

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

.....
ORIGINAL APPLICATION No. 43/2023/EZ

IN THE MATTER OF:

Pradeep Kumar Dhal,
S/o Kartik Chandra Dhal,
Aged about 55 years,
At/Po – Rudhia, Bageswari Temple,
Jajpur, Odisha,
Pin - 755043,

.... Applicant(s)

Versus

1. **State of Odisha**
Represented by Chief Secretary,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar,
2. **District Collector, Jajpur,**
At/Po/Dist - Jajpur,
Odisha - 758001
3. **Tahasildar, Vyasaganagar,**
At/Po/Dist–Vyasaganagar,
Dist – Jajpur,
Pin – 756032,
4. **Member Secretary,**
Odisha State Pollution Control Board,
A/118, Unit-VII,
Nilakantha Nagar,
Bhubaneswar
Pin – 751012,
5. **Member Secretary,**
State Environment Impact Assessment Authority (SEIAA), Odisha,
5RF-2/1, Acharya Vihar,
Unit - IX, Bhubaneswar
Odisha – 751022,
6. **Deputy Director of Mines,**
At/PO/PS Jajpur Road,
Dist – Jajpur,
Pin – 755043,

7. **Superintendent of Police, Jajpur,**
At/Po/Ps – Panoikoili,
Dist – Jajpur,
Pin – 755043,
8. **Deputy Director General of Forests,**
Ministry of Environment and Forests, Climate Change,
Integrated Regional Office, Bhubaneswar,
A/3, Rail Vihar, Chandrasekharapur,
Bhubaneswar, Odisha,
Pin – 751023,
9. **Sri Ananda Chandra Mohanty (Lessee),**
S/o Late Muralidhar Mohanty,
At-Madhapur, P.O. – Rudhia, P.S. - Panikoili,
Dist – Jajpur, Odisha
Pin – 755043,

.... Respondent(s)

WITH

ORIGINAL APPLICATION NO.47/2023/EZ

Rabindra Ghadai,
S/O Late Harihar Ghadai,
Aged about 62 Years,
At/- Sanala, Po : Tulasipur Via – Barunei,
Dist – Jajpur, Odisha
Pin – 755025,

.... Applicant(s)

Versus

1. **The State of Odisha**
Represented by Chief Secretary,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar,
2. **District Collector, Jajpur,**
At/Po/Dist - Jajpur,
Odisha – 758001,
3. **Tahasildar, Vyasagar,**
At/Po/Dist – Vyasagar,
Dist – Jajpur,
Pin – 756032,

4. **Member Secretary,**
Odisha State Pollution Control Board,
A/118, Unit-VII,
Nilakantha Nagar,
Bhubaneswar, Odisha,
Pin – 751012,
5. **Member Secretary,**
State Environment Impact Assessment Authority, Odisha,
5RF-2/1, Acharya Vihar, Unit - IX,
Bhubaneswar Odisha,
Pin – 751022,
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At/PO/PS Jajpur Road,
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At/Po/Ps – Panoikoili,
Dist – Jajpur,
Pin – 755043
8. **Deputy Director General of Forests,**
Ministry of Environment and Forests, Climate Change,
Integrated Regional Office, Bhubaneswar,
A/3, Rail Vihar, Chandrasekharapur, Bhubaneswar,
Pin – 751023,
9. **Sri Ananda Chandra Mohanty (Lessee),**
S/o Late Muralidhar Mohanty,
At-Madhapur, P.O. – Rudhia, P.S. - Panikoili,
Dist – Jajpur, Odisha,
Pin – 755043,

.... Respondent(s)

COUNSEL FOR APPLICANT(S):

Mr. Sankar Prasad Pani, Advocate (in both O.As.)

COUNSEL FOR RESPONDENT(S) :

**Mr. Anand Prakash Das, ASC for R-1, 2, 3, 6 & 7,
Ms. Papiya Banerjee Bihani, Advocate for R-4,
Mr. Apurba Ghosh, Advocate for R-5,
Ms. Amrita Pandey, Advocate for R-8,
Mr. Prabhu Prasanna Behera, Advocate a/w Mr. Biswa Chandan Mohanty for R-9,**

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)
HON'BLE DR. ARUN KUMAR VERMA (EXPERT MEMBER)

Reserved On:- August 25th, 2023
Pronounce On:- August 29th, 2023

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| 1. Whether the Judgment is allowed to be published on the net? | Yes |
| 2. Whether the Judgment is allowed to be published in the NGT Reporter? | Yes |
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JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

The issues involved in Original Application No.43/2023/EZ and Original Application No.47/2023/EZ are identical as pointed out by Mr. Sankar Prasad Pani, learned Counsel for the Applicants in both the Original Applications and, therefore, both the Original Applications are being taken up for consideration together with Original Application No.43/2023/EZ as the leading case.

