

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Appeal No.18/2023/EZ
(I.A. No.10/2024/EZ)

IN THE MATTER OF:

Haripada Manna,
S/o Late Paresh Chandra Manna,
Aged about 48 years,
R/o Sekhsarai, P.O.-Chalanti,
P.S.-Jaleswar, District-Balasore,
Pin – 756032,

...Appellant(s)

Versus

- 1. State of Odisha,**
Through its Additional Chief Secretary,
Forest, Environment and Climate Change Department,
Kharavel Bhavan, Bhubaneswar, Odisha,
Pin – 751001,
- 2. District Collector, Balasore,**
At/PO/Dist.-Balasore, Odisha,
Pin – 758001,
- 3. Tahasildar, Jaleswar,**
At/PO/-Jaleswar, District-Balasore,
Pin – 756001,
- 4. Member Secretary,**
Odisha State Pollution Control Board,
A/118, Unit-VII, Nilakantha Nagar,
Bhubaneswar – 751012,
- 5. Member Secretary,**
State Environment Impact Assessment Authority (SEIAA), Odisha,
5RF-2/1, Acharya Vihar, Unit-IX, Bhubaneswar,
Pin – 751022,
- 6. Mining Officer, Baripada Circle, Baripada,**
At/PO/PS-Baripada,
Pin – 757001,
- 7. Secretary,**
Water Resource Department,
Government of Odisha,
Lok Seva Bhawan, Sachivalaya Marg,
Bhubaneswar – 751001,

8. Secretary,

Revenue and Disaster Management Department,
Government of Odisha,
Lok Seva Bhawan, Sachivalaya Marg,
Bhubaneswar – 751001,

9. The Secretary,

Ministry of Environment, Forest and Climate Change (MoEF&CC),
Indira Paryavaran Bhawan, Jor Bagh,
New Delhi – 110003,

...Respondent(s)

Date of hearing: 16.07.2024

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Appellant(s) : Mr. Sankar Prasad Pani, Advocate (in Virtual Mode) a/w
Mr. Ashutosh Padhy, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Tarun Patnaik, ASC for R-1-3,6-8, (in Virtual Mode)
Mr. Dipanjan Ghosh, Advocate for R-4,
Mr. Apurba Ghosh, Adv. for R-5, (in Virtual Mode)
Ms. Rashmi Singhee, Adv. for R-9, (in Virtual Mode)

ORDER

1. Mr. Sankar Prasad Pani assisted by Mr. Ashutosh Padhy, learned Counsel is present (in Virtual Mode) for the Appellant.
2. The Appellant in the present Appeal is seeking quashing of the order dated 26.04.2023 (Annexure-6 to the Appeal), challenging the District Survey Report ('DSR' for short) of District-Balasore, for mining of River Sand, Stone, Morrum, Brick Earth for the period of 2023-2028, located in District-Balasore, Odisha.
3. The grounds for assailing the impugned order dated 26.04.2023, *inter alia*, are that DSR is still an Interim Report and there is no final Report and that the State Environment Impact Assessment Authority ('SEIAA' for short), has itself observed that "*this DSR is stated to have examined by DEIAA, but the agency/expert(s)*

prepared the same is not made known. It is stated to be an Interim Report”.

4. The DSR in question is stated to be in respect of four minor minerals, namely, Morrum, Brick Earth/Ordinary Soil, Road Metals and River Sand for the financial years of 2016-17, 2017-18 & 2018-19, ignoring the years 2019-20 to 2021-2022.
5. One of the grounds taken in the Memo of Appeal is that no Replenishment Study is found to be carried out. It is stated that the DSR is not in accordance with the Sustainable Sand Mining Guidelines, 2016, and the Enforcement and Monitoring Guidelines for Sand Mining, 2020.
6. We have gone through the impugned order dated 26.04.2023, copy of which has been filed as Annexure-6, page 99, to the Memo of Appeal, which mentions that the draft DSR of Balasore for Sand, Stone, Morrum, Brick Earth was examined by State Expert Appraisal Committee (‘SEAC’ for short) in its meetings held on 13.05.2022, 20.08.2022, 14.10.2022 and 12.04.2023. It is also mentioned that the DSR is stated to have been examined by the District Environment Impact Assessment Authority (‘DEIAA’ for short), but the agency/expert(s) who prepared the same is not made known. It is stated to be an Interim Report.
7. In Item No.‘8’ of the order, it is mentioned that the final DSR of Balasore was submitted to the SEIAA on 05.04.2023 and the matter was examined by the SEIAA, Odisha, in its 115th meeting held on 24.04.2023 with recommendation of SEAC for approval of DSRs for Sand, Stone, Morrum and Brick Earth of Balasore District in accordance with the EIA Notification, 2006, and it is observed that DSR has been prepared afresh and it has been signed by the

Collector & District Magistrate, Balasore, along with members of the designated Sub-Committee consisting of; Sub-Divisional Magistrate and District Level Officers from Irrigation Department, State Pollution Control Board, Forest Department and Mining Department.

8. At Item No.'10' of the impugned order, it is mentioned that approval is conveyed under the provision of EIA Notification, 2006, as amended from time to time for the DSR of Balasore comprising of 238 Sairat Sources for a period of 5 years (2023-2028) with certain conditions which are enumerated in the impugned order.
9. What is relevant to note is that at Item No.'10 (iv)' of the impugned order, it is mentioned that *"the approval is granted on the basis of undertaking that the annual replenishment study shall be completed within a period of one year. The approval of DSR will be liable for revocation if no replenishment study is submitted by 31st May, 2024"*.
10. The Ministry of Environment, Forests and Climate Change, Respondent No.9, has filed affidavit dated 23.08.2023, stating that in the matter of minor minerals, the SEIAA has been delegated the powers vide Ministry's Notification S.O. No.1886 (E) dated 20.04.2022 to grant Environmental Clearances.
11. The Collector Balasore, has filed affidavit dated 05.10.2023 stating that the Committee, already referred to hereinabove, has visited the Sairat Sources and found the same to be suitable and feasible.
12. The Appellant has also filed rejoinder affidavit dated 04.05.2024, reiterating the contents of the Memo of Appeal.
13. Today, Mr. Apurba Ghosh, learned Counsel for the Respondent No.5, SEIAA, Odisha, has filed a letter through e-mail dated

16.07.2024, which is a letter of the Collector & District Magistrate, Balasore, addressed to the Chairman, SEIAA, Odisha, Bhubaneswar, wherein it is stated that the Mining Officer, Balasore, has requested the undersigned to inform the SEIAA for taking necessary steps for extension of one year time for submission of Replenishment Report in connection with all Sand Sairat Sources in respect of Balasore District. Relevant extract of the letter dated 30.05.2024 reads as under:-

“.....xxx.....xxx.....xxx.....

The Mining Officer, Balasore requests the undersigned to move the matter to your good office for taking necessary steps for extension of one year time for submission of replenishment report in connection with all sand sources in respect of Balasore District.”

- 14. We have heard the learned Counsel for the parties and perused the documents on record.
- 15. In the impugned approval order dated 26.04.2023 which is under challenge in the present Appeal, SEIAA, Odisha, had mandated that the Annual Replenishment Study was required to be completed within one year, failing which approval of DSR shall be liable for revocation, if the Replenishment Study Report is not submitted by 31.05.2024. That date has already passed and no Replenishment Study has been carried out as is evident from the letter of the Collector & District Magistrate, Balasore, dated 30.05.2024.
- 16. The Standard Environmental Conditions for Sand Mining under the Sustainable Sand Mining Management Guidelines, 2016, provides that the District Survey Report should be prepared and area suitable for mining and area prohibited for mining be identified. It is also provided that the depth of mining in river bed shall not

exceed one meter or water level whichever is less, provided that where the Joint Inspection Committee certifies about excessive deposit or over accumulation of mineral in certain reaches requiring channelization, it can go up to three meters on defined reaches of the River.

17. The Standard Environmental Conditions for Sand Mining further provides for submission of Annual Replenishment Report certified by an authorized agency. In case the replenishment is lower than the approved rate of production, then the mining activity/production levels shall be decreased/stopped accordingly till the replenishment is completed. Thus, the Replenishment Study is a fundamental condition for grant of approval of the District Survey Report with reference to sand mining as per Rules, 2016. The Standard Environmental Conditions for Sustainable Mining Practices Sl. Nos. 8 to 19 read as under:-

“STANDARD ENVIRONMENTAL CONDITIONS FOR SAND MINING		
Impact Category	S. No.	Environmental Conditions
.....		
Sustainable Mining Practices	8	<i>District Level Survey Report should be prepared and area suitable for mining and area prohibited for mining be identified.</i>
	9	<i>The depth of mining in Riverbed shall not exceed one meter or water level whichever is less, provided that where the Joint Inspection Committee certifies about excessive deposit or over accumulation of mineral in certain reaches requiring channelization, it can go up to 3 meters on defined reaches of the River.</i>
	10	<i>No River sand mining be allowed in</i>

		<i>rainy season.</i>
	11	<i>To submit annual replenishment report certified by an authorized agency. In case the replenishment is lower than the approved rate of production, then the mining activity/production levels shall be decreased/stopped accordingly till the replenishment is completed.</i>
	12	<i>Ultimate working depth shall be up to 3.0 from Riverbed level and not less than one meter from the water level of the River channel whichever is reached earlier. In hilly terrain this depth be preferably restricted to one meter.</i>
	13	<i>In River flood plain mining a buffer of 3 meter to be left from the River bank for mining.</i>
	14	<i>In mining from agricultural field a buffer of 3 meter to be left from the adjacent field.</i>
	15	<i>Mining shall be done in layers of 1 meter depth to avoid ponding effect and after first layer is excavated, the process will be repeated for the next layers.</i>
	16	<i>To maintain safety and stability of Riverbanks i.e. 3 meter or 10% of the width of the River whichever is more will be left intact as no mining zone.</i>
	17	<i>No stream should be diverted for the purpose of sand mining. No natural water course and/or water resources are obstructed due to mining operations.</i>
	18	<i>No blasting shall be resorted to in River mining and without permission at any other place.</i>
	19	<i>Depending upon the location, thickness of sand, deposition, agricultural land/Riverbed, the method of mining may be manual, semi-mechanized or mechanized; however, the manual</i>

		<i>method of mining shall be preferred over any other method.”</i>
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18. With regard to Replenishment Study, para 5.0 of the Enforcement and Monitoring Guidelines for Sand Mining, January, 2020, issued by the Ministry of Environment, Forests and Climate Change, enjoins that the need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due to excessive sand extraction. Para 5.0 of the Guidelines, 2020, reads as under:-

“.....XXX.....XXX.....XXX.....

5.0 REPLENISHMENT STUDY

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

19. In the present case, in view of the letter of the Collector & District Magistrate, Balasore, dated 30.05.2024, since no Replenishment Study has been carried out in the District-Balasore, the impugned order of approval of the District Survey Report vide impugned order

dated 26.04.2023 is liable for revocation and cannot be acted upon. In the absence of Replenishment Study in the District Balasore, duly considered by State Expert Appraisal Committee and approved by SEIAA, Odisha, no sand mining can be carried out in the stretch of the Subarnarekha river passing through the District Balasore. We accordingly allow the present Appeal and quash the impugned order dated 26.04.2023.

20. However, without prejudice to the order that has been passed hereinabove, we may observe that it will always be open for SEIAA, Odisha, to reconsider the matter of grant of approval of District Survey Report, if the same is submitted afresh with Replenishment Study, in accordance with law.
21. I.As., if any, stand disposed of accordingly.
22. 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

July 16, 2024,
Appeal No.18/2023/EZ
(I.A. No.10/2024/EZ)
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