

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

(Under Section 19(4) (f) of National Green Tribunal Act, 2010)

MISCELLANEOUS APPLICATION NO. OF 2024

In

Original Application No.99/2020/EZ

(I.A No.102/2020/EZ)

TRILOCHAN DAS

.....APPLICANT

-VERSUS-

BHOLANATH PADHI & ORS.

.....RESPONDENTS

PAPER BOOK

FOR INDEX PLEASE SEE INSIDE



ANANYA PRADHAN
ADVOCATE

ENR. NO. O-599/2020

MOB:- 8917222517

Email:palit_subir02@yahoo.com

CDA, Sector-8, Cuttack, Odisha

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ANANYA PRADHAN
ADVOCATE
ENR. NO. O-599/2020
MOB:- 8917222517
Email: palit_subir02@yahoo.com
CDA, Sector-8, Cuttack, Odisha

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-V E R S U S-

BHOLANATH PADHI & ORS.

.....RESPONDENTS

BY THE RESPONDENT NO.13/ APPLICANT THROUGH



ANANYA PRADHAN
ADVOCATE

ENR. NO. O-599/2020

MOB:-8917222517

Email:palit_subir02@yahoo.com

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TRILOCHAN DASAPPLICANT

-VERSUS-

BHOLANATH PADHI & ORS.RESPONDENTS

SYNOPSIS

That, the applicant herein begs to prefer this application, therein making a prayer that this Hon'ble Tribunal may graciously be pleased to declare the order dated 10.05.2022 erroneous, arbitrary, illegal and whimsical, thereby recalling the order dated 10.05.2022 passed in I.A No.102/2020/EZ arising out of O.A No.99/2020/EZ or in the alternative, granting an additional time period of six months to comply with the order dated 10.05.2022 passed by this learned Tribunal in I.A No.102/2020/EZ arising out of O.A No.99/2020/EZ.

BY THE RESPONDENT NO.13/ APPLICANT THROUGH

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ENR. NO. O-599/2020
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**BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN
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TRILOCHAN DAS

.....APPLICANT

-V E R S U S-

BHOLANATH PADHI & ORS.

.....RESPONDENTS

LIST OF DATES

S.L No.	Dates	Events
1	26.11.2015 to 31.03.2020	A "long term lease for sand quarry" was executed between the Respondent No.13 and the Government of Odisha for a period of 5 years, i.e., w.e.f. 26.11.2015 till 31.03.2020, in respect of Mahammad Nagar Patana (Gha) Sand Quarry.
2	02.01.2016 to 31.03.2020	Similarly, another lease agreement was also executed between the Respondent No.13 and the Government of Odisha, in respect of Mahammad Nagar Patana (Kha) Sand Quarry. The said lease was also valid for 5 years. i.e., w.e.f. 02.01.2016 till 31.03.2020

3	21.10.2016	The State Pollution Control Board, Odisha (Respondent No.5) granted 'Consent to Operate' in respect of both quarries, i.e., Mahammad Nagar Patana (Gha) Sand Quarry and Mahammad Nagar Patna (Kha) Sand Quarry.
4	30.03.2019	On the basis of findings of report by the mining officer, the Tehsildar cum competent authority imposed a penalty of 29,08,484 (Kha) for the excess amount of 12470Cum. and a penalty of 18,83,735 (Gha) for the excess amount of 9690Cum.
5	13.01.2021	The penalty was imposed by the Tehsildar-cum-Competent Authority amounting to Rs.6,92,810/- (Rupees Six Lakhs Ninety Two Thousand Eight Hundred Ten Only).
6	19.02.2021	The Tehsildar collected Rs.1,63,330/- (One Lakhs Sixty Three Thousand Three Hundred Thirty only) as royalty and penalty.
7	24.07.2021	The above penalty amount was subsequently deposited by the Respondent No.13.
8	07.12.2021	The SEIAA through its affidavit stated that in adherence to 'Polluter Pays Principle' a fine of Rs.81,10,458.45/- has been imposed on Respondent No.12 and 13. This fine is to be collectively borne by the lessees, i.e., Respondent No.12 and 13.
9	10.05.2022	The learned National Green Tribunal gave its assent to the compensation imposed by SEIAA, with a direction to Respondent No.12 and 13 for

3	21.10.2016	The State Pollution Control Board, Odisha (Respondent No.5) granted 'Consent to Operate' in respect of both quarries, i.e., Mahammad Nagar Patana (Gha) Sand Quarry and Mahammad Nagar Patna (Kha) Sand Quarry.
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7	24.07.2021	The above penalty amount was subsequently deposited by the Respondent No.13.
8	07.12.2021	The SEIAA through its affidavit stated that in adherence to 'Polluter Pays Principle' a fine of Rs.81,10,458.45/- has been imposed on Respondent No.12 and 13. This fine is to be collectively borne by the lessees, i.e., Respondent No.12 and 13.
9	10.05.2022	The learned National Green Tribunal gave its assent to the compensation imposed by SEIAA, with a direction to Respondent No.12 and 13 for

		depositing interim compensation of Rs.50,00,000/- with SPCB within one month subject to final determination of the environmental compensation by the Competent Authority.
10	18.03.2024	The Respondent No.13 approached the Hon'ble Apex Court by way of a Special Leave Application, vide Civil Appeal Diary No. 37688 of 2023. The Hon'ble Supreme Court disposed the application as it was not inclined to interfere with the learned National Green Tribunal's order.
11	12.05.2024	Hence, this Miscellaneous Application.

BY THE RESPONDENT NO.13/ APPLICANT THROUGH

l

ANANYA PRADHAN
ADVOCATE

ENR. NO. O-599/2020

MOB:- 8917222517

Email:palit_subir02@yahoo.com

CDA, Sector-8, Cuttack, Odisha



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

(Under Section 19(4)(f) of National Green Tribunal Act, 2010)

MISCELLANEOUS APPLICATION NO. OF 2024

In

Original Application No.99/2020/EZ

(I.A No.102/2020/EZ)

BETWEEN

1. Mr. Trilochan Das, Lessee (Mahammad Nagar Patna KHA, GHA Sand
Quaries, Under Jaleswar Tahasil, Balasore),
At/P.O. Mahammad Nagar Patna, Jaleswar,
Dist. Balasore-756032

.....APPLICANT IN M.A

-VERSUS-

1. Bholanath Padhi,
aged about 29 years, S/o Late Purna Chandra Padhi,
At/P.O.-Mahammad Nagar, Patna,
P.S. Jaleswar, Dist. Balasore
2. Kali Charan Chand, aged about 27 years,
S/o Maheswar Chand,
At/P.O.-Mahammad Nagar, Patna,
P.S.-Jaleswar, Dist. Balasore

.....APPLICANTS IN O.A

3. State of Odisha,
Represented through Commissioner-cum-Secretary,
Revenue & Disaster Management, Secretariat Building,
Bhubaneswar, Khurda-751001



