attracted in the present case. The Supreme Court, in its order dated 11.12.2018, directed that the area of 10 KM around the mentioned 21 National Parks and Wildlife Sanctuaries be declared as the ESZ. The relevant extract of the order of the Supreme Court is quoted as follows: -

"The learned ASG has informed us that there are 104 National Parks and 558 Wildlife

Sanctuaries making a total of 662 National Parks and Wildlife Sanctuaries in the country.

The proposals for declaring areas around these National Parks and Wildlife Sanctuaries as Eco Sensitive Zone have been received from State Governments / UT Administrations for 641 National Parks and Wildlife Sanctuaries. No proposals have been received in respect of 21 National Parks and Wildlife Sanctuaries.

The proposals have been accepted and Notification has been issued in respect of 289 National Parks and Wildlife Sanctuaries as on 26.11.2018 and draft Notification has been prepared in respect of 206 National Parks and Wildlife Sanctuaries.

The declaration with regard to Eco Sensitive Zone is under process with the Ministry of Environment, Forests and Climate Change (MoEF) as well as with the State Governments in respect of 146 National Parks and Wildlife Sanctuaries.

We expect the Ministry of Environment, Forests and Climate Change to actively pursue the preparation of the draft Notification and to issue a final Notification at the earliest.

The proposals for 21 National Parks and Wildlife Sanctuaries in respect of which proposals have not yet been received by the MOEF are as follows: -

.....

.....

.....

It is submitted by the learned Amicus that this issue has been pending since sometime in December, 2006. 12 years have gone-by but no effective steps have been taken by the State Governments in respect of the National Parks and Wildlife Sanctuaries mentioned above.

Under the circumstances, we direct that an area of 10 Kms around these 21 National Parks and Wildlife Sanctuaries be declared as Eco Sensitive Zone by the MoEF. The declaration be made by the MoEF at the earliest.

Liberty is granted to the State Governments to move an application for modification of this order along with proposal only two weeks after submission of the proposals to the MoEF."

(emphasis supplied)

93) The order of this court in ***Ayub Khan Vs State of Uttarakhand*** (supra) dated 13.06.2018 relates to the mining activities being carried out within the radius of 10 KMs from the boundary of the Rajaji National Park without obtaining clearance from the National Board for Wildlife. This order proceeded on the basis that under the norms, mining activities cannot be carried out within a radius of 10 Kms from the boundary of a National Park. Reference was also made to the Counter Affidavit filed in WPPIL No. 65 of 2015. The operative direction related to stoppage of mining activity, which reads as follows:

"Accordingly, these writ petitions are disposed of with the direction to the respondent-State to ensure that no mining activity is carried out within the radius of 10 km. from the boundaries of all the National Parks including Jim Corbett, Rajaji National Park and other National Parks without obtaining clearance from National Board for Wildlife."

Thus, this order is not squarely attracted, as the activity we are concerned with is not mining but stone crushing. However, the rationale which applies for not permitting mining activity within 10 KM of a National Park, also applies to the stone crushing activity vis-à-vis air, water & noise pollution that such activity causes in the vicinity of the National Park.

94) The orders of the NGT in ***Nandan Singh Bora*** (supra) and in ***M/s LSC Infratech Pvt. Ltd.*** (supra) relates to the Nandhaur Wildlife Sanctuary and, as such, the NGT did not deal with the ESZ around the Rajaji National Park. However, the rationale behind the restraint order issued by the NGT in ***Nandan Singh Bora*** (supra), in respect of which the review application was dismissed in ***M/s LSC Infratech Pvt. Ltd.*** (supra) was that stone crusher units cause severe air and noise pollution and, therefore, they cannot be permitted within the ESZ around the National Parks and Wildlife Sanctuaries.

95) In the recent judgment of the Supreme Court rendered in ***In re T.N. Godavarman Thirumulpad v. Union of India, (2022) 10 SCC 544***, the Supreme Court has held :-

"54. In our opinion, the Guidelines framed on 9-2-2011 appear to be reasonable and we accept the view of the Standing Committee that uniform guidelines may not be possible in respect of each sanctuary or national park for maintaining ESZ. We are of the opinion, however, that a minimum width of 1 km ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations of CEC in relation to Category B protected forests. This would be the standard formula, subject to changes in special circumstances. We have considered CEC's recommendation that the ESZ should be relatable to the area covered by a protected forest but the Standing Committee's view that the area of a protected forest may not always be a reasonable criterion also merits consideration. It was argued before us that the 1 km wide "no-development-zone" may not be feasible in all cases and specific instances were given for Sanjay Gandhi National Park and Guindy National Park in Mumbai and Chennai metropolis respectively which have urban activities in very close proximity. These sanctuaries shall form special cases."