2. The allegation in the Original Application is that the Respondent No.9, Sri Ananda Chandra Mohanty (Lessee), is operating the Sanla-II Baitarani River Sand Quarry over an area of 12.00 Acres or 4.86 Hectare in Village Sanla under Tahasil-Vyasanagar, District-Jajpur, Odisha.

3. The Applicant is stated to be a resident of Vyasanagar Tahasil and espousing the cause of the villagers of Mukundapur.

4. It is stated that Sanla-II Baitarani River Sand Quarry over an area of 12.00 Acres or 4.86 Hectares, Khata No.301, Plot No.2(P) in Village-Sanla under Vyasaganagar Tahasil, District-Jajpur, Odisha, has been leased out to the Respondent No.9 who is presently operating the quarry.

5. It is stated that Consent to Operate (CTO) was granted vide letter dated 16.01.2023 and Consent to Establish (CTE) has been granted for production capacity of 3625CM per annum and only 17CM per day vide letter dated 03.01.2022.

6. It is stated that Environmental Clearance was also granted in favour of Tahasildar Vyasaganagar on 07.10.2021 and transferred in favour of the Private Respondent on 18.12.2021.

7. It is alleged that the Respondent No.9 has been engaged in excess mining by extracting and transporting more than 1000 cum/day of sand mineral by engaging at least two hundred (200) vehicles of different sizes.

8. It is also alleged that Hyva truckloads/day (one Hyva has a loading capacity of 16 cum of sand) and around one hundred (100) trips of tractors (one tractor has a capacity of 3 cum) are being operated carrying total 1900 cum/day of sand whereas the permissible limit is only 14,500 cum for the year 2022 and only 3625cum for the year 2023.

9. It is further alleged that though as per Mining Plan, the lease area has been demarcated by the Revenue Inspector but on ground

there is no demarcation and no distinct pillar posting. It is also alleged that mechanical mining is being resorted to by engaging three (3) Earth Mover/Machines.

10. The Ministry of Environment, Forests and Climate Change, Respondent No.8, has filed counter-affidavit dated 26.06.2023, stating therein that as per Government Notification S.O. 1886 (E) dated 20.04.2022, Environmental Clearances of all minor minerals shall be granted at the State level irrespective of the mine lease area.

11. The Collector & District Magistrate, Jajpur, has filed counter-affidavit dated 24.08.2023 bringing on record the Inspection Report of an inspection carried out on 18.05.2023 which reads as under:-

**“OBSERVATIOINS MADE DURING JOINT VISIT
CONDUCTED ON 18-05-2023 IN PURSUANT TO THE
ORDER OF HON’BLE NGT, EASTERN ZONE, KOLKATA IN
OA NO.43/2023/EZ**

The Hon’ble NGT, Eastern Zone, Kolkata vide order dated 24.04.2023 directed to constitute a committee to inspect the area in question.

In pursuant to the above order, the site was inspected on dtd. 18-05-2023 as per schedule fixed by the Collector & District Magistrate, Jajpur. Following officers were present during the visit.

- 1. Sri Santosh Kumar Mishra, Additional District Magistrate, Kalinganagar (Nominee of Collector & DM, Jajpur).*
- 2. Sri Pramod Kumar Behera, Regional Officer, SPCB, Kalinganagar,*
- 3. Sri Ashok Kumar Majhi Tahaildar, Vyasaganagar.*

General Observation: -

The lessee of Sanla-II Baitarani River Sand Quarry has obtained all the statutory clearances from the competent authorities i.e. Environment Clearance (EC) from SEIAA, Bhubaneswar vide Letter No.3260/07.10.2023, 3633/18.12.2021 & File No. SIA/OR/MIN/294456/2022 Dtd 09.01.2023, Consent to Establish (CTE) from Regional Officer, SPCB, Kalinganagar vide letter No. 08/ 03.01.2022 and Consent to Opeate (CTO) from Regional Officer, SPCB, Kalinganagar vide letter No. 104/ 16.01.2023. Quarry Lease agreement is valid upto dt. 31.01.2024.

The following were observed during the field visit with respect to the direction of the Hon'ble NGT.