4. State of Odisha,
Represented through Commissioner-cum-Secretary,
Department of Steel and Mines, Secretariat Building,
Bhubaneswar, Khurda-751001
5. Union of India, Represented through Secretary,
Ministry of Environment, Forest and Climate Change,
Jor Bagh Road, Aliganj, New Delhi-110003
6. State Environment Impact Assessment Authority (SEIAA),
Represented through its Member Secretary, Bhubaneswar,
Unit-IX, Pin-751022
7. Odisha State Pollution Control Board,
Represented through its Member Secretary,
A/118, Unit-VIII, Nilkantha Nagar, Bhubaneswar-751012
8. The Collector-cum-Chairman,
Monitoring Committee, Balasore,
Dist. Balasore, Odisha-756001
9. The Tahasildar-cum-Competent Authority,
Jaleswar, Dist.-Balasore, Odisha-756032
10. Chairman, State Pollution Control Board Odisha,
Secretariat Building, Bhubaneswar, Khurda-751001
11. Revenue Divisional Commissioner,
Cuttack Chandini Chowk, Cuttack, Odisha-753002
12. Mining Officer Baripada, Baripada Circle,
Baripada, Mayurbhanj-757001
13. Central Pollution Control Board,
Represented through its Member Secretary, Paribesh Bhawan,
CBD-cum-Office Complex, East Arjun Nagar, Delhi-110032



14. Mr. Prabeer Kumar Pradhan,
Lessee (Mahammad Nagar Patna KA, GA Sand Quarries,
Under Jaleswar Tahasil, Balasore),
At-Badabazar, P.O. Jaleswar, Dist. Balasore-756032

.....RESPONDENTS IN O.A

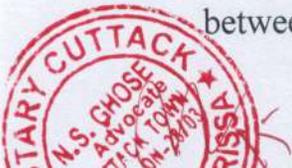
An application seeking an order for recall of order dated 10.05.2022 or in the alternative grant of extension of time for compliance of order dated 10.05.2022 passed by this Hon'ble Tribunal.

THE HUMBLE PETITION OF THE
PRESENT RESPONDENT NO.13
(APPLICANT IN M.A) NAMED
ABOVE.

MOST RESPECTFULLY SHEWETH:-

1. That, this original application has been filed by the Applicant with the allegation that the Respondent Nos.12 and 13 are involved in illegal sand mining in sand quarries in Mahammad Nagar Patna, under Jaleswar Tehsil in the Subarnarekha River, District Balasore, Odisha.

2. That, the present Respondent No.13 is the Lessee of Kha, Gha quarries with respect to Mahammad Nagar Patana sand quarries. A "Long term lease for sand quarry" was executed between the Respondent No.13 and the Government of Odisha, on 26.11.2015, for a period of 5 years, i.e., w.e.f. 26.11.2015 till 31.03.2020, in respect of Mahammad Nagar Patana (Gha) Sand Quarry. Similarly, another lease agreement was also executed between the Respondent No.13 and the Government of Odisha, on



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02.01.2016, in respect of Mahammad Nagar Patana (Kha) Sand Quarry. The said lease was also valid for 5 years, i.e., w.e.f. 02.01.2016 till 31.03.2020.

3. That, the State Pollution Control Board, Odisha (Respondent No.5) vide Order dated 21.10.2016, granted '*Consent to Operate*' in respect of both quarries, i.e., Mahammad Nagar Patana (Gha) Sand Quarry and Mahammad Nagar Patna (Kha) Sand Quarry. The said consent was valid till 31.03.2020 and later it was extended from 31.03.2020 till 30.06.2020 during Covid-19 period. Later, the validity of CTO again renewed for the period 13.07.2020 to 03.01.2021 (*for sand bed Kha*) and from 13.07.2020 to 25.11.2020 (*for sand bed Gha*).

4. That, on the basis of findings of report dated 30.03.2019 by the mining officer, the Tehsildar cum competent authority imposed a penalty of 29,08,484 (Kha) for the excess amount of 12470Cum. and a penalty of 18,83,735 (Gha) for the excess amount of 9690Cum.

5. That, again on 13.01.2021 the penalty was imposed by the Tehsildar-cum-Competent Authority amounting to Rs.6,92,810/- (Rupees Six Lakhs Ninety Two Thousand Eight Hundred Ten Only). This amount was subsequently fully paid on 24.07.2021.

6. That, the Tehsildar on 19.02.2021 collected Rs.1,63,330/- (One Lakhs Sixty Three Thousand Three Hundred Thirty only) as royalty and penalty.

7. That, the Tehsildar imposed another fine of Rs.19,98,830/- (Rupees Nineteen Lakhs Ninety Eight Thousand Eight Hundred Thirty Only) for



extensive sand stacking of which Rs.8,68,230/- (Rupees Eight Lakhs Sixty Eight Thousand Two Hundred Thirty Only) was collected, leaving Rs.11,30,600/- (Rupees Eleven Lakhs Thirty Thousand Six Hundred Only) outstanding.

8. That, the present original application alongwith I.A No.102 of 2020 was filed and heard, wherein the SEIAA through its affidavit dated 07.12.2021 stated that in adherence to 'Polluter Pays Principle' a fine of Rs.81,10,458.45/- (Rupees Eighty One Lakhs Ten Thousand Four Hundred Fifty Eight and Forty Five paisa only) has been imposed on Respondent No.12 and 13. This fine is to be collectively borne by the lessees, i.e., Respondent No.12 and 13.

9. That, the learned National Green Tribunal on 10.05.2022 gave its assent to the compensation imposed by SEIAA, with a direction to Respondent No.12 and 13 for depositing interim compensation of Rs.50,00,000/- (Rupees Fifty Lakhs Only) with SPCB within one month subject to final determination of the environmental compensation by the Competent Authority.

10. That, the Respondent No.13 approached the Hon'ble Apex Court by way of a Special Leave Application, vide Civil Appeal Diary No. 37688 of 2023. The Hon'ble Supreme Court disposed the application as it was not inclined to interfere with the learned National Green Tribunal's order, thereby granting two weeks' time to deposit the interim compensation. Be that as it may, the Respondent No.13 is not barred from raising the same issues, as raised in the special leave application before the Hon'ble Apex Court, for reconsideration before the learned Tribunal.



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It is well settled in law that a dismissal of Special Leave to Appeal does not constitute res-judicate to deny the petitioner, the right to agitate matter on merits before the Competent Court or Tribunal.

(Downloaded copy of the order dated 18.03.2024 passed by the Hon'ble Apex Court is annexed herewith as **Annexure-A1**)

11. That, according to the mining officer's report on excess mining, a total of Rs.1,13,56,884/- (Rupees One Crores Thirteen Lakhs Fifty Six Thousand and Eight Hundred Eighty Four Only) has been collected from the lessees. As per Sub-clause (ii) of Clause-2 of Rule-49 and Clause-4 of Rule-32 of the OMMC Rules, 2016, this penalty imposed includes a contribution towards Environment Management Fund, hereinafter referred to as EMF, which is to be utilized for restoration, repair, reclamation, and rehabilitation necessitated by mining activities causing damage to the environment. Thus, the finding of the Hon'ble Tribunal at para-14 of the impugned order dated 10.05.2022, asserting the lack of computation of environmental compensation or the cost of restitution and restoration of the environment, is deemed erroneous and unsustainable. The OMMC Rules, 2016, Rule-32(4) is extracted herein below for ready reference of this learned Tribunal:

"32. Liability for payment of royalty, dead rent, surface rent, additional charge, amount of contribution payable to the District Mineral Foundation, amount of contribution payable to the Environment Management Fund:—

xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx

(4) The quantity of extraction beyond the minimum guaranteed quantity, may be removed from the lease area only after payment of royalty, additional charge, amount of contribution payable to the



District Mineral Foundation and an amount of contribution payable to the Environment Management Fund on pro-rata basis. xx xx

The, relevant portion of the Rule-49 is extracted herein below for ready reference of this learned Tribunal:

“49. Environment Management Fund:

xx xx xx

(1) The Environment Management Fund shall be created at the State level for reclamation, and rehabilitation of mined out areas of minor minerals and conservation of environment thereof.

(2) An amount equal to five percentum of the royalty payable shall be collected from the lessee and shall be paid to the Environment Management Fund in such manner, as may be specified in the notification, issued by the Government and such amount shall be realized along with the royalty.

3. The Environment Management Fund shall be utilized for following objects, namely:—

(i) restoration;

(ii) repair, reclamation and rehabilitation work required to be undertaken for adjoining or external damage, outside the quarry, caused by mining activities:

Provided that any casualty by the lessee due to his negligence or non-compliance of conditions made in the lease deed shall be compensated or rehabilitated by the lessee;

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(Copy of the order dated 10.05.2022 passed by this learned Tribunal is annexed herewith as **Annexure-A2**)

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12. That, there is a contention regarding the precise calculation of compensation. Additionally, there is ambiguity surrounding the methodology used for calculating the compensation, as the methodology of “Polluter Pays Principle” behind the calculation remains unknown.



Further, the figures used in components of the formula for "Polluter pays Principle" are arbitrary as there exists no reliable source to corroborate them.

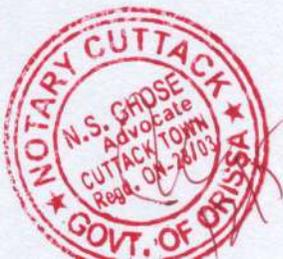
13. That, while a formula for calculation is presented, there is a lack of clarity on the actual process behind determining the variables on a per-year basis. This opacity raises concerns about the fairness and accuracy of the compensation assessment, compounding the potential prejudice faced by the Respondent. It suggests a lack of accountability and opens the door to arbitrary decision-making.

14. That, the Enforcement & Monitoring Guidelines for Sand Mining 2020, as amended and upheld in order dated 05.04.2019 *National Green Tribunal, Bar Association -Versus- Birendar Singh in O.A No.360 of 2015* requires the assessment of damage to the environment to be done by a committee constituted by the District Administration which includes:-

- i. Individuals having expertise in the relevant field.
- ii. Representation of local.
- iii. Representation of SPCB.

That, in the present matter the Joint Verification Committee constituted four members which excluded representation of locals. Thus, the report of the Joint Verification Committee is not sustainable in law as the same lacks representation of locals, which is in direct violation of the Enforcement & Monitoring Guidelines for Sand Mining, 2020.

(Copy of the relevant portion of the Enforcement & Monitoring Guidelines for Sand Mining is annexed herewith as **Annexure-A3**)

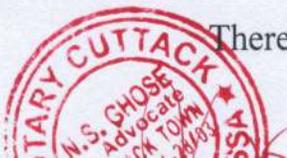


15. That, after imposing a penalty of Rs.1,00,00,000/- (Rupees One Crores), which expressly includes the Environment Management Fund (EMF) the subsequent environment compensation as per the SEIAA report assented by the learned Tribunal vide order dated 10.05.2022 is arbitrary, illegal and whimsical.

16. That, the EMF is a contribution towards restoration, repair, reclamation and rehabilitation work required to be undertaken for the damage caused to the environment. Thereafter, another compensation of Rs.81,10,458.45/- (Rupees Eighty One Lakhs Ten Thousand Four Hundred Fifty Eight and Forty Five paisa only) amounts to double compensation which is neither justified in law nor by logic.

17. That, the order of the learned Tribunal bases its foundation on the report submitted by the State Environment Impact Assessment Authority (SEIAA) which includes two tabular calculations by two authorities namely the Tahasildar and the Mining Officer. In the first table, the Mining Officer and the Tahasildar report that there exists no excess mining as to the Gha sand quarry for the entire 5 years lease period. However, the previous report of Mining Officer for the year 2019 states that there exists excess mining as to the Kha sand quarry. The report of both the officers being later in time was to be considered by the SEIAA. However, the final calculation by the SEIAA has accepted figures from both the reports and has calculated the compensation applying the "Polluter pays Principle". Even though the "Polluter Pays Principle" has been followed by the authorities for calculation of compensation, the ambiguity surrounding the figures placed in the formula and its unknown source makes the entire calculation fall apart and devoid of merit.

Thereby, making the compensation calculated erroneous and not



sustainable in law. Thus, the compensation for environment amounting to Rs.81,10,458.45/- is not sustainable in law. As a consequence, the interim compensation being bad in law is liable to recalled.

18. That, all the above aspects have not been pointed out or have escaped the notice of the learned Tribunal. Thus, the compensation of Rs.81,10,458.45/- derived by the SEIAA is nothing more than a repetition of environmental compensation having already duly paid by the Respondent No.13 under the head of EMF a component in the penalty for excess extraction of minerals. This results in double compensation for the same issue, which is bad in law. Thus, a subsequent imposition of environment compensation and interim compensation by the learned Tribunal amounts double compensation which is arbitrary illegal & whimsical.

19. That, the observations in the report are vague and ambiguous as they do not in any way directly implicate the Respondent No.13. It is well settled principle of law that compensation cannot be imposed on the basis of mere conjectures and surmises. The report in the present matter smacks of irregularities, infirmities and ambiguities. Thus, the compensation imposed by the SEIAA and assented by the learned tribunal in order dated 10.05.2022 is arbitrary, illegal and whimsical and thus not sustainable in law.

20. That, the lease period of Respondent NO.13 has completed in the year 2020. Further, there was no replenishment study during the lease period. This raises a doubt as to the method used by the authorities to derive the figures of excess extraction. Hence, it is very difficult to accept

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the figure of excess extraction accepted in the report of the SEIAA to calculate the environment compensation.

21. That, the allegation of violation of environmental norms causing pollution are too vague and ambiguous to directly impose a compensation on the Respondent No.13. However, without conceding to such vague allegations, it is humbly and respectfully submitted here that the respondent no 13 has deposited a considerable amount towards the EMF, which is a express component of the penalty imposed for excess extraction of minerals under the OMMC Rules, 2016. The Respondent No. 13 reserves the right to file the receipts dated 27.05.2019 and 24.07.2021 by additional affidavit establishing the fact that the payment of previous penalty amounting to Rs.1,00,00,000/- (Rupees One Crores), expressly included a contribution towards the EMF for the purpose of restoration, repair, reclamation and rehabilitation work of environment.

22. That, taking into consideration the aforementioned facts and averments made by Respondent No.13, the environmental compensation imposed by the SEIAA and assented by the learned Tribunal is arbitrary, illegal and whimsical. As a consequence, the interim compensation imposed by the learned tribunal vide order dated 10.05.2022 is bad in law and thus the same is liable to be recalled.

