

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**EASTERN ZONE BENCH AT KOLKATA****ORIGINAL APPLICATION NO. 85 OF 2023****IN THE MATTER OF:**

SAHEEN TARANNUM & ANR.

... APPLICANTS

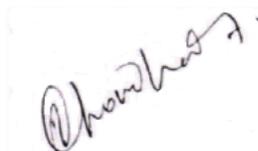
VERSUS

STATE OF ODISHA & ORS.

... RESPONDENTS

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S.NO.	PARTICULARS	PG.NO.
1.	Rejoinder To The Counter Affidavit by Respondent No. 11, M/s Godavari Commodities Ltd. Dated 24.05.2024 On Behalf Of The Applicants Along With Affidavit	435-442

Proof of Service**443****THROUGH****RITWICK DUTTA RAHUL CHOUDHARY KAUSTAV DHAR****ADVOCATES**

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Email: dclaw160@gmail.com**PLACE: NEW DELHI/KOLKATA****DATE:- 06.08.2024**

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**EASTERN ZONE BENCH AT KOLKATA****ORIGINAL APPLICATION NO. 85 OF 2023****IN THE MATTER OF:**

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VERSUS

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**REJOINDER TO THE COUNTER AFFIDAVIT BY RESPONDENT
NO.11 M/S GODAVARI COMMODITIES DATED 24.05.2024 ON
BEHALF OF THE APPLICANTS****MOST RESPECTFULLY SHOWETH:**

1. That the Applicants had filed the above-mentioned Original Application No. 85 of 2023 before this Hon'ble Tribunal against the illegal operation of the private stack yard located near the Bilteruan village and opposite to the railway tracks leading to the Nergundi Railway Station, in Alarpur, Cuttack, Odisha. The Applicants, through the above-titled Application, had raised the issue that the operation of the private stack yard near the Nergundi Railway Siding was illegal and in violation of the 'Guidelines for Environmental Management in Mineral Stack Yards and Railway Sidings, 2010' issued by the Odisha State Pollution Control Board. It was further submitted that due to such loading, unloading, stacking and transportation of the minerals in the private stack yards, it had led to extreme amount of dust pollution in Bilteruan village causing breathing related issues amongst the residents.

2. That this Rejoinder is being filed in response to the Counter Affidavit dated 24.05.2024 by the Respondent No. 11, i.e. M/s Godavari Commodities. At the outset, the Applicant denies the contents of the Counter Affidavit filed by the Respondent No. 11 unless expressly admitted or are a matter of record.

PRELIMINARY SUBMISSIONS AND OBJECTIONS:

3. That the Applicant is making the following preliminary submissions and objections to the contentions of the Respondent No. 10 raised in the Counter Affidavit:
 - i. That the Respondent is violating the siting considerations under the Guidelines for Environmental Management in Mineral Stack Yards and Railway Sidings, dated 16/4/2010 for railway siding and mineral stack yard issued by the State Pollution Control Board. The Guidelines require that the stack yards must be at a minimum distance of 500 m from schools. However, as per the Joint Committee Report dated 2.09.2023, the concerned stack yard is at 376 m and 440 from the Bilteruan Urdu Primary School. Therefore, it is in violation of the siting criteria.
 - ii. That the Respondent is not complying with the conditions mentioned in the latest Consents granted to it dated 19.02.2022 by the Odisha State Pollution Control Board. The following table shall show the non-compliance of the Consent conditions, based on the observations made by the Joint Committee in report dated 2.09.2023:

S.No.	Condition mentioned in the Consent dated 19.02.2022	Non-compliance done by the Respondent No. 11
1.	<p><i>"Special Conditions: A. General: ... 2. Industry shall undertake plantation of indigenous species for at least two rows all along the plant boundary and in vacant spaces."</i></p>	<p>The Joint Committee in Para 9 of the report dated 2.09.2023 had stated that the Respondent No. 11 had planted a line of trees recently, along the boundary wall of the stackyard. The relevant portion is reproduced below: <i>"9.A line of trees found to be planted recently along the boundary wall of the stack yard."</i></p>
2.	<p><i>"Special Conditions: C. Air Pollution: ... 1. The unit has to provide 3 meter height boundary wall all along its boundary to prevent the material getting air borne and the height of material within storage areas must be kept below the height of the boundary wall."</i></p>	<p>The Joint Committee in its report dated 2.09.2023 had further observed that although the boundary wall was constructed at 3 meter height, the height of the coal stacked was found to be exceeding the height of the boundary wall. The relevant portion is reproduced below: <i>"9. ...The height of the coal was exceeding the height of the boundary wall."</i></p>

REJOINDER ON BEHALF OF THE APPLICANT TO COUNTER AFFIDAVIT FILED BY M/S GODAVARI COMMODITIES, RESPONDENT NO. 11:

- a. Response to the contention that the Respondent is adhering to all the conditions mentioned in the Consent by the Odisha Pollution Control Board:**

4. That the Respondent No. 11 has submitted that it is adhering to all the conditions mentioned in the Consent orders granted to it by the Odisha State Pollution Control Board. However, it is violating certain conditions in the latest Consent granted to it. The same has been mentioned in the table in Preliminary submissions, and may be read as part and parcel of the submissions.
5. It is submitted that the Respondent was first granted CTE on 29.11.2018 as per the Joint Committee Report dated 2.09.2023. Thereafter, it has renewed its CTO over the years accordingly. On a perusal of the Consent orders, it can be clearly seen that each CTO has these above-mentioned conditions being imposed, constantly. Yet, even as per the latest Consent, the Respondent has failed to adhere to these conditions and the same has been reiterated in the Joint Committee Report.
6. That therefore, appropriate compensation is required to be calculated against the concerned Respondent as per the CPCB formula, for such violation of the consent conditions, resulting in extreme dust pollution in the area.

b. Response to the contention that the Respondent No. 11 was not impleaded as a party to the proceedings:

7. That the Respondent No. 11 has claimed that the Applicants have not impleaded them as party to the proceedings despite being aware about the operation of the stack yard by the concerned Respondent. It is submitted that during the time of the filing of the application, the Applicants were not aware about the role of M/s Sendoz Impex Ltd. and M/s Godavari Commodities in operation of stack yards.

8. That the Joint Committee in its report dated 2.09.2023 has given the finding that the 'Consent to Establish and Operate' is not given to Respondent No. 6 and 7. However, Respondent No. 6 has leased out his land to M/s Sendoz Impex Ