

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

(THROUGH PHYSICAL HEARING WITH HYBRID MODE)

Original Application No.84/2023/EZ

In the matter of:

Abani Kumar Sahu,
Aged about 38 years
S/o Surendranath Sahoo,
At/PO-Jamalpur,
Dist.-Balasore, PS-Jaleswar,
Dist.-Balasore, PIN-756029

.... Applicant(s)

Versus

- 1. State of Odisha,**
Represented by Additional Chief Secretary,
Forest Environment and Climate Change Department,
Kharavel Bhavan, Bhubaneswar, Odisha-75101;
- 2. District Collector, Balasore,**
At/PO/Dist.-Balsore, Odisha-758001;
- 3. Tehsildar, Jaleswar,**
At/PO/Dist.-Jaleswar, Odisha-756001;
- 4. Member Secretary,**
Odisha State Pollution Control Board,
A/118, Unit-VII, Nilakantha Nagar,
Bhubaneswar, PIN-751012, Odisha;
- 5. Member Secretary,**
State Environment Impact Assessment Authority (SEIAA), Odisha,
5RF-2/1, Acharya Vihar,
Unit-IX, Bhubaneswar, Odisha-751022;
- 6. Divisional Forest Office,**
Balsore Wildlife Division,
At/PO-Khurda, Dist.-Baleshwar,
Odisha-756056;
- 7. Mining Officer,**
Baripada Circle, Baripada,
At/PO/PS-Baripada-757001;
- 8. Asit Kumar Parida,**
S/o late Umakanta Parida,
At-Sanrout Pada,

P.O.-Jamalpur,
P.S.-Jaleswar, Dist.-Balasore,
Odisha-758022

..... Respondent(s)

Date of hearing: 04.09.2024

Date of uploading: 18.09.2024

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

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

For Respondent(s) : Mr. Tarun Patnaik, ASC for R-1,2,3,6&7 (in Virtual Mode),
Ms. Papiya Banerjee Bihani, Adv. for R-4 (in Virtual Mode),
Mr. Apurba Ghosh, Advocate for R-5 (in Virtual Mode),
Mr. Pratik Dash, Advocate for R-8 (in Virtual Mode)

ORDER

1. The allegation in the present Original Application is that the Respondent No.8, Private Respondent, is carrying on illegal sand mining in Rayan Ramchandrapur Sand Source Jaleswar, District Balasore, Odisha over an area of 20.38 acres. It is stated that the Tahasildar-Jaleswar executed a lease deed in favour of the Respondent No.8 on 13.04.2021. Environmental Clearance was granted by the State Environment Impact Assessment Authority (SEIAA) Odisha, on 13.07.2017 in favour of one Rajesh Kumar Khatua and thereafter the said Environmental Clearance was transferred to Asit Kumar Parida, Respondent No.8 herein, on 09.03.2021. It is stated that the SEIAA, Odisha, on 06.05.2022 issued a clarification stating that Environmental Clearance has been granted in adhoc manner and will be revoked after 31.12.2022. The Consent to Operate was granted by the State Pollution Control Board, Odisha, on 10.05.2022 valid upto 31.12.2022 and thereafter it has been renewed on 14.02.2023 valid upto 31.03.2023 for a mining capacity of 2500 m³ of sand.

2. It is alleged that the Consent to Operate was granted illegally without verifying the validity of the Environmental Clearance.
3. It is further alleged that the Sub-Collector, Balasore, vide his letter dated 24.03.2023 addressed to the Additional District Magistrate, Balasore, has clarified that the Rayan Ramchandrapur Sand Source is situated in the DLC forest and should not be allowed to be operated. It is also stated that the said Sand Source has not been recommended in the District Survey Report by the Sub-Divisional Committee.
4. It is further alleged that 'Y' Form (Transit Permit) in respect of Rayan Ramchandrapur was issued on 08.07.2023 for transportation of sand which suggests that mining is going in the monsoon period in spite of the letter of the Sub-Collector.
5. The allegation further is that no green belt or plantation has been done as per the Approved Mining Plan which requires plantation of 50 saplings every year and 250 saplings in a five year lease period.
6. At the time of admission, the Tribunal constituted a fact finding Committee comprising of the following members:-
 - (i) Senior Scientist, West Bengal Pollution Control Board;
 - (ii) Senior Scientist, SEIAA, Odisha;
 - (iii) Divisional Forest Officer, Balasore Wildlife Division;
 - (iv) District Collector, Balasore, or his nominee not below the rank of Additional District Magistrate; and
 - (v) Mining Officer, Baripada Circle, or his nominee of a Senior Rank
7. The Committee was directed to visit the site in question and submit its report with regard to the allegations made in the Original Application.

8. The District Collector-cum-District Magistrate, Balasore, has filed affidavit dated 10.10.2023 bringing on record the Joint Inspection Report of the Committee constituted by the Tribunal which reads as under:-

“Joint Verification report in the matter Abani Kumar Sahoo Others Vrs State of Odisha and others in O.A. No.84/2023/EZ in respect of orders dt. 04.08.2023 & 06.09.2023.

Background:

With reference to Hon’ble NGT order dated 04.08.2023 in the matter of O.A. No. 84 of 2023 (Eastern Zone Bench, Kolkata) titled Abani Kumar Sahoo & ors. Vs. State of Odisha, it was directed “Let a joint committee of four members, comprising Senior Scientist Odisha State Pollution Control Board (OSPCB), Senior Scientist, State Level Environmental Impact Assessment Authority (SEIAA) Odisha, Divisional Forest Officer, Wild life Division, Balasore and District Collector, Balasore or his nominee not below the rank of Additional District Magistrate and Mining Officer, Baripada Circle, Baripada or his nominee of a senior rank to look into the grievance in the application and furnish a report to this Tribunal within four weeks time on affidavit”.

In view of this team consisting of the following members from Senior Scientist, State Environmental Impact Assessment Authority (SEIAA) Odisha, Divisional Forest Officer, Wild life Division, Balasore, Additional District Magistrate, Balasore and Mining Officer, Balasore were visited the project area to look into the matter on 23.08.2023.

Sl. No.	Name	Designation	Organization
i.	Smt. Priyadashinee Mallick	Additional District Magistrate, Balasore	Govt. of Odisha
ii.	Dr. Pradeept Kumar Nayak	Environmental Scientist, SEIAA, Odisha	SEIAA, Bhubaneswar
iii.	Khuswant Singh	Divisional Forest Officer, Wild Life Division, Balasore	Wild Live Division, Balasore
iv.	Santoshee Prava Sethy	Mining Officer, Balasore	Department of Steel and Mines, Government of Odisha

The Hon’ble NGT during the hearing on dated 06.09.2023 has made a correction in the constitution of the Committee to read as “Senior Scientist, Odisha Pollution Control Board” in pursuant to the Order of the Hon’ble NGT dated 06.09.2023, the Committee comprising the following against visited the site on dated 18.09.2023.