PRAYER

It is therefore most humbly and respectfully prayed that this Hon'ble Tribunal may graciously be pleased to declare the order dated 10.05.2022 erroneous, arbitrary, illegal and whimsical, thereby recalling the order dated 10.05.2022 passed in I.A No.102/2020/EZ arising out of O.A No.99/2020/EZ; or



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In the alternative, grant an additional time period of six months to comply with the order dated 10.05.2022 passed by this learned Tribunal;

And may further be pleased to pass any other order / orders in favour of the present Respondent No.13 as it may deem just and proper;

And for this act of kindness the present Respondent No.13 shall as in duty bound ever pray.

BY THE RESPONDENT NO.13 THROUGH

CUTTACK
DATE:-12.05.2024

ANANYA PRADHAN
ADVOCATE
ENR. NO. O-599/2020
MOB:- 8917222517
Email:palit_subir02@yahoo.com



21
-21-

VERIFICATION

I, Sri Trilohan Das, aged about 65 years, S/o Late Bhuban Chandra Das, At- Mahammad Nagar Patna, P.S.- Jaleswar, District- Balasore, Pin- 756030, do hereby solemnly verify that the facts stated above are true to the best of my knowledge and belief, and no material facts have been concealed therefrom.

Date:12.05.2024

Place: Cuttack

Sri Trilohan Das

VERIFICANT



22



AFFIDAVIT

I, Sri Trilohan Das, aged about 65 years, S/o Late Bhuban Chandra Das, At- Mahammad Nagar Patna, P.S.- Jaleswar, District- Balasore, Pin- 756030, do hereby solemnly affirm and state as follows:

1. That, I am the Respondent No.13 in Original Application presently arrayed as Applicant in the accompanying Miscellaneous Application and being aware of the facts thereof, I am competent to swear the present affidavit.
2. That, the contents of the accompanying Miscellaneous Application have been drafted by my counsel upon my instruction and the legal submissions therein are based upon legal advice, and are believed to be true and correct to the best of my knowledge and belief.
3. That, the contents of the accompanying Miscellaneous Application are not being reproduced in the present affidavit for the sake of brevity and the same may be read from the application and may be considered as a part and parcel of the present affidavit.



Identified By:

Ananya Pradhan
Advocate

✓ *Sri Trilohan Das*
DEPONENT

Place: Cuttack
Date: 12.05.2024

The above named deponent being identified by Mr./Ms. *A. Pradhan* Advocate appears before me at *Cuttack* AM/PM. on this the *12* day of *May* 20*24* solemnly affirms that the facts stated are true to his/her knowledge and belief.

N.S. GHOSE
NETAJI SARYASACHI GHOSE NOTARY *12/05/2024*



VAKALATNAMA

BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN BENCH, KOLKATA

M.A No. of 2024
(Arising out of O.A No-99/2020/E2) I.A No. 102/2020/E2

Between Bholanath Padhi & ors. Plaintiff(s)/Petitioner(s)
Appellant(s)/Complainant(s)

-VERSUS-

State of Odisha & Ors. Defendant(s)/Opp. Party (ies)
Respondent(s)/Accused(s)

Know all men by these presents, that by this VAKALATNAMA I/We, Sri Trilochan Das, aged about 65 years, S/o Late Bhukam Chandra Das, at - Mahamunda Nagar, Patna, P.S - Jaleswar, Dist - Balesore, Pin - 756030

Plaintiff / Defendant / Appellant / Respondent / Petitioner / Opposite Party in the aforesaid Suit /Appeal / Case do hereby appoint and Mr. Anubhuk Mishra (0-894/2002) M-9978441871 ABhishek Kejriwal (0-692/2006) M-9437022234 Ananya Pradhan (0-599/2020) M-8917222517, - Sharank Shekhar (0-548/2020) M-8895805757, Sritam Mohanty (0-972/2023) M-79789 79093. (Advocate(s), to appear for

me/us in the above case and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same, or any decree or order passed therein including all applications for return of documents or receipt of any moneys that may be payable to me/us in the said case and also in applications for review in appeals under Orissa High Court Order and in applications for leave to appeal to Supreme Court. I/We authorize my/our Advocate(s) to admit any compromise lawfully entered in the said case.

Dated the 12.09.2024

Sri Trilochan Das
SIGNATURE OF THE EXECUTANT (S)

Received from the executant(s) through certify that I hold no brief for the other side, satisfied and accepted.

[Signature]
ADVOCATE

[Signature]
ADVOCATE

Accepted as above

Accepted as above

Accepted as above

[Signature]
Advocate

[Signature]
Advocate

[Signature]
Advocate

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Annexure-A1

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). /2024
(Diary No.37688/2023)

TRILOCHAN DAS

Appellant(s)

VERSUS

BHOLANATH PADHI & ORS.

Respondent(s)

O R D E R

1. Delay condoned.
2. We are not inclined to interfere with the judgment passed by the National Green Tribunal, Eastern Zone Bench, Kolkata in Original Application No. 99/2020/EZ and IA No.102/2020/EZ on 10-05-2022. However, we grant time of two weeks to the appellant to deposit the amount as directed by the Tribunal.
3. The Civil Appeals are dismissed accordingly.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ARAVIND KUMAR]

Signature Not Verified

Digitally signed by
Indu Marwal
Date: 2024.03.21
15:44:13 IST
Reason:

New Delhi

March 18, 2024.

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2

ITEM NO.4

COURT NO.16

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No(s). 37688/2023

(Arising out of impugned final judgment and order dated 10-05-2022 in OA No. 99/2020 10-05-2022 in IA No. 102/2020 passed by the National Green Tribunal, Eastern Zone Bench, Kolkata)

TRILOCHAN DAS

Petitioner(s)

VERSUS

BHOLANATH PADHI & ORS.

Respondent(s)

(IA No.61101/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.61104/2024-EX-PARTE STAY and IA No.61099/2024-CONDONATION OF DELAY IN FILING APPEAL and IA No.61100/2024-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

Date : 18-03-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Petitioner(s) Dr. Menaka Guruswamy, Sr. Adv .
Mr. S.Debabrata Reddy, Adv
Mr. Utkarsh Pratap, Adv.
Mr. Lavkesh Bhambhani, Adv.
Mr. Harshwardhan Thakur, Adv.
Ms. Hera Fatima, Adv
Mr. Nishant Bishnoi , AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

The Civil Appeals are dismissed in terms of the signed order.