Sl. No.	Issues raised before the Hon'ble NGT by the petitioner	Observation
1	Excess Mining: The lessee use to extract and transport more than 1000 cubic meters per day by engaging at least 200 vehicles of different size and capacity. Excess mining to the tune of more than 100 Hyva Truckload / day (one Hyva is having load capacity of 16 Cubic Metres of sand) and around 100 trips of tractors (1 Tractor is of 3 Cubic metres) which is around 1900 CM/Day when the permission is only for 14,500 CM for the 2022 and only 3625 for year 2023. As per the revised CTO the permitted sand is only 17 Cubic Metre per day considering maximum 210 days of sand mining in a	During the visit of the committee, it is observed that most part of the lease area is submerged with water. So, the quantity of extraction of sand could not be ascertained.

	<i>year.</i>	
2	<i>That the mining is spread on an area of more than 56 acres and hundreds of heavy vehicles as well as machines engaged for sand mining is evident from the google earth images dated 13/05/2022.</i>	<i>During the visit of the committee, it is observed that the mining is operated within the approved area of A 12.00.</i>
3	No Pillar posting in the lease area: <i>Though the mining plan suggests that the lease area has been demarcated by the Revenue Inspector but on ground there has been no demarcation and no distinct pillar posting allowing the mining to spread randomly all across the riverbed.</i>	<i>During the visit of the committee, it is observed that the leased area of the quarry is well demarcated by pillar postings.</i>
4	Mechanical Mining: <i>It is humbly submitted that the mining is supposed to be of Dry Pit and Manual means of mining and loading. However the mining is done by engaging 3 Earth Mover/Machines of different capacity which is strictly prohibited and not approved by any of the regulating authorities.</i>	<i>During the field visit, it is observed that manual labourers are engaged in the quarry for excavation of sand. But, no JCB machine and Heavy Trucks are found on the spot.</i>
5	Compliance to conditions of CTO: <i>No monitoring of compliance of conditions of CTO by Regional Offices of Kalinganagar SPCB.</i>	<i>During the field visit, no violation of the conditions as imposed in consent to operate order is found.”</i>

12. The Ministry of Environment, Forests and Climate Change, Respondent No.8, has filed further affidavit dated 18.08.2023 explaining certain erroneous averments made in its previous affidavit of 26.06.2023.

13. The State Environment Impact Assessment Authority (SEIAA), Odisha, Respondent No.5, has filed affidavit dated 13.05.2023, stating therein that the Project Proponent Tahasildar-Vyasanagar, District-Jajpur, had submitted project proposal to State Environment Impact Assessment Authority, Odisha, (hereinafter referred to as 'SEIAA' Odisha), along with required documents – [Form-1, Checklist, Pre-Feasibility Report (PFR), District Survey Report (DSR), Environmental Management Plan (EMP), Approved Mining Plan and other documents] for grant of Environmental Clearance for Sanla-II Baitarani River Sand Bed over lease area of 12.00 acres (4.86 hectares) in Village-Sanla under Vyasanagar Tahasil of Jajpur District, Odisha, on 13.04.2021. Based on these documents and clarification submitted by the Project Proponent, the State Level Expert Appraisal Committee (SEAC) recommended the proposal for grant of Environmental Clearance in its meeting held on 23.09.2021 and finally the Environmental Clearance was granted by the SEIAA, Odisha, on 07.10.2021 in respect of the project in question.

14. It is also stated that due to absence of Replenishment Study Report in the District Survey Report, the SEIAA, Odisha, accorded Environmental Clearance for extraction of 14,500 cum of sand for

the first year lease period with condition that pending carrying out of the Replenishment Study and submission of Report, the Clearance is being granted in an adhoc manner and is liable to be revoked after one year i.e., after 30.12.2022, if satisfactory Replenishment Study Report is not submitted. It is also stated that in the Mining Plan the annual production was mentioned as 28,430 cum/annum of sand.

15. In the affidavit of the SEIAA, Odisha, it is further stated that the Project Proponent, Respondent No.9, has submitted transfer of Environmental Clearance application to SEIAA, Odisha, on 18.12.2021 with required documents and accordingly SEIAA, Odisha, allowed transfer of Environmental Clearance in favour of the Respondent No.9 vide transfer of Environmental Clearance letter dated 18.12.2021, copy of which is on record of the present Original Application.

16. Thereafter, the Project Proponent, Respondent No.9, submitted a proposal for amendment of Environmental Clearance on Replenishment Study Report vide online application dated 24.11.2022 with required documents along with forwarding letter of the Tahasildar and based on the Replenishment Study Report, the SEIAA, Odisha, observed that Environmental Clearance was granted for the first year for production of 14,500 cum of sand but Tahasildar clarified that the same quantity of 14,500 cum sand already extracted from the lease area for the first year lease period and the quantity of sand reserve after post-monsoon period is

10,514 cum. In this view of the matter, after detailed deliberations it was decided by the SEIAA, Odisha, that the Annual Replenishment Rate Study Report (ARRS) has not been done as per MoEF&CC, Government of India, Notification S.O. 3611(E) dated 25.07.2018, Sustainable Sand Mining Guidelines, 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020, and rejected the Replenishment Study Report and allowed the Project Proponent for extraction of maximum 3625 cum sand for second year lease period upto 31.01.2024 i.e., 25% of 14,500 cum for first year production allowed in the Environmental Clearance. Thereafter, the amendment of Environmental Clearance was issued by the SEIAA, Odisha, on 09.01.2023.

17. Reference has also been made in this affidavit of SEIAA, Odisha, to point no.9.22 of the Environmental Clearance Stipulation which mentions that the conditions stipulated in the Environmental Clearance will be closely monitored on the ground by the lease granting authority i.e., Tahasildar, who shall ensure that the Project Proponent submits quarterly compliance reports but in the present case the Project Proponent has not submitted any quarterly report except the Environmental Clearance compliance report submitted during amendment of Environmental Clearance.

18. The Applicant has filed rejoinder affidavit dated 24.08.2023, stating therein that the Committee has noted that the quantity of the extracted sand could not be ascertained as most part of the

lease area is submerged under water due to intermittent rain and that the quantity of excess sand extracted, if any, will be assessed immediately once the water recedes and the report thereof is submitted.

19. In the rejoinder affidavit of the Applicant, it is further stated that because of rain and flood water in the river Baitarani, the mining operation has been stopped and the Applicant has not been able to gather any evidence to refute the findings of the Committee.

20. We have heard the learned Counsel for the parties and perused the documents on record.

21. A perusal of the Committee Report would clearly show that during the visit of the Committee on 18.05.2023, most parts of the lease area were found to be submerged under water and, therefore, the quantity of sand extracted could not be ascertained. It is, however, categorically stated that mining is being operated within the approved area of Ac. 12.00.

22. The Committee in its Report has noted that the lease area of the quarry is well demarcated by pillar postings. Allegation of use of JCB machine and heavy trucks has been denied and it is stated that no JCB machine or heavy trucks were found at the spot during inspection and that manual labourers were engaged in the quarry for excavation of sand.

23. Mr. Sankar Prasad Pani, learned Counsel for the Applicant submitted that though the Applicant has stated in his rejoinder

affidavit that due to the lease area being submerged under water, extraction of sand cannot be determined but he has filed coloured photographs of google image along with the Original Application and, therefore, whether excess sand has been extracted by the Lease Holder, Respondent No.9, or not can be determined by the Committee or by the Respondent No.6 and other State Respondents once the rains stop and flood water recedes from the lease area.

24. Considering the submissions made by the learned Counsel for the parties and the documents on record as well as the Inspection Report, we are of the view that at present due to the lease area being submerged under flood water, no presumption of violation of the Sustainable Sand Mining Guidelines, 2016, and Enforcement & Monitoring Guidelines for Sand Mining 2020, can be made against the Respondent No.9, Lease Holder, with regard to the excess sand being extracted from the lease area. This study needs to be carried out by the State Respondents after the flood water recedes from the lease area.

25. We accordingly dispose of both the Original Applications with a direction to the Respondent No.2, District Collector, Jajpur, and Respondent No.6, Deputy Director of Mines, Jajpur, to carry out a fresh inspection of the site in question along with the Senior Scientist of the Odisha State Pollution Control Board, and ascertain as to whether the excess sand has been extracted by the Project Proponent/Lease Holder (Respondent No.9), in excess of what is permitted in the Environmental Clearance granted by the SEIAA,

Odisha, and in case violations are found, the concerned authorities shall proceed to determine the Environmental Compensation against the Respondent No.9 as well as suggest other remedial measures to mitigate the same. Compliance Report should be filed on affidavit by the District Collector, Jajpur, before the Registrar, National Green Tribunal, Eastern Bench, Kolkata, latest by **31st December, 2023.**

26. I.As. if any, stand disposed of accordingly.

27. There shall be no order as to costs.

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B. AMIT STHALEKAR, JM

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DR. ARUN KUMAR VERMA, EM

**Kolkata,
August 29th, 2023,
Original Application No.43/2023/EZ
With
Original Application No.47/2023/EZ
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