Sl. No.	Name	Designation	Organization
i.	Smt.	Additional District Magistrate,	Govt. of

	<i>Priyadashinee Mallick</i>	<i>Balasore</i>	<i>Odisha</i>
<i>ii.</i>	<i>Dr. Pradeept Kumar Nayak</i>	<i>Environmental Scientist, SEIAA, Odisha</i>	<i>SEIAA, Bhubaneswar</i>
<i>iii.</i>	<i>Khuswant Singh</i>	<i>Divisional Forest Officer, Wild Life Division, Balasore</i>	<i>Wild Live Division, Balasore</i>
<i>iv.</i>	<i>Er. Manmohan Murmu</i>	<i>Regional Officer, Balasore</i>	<i>State Pollution Control Board, Odisha</i>
<i>v.</i>	<i>Santoshee Prava Sethy</i>	<i>Mining Officer, Balasore</i>	<i>Department of Steel and Mines, Government of Odisha</i>

1.0 Present Status of the allegation against sand quarry:

The inspecting team visited the allegation project site and accordingly made assessment against sand quarry granted in favour of Sri Asit Kumar Parida in village Rayanramchandrapur sand bed in River Subarnarekha of Jaleswar Tahasil Dist. Balasore which are tabulated below:

Sl. No.	Issues	Present Status
1.	That the applicant is a villager of Jamalpur adjoining the sand mining lease at Rayan Ramchandraput. The petitioner village is affected because of transportation of sand loaded vehicles and threat to embankment of river. It is further submitted that the indiscriminate sand mining in the river has already threatened the river bank and changed the course of river flow. It is further submitted that mining in Subarnarekha River bed in Jaleswar and Jaleswar Tahasil has caused serious environmental degradation and ecological impact, over the years river and Riparian ecology have been badly affected by the alarming rate of unrestricted Sand Mining which damage the river ecosystem, weakening of river bank, destruction of natural habitats of organisms living on the river beds, affects fish breeding and migrating, the associated riparian habitat.	i. During the course of visit, the Committee found that presently the source is not in operation as river is flowing over the lease area. The village will no way be affected as it remains more than one Kilometer from the sand bed/ lease area. The river embankment is safe and there is no possibility of damage of it if the source is operated keeping in view of the stipulations of EC and Mining Plan. Further, it is observed that the river is flowing in its regular course. ii. In the KML file of Google earth map (for the period i.e. May 2017, December 2017, July 2018) it appears that there was sufficient sand both inside and outside the lease area and after time being passed the river course changes and after February 2019 to till date it appears that half of the lease was covered with grass and looks like a River Bank. It seems to

		be the reason that the mining plan was prepared earlier based on earlier sand deposition with proposed annual production quantity i.e. 5500cum and accordingly, environmental clearance (EC) was allowed the same quantity vide EC letter no. 3278/SEIAA dated 13.07.2017 as per approved mining plan and later EC amended as per annual rate of replenishment rate of sand and allowed extraction quantity of sand 4283.5 cum/annum. The details of Google earth map from the period May 2017 to till date is attached in Annexure-II.
2.	That one Asit Kumar Parida, the present lessee of Rayan Ramchandraput sand source in an area over 20.38 Ac. The Tahasildar, Jaleswar executed the lease Deed in favour of private respondent on 13.04.2021. Environmental Clearance was granted by State Environment Impact Assessment Authority (SEIAA), Odisha on 13.07.2017 in favour of one Mr. Rajesh Kumar Khatua and thereafter the Environmental Clearance was transferred in favour of Asit Kumar Parida on 09.03.2021.	i. The total area of the plot is 26.05 hectare, out of which, only 8.247 hectare is give on quarry lease. As regards renewal of EC is concerned, the same has been issued basing on the parameter of environmental aspect. ii. Earlier the EC was issued in favour of Sri Rajesh Kumar Khatua Vide SEIAA, Odisha later no. 3278/SEIAA, dt. 13.07.2017. iii. There were two bidders in the auction of Rayan Ramachandraput River Sand Bed namely Sri Rajesh Kumar Khatua and Sri Asit Kumar Parida and Sri Rajesh Kumar Khatua was selected as a highest bidder by the Tahasildar, Jaleswar. But the second highest bidder Sri Asit Kumar Parida objected that the Sri Khatua has obtained one solvency certificate issued by Sub-Collector, Balasore vide Misc. case No. 135/2015 by which he has already participated the auction process and obtained two

		sairat sources from Jaleswar Tahasil. Again, by Khatua has participated in the tendering process of Rayan Ramachandraput River Sand Bed which is not legal. iv. The second highest bidder Sri Asit Kumar Parida has filed a W.P.(C) case bearing no. 8871/2017 at Hon'ble High Court, Orissa and Hon'ble Court disposed of the matter which a direction to the Collector, Balasore to decided himself or any other officer duly authorized the Additional District Magistrate (ADM), Balasore for necessary hearing and disposal of the case and the matter was decided in favour of Sri Khatua. Again, Sri Parida filed another W.P.(C) bearing no. 20414/2019 against the order of the Court of A.D.M., Balasore. This time the Court of A.D.M., Balasore settled the case in favour of Sri Parida. With this, Sri Khatua file another writ Vide No. 24852/2019 challenging the orders of the ADM, Balasore. The Court of ADM, Balasore strick up with the previous order in Misc., case no. 01/2019 arising out of W.P. No. 24852/2019. v. Sri Khatua once again filed a fresh write bearing W.P.(C) No. 16117/2020 against the order of the Court of ADM. Balasore. Finally, Hon'ble High Court, Odisha has disposed of the I.A. No. 9911 of 2020 arising out the above case on dt. 08.12.2020 with an order "we are inclined to modify the interim order of status
--	--	--

		quo dt. 17.08.2020 passed by this Court in I.A. No. 7539 of 2020 and direct that the award of the work in favour of the Sri Asit Kumar Parida shall remain subject to the outcome the writ petition. vi. Based on the Hon'ble High Court Order, the Tahasildar, Jaleswar has requested to SEIAA, Odisha vide letter no. 450 dt. 05.02.2021 and the Collector, Balasore letter vide letter no. 11740 dt. 24.12.2020 for transfer of EC from the name Sri Rajesh Kumar Khatua (earlier lessee) to Sri Asit Kumar Parida (present lessee). Accordingly, the EC was transferred in favour of Sri Asit Kumar Parida vide EC letter no. 801/SEIAA dated 09.03.2021. From the period 13.07.2017 to 09.03.2021 the quarry was not in operation was informed by District Authority. vii. Then there was appeal filed by the petition Kalicharan Das Vrs MoEF & CC & Ors. before Hon'ble NGT on Appeal No. 03/2021/EZ with regard whether the proposed quarry required Public Hearing based on the MoEF & CC, Govt. of India Office Memorandum dated 12.12.2018. Finally, Hon'ble NGT disposed the matter with view that "since no fresh lease has been granted in favour of Respondent No. 9 and the previous lease continues and only the Mining Plan has been granted in favour of Respondent No. 9 but the sand bed in question remains the same,
--	--	--

		namely, Rayan Ramachandraput sand Bed and the area also remains the same i.e., 20.38 acres i.e., 8.247 hectares situated in Village-Rayan Ramchandraput, Tahasil Jaleswar, District-Balasore.
3.	Clarification issued by SEIAA on 06.05.2022 in respect of EC stating that the EC is granted in adhoc manner and will be revoked after 31.12.2022 if no replenishment study is submitted.	i. EC granted by SEIAA, Odisha vide letter no. 3278/SEIAA dated 13.07.2017 with specific condition that this environmental clearance shall be valid for the lease period granted by lease granting authority and coterminous with expiry of the lease period and other operating condition that EC is granted on condition that the yearly extraction of sand shall remain within 5500 cum. In case, there is greater volume available in any year due to large scale replenishment the previous year rainy season, a case can be made out by the Tahasildar at the beginning of the year before SEIAA with details. ii. EC transfer was made on 801/SEIAA dated 09.03. 2021 with additional stipulation that the project proponent has to carry out engaging appropriate consultant, a study of the annual replenishment rate of sand by collecting pre-monsoon & post-monsoon elevation data shall be included in the study report. The replenishment rate of sand may be calculated by using the volumetric survey method or any other methods as laid down in Enforcement & Monitoring Guidelines for Sand Mining, 2020 issued by the MoEF &