(emphasis supplied)

96) The National Tiger Conservation Authority, Government of India, New Delhi, vide letter No. F.no. 1-21/2013-NTCA dated 06.06.2013, has declared that the core zone of the Rajaji Tiger Reserve comprises of the whole of 819.54 sq. kms area of the Rajaji National Park.

In its report dated 11.03.2020, the Conservator of Forest has stated that: -

"The aerial distance of the stone crusher from the Rajaji National Park is 6.4 KM.

The Linear distance of the outermost boundary of the stone crusher from the buffer area of the Rajaji Tiger Reserve is about 161 m."

From perusal of the above report of the Conservator of Forest, it is clear that respondent No. 5- Stone Crusher falls within the areas of 1 KM as earmarked by the Supreme Court in ***In re T.N. Godavarman Thirumulpad v. Union of India, (2022) 10 SCC 544***, as the ESZ.

97) The aspect whether the height of the boundary wall of the Respondent No. 5 Stone Crusher is sufficient; whether the storage of crushed stones is lower than the height of the boundary wall; whether the Respondent Nos. 5 & 6 have provided sufficient green cover to prevent spread of dust; whether the said stone crusher is adhering to the limits of time set for operation; whether it is crushing stone beyond the permissible limits, whether the distance of the Sigaddi Nallah from the boundary of the stone crusher is 50 meter, or more, and; whether the noise pollution levels are being met or not, are aspects, which we are not proposing to go into, as these involve determination of disputed questions of facts.

The reports placed on record are not very clear with regard to compliance of the aforesaid norms. However, it is abundantly clear that the Respondent Nos. 5 and 6 are not situated outside the ESZ of the Rajaji National Park/Rajaji Tiger Reserve. We are, thus, of the considered view that Respondent Nos. 5 and 6 are running the stone crusher plant in breach of the mandatory and binding obligation of obtaining the approval of the NBWL, which cannot be allowed. Admittedly, the stone crusher in question is located at a distance of only 161 meters from the boundary of the Rajaji National Park. Therefore, it clearly falls within the ESZ which, as per the judgment of the Supreme Court, reported in ***In re T.N. Godavarman Thirumulpad v. Union of India, (2022) 10 SCC 544***, is 01 KM. Industrial activity of running stone crusher within the ESZ cannot be undertaken without obtaining prior permission, *inter alia*, of the NBWL, which, admittedly, the Petitioner has not obtained. Pertinently, even the State Pollution Control Board has submitted before us, that the stone crusher in question cannot be permitted to operate, and they must obtain the approval of the NBWL.

98) We are at our wits end as to how the State Government could have directed the exclusion of the State Pollution Control Board from the joint inspection process to ascertain whether any project proponent is complying with

the pollution control norms. By doing so, the State Government is practically dismantling the statutory regime for protection of environment, and removing the vigilance that the State Pollution Control Board is mandated by law to maintain in the State to prevent pollution. We, therefore, completely disapprove of the exclusion of the State Pollution Control Board from the process of joint inspection and direct the State to ensure that the State Pollution Control Board shall be called for participation in all inspection exercises, whenever the viability of a project is being assessed from the point of view of pollution control. Any inspection reports prepared without the participation of the State Pollution Control Board shall be illegal and would not form the basis of grant of permission to either set up, or operate a polluting plant/industry. We further direct that even in cases where inspections may have been undertaken in the past, without the participation of the State Pollution Control Board, re-inspection should be carried out with their participation within the next three months, and consequential action be taken on the basis of such inspection reports.

99) Accordingly, we allow the petition and direct Respondent Nos. 5 and 6 to stop the operation of the stone crusher forthwith. Respondent Nos. 5 & 6 shall

apply to the NBWL to obtain its clearance for running its stoner crusher plant. The NBWL shall examine the case threadbare, and shall also examine, amongst others, the aspects taken note of in paragraph 97 hereinabove, and by a speaking order shall either grant, or refuse, its approval for the running of the stone crusher plant of Respondent Nos. 5 & 6. The NBWL shall take its decision, and communicate the same within three months from the date of this judgment. In the event of the NBWL granting approval to the stone crusher plant of the Respondent Nos. 5 & 6, it may resume operation. On the other hand, if the NBWL refuses to grant its approval, the Respondent Nos. 5 & 6 shall proceed to dismantle its stone crusher plant, and remove all its equipments and machinery from the site within two months of the order being passed by the NBWL.

100) The directions contained in the paragraph 98 shall also be strictly complied with. The parties are left to bear their respective costs.

VIPIN SANGHI, C.J.

R.C. KHULBE, J.