Pending applications, if any, also stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(NIDHI WASON)
COURT MASTER (NSH)

(signed order is placed on the file)

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Annexure-A2

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

.....
**ORIGINAL APPLICATION No.99/2020/EZ
(I.A. No.102/2020/EZ)**

IN THE MATTER OF:

1. **Bholanath Padhi**
Aged about 29 years,
S/o Late Purna Chandra Padhi,
At/P.O.-Mahammad Nagar, Patna,
P.S. Jaleswar, Dist. Balasore

2. **Kali Charan Chand**
Aged about 27 years
S/o Maheswar Chand,
At/P.O.-Mahammad Nagar, Patna,
P.S.-Jaleswar, Dist. Balasore

....Applicant(s)

Versus

1. **State of Odisha**
Represented through Commissioner-cum-Secretary,
Revenue & Disaster Management,
Secretariat Building,
Bhubaneswar, Khurda-751001

2. **State of Odisha**
Represented through Commissioner-cum-Secretary,
Department of Steel and Mines,
Secretariat Building,
Bhubaneswar, Khurda-751001

3. **Union of India**
Represented through Secretary,
Ministry of Environment, Forest and Climate Change,

- # - -26-

Jor Bagh Road, Aliganj,
New Delhi-110003

4. **State Environment Impact Assessment Authority (SEIAA)**
Represented through its Member Secretary,
Bhubaneswar, Unit-IX, Pin-751022
5. **Odisha State Pollution Control Board**
Represented through its Member Secretary,
A/118, Unit-VIII, Nilkantha Nagar,
Bhubaneswar-751012
6. **The Collector-cum-Chairman,**
Monitoring Committee, Balasore,
Dist. Balasore, Odisha-756001
7. **The Tahasildar-cum-Competent Authority,**
Jaleswar, Dist. Balasore,
Odisha-756032
8. **Chairman,**
State Pollution Control Board Odisha
Secretariat Building, Bhubaneswar, Khurda-751001
9. **Revenue Divisional Commissioner, Cuttack**
Chandini Chowk, Cuttack Odisha-753002
10. **Mining Officer Baripada,**
Baripada Circle, Baripada,
Mayurbhanj-757001
11. **Central Pollution Control Board**
Represented through its Member Secretary,
Paribesh Bhawan, CBD-cum-Office Complex,
East Arjun Nagar, Delhi-110032

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12. Mr. Prabeer Kumar Pradhan

**Lessee (Mahammad Nagar Patna KA, GA Sand Quarries.
Under Jaleswar Tahasil, Balasore),
At-Badabazar, P.O. Jaleswar,
Dist. Balasore-756032**

13. Mr. Trilochan Das

**Lessee (Mahammad Nagar Patna KHA, GHA Sand Quarries.
Under Jaleswar Tahasil, Balasore),
At/P.O. Mahammad Nagar Patna, Jaleswar,
Dist. Balasore-756032**

....Respondent(s)

COUNSEL FOR APPLICANT:

Mr. Prabhu Prasanna Behara, Advocate

COUNSEL FOR RESPONDENTS:

Mr. P.P. Mohanty, AGA for R-1, 2, 6, 7, 9 & 10,

Mr. Gora Chand Roy Choudhury, Advocate for R-4,

Mr. Dipanjan Ghosh, Advocate for R-5 & 8,

Mr. Sibojyoti Chakraborty, Advocate for R-11,

Mr. Somnath Roy Chowdhury, Advocate a/w

Ms. Arpita Chowdhury, Advocate for R-12 & 13

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)

Reserved On:- 27th April, 2022

Pronounce On:- 10th May, 2022

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**

JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

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Heard the learned Counsel for the parties and perused the documents on record.

2. This original application has been filed by the Applicant with the allegation that the Respondent Nos. 12 and 13 are carrying on illegal sand mining in sand quarries in Mahammad Nagar Patna, under Jaleswar Tahasil in the Subarnarekha River, District Balasore, Odisha.

3. It is stated that the Respondent No.12 was granted quarry lease within Mahammad Nagar Patna, Sand bed 'Ka' over 6.070 hectares and Sand bed 'Ga' over 5.65 hectares of land under the Jaleswar Tahasil, District-Balasore, for mining of sand for the period 2015-16 to 2019-20.

4. Similarly, the Respondent No.13 was granted Quarry Lease within Mahammad Nagar Patna, in Sand bed 'Kha' over 5.665 hectares of land and Sand bed 'Gha' over 5.261 hectares of land in Jaleswar Tahasil, District-Balasore, for the period of 2015-2016 to 2019-2020, vide tender notice.

5. It is also stated that as per the approved mining plan of Mahammad Nagar Patna, the Sand quarries are 'Ka' 'Kha' 'Ga' 'Gha', and the quantity of sand to be lifted in the said sand quarries is as follows: -

- (i) 23,000 Cum lifted from 'Ka' Sand quarry,
- (ii) 83,640 Cum lifted from 'Kha' Sand quarry,
- (iii) 23,790 Cum lifted from 'Ga' Sand quarry, and

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(iv) 28,500 Cum lifted from 'Gha' Sand quarry within the period of five years from 2015-2016 to 2019-2020.

6. It is stated that in this regard, a complaint was made to the Odisha State Pollution Control Board, Balasore and thereafter the State Pollution Control Board conducted an inquiry on 07.06.2019. The Inquiry Report has been filed as Annexure-4 to the original application. The observations and conclusion of the Inquiry Report are reproduced herein below:-

"8.	Observation:	<ol style="list-style-type: none">1. During the day of enquiry, the excavation of sand was not going on.2. The excavation of sand has been done below the water level of the river sand bed and in and around the lease hold area by all the lessee.3. The Sand bund has been constructed partly to divert the flow of river stream and excavation of sand.4. No excavation of sand near the river bank has been done and maintained some distance.5. The approach road leading from sand sairat source Gha to Jaleswar road used for transportation purposes has pot & holes and spreaded with sands.6. The chain mark of wheel of Poclairn machine was found to be inside the sand quarry area and assured
-----	--------------	---

		<p>that, machines are being used for loading and excavation purposes.</p> <p>7. The sand particles spreaded by the road side leading from Mahammadnagar Patna Chhak to NH-60, which indicates spillages of sand occurred during transportation.</p>
9.	Conclusion:	<p>On above facts & observation, appropriate action may be initiated against the alleged units.</p>

7. The Tribunal by its order dated 21.01.2021 constituted a four Member Joint Committee comprising of following Members;

- (i) Central Pollution Control Board (CPCB);
- (ii) State Pollution Control Board (SPCB);
- (iii) State Level Environment Impact Assessment Authority (SEIAA); and
- (iv) District Magistrate, Balasore, to look into the allegations made in the application and furnish a report.

8. The Joint Verification Team submitted its report of an inspection carried out on 19.02.2021. The issues and present status as noted by the Joint Verification Team read as under:-

"Sl. No.	Issues	Present Status
1	<p>That one Sri Trilochan Das, S/o-Late Bhuban Chandra Das, residing At-PO- Mahammad Nagar Patna, PS- Jaleswar, Dist- Balasore has been granted Quarry Lease within Mahammad Nagar Patna (Kha), (Gha) sand bed over</p>	Agreed

	<p>an area of 13.0 acres (5.261 ha) and another sairat source is over an lease area of 13.00 acres (5.261ha) in village - Mahammad Nagar Patna, Jaleswar Tahasil, Dist- Balasore for mining and from the area as mentioned above.</p>	
2	<p>That further one Sri Prabir Kumar Pradhan, S/o- Gyanendra Pradhan, residing at- Deuli Panchughanta, PO/PS- Jaleswar, Dist- Balasore, has also been granted Quarry lease within Mahammad Nagar Patna (Ka), (Ga) sand bed over an area of 15.00 acres (6.070ha) and another sairat source is over an area of 14.00 acres (5.665ha) in village- Mahammad Nagar Patna, Jaleswara Tahasil, Dist - Balasore for mining and from the area as mentioned above</p>	Agreed
3	<p>That day by day, the lives of the local people is greatly affected and endangered due to illegal deep sand</p>	Presently the mining activity has stopped and no mining activity was going on.

	<p>lifting from water level with the help of 10 Proclain Machines and other modern machinery throughout the day and night. The water flowing sand (during transportation), which is being lifted from the river is making the condition of the roads even worse.</p>	
4	<p>That apart from air pollution the plying trucks are creating rise pollution due to which the villagers are suffering from the hearing problems, hypertension, and irritation etc.</p>	<p>Since no mining activity was going on. No Assessment could be made in this regard.</p>
5	<p>That, as sand lifting from the river bed is going throughout the day (24hrs) day, the heavy trucks (both empty and loaded) are also plying 24 hrs thereby creating unbearable sound as a result of which the people of the adjacent areas are having sleepless nights.</p>	<p>As above.</p>
6	<p>That illegal and unregulated lifting of sand violating the lifting capacity of the point is gradually going to the path of the river</p>	<p>As above.</p>

	<p>thereby damaging river bed along with the surrounding villages.</p>	
7	<p>That on 07/06/2019 the Regional office of the State Pollution Control Board Odisha, Balasore visited the site and conducted an Enquiry on Public Complaint Alleged Against M/S Mahammad Nagar Patna Ka, Kha, Ga, Gha sand quarry, at/ PO- Mahammad Nagar Patna, PS- Jeleswar Balasore in case of the enquiry it was as contend that:-</p> <ul style="list-style-type: none">i. During the day of enquiry, the excavation of sand was not going onii. The excavation of sand has been done below the water level of the river sand bed and in and round the lease hold area by all the lessee.iii. The sand bund has been constructed partly to divert the flow of river stream and excavation of sand.	<p>Presently no sand mining was going on. The inspection report by S.P.C.B. dated 11.02.2020 is enclosed as Annexure II)</p>

	<p>iv. No excavation of sand near the river bank has been done and maintained some distance.</p> <p>v. The approach road leading from sand sairat source 'Gha' to Jaleswar road used for transportation purposes has pot & holes and spread with sands</p> <p>vi. The chain mark of wheel of proclaim machine was found to be inside the sand quarry area and assured that, machines are being used for loading and excavation purposes.</p> <p>vii. The sand particulars spread by the road side leading from Mahammad Nagarpatna Chhak to NH 60, which indicates spillages of sand, occurred during transportation.</p>	
8	<p>That the lessee are using their muscle power by deploying antisocial and</p>	<p>No sand mining was going on as the lease period has expired.</p>

	<p>political leaders to continue their illegal sand mining, a duty by suppressing the voice of intellectuals and general public of Mahammad Nagar Patna village.</p>	
9	<p>That due to this unnatural change of water flow in the river, all the agricultural lands, orchards hutments, houses and buildings along the river (or even whole village) may get destroyed in big flood in rainy season. In the past also the same types of devastation have been faced by the villagers. Now this excessive sand extraction surely escalates the situation and likely to invite a big catastrophe.</p>	<p>It could not be assessed now.</p>
10 (i)	<p>Both the lessees are also illegally lifting sand without any adherence to the Mining plan as has been provided to them.</p>	<p>1). Though actual assessment was not possible as no mining was going on during field visit but it has been observed that there was no proper demarcation of river bank, lease hold area using fixed pillar as per rule. However the Tahasildar, Jaleswar claimed that there were</p>

fixed pillars & proper demarcation points during the lease period. He further added that such pillars may have been removed by the lessee or other villagers after the lease period got over.

2). As per the information of the Mining Officer, Baripada Circle, Baripada vide Letter No. 760/Mines dated 30.03.2019, it can be stated that the project proponent has executed excess sand excavation from **Kha, Ga, Gha** river sand bed (already copy submitted).

3). In this regard, a letter was issued to Sri Trilochan Das (lessee) by Tahasildar, Jaleswar vide Letter No. 581 on dated 17.02.2021 for collection of an amount of Rs.6,92,810/- for excess lifting of sand from river sand bed '**Kha**' but it is not yet been collected (Copy attached).

4). In this regard, a letter was issued to Sri Prabir

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		<p>Kumar Pradhan (lessee) by Tahasildar, Jaleswar vide Letter No.582 on dated 17.02.2021 for collection of an amount of Rs.6,67,565/- for excess lifting of river sand bed 'Ka' but it is also yet be collected (copy attached).</p>
10 (ii)	<p>The sand mining plan has been completely violated by the lessees by usage of Machines and Mechanized tools as a result of which the embankment of the river is being damaged there by causing a huge loss to flora and fauna of the village area</p>	<p>1. During the inspection, it was observed that no sand mining was going on as the lease period had expired.</p> <p>2. The Tahasildar, Jaleswar has informed vide Letter No. 666 on dated 23.02.2021 that 02 nos. of JCB have been seized and of Rs.2,00,000/- have been imposed for mechanical mining on dated 20.11.2020.</p> <p>Besides that another 53 nos. of vehicles seized from Mahammad Nagar Patna for illegal sand mining and of</p>

		Rs.9,110/- have been realized as royalty and Rs.9,48,835/- for penalty during the period 01.04.2020 to 31.12.2020.
11	The sand mining operated without valid EC.	The Tahasildar, Jaleswar has mentioned that the date of execution & conclusion are as follows:

Sl. No.	Name of Sand bed (Mahammadnagarpatna)	Date of lease execution	Date of conclusion of lease period
1	"Ka"	07.12.2015	17.12.2020
	"Kha"	02.01.2016	01.01.2021
	"Ga"	17.12.2015	17.12.2020
	"Gha"	26.11.2015	25.11.2020

3.0 Over all Observations

- The committee members observed the following at the time of inspection:
- No mining activity was going on and there were no machines found in the mine lease area.
 - The free flow of the river water has not been changed as observed
 - The concrete pillars marking for the boundary of lease hold area those were claimed to be there during the lease period were not found at the time of joint verification.
 - The line of river bank, the river bed and the lease area could not be observed separately due to lack of concrete pillars around the lease area. It was also observed that a temporary kutchra road was constructed over a small portion of the river embankment at

Mahammad Nagar Patna-“Kha” for transportation of sand from the source.

- v. It has been observed that huge sand stock piling was done at different private land of the nearby quarry area and the details are provided by the Tahasildar, Jaleswar (copy attached). The Tahasildar stated that he has issued demand notices in all such cases and already Rs.1,63,330/- have been collected by him as Royalty & Penalty and he assured that remaining amount would be collected soon.
- vi. The detailed inspection report submitted by State Pollution Control Board on dated 11.02.2020 is enclosed as Annexure II.

4.0 Recommendations

1. In view of the above observations since the existing lease for the sand mining has already expired and new lease is to be granted the Committee recommends that the authorities concerned with the grant of lease for sand mining in the area must ensure that the new sand mining guide lines (Enforcement & Monitoring Guidelines for Sand Mining by Ministry of Environment, Forest and Climate change. January, 2020) are strictly followed while granting the lease to a lease holder as well as before, during and after the execution of the sand mining.
2. The fine amount imposed for excess sand mining and stock piling shall be collected from previous lessee and others as has been stated by the Tahasildar.”
9. The Respondent No.11, Central Pollution Control Board also filed an affidavit stating that excessive mining has been noticed in the report of the Mining Officer, Baripada dated 29.03.2019 & 08.01.2021 but mining beyond the leasehold area is yet to be assessed by the Mining Officer.