		CC, Govt. of India. The finding of the study shall be submitted to SEIAA to assess the rate of replenishment of mined out sand in the lease area. Pending carrying out of the study & submission of the report, this clearance is being granted in an adhoc manner and is liable to be revoked after one year if satisfactory replenishment study report is not submitted. The PP shall carry out the rate of replenishment study this year and submit its report by the 14th October 2021. iii. Again, the project proponent Sri Asit Kumar Parida had submitted the replenishment study report to SEIAA on 08.03.2022 by email and during that time there are some proposals were pending at the State Level Expert Appraisal Committee (SEIAA, Odisha) for taking decision and the SEAC has not finalized the detailed method and procedure for replenishment study. Due to absence of committee decision and the project proponent (pp) has proposed the same production quantity i.e. 5500 cum based on the replenishment study and was mentioned previous year EC letter, then SEIAA, Odisha allowed EC vide letter no. 4438/SEIAA dated 06.05.2022 with condition that the Pending carrying out of the study & submission of the report, this clearance is being granted in an adhoc manner and is liable to be revoked after one year i.e. after 31.12.2022 if
--	--	---

		satisfactory replenishment study report is not submitted. iv. Then the PP has submitted application for amendment of EC vide application no. SIA/OR/MIN/297576/2023 dated 21.02.2023 based on the rate of replenishment study report through Odisha Space Application Centre (ORSAC). As per the Seac recommendation in its meeting on 27.03.2023, the amended EX of Rayan Ramachandraput is allowed on dated 28.04.2023 with production capacity of 4283.5 cum/annum for remaining period of lease. v. In this case it is mentioned that EC is valid upto the lease period with condition given that if replenishment study is not submitted stipulated time period the EC is liable to revoked but the Authority has not revoked the EC in this case.
4.	CTO granted by SPCB on 10.05.2022 with validity up to 31.12.2022 and then after CTO renewed on 14.02.2023 with validity up to 31 st March, 2023 for capacity of 2500 CM. this CTO was illegally granted without verifying the validity of Environmental Clearance.	i. Consent to Operate was issued by SPCB, Balasore vide letter no. 4483 dated 31.03.2021 valid up to 31.03.2022 and then CTO obtained vide letter no. 943 dt. 10.05.2022 valid up to 31.12.2022 and then CTO obtained vide letter no. 458 dated 14.02.2023 valid up to 31.03.2023.
5.	The Sub-Collector, Balasore in a letter dt. 21.03.2023 addressed to the Additional District Magistrate, Balasore in respect of clarification regarding operationalization of Rayan Ramchandraput sand source has stated that the sairat being in DLC forest list should not be allowed or operation. The relevant portion of the letter dt. 24.03.2023 is reproduced as follow	i. The Committee observed that there is no forest growth in the lease area and it is also observed that out 8.247 Ha lease area mining activity was done only half or lease than half of the lease area as it is mentioned point no. 01 that the half of the lease was covered

	<i>“In inviting a kind reference to the letter on the subject cite above, I am to intimate you that the Tahasildar, Jaleswar has submitted a report vide memo no. 201 dt. 13.01.2023 that the land schedule of R.R pur sairat source is coming under DLC forest area. On perusal of the report of the Tahasildar, Jaleswar the Sub-Divisional Committee have considered that the said source has no DLC clearance and it will not be feasible for because it will violate Government Guideline/provisions of sustainable Sand Management Guideline, 2016 and the forest Conservation Act, 1980 and also jucial directive of Hon’ble Supreme Court in W.P.C. No. 202/ 1995.</i> <i>Hence, the R.R. pur sand source has not been recommended for DSR by the Sub-Divisional Committee as it would lead to illegal mining as per Hon’ble Supreme Court in its Judgment dt. 02.08.2017 in W/P.C. No. 114 of 2014 in the matter of common cause Vrs Union of India & Others.</i>	<i>with grass and looks like a river Bank.</i> <i>ii. In the DLC report it is mentioned that total lease area is 26.05 Ha and out of this only 5.0 Ha area is coming under DLC land and quarry allowed for sand mining 8.247 Ha. Proper demarcation or location of forest growth has not been mentioned in the DLC report prepared in 1997. Without proper demarcation, it cannot be ascertained that sand mining in Rayanramchandraput sand source is coming under DLC land and it is illegal. The proper location of the DLC land can be ascertained by Forest Department. The Divisional Forest Officer, Wild Life Division, Balasore has been sought for up to date map or Geo-Reference of the DLC land involved in Rayanramachandraput sand source vide District Office Letter No. 8889/Tz dt. 22.08.2023. (Copy enclosed). However, it is observed from the report of Deputy Collector, District Record Room, Collector, Balasore vide his Letter No. 157 dt. 16.09.2023 that the alleged scheduled of land bearing plot No. 2824, Khata No. 1070 (in Hal Record) whose Sabik Record is Plot No. 2728 Khata No. 1063 Mz Rayanramchandraput has the Kisam Nadi (River). The issue of DLC in connection with the above Divisional Forest Officer, Wild Life Division, Balasore.</i>
6.	<i>The Y-form (Transit Permit) in respect of RAYAN Ranachandraput sand source was issued on 08.07.2023 for transportation of sand suggests the</i>	<i>It is mentioned in the report of Sub-Collector, Balasore that the land is coming in DLC forest, but in DLC</i>

	mining is ongoing even after the letter of Sub-Collector mining should be stopped. As such, the CTO is not valid after 31st March, 2023 and EC is also not valid after 21.12.2022.	report prepared in 1997 it is mentioned that only 5 hectare is included in DLC forest out of 26.01 hectare of the total land. Hence, the DLC report proves that the land has part DLC. Again, it is observed that neither proper demarcation has been made for DLC forest nor location has been reflected in the report. So, it cannot be ascertained that mining was continuing illegally as regards DLC land is concerned.
7.	That the Tahasil Office of Jaleswar issued permit for mining up to 31.03.2023 as per the information obtained under RTI DT. 13.07.2023.	Based on the valid EC from SEIAA, Odisha and CTO from SPCB, the Tahasildar, Jaleswar issued quarry permit for mining upto 31.03.2023.
8.	That being concerned about the ecology of the area and the impact of illegal sand mining by the private respondent operating the Rayan Ramchandrapur lease area by disturbing the Subarnarekha River Ecology, endangering the safety of local villagers changing the course of river and obstructing the nature flow by making artificial sand bars/bounds with in river have complained before the Tahasildar time and again but all in vain.	Complied at Para-I
9.	Mechanical Mining:- It is humbly submitted that as per approved mining plan, the Mining is of Dry Pit and manual means by engaging 36 labours for mining and loading. However, the mining is done by engaging Earth Movers/Machines of different capacity which is strictly prohibited and not approved by any of the regulating authorities.	During the course of visit, it is found that the source is not in operation. It can only be ascertained if any geo tagged video clips are with the complainant.
10	After the letter of ADM Balasore dt. 24.03.2023 saying the Rayan Ramchandrapur sand quarry has not been recommended for inclusion in DSR and mining should not be allowed, however, the mining is still ongoing in the aforesaid source.	No such letter issued from ADM, Balasore
11	The DSR Balasore was finalized by members of DEIAA on 03.04.2023 wherein Rayan Ramchandrapur sand source was shown as DLC land and not included in the final list of sources in the District Survey Report.	Agreed
12	Illegally Hoarding and Stockpile:- The extracted sand is required to be sent	No hoarding of sand is found by the Committee