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10. The SEIAA has also filed an affidavit bringing on record a Joint Verification Report of an Inspection carried out on 25.06.2021. The overall observations of the Inspection Team read as under: -

“3.0 Over all observation

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

- i. The Subernrekha river is flowing with full of flood water. No mining activity was going on, lease period has expired as mentioned in the above table, and there was no machine found in the mine lease area.*
- ii. Free flow of the river water within the river bank has been observed.*
- iii. There is a pillar marking on the river embankment to demarcate in the lease area.*
- iv. The lessees have operated the sand bed with valid EC. After obtaining EC the Consent to Operate (CTO) was issued by Regional Office, SPCB, Balasore on 21.10.2016 and it was valid upto **31.03.2020**, then the Chairman, SPCB, BBSR, Odisha has extended the CTO validity vide their letter no.4029 dtd. 31.03.2020 for the period 31.03.2020 to **30.06.2020** during COVID-19 period. Later the validity of CTO again renewed for the period 13.07.2020 to 18.12.2020 (for Mahamadnagar Patna (Ka) sand Bed), 13.07.2020 to 03.01.2021 (for sand bed Kha), 13.07.2020 to 18.12.2020 (for sand bed Ga) and 13.07.2020 to 25.11.2020 (for sand bed Gha). The RO, SPCB, Balasore during his visit to the quarry site noticed violation of CTO condition and hence issued cancellation of consent to operate from 28.05.2020 till further renewal from 13.07.2020. So, it reveals that the above sources were without CTO for few days from **28.05.2020 to 12.07.2020**.*

It is pertinent to mention here that quarry operation is not possible during monsoon period due to heavy flow of water.

- v. As per the report of Mining Officer, Baripada the excess mining was done and an amount of **Rs.1,13,56,884/-** has been collected from the lessees.
- vi. It has been observed that huge sand stacking has been made near quarry area, for which an amount of Rs.19,98,830/- has been imposed by the Tahasildar, Jaleswar out of which Rs.8,68,230/- has been collected. Certificate cases under OPDR Act have been initiated for realization of rest amount of Rs.11,30,600/-.
- vii. The lessees have operated the quarry with violating mining plan/EC & CTO conditions for which the Mining Officer, Baripada has quantified the excess production for which fine and penalties have been collected by the Tahasildar, Jaleswar and the SPCB, has cancelled the CTO from 28.05.2020 to further renewal from 13.07.2020.
- viii. The Excess mining was done by the lessees and the amount realized from the lessees and the committee quantified the amount for excess production, are as follows:

Block	Permitted quantity	Total Extraction	Excess Extraction	Market value of sand Per Cum.	Market value of illegally mined material	Risk Factor (RE)	Discount rate	1 st year	2 nd year	3 rd year	4 th year	5 th year	Present value	Compensation or N.P.V. (P.V.O)
K	292	5183	2258	140	316120	0.5	0.07	147719.	138055	129024.	120583.	11269	64807	331957.
a	5							63	.73	04	22	4.60	7.21	21
K	114	1344	1950	140	273000	0.5	0.07	127570.	119224	111424	104135.	97322.	55967	286676.
H	90	0						09	.39	.66	20	61	6.95	95
a														
G	No excess production was done as informed by Tahasildar & Mining Officer.													
a														
G	No excess production was done as informed by Tahasildar & Mining Officer.													
h														
a														

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The quarry wise detail report inspected on dtd. 29.03.2019 by the Mining Officer, Baripada and others against M.N Patna sand sources.

K	520	4550	0	140	0	0.5	0.07	0.00	0.00	0.00	0.00	0.00	0.00	0.00
a	0													
K	179	3044	1247	140	174580	0.5	0.07	815794.	762424	712546	665931.	62236	35790	1833262
h	70	0	0		0			39	.67	.42	23	5.64	62.34	.34
a														
G	480	3360	2880	140	403200	0.5	0.07	188411	176085	164565	1537996	14373	82659	4233997
a	0	0			0			2.15	2.48	6.52	.75	80.14	98.03	.03
G	600	1569	9690	140	135660	0.5	0.07	633925.	592453	553694	517471.	48361	27811	1424563
h	0	0			0			23	.49	.85	82	8.53	63.92	.92
a														
														8110458
														.45

Based on the findings from the visits of the Joint Inspection Committee and on perusal of reports of Tahasildar, Jaleswar, Mining Officer, Baripada, RO, SPCB, Balasore, it is observed that excess mining is done which has been quantified in the above table.

Now the amount calculated on polluters pay principle for excess mining comes to Rs.81,10,458.45/- (Rupees eighty one lakh ten thousand four hundred fifty eight and forty five paise) only, which shall be collected from the lessees of 4 sand sairat sources as given below:

Name of the source	Amount to be realized
Ka	Rs.331957.21
Kha	Rs.2119939.29
Ga	Rs.4233998.03
Gha	Rs.1424563.92
Total	Rs.8110458.45

The new sand mining guidelines of Sustainable sand Mining Management Guidelines-2016 & Environment and Monitoring Guidelines for sand Mining-2020 shall strictly be adhered to in case of any further sand mining activities.”

11. The Respondent No.12 in his affidavit dated 11.01.2022 has admitted that there was excessive mining in 2021 to the extent of 2258 Cum in sand plot 'Ka' for which fine was computed at

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Rs.6,67,565/- (Rupees Six lakhs sixty seven thousand five hundred sixty five only) and to the extent of 28800 Cum in 2018-2019 in sand plot 'Ga' for which fine was computed at Rs.52,04,288/- (Rupees Fifty two lakhs four thousand two hundred eighty eight only) and submits that these figures submitted by him have been accepted by the Committee and it is also stated that he has paid Rs.6,67,565/- (Rupees Six lakhs sixty seven thousand five hundred sixty five only) as fine for plot 'Ka' and Rs.52,04,288/- (Rupees Fifty two lakhs four thousand two hundred eighty eight only) as fine for plot 'Ga'.

12. Respondent No.13 in his affidavit has stated that 12,470 Cum excess sand mining was done by him in 2018-19 on which a fine of Rs.29,08,484/- (Rupees Twenty-nine lakhs eight thousand four hundred eighty-four only) has been imposed and 1950 Cum of excess sand has been mined for the year 2020-21 for which fine of Rs.6,92,810/- (Rupees Six lakhs ninety-two thousand eight hundred ten only) has been imposed. Thus a total fine of Rs.36,01,294/- (Rupees Thirty six lakhs one thousand two hundred ninety four only) for sand plot 'Kha' has been imposed and has been paid.

13. So far as sand plot 'Gha' is concerned, it is admitted that 9690 Cum of sand has been mined in 2018-19 for which a fine of Rs.18,83,735/- (Rupees Eighteen lakhs eighty-three thousand seven hundred thirty-five only) has been imposed which has also been paid. It is also stated that for the excessive sand mined for

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2018-19, the said respondents had already paid Rs.18,83,735/- (Rupees Eighteen lakhs eighty three lakhs seven hundred thirty five only) towards fine.

14. We find that the amount which has been computed and paid by the Respondent Nos.12 and 13 for excess sand mined is only the fine/penalty and there is no computation of Environmental Compensation or computation of cost of restitution/restoration of the Environment.

15. The Joint Verification Team has noted that as per the Report of the Mining Officer, Baripada the excess mining was done for which sum of Rs.1,13,56,884/- (Rupees One crore thirteen lakhs fifty six thousand eight hundred eighty four only) has been collected from the Respondent Nos.12 and 13. It is also observed that huge sand stacking has been made near the quarry area for which an amount of Rs.19,98,830/- (Rupees Nineteen lakhs ninety eight thousand eight hundred thirty only) has been imposed by the Tahasildar, Jaleswar, out of which a sum of Rs.8,68,230/- (Rupees Eight lakhs sixty eight thousand two hundred thirty only) has been collected and an amount of Rs.11,30,600/- (Rupees Eleven lakhs thirty thousand six hundred only) remains to be still realized. The computation chart has been filed with the Report itself and which has already been reproduced hereinabove, which shows that not only the excess sand has been quarried from all the four sand quarries 'Ka' 'Kha' 'Ga' 'Gha'; 'Ka' and 'Gha' by Respondent No.12

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and 'Kha' and 'Gha' by Respondent No.13, the area has also been degraded on account of excess sand mining.

16. The total amount which the Respondent Nos. 12 and 13 are required to pay on the basis of Polluters Pay Principle for the excess mining, had been computed at Rs.81,10,458.45/- (Rupees Eighty One lakhs ten thousand four hundred fifty eight and forty five paisa only) as will be demonstrated from the chart given hereinbelow which is also part of the Report of the Joint Verification Team:-

<i>"Name of the source</i>	<i>Amount to be realized</i>
<i>Ka</i>	<i>Rs.331957.21</i>
<i>Kha</i>	<i>Rs.2119939.29</i>
<i>Ga</i>	<i>Rs.4233998.03</i>
<i>Gha</i>	<i>Rs.1424563.92</i>
<i>Total</i>	<i>Rs.8110458.45</i>

17. Since, the amount of Rs.81,10,458.45 (Rupees Eighty-one lakhs ten thousand four hundred fifty-eight and forty-five paisa only) is yet to be realized from the Respondent Nos. 12 and 13, we determine the interim compensation to be paid by the Respondent Nos.12 & 13 at Rs.50,00,000/- (Rupees Fifty lakh only) each, to be deposited with the Odisha State Pollution Control Board within one-month subject to final determination of the Environmental Compensation by the Competent Authority.

18. With the above observations, the Original Application No.99/2020/EZ is disposed of.

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19. In view of the above, the I.A. No. 102/2020/EZ is also disposed of.

20. There shall be no order as to costs.

.....
B. AMIT STHALEKAR, JM

.....
SAIBAL DASGUPTA, EM

**Kolkata,
May 10, 2022,
Original Application No.99/2020/EZ
(I.A. No.102/2020/EZ)
MN**

TRUE COPY ATTESTED

[Signature]
ADVOCATE



Enforcement & Monitoring Guidelines for Sand Mining



Ministry of Environment, Forest and Climate change

January, 2020

Enforcement & Monitoring Guidelines for Sand Mining

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1.0 INTRODUCTION

The Ministry of Environment Forest & Climate Change formulated the Sustainable Sand Management Guidelines 2016 which focuses on the Management of Sand Mining in the Country. But in the recent past, it has been observed that apart from management and systematic mining practices there is an urgent need to have a guideline for effective enforcement of regulatory provision and their monitoring.

Section 23 C of MMDR, Act 1957 empowered the State Government to make rules for preventing illegal mining, transportation and storage of minerals. But in the recent past, it has been observed that there was large number of illegal mining cases in the Country and in some cases, many of the officers lost their lives while executing their duties for curbing illegal mining incidence. The illegal and uncontrolled illegal mining leads to loss of revenue to the State and degradation of the environment.

India is developing at a faster pace and much technological advancement has already been taken place in the surveillance and remote monitoring in the field of mining. Thus, it is prudent to utilize the technological advancement for the effective monitoring of the mining activities particularly sand mining in the country.

Use of latest remote surveillance and IT services helps in effective monitoring of the sand mining activity in-country and also assist the government in controlling the illegal mining activity in the country. Thus, there is a need for an effective policy for monitoring of sand mining in the Country which can be enforced on the ground. These guidelines focus on the effective monitoring of the sand mining since from the identification of sand mineral sources to its dispatch and end-use by consumers and the general public. Further, the effective monitoring and enforcement require efforts from not only Government agencies but also by consumers and the general public.

It is the responsibility of every citizen of India to protect the environment and effective monitoring can only be possible when all the stakeholders viz. Central Government, State Government, Leaseholders/Mine Owners, Distributors, Dealers, Transporters and Consumers (bulk & retail) will contribute towards sustainable mining, and comply with all the statutory provisions. It is felt necessary to identify the minimum requirements across all geographical region to have a uniform protocol for monitoring and enforcement of regulatory provision prescribed for sustainable sand and gravel mining.

This document will serve as a guideline for collection of critical information for enforcement of the regulatory provision(s) and also highlights the essential infrastructural requirements necessary for effective monitoring for Sustainable Sand Mining.

The document is prepared in consideration of various orders/directions issued by Hon'ble NGT in matters pertaining to illegal sand mining and also based on the reports submitted by expert committees and investigation teams.

Further, this document is supplemental to the existing "Sustainable Sand Mining Management Guideline-2016" (SSMG-2016), and these two guidelines viz. "Enforcement & Monitoring Guidelines for Sand Mining" (EMGSM-2020) and SSMG-2016 shall be read and implemented in sync with each other. In case, any ambiguity or variation between the provision of both these document arises, the provision made in "Enforcement & Monitoring Guidelines for Sand Mining-2020 "shall prevail.

& storage of Illegal minerals. All such mining which qualifies under illegal, shall be dealt with in the provision of MMDR Act by the concern authorities.

State Pollution Control Board (SPCB) is the nodal authority in the State for dealing with cases related to pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act 1986. SPCB shall initiate appropriate action under the provision of these acts for non-compliance of violation of the provisions.

9.2 Environmental Damage due to illegal mining

The environmental damages incurred or resulting due to illegal mining shall be assessed by a committee constituted by District Administration having expertise from relevant fields, and also having independent representation of locals and State Pollution Control Board. Guidelines for assessment of ecological damages prescribed by the State Government or Concerned Pollution Control Boards or any other authority shall be applicable and compensation as fixed shall be paid by the project proponent, in light of Hon'ble National Green Tribunal orders.

9.3 Monitoring of Mining near Inter-district or inter-state boundary

There are situations where bifurcated river becomes district boundaries or state boundaries in such situation it is difficult to assess the mining potential, or to have close monitoring and enforcement of the regulatory provision. Such challenges have been identified and dealt with in SSMG-2016. However, in the absence of any standardized procedure, the monitoring has not been effectively practiced. This has been highlighted by the High Power Committee constituted by NGT in the matter pertaining to illegal mining.