	<i>directly to the destination point and there is no provision for illegal hoarding and stockpile</i>	<i>during visit. Tahasildar, Jaleswar has also pointed that no such hoarding of sand was made by the lessee.</i>
13	<i>No green belt and plantation:- As per the approved mining plan there should be plantation of 50 saplings every year and 250 saplings in the 5 year lease period. Even after completion of 4 years of lease period, not even a single tree has been planted despite of commitment and budget allocation of Rs. 50 thousand per annum.</i>	<i>During field visit no plantation near by the source is found. But on enquiry the Tahasildar, Jaleswar informed the Committee that the lessee has been asked time and again to follow the terms and conditions of EC and Mining Plan strictly. In the meantime, the lessee has submitted compliance of EC conditions to SEIAA, Odisha Email on 02.10.2023 and mentioned already 150 no. of tree species planted at Ektali village under Rayanramachandra put G.P. and the proof of the photographs attached in the compliance report. It is the sole responsibility of the lessee to plant saplings every year as per EC conditions and submit compliance report on regular basis.</i>
14	<i>Sand Mining During Monsoon:- The Y form and photographs suggests the sand mining continued even during monsoon season from 15th June onwards which is prohibited as per mining plan EC condition and sustainable sand mining guideline.</i>	<i>On enquiry the Tahasildar informed that, respective sand mining is carried out for three days from 08.07.2023 to 10.07.2023 as because verifying field situation and then quarry operation stopped as there was water flow in some part of the source area.</i>
15	<i>All the Mining activities carried after 31th December is illegal as because there was no valid environmental Clearance after that.</i>	<i>It has been clarified by the SEIAA in their letter No. 4483, dt. 06.05.2022 that the Environmental Clearance issued vide letter No.801/SEIAA, dt. 09.03.2021 is valid up to lease period with the same terms and conditions under which environmental clearance was initially granted and for the same validity period subject to the satisfactory compliance to all the stipulated terms and conditions of EC along with specific conditions mentioned therein.</i>

		<i>Pending carrying put of the study & submission of the report, the clearance issued on dated 06.05.2019/22 was granted in an adhoc manner and is liable to be revoked after one year i.e. after 31st December, 2022 if satisfactory replenishment study report is not submitted. In compliance to the conditions, the project proponent has submitted the replenishment study report to the Chairman, SEIAA, Bhubaneswar on dated 09.02.2023.</i> <i>Thereafter, the SEIAA has issued amendment of Environmental Clearance (initially issued vide letter No. 801/SEIAA, dt. 09.03.2021) with respect to quantity of sand to be mined during the remaining lease period without any amendment with respect to validity of the EC.</i> <i>Similarly, CTO has been issued by SPCB, Balasore in respect of sand source vide letter No. 714/Con.-3318/2021 dated 31.03.2021 valid up to 31.03.2022. Then letter No. 943/CTO-3318/2021 dated 10.05.2022 valid up to 31.12.2022. Then another CTO has also issued vide letter No. 458/CTO-3318/2020-21 Dated 14.02.2023 valid up to 31.03.2023 with production of sand of quantity 2500 cum (out of 5500 cum. allowed during 2nd year) and lastly CTO was issued vide letter No. 1646/CTO-3318/2020-21 dated 05.06.2023 valid up to 31.03.2026 i.e. up to validity of the lease period. As such the sand mining of concerned sand source has been carried out as on 10.07.2023 against valid EC and CTO issued by the respective authorities.</i>
--	--	---

16	Similarly, grant of CTO in February, 2023 is also illegal as because there was no EC and in absence of valid Environmental Clearance no CTO should have been granted.	In this case it is mentioned that EC is valid upto the lease period with condition given that if replenishment study is not submitted stipulated time period the EC is liable to be revoked but the Authority has not revoked the EC in this case.
17	The issue of Y form and transit permit for sand mining post 31 st December, 2022 is wholly illegal and hence entire mining operation post 31 st December, 2022 till 10 th July 2023 is to be treated as illegal and environmental compensation and prosecution need to be initiated.	The “Y” form and transit permit for sand mining post 31 st December 2022 was issued basing on the valid E.C. & C.T.O. The “y” form and transit permit for sand mining post 31 st December, 2022 was issued on 21.02.2023 on receive the CTO of respective sand source from SPCB, Balasore vide letter No. 458/CTO-3318/2020-21 DATED 14.02.2023 and subsequent CTO issued therein. As such mining operation of the concerned sand source has been carried out on the basis of valid permissions of the concerned authority.
18	Replenishment Study not Conducted :- There has no replenishment study conducted as required as required after every monsoon season and assessment of extraction prior to monsoon were also not conducted by the Mining Department and thereby allowing the excess mining to be covered up and resulting in loss of revenue and deep sand mining.	The District Survey Report was approved by the SEIAA, Odisha, Bhubaneswar with a condition to submit replenishment study report of sand sources within a year or approval of DSR with be cancelled. Hence, it is suggested that the lessee will submit pre-monsoon and post monsoon Replenishment Study Report in compliance to the conditional approval of DSR.
19	Six months compliance report no submitted. The Lessee is required to submit the compliance report in every six months, however not a single compliance report has been submitted and uploaded in the public domain.	The lessee has submitted EC compliance to SEIAA, Odisha two times during amendment of EC and very recently i.e. 02.10.2023, the lessee has submitted EC compliance to SEIAA, Odisha Email and also mentioned that he has already planted 150nos. of tree species near Ektali village of Rayanramachandrapur G.P. with attaching photographs. As this a case

		for which EC obtained from SEIAA, Odisha in offline mode so, there is no provision to upload EC compliance report in Parivesh Potal.
20	No mentioning of compliance of conditions of CTO by the Regional Office SPCB, Balasore. Considering the threat to the embankment, loss of Revenue, violation of Mining Plan and environmental Clearance, damage to the riparian ecology, the undersigned urges the authority to immediately enquire into the matter and take appropriate action against the Tahasildar and Revenue staff for dereliction in duty and apparent corruption and involvement in revenue loss to the exchequer by conducting the ground assessment of sand mining on weekly basis and obtaining the satellite information from ORSSC. It is submitted that as per Govt. of Odisha Revenue & Disaster Management Department letter Dt. 26.04.2019, the illegal sand extraction is required to be Tahasildar within 72 hours of the complaint and same has not been followed here indicating the connivance of the authorities with the Lessee.	The Tahasil Level squad, the Sub-Division Level Squad and District Level Squad have been visited the sources regularly and penalty have been imposed against the illegal sand lifters if found.
21	Violation Of Environmental Clearance & CTO Conditions:-	During the operation period of 1 st year quantity of 5500 cum and during 2 nd year quantity of 5500 cum and in 3 rd year till date 876 cum Material permitted & extracted as per 'Y' form.
22	No river bed rehabilitation plan submitted as per EC conditions	The competent Authority is asked to comply the matter time to time.
23	EC condition No. 27 and 28 clearly specifies that no satisfactory implementation of the conditions and failure to comply any of the conditions will lead to suspension of EC letter, Revocation/ Withdrawal of EC letter and proceedings under EP Act, 1986.	No such compliance is available at Tahasil level.
24	The mechanical mining, in stream mining, diversion of river flow and vehicles carrying the sand are not covered with tarpaulin and being over loaded and hereby causing air/dust pollution. It is humbly submitted that the local people have to face many inconveniences because of uncovered vehicles carrying the sand from the mining site.	During joint visit the committee was observed that the quarry is not in operation and also in the Google earth map it appears that no excavator was used for mining activity. So mechanical mining not envisaged but cannot be ruled out. It is mention here that at the time of joint visit, the

		source area was water logged.
25	<i>It is further submitted there has been no plantation activity carried out by the private Respondent along the roadside where their vehicles are playing.</i>	<i>As stated against Point No. 13.</i>
26	<i>That after issuing EC and CTO, the State Pollution Control Board did nothing to ensure if the conditions in the consent to operate were complied in letter and spirit. The Authority have also not acted upon the complaint petition of the applicant. The violations continue unabated and no action have been taken by the Pollution Control Board to revoke the consent to operate and ensure that the mining activity stops.</i>	<i>Nothing to comply.</i>
27	<i>Mining should be restricted to single shift only that is for 8 hours (7 A.M. TO 12 Noon and 2 P.M. to 5 P.M.) however, it takes place all throughout day and night using alternative excavator.</i>	<i>During visit by the team the quarry was non operational. Operation of quarry all throughout the day and night was not allowed by the squads as they are quite vigilant in the matter.</i>
28	<i>Lessee undertook for implementation of Mining Plan and will be strictly held responsible for any deviation but blatantly violating in daylight with full impunity.</i>	<i>The Committee suggests for taking necessary action by the authority concerned if violation of provisions proved.</i>
29	<i>That the State Government is losing huge revenue because of the unaccounted illegal mining. At present one tractor load sand is sold around Rs. 800, while tipper load sand is sold at Rs. 4000 and 10 wheelers load is sold at Rs. 6000 in the market.</i>	<i>No comments</i>
	VIONATION AND NON-IMPLEMENTATION OF HON'BLE ORDER	
30	<i>That Hon'ble Tribunal O.A. No. 173/2018/EZ has restrained the mechanical sand mining in Subarnarekha River and the present case is of same river at a different site. In order dt. 04.09.2018, Hon'ble Tribunal directed the Committee to get the assessment done through Indian Council of Forestry Research and Education , Dehradun of the ecological damage on account of illegal mining by incorporating the following components:- a) Cost of river bed material b) Cost of ecological restoration c) Net present value of the future ecosystem services foregone.</i>	<i>The lessee should follow the Enforcement & Monitoring Guideline for sand Mining 2020 of MoEF & CC, Govt. Of India, EC and CTO conditions during operation of quarry.</i>
31	<i>The Hon'ble Apex Court in Deepak</i>	<i>No Comments.</i>

	<i>Kumar case has observed that “ We are of the considered view that it is highly necessary to have an effective framework of Mining Plan which will be taken care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand Mining, it may be noted, may have an adverse effect no Bio-diversity as loss of habitat caused by sand mining will affect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolate islands. We find that, taking note of those technical, scientific and environmental matters, MoEF & CC, Government of India, issued various recommendations in March, 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to inculcating the spirit of Articles 48AS, Article 51A (g) read with Article 21 of the Constitution.</i>	
32	<i>It has been further submitted that there has been no monitoring by any of the respondents whether the conditions are being complied or not and that allows the private respondent to violate the norms in board daylight.</i>	<i>Regular enforcement was made and some vehicles also detected playing without valid transit pass on that locality accordingly required royalty and Environmental compensation along with penalty was realized.</i>

2.0 **Over all observations**

The Committee members observed the following at the time of inspection:

- i. No mining activity was going on and there were no machines found in the mine lease area.*
- ii. The free flow of the river water has not been changed as observed.*
- iii. No sign of damage in river bank observed.*

3.0 **Recommendations:**

- i. There is lot of space in the lease area as half of lease area is converted to River Bank covered with wild grass and that may be use for plantation after due permission.*
- ii. As per change of river course the mining plan may be modified accordingly and then allowed sand extraction.*
- iii. The project proponent may be asked to submit replenishment study report continuously three years as per LC stipulation.*
- iv. The lessee has submitted LC compliance to SEIAA email on 02.10.2023 and mentioned that plantation was made at Ektali Village of Rayaramachandrapur G.P. The lessee shall submit EC compliance on regular basis to the competent authority for taking further action by both SEIAA and SPCB.”*

9. The Respondent No.8, Private Respondent, has filed affidavit dated 04.12.2023 alleging therein that the Applicant-Abani Kumar Sahoo has himself been a repeated offender who has committed theft of sand regularly and there are criminal cases lodged against him at Jaleswar Police Station being Jaleswar P.S. Case No.129 of 2022 for commission of offence under Section 379/411/34 of IPC read with Section 51 (I) (i) of the Odisha Minor Mineral Concession Rules, 2004 and P.S. Case No.390 of 2023 for commission of offence under Section 379/294/506/34 of IPC.
10. It is stated that the Respondent No.8 has been awarded the sand mining lease and Environmental Clearance has also been granted in his favour on 09.03.2021 on the basis of an order passed by the Hon'ble High Court of Orissa dated 08.12.2020 in I.A. No.9911/2020 arising out of W.P. (C) No.16117/2020. It is also stated that the matter is still sub-judice before the Hon'ble High Court.
11. It is further stated that Environmental Clearance will be revoked if there is no Replenishment Study furnished by the Respondent and accordingly, amended Environmental Clearance was issued on 28.04.2023 with an extraction limit of 4283.5 m³ per annum for remaining period of lease.
12. It is stated that Consent to Operate (CTO) and Environmental Clearance granted by the Competent Authority for the remaining lease period has been extended up to 31.05.2026 in favour of the Respondent No.8. It is also stated that the Respondent No.8 is continuing to operate the sand mine quarry in question in pursuance of the order dated 08.12.2020 passed by the Hon'ble High Court in W.P. (C) No.16117/2020 and I.A. No.9911/2020. The

Respondent No.8 has not filed the current status of the W.P. (C) No.16117/2020 and I.A. No.9911/2020. The Respondent No.8 has also not indicated as to what was the issue in W.P. (C) No.16117/2020 and I.A. No.9911/2020 pending before the Hon'ble High Court.

13. We also find that the issue in Appeal No.03/2021/EZ is quite different from that of the present Original Application.
14. The State Environment Impact Assessment Authority (SEIAA), Odisha, has filed affidavit dated 05.12.2023 stating therein that during the visit of the Joint Committee, it was found that the sand source is not in operation as the river is over flowing the lease area; there is no adverse impact on the nearest Village-Rayanamchandrapur due to the mining of sand from the Rayanamachandrapur River sand bed which is located at a distance of more than 1 KM from the sand bed lease area.
15. It is stated that Environmental Clearance was granted by SEIAA, Odisha, on 13.07.2017 with the condition that the same shall be valid for the lease period and shall be co-terminus with the expiry of the lease period and therefore other operating condition that the Environmental Clearance is granted on the condition that the yearly extraction of sand shall remain within 5500 m³ and in case there is greater volume of sand available in a year due to large scale replenishment in the previous year's rainy season, a case can be made out by the Tahasildar at the beginning of the year before SEIAA with details. It is also stated that the Environmental Clearance was thereafter transferred in favour of the Project Proponent-Respondent No.8 on 09.03.2021 with an additional stipulation that the Project Proponent has to carry out study of

annual replenishment rate of sand by engaging appropriate consultant and by collecting pre-monsoon and post-monsoon data from the field to know the quantum of volume of sand deposited/replenished and extracted in the mining lease area.

16. It was provided that the replenishment rate of sand may be calculated by using the volumetric survey method or any other method laid down in the Enforcement and Monitoring Guidelines for Sand Mining, 2020 issued by the MoEF&CC, Govt. of India. It was provided that the finding of the study shall be submitted to SEIAA to assess the rate of replenishment of mined out sand in the lease area; pending carrying out of the study and submission of the report, clearance was granted on adhoc basis and liable to be revoked after one year if satisfactory Replenishment Study Report is not submitted. The Project Proponent was required to carry out the rate of Replenishment Study and submit its Report by 14.10.2021.
17. It is stated that in pursuance of the conditions laid down in the Environmental Clearance, the Project Proponent-Respondent No.8 submitted the Replenishment Study Report to SEIAA on 08.03.2022 by email but some proposals were pending before the State Level Expert Appraisal Committee ('SEAC' for short), Odisha and the SEAC had not finalized the detailed method and procedure for Replenishment Study therefore, the Project Proponent proposed the production quantity of 5500 m³ based on the Replenishment Study as was mentioned in the previous Environmental Clearance. The SEIAA, Odisha considered the matter and allowed Environmental Clearance vide order dated 06.05.2022 with a condition that pending carrying out of Replenishment Study and submission of the report, the Environmental Clearance was being

granted in an adhoc manner which was liable to be revoked after one year i.e. after 31.12.2022 if satisfactory Replenishment Study Report is not submitted.

18. It is also stated that thereafter, the Project Proponent submitted application for amendment of Environmental Clearance vide application dated 21.02.2023 based on the rate of Replenishment Study Report through Odisha Space Application Centre (ORSAC); the SEAC considered the matter in its meeting held on 27.03.2023 and the application of the Respondent No.8 for grant of amended Environmental Clearance of Rayanramchandrapur was allowed on 28.04.2023 with a production capacity of 4283.5 m³/annum for the remaining period of the lease. It is further stated that as per Committee Report there is no forest growth in the lease area and the rest half of the lease area was covered with grass and looks like a river bank. It is stated that in the DLC Report, it is mentioned that total lease area is 26.05 Ha. out of which only 5.0 Ha. is coming under DLC land and the quarry allowed for sand mining 8.247 Ha.; proper demarcation or location of forest growth has not been mentioned in the DLC Report of 1997 and without proper demarcation, it cannot be said that sand mining in Rayanramchandrapur sand source is coming under DLC land and is therefore, illegal.
19. The Divisional Forest Officer, Balasore Wildlife Division, has filed affidavit dated 13.03.2024 and it is stated that as per directions of the Hon'ble Supreme Court in *W.P. (C) No.202/1995, T.N. Godavarman Thirumulkpad Vs. Union of India & Ors.*, District Level Committees (DLCs) for each district under Chairmanship of the Collector, was constituted by the Forest & Environment

Department during 1997 to identify all forest areas under administrative control of Forest & Environment Department/Revenue Department and Forest land/plantations belonging to private persons.

20. It is stated that the DLC Report of Balasore District was prepared and finalized on 29.08.1997. It is also stated that the erstwhile Social Forestry Division, Balasore in the year 1988-89 raised plantation over 5.00 Hectares in Sabik Plot No.2728 of Mouza-Rayaramchandrapur under Jaleswar Tahasil. Thereafter, on 15.02.1993, the Forest & Environment Department, Government of Odisha, issued a notification under Section 30 of the Orissa Forest Act, 1972 notifying Rayaramchandrapur as Village Forest referring to the above Sabik plot admeasuring 5.4 Hectares. It is further stated that the area of 5 Hectares of DLC forest land is included in the area of 5.4 Hectares which has been notified as Village Forest.
21. The case of the State Respondents categorically is that on 07.03.2023, an inspection of the site was carried out to ascertain as to whether there is presence of DLC forest land in the lease granted to the Respondent No.8 in the lease hold area of Rayaramchandrapur Sand Quarry, in the presence of Revenue, Forest and Mining Officials. It is stated that on inspection, it was ascertained that only 5 Hectares out of 26.01 Hectares of Hal Plot No.2824, corresponding to Sabik Plot No.2728 is DLC Forest land but the lease hold area i.e. the land in question does not come within the aforesaid 5 Hectares of DLC Forest land which is ascertained through geo referencing in Geographic Information System which has been arrived at after superimposition of the geo

coordinates of the sand quarry boundaries over the Hal Sabik Map of the village concerned. It is also stated that the DLC forest area and sand quarry are located in the same plot but the two areas do not overlap.

22. It is stated that Sabik Plot No.2728 of Mouza Rayanramchandrapur under Jaleswar Tahasil is corresponding to Hal Plot No.2824, Khata No.1070, Area-Ac.64.38 dec. or 26.01 Hectares, Kisam-Nadi under Rayanramchandrapur Mouza, Tahasil Jaleswar and out of the 26.01 Hectares, 5.40 Hectares has been notified as Rayanramchandrapur Village Forest and 8.5 Hectares areas has been leased out for sand quarry operation.
23. Along with this affidavit, a site inspection report has been filed which reads as under:-

“Site Inspection & Ground Truthing Report of Revenue, Forest & Mining Officials demarcating Rayanramchandraput Village Forest vis-à-vis Rayanramachandrapur Sand Quarry

SYNOPSIS:

As per direction of the Hon’ble Supreme Court of India in W.P.(C) No. 202/1995 (T.N. Godavarman Thirumulkpad Vrs. Union of India), District Level Committees (DLCs) for each district under chairmanship of the Collector were constituted by Forest & Environment Department during 1997 to identify all forest areas under administrative control of Forest & Environment Department/ Revenue Department and Forest land / plantations belonging to private persons.

After necessary scrutiny, the DLC Report of Balasore district was prepared and attended its finality on dated 29.08.1997 under signature of the concerned authorities together with Collector & District Magistrate, Balasore and Chairman of District Level Committee. After further scrutiny of the DLC Reports by the State Level Committee, the details of forest land were submitted before the Hon’ble Apex Court in shape of an affidavit.

On perusal of the DLC Report of Balasore District, it has been ascertained that the erstwhile Social Forestry Division, Balasore in the year 1988-89 had raised plantation over 05.00 hectare in Sabik Plot No. 2728 of Mouza : Rayanramechandrapur under Jaleswar Tahasil.

Further, on perusal of the Village Forest Notifications of Balasore District, it has been ascertained that the Rayanramchandapur Village Forest referring above Sabik reference Forest & Environment Department, Govt. of Odisha with following description.

<i>Sl. No.</i>	<i>District</i>	<i>Tahasil</i>	<i>Village or Mouza</i>	<i>Gram Panchayat</i>	<i>Khata No.</i>	<i>Plot No.</i>	<i>Area in hectare</i>	<i>Local limits of boundary</i>
05	Balasore	Jaleswar	Rayarampur	Ch. Rayarampur	378	2728	5.4	N- Anabidi S-River E-Anabadi W-Anabadi

On further perusal of the available records vis-à-vis DLC Forest List of Balasore district, it has been ascertained that the above Sabik Plot had also been included in the DLC Forest Report of Balasore District prepared in the year 1997 & categorized as DLC Forest, where the survival percentage was “NIL” at that time.

The Sabik Plot No. 2728 of Mouza: Rayanramchandrapur under Jaleswar Tahasil is corresponding to Hal Plot No. 2824, Khata No. 1070, Area : Ac. 64.38 dec. or 26.01 hectare, Kissam: Nadi under Rayanramchandrapur Mouza of Jaleswar Tahasil. Out of the 26.01 hectare, 5.40 hectare has been notified as Rayanramchandrapur Village Forest and 8.5 hectare area has been leased out for sand quarry operation.

VERIFICATION PROCESS & FINDINGS:

To assess the boundary demarcation referring the notification of the Rayanramchandrapur Village Forest & approved Mining Plan of Rayanramchandrapur Sand Quarry, referring Letter No. 8889/Tz. Dated 28.08.2023 read with Letter No. 1839/Tz. Dated 06.03.2024 of the Addl. District Magistrate, O/o the Collector & District Magistrate, Balasore, a Site Inspection & Ground Truthing has been made in presence of the following Revenue, Forest & Mining officials of Balasore District of on dated 07.03.2024 –AN.

- 1. Prathamesh Arvind Rajeshirke, IAS, Sub-Collector, Balasore*
- 2. Sushri Sasmita Sahoo, OFS-I (jb), Asst. Conservator of Forest, Balasore Wild life Division, Balasore.*
- 3. Santoshu Prava Sethy, Mining Officer, Balasore.*
- 4. Avay Kumar Swain, Additional Tahasildar, Jaleswar*
- 5. Jayshree Murmu, Range Officer, Jaleswar Wildlife Range.*
- 6. Debanjan Mahanty, Revenue Inspector, Jamalpur, Jaleswar Tahasil*
- 7. Minarani Behera, Forester, Jaleswar wildlife Section*

As preliminary exercise, necessary digitization of Sabik Plot No. 2728 of Mouza Rayanramchandrapur under Jaleswar Tahasil corresponding to Hal Plot No. 2824 of Mouza Rayanramchandrapur

under Jaleswar Tahasil vis-à-vis proposed Sand Quarry had been made and referred during ground truthing.

The verification team conducted a thorough examination of the boundary between the Rayanramchandrapur VF and the sand quarry vis-à-vis Sabik & Hal plot references. The GPS coordinates were verified accurately to delineate the boundaries.

INFERENCE

After through analysis, the boundary of Rayanramechandrapur VF has been identified referring its notification, Sabik & Hal boundary and current field position.

The subsequently prepared digitized map of Rayanramchandrapur VF and proposed Sand Quarry delineating Hal & Sabik Plot boundary together with geo-referred coordinates in GIS domain, duly signed by all concerned officials attended the joint verification is attached herewith with this report for perusal, finalization & acceptance.”

24. The Respondent No.8, Private Respondent, has filed further affidavit dated 02.09.2024 denying the stand of the Applicant in his additional affidavit and rejoinder affidavit and it is stated that the Tahasildar, Jaleswawr vide Touze Misc. Case No.186/2022-23, 188/2022-23, 189/2022-23 and 190/2022-23 had issued demand notices dated 12.09.2023, imposing fine against the Respondent No.8 for illegal stacking of sand. The Respondent No.8 challenged the validity of the notices before the Hon’ble High Court of Orissa vide W.P. (C) No.32637/2023, W.P. (C) No.32636/2023, W.P. (C) No.32634/2023 & W.P. (C) No.32451/2023 and the demand notices have been stayed by the Hon’ble High Court which is continuing till date. It is also stated that the Respondent No.8 filed W.P. (C) No.5466/2024 before the Hon’ble High Court of Orissa seeking appropriate direction to the Deputy Director of Mines, Bhadrak and Mining Officer, Balasore, to issue Transit Pass in Form-Y under the Rule 58 (1) of Orissa Minor Mineral Concession Rules for operating the sand source for which he possesses the

statutory requirements for operation and extraction of minor minerals and has a valid lease up to 31.03.2026.

25. It is stated that the Hon'ble High Court vide its order dated 12.03.2024 disposed of the said writ petition directing the Mining Officer, Balasore, to consider and decide the representation of the petitioner as early as possible time. Copy of the said order dated 12.03.2024 has been filed at page no.394-395 of the paper book, and we may note that the Hon'ble High Court has not expressed any opinion upon the merits of the case. Order dated 12.03.2024 passed by the Hon'ble High Court of Orissa at Cuttack reads as under:-

“ORDER 12.03.2024

This matter is taken up through hybrid mode.

2. Heard.

3. The Petitioner has filed this writ petition with the following prayer:

“Under the above circumstances, it is therefore humbly prayed that this Hon'ble court may be graciously pleased to direct the Deputy Director of Mines, Bhadrak and Mining Officer, Balasore to issue transit pass in nature of Form-Y under the Rule 58(1) of OMCC Rules to the petitioner for operating the sand source for which the petitioner possesses the statutory requirements for operation & extraction of Minor Minerals and has a valid lease up to 31.03.2026;

And/or pass any others appropriate writ/writs, order/orders and direction/directions in the fitness of the case.”

4. In course of hearing, learned counsel appearing for the Petitioner states that the Petitioner has already made representation before the Opposite Party No.6 vide Annexures-14 & 15, and the same may be directed to be disposed of

within a stipulated time, to which learned Counsel for the State has no objection.

5. As agreed by learned counsel for the parties and after going through the records, this Court, without expressing any opinion on the merits of the case, disposes of the Writ Petition directing Opposite Party No.6 to consider and dispose of the representation filed by the Petitioner vide Annexures-14 & 15 and pass appropriate order as early as possible within a period of three months from the date of production of certified copy of this order.”

26. The Applicant has filed rejoinder affidavit dated 11.03.2024 alleging that the Environmental Clearance granted by SEIAA, Odisha, being adhoc was liable to be revoked after one year i.e. 31.12.2022. It is also alleged that the Consent to Operate (CTO) dated 14.02.2023 was valid up to 31.03.2023 and no Consent to Operate was in force from 01.01.2023 to 14.02.2023. It is further alleged that there was no valid Environmental Clearance from 01.01.2023 till 28.04.2023 and, therefore, all mining activity from 01.01.2023 till 28.04.2023 was without valid Environmental Clearance.
27. It is alleged that there has been no subplotting of Plot No.2824 hence the entire plot is to be treated as DLC Forest land and any subsequent demarcation to the extent of 5 Hectares cannot make the plot, part non-forest. It is also alleged that the Respondent No.8 has continued mining from 08.07.2023 till 10.07.2023 which is monsoon season and during which period mining is prohibited and, therefore, any mining activity during this period constitutes violations of the Sustainable Sand Mining Management Guidelines, 2020 and the averment of the Respondents that mining operations stopped from 11.07.2023 itself confirms that mining had continued till 11.07.2023; it is also alleged that sand mining source

Rayanramchandrapur is not mentioned in the District Survey Report and, therefore, no mining can be allowed in the absence of a District Survey Report validly approved by SEIAA, Odisha.

28. In his additional affidavit dated 10.07.2024 the Applicant has further stated that the Tahasildar, Jaleswar in his demand notice dated 12.05.2022 has alleged that the Respondent No.8 has deposited Rs.60,000/- (Rupees Sixty thousand only) as fine and that mining operation was carried out using excavator machine which is not allowed for the purpose and further Rs.2,50,000/- (Rupees Two lakhs fifty thousand only) has been imposed by way of penalty.
29. The Applicant has next relied upon the judgment of this Tribunal dated 16.07.2024 filed in *Appeal No.18/2023/EZ, Haripada Manna Vs. State of Odisha & Ors.*, wherein the issue was with regard to District Survey Report (DSR) of District Balasore for mining of River Sand, Stone, Morrum, Brick Earth for the period of 2023-28. The challenge in the Appeal was on the ground that the said DSR was an interim report and the SEIAA, Odisha in the order dated 26.04.2023 (under challenge in the aforesaid Appeal) had, itself 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 is not submitted by 31.05.2024. The Tribunal considered the matter and observed that in view of the letter of the Collector & District Magistrate, Balasore, dated 30.05.2024 since no Replenishment Study has been carried out in District Balasore, the impugned order (order impugned in the Appeal) of approval of the DSR is liable for revocation and cannot be acted upon and no sand mining can be

carried out in the stretch of the Subarnarekha River passing through the District Balasore. Paragraphs 15, 16, 17, 18, 19 and 20 of the said judgment read as under:-

“xxx.....xxx.....xxx.....

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

<i>Impact Category</i>	<i>S. No.</i>	<i>Environmental Conditions</i>
.....		
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 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 method of mining shall be preferred over any other method.”</i>

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.”

30. The District Magistrate, Balasore in his affidavit dated 10.10.2023 has in paragraph-14 of the affidavit admitted that the DSR was approved by SEIAA, Odisha, with the condition to submit Replenishment Study Report of sand sources within one year or approval of the District Survey Report will be cancelled. However, thereafter, nothing has been stated as to whether the

Replenishment Study has been submitted and duly considered by State Expert Appraisal Committee and approved by SEIAA, Odisha. In Haripad Manna case (supra) this Tribunal has already recorded a finding that the District Collector, Balasore, has in his own letter dated 30.05.2024 admitted that no Replenishment Study has been carried out with regard to the sand sources along the stretch of the Subarnarekha River passing through the District Balasore. In the circumstances, we hold that no Environmental Clearance could have been granted by SEIAA, Odisha, to the Respondent No.8 in 2021 in the absence of a validity approved District Survey Report and, therefore, mining of sand from Sand Sairat Sources in the absence of a valid District Survey Report would be absolutely illegal and in violation of the Sustainable Sand Mining Guidelines, 2016 and Enforcement and Monitoring Guidelines, for Sand Mining, 2020. However, having said that we are of the view that the fault lay exclusively at the door of SEIAA, Odisha, which has acted in gross ignorance of and in gross violation of the Sand Mining Guidelines, 2016 & 2020 in granting Environmental Clearance to the Respondent No.8 and, therefore, in the circumstances, the Respondent No.8 cannot be held liable for having 'illegally' mined sand from the Rayanramchandrapur sand source on the basis of an illegally granted Environmental Clearance. It has not been alleged by the Applicant nor has it been established from the documents on record that the Respondent No.8 was acting in collusion with the Respondent-SEIAA, Odisha, by misrepresentation of documents, in obtaining Environmental Clearance from SEIAA, Odisha in absence of a valid District Survey Report (DSR) for District Balasore.

31. The Applicant has also alleged that as per the affidavit of the SEIAA, Odisha, the total lease area is 26.05 Hectares of which 5.0 Hectares is stated to be falling under DLC land and quarrying has been allowed over an area of 8.247 Hectares and once the entire lease area is held to be falling in DLC land, the area for which quarrying has been allowed would also constitute part of the DLC land. We are not convinced with the submission of the learned Counsel for the reason that in the affidavit of the Collector, Balasore, it has been categorically stated that the total lease area is only 8.247 Hectares and that the total area of Plot No.2824 is 26.05 Hectares and out of the said area only 5.0 Hectares is falling under the DLC Forest land. The Relevant extract of paragraph-8 of the affidavit of the District Magistrate, Balasore, is reproduced herein under:-

“xxxxx

xxxxxx

xxxxx

In the DLC report, it is mentioned that out of total area of Plot No.2824 is 26.05 ha., and out of the said area, only 5.0 ha. area is coming under the DLC forest land.”

32. In fact even in the affidavit of the Divisional Forest Officer, Balasore, dated 13.03.2024 the categorical stand of the Forest Department is that on an inspection of the site to ascertain the presence of DLC Forest land in the lease hold area of Rayanramchandrapur Sand Quarry and inspection was carried out on 07.03.2023 by the Revenue, Forest and Mining Officials and on inspection, it was ascertained that only 5.0 Hectares out of 26.01 Hectares of Hal Plot No.2824 corresponding to Sabik Plot No.2728 is DLC Forest land and the lease hold area of the sand quarry does not fall within the 5.0 Hectares of DLC Forest land which was ascertained through geo referencing in Geographic Information

System. It is further stated that the factual scenario was arrived at after superimposition of the geo coordinates of the sand quarry boundaries over the Hal Sabik Map of the village concerned. The further categorical stand of the Forest Department in its affidavit is that out of the total area of 26.01 Hectares an area of 5.40 Hectares has been notified as Rayanramchandrapur Village Forest and an area of 8.5 Hectares has been leased out for sand quarry operation.

33. Merely because the total area of the Sabik Plot No.2728 of Mouza Rayanramchandrapur under Jaleswar Tahasil is corresponding to Hal Plot No.2824, Khata No.1070, area Ac. 64.38 dec./26.01 Hectares, Kisam-Nadi under Rayanramchandrapur Mouza of Jaleswar Tahasil, it does not imply that part of the said plot amounting to area 5.0 Hectares cannot form part of DLC Forest land unless subplotting of the entire plot is done. The affidavit of the Divisional Forest Officer, Balasore reveals that the erstwhile Social Forestry Division, Balasore in the year 1988-89 raised plantation over 5.00 Hectares in Sabik Plot No.2728 of Mouza-Rayanramchandrapur under Jaleswar Tahasil. Thereafter, on 15.02.1993, the Forest & Environment Department, Government of Odisha, issued a notification under Section 30 of the Orissa Forest Act, 1972 notifying Rayanramchandrapur as Village Forest referring to the above Sabik plot admeasuring 5.4 Hectares. Thus, the area under plantation has been implicitly demarcated. The submission of the learned Counsel for the Applicant that without subplotting, the total area of 26.01 Hectares should be deemed to be DLC Forest is wholly misconceived and is rejected.
34. Having said that the question that the Respondent No.8 was initially granted Environmental Clearance which was adhoc subject

to submission of Replenishment Study and which was subsequently submitted by him, does not require any opinion from this Tribunal since we have already held that there was no valid DSR existing for the District Balasore as held by this Tribunal in the case Haripada Manna (supra).

35. However, even though the Respondent No.8 may not be guilty of illegal mining of sand from Sand Sairat Source Rayanramchandrapur, Tahasil Jaleswar, District Balasore, on the ground that the Environmental Clearance granted to him was illegally granted by SEIAA, Odisha, but the fact remains that even assuming that he was carrying on mining activity under an Environmental Clearance, he has carried out mining operations during the monsoon period which is prohibited under the Sand Mining Guidelines, 2016 & 2020 and, therefore, he would be liable for payment of Environmental Compensation. We, therefore, direct SEIAA, Odisha, to compute Environmental Compensation in this regard strictly as per law giving the Respondent No.8 an opportunity of being heard against the amount so computed and if the Respondent No.8 has any grievance in respect of any computation of Environmental Clearance by SEIAA, Odisha, in this regard, he may avail the legal remedies available to him under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.
36. We, therefore, dispose of this Original Application with a direction that no sand mining shall be carried out in the Rayanramchandrapur Sand Source along the Subarnarekha River in the absence of a District Survey Report in District Balasore duly approved by SEIAA, Odisha.

37. The SEIAA, Odisha, shall take necessary action to pass order for revocation of the Environmental Clearance granted by it illegally in favour of Respondent No.8 forthwith. It is further directed that in case sand mining operation is still being carried out in Rayanramchandrapur sand quarry in question, the SEIAA, Odisha, shall also take steps to ensure that such sand mining operation is ceased forthwith. It is also provided that our order hereinabove shall not come in the way of the Respondents initiating criminal proceedings against the Respondent No.8 if any, as per law.
38. Interlocutory Applications, if any, stand disposed of accordingly.
39. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

September 04, 2024,
Original Application No.84/2023/EZ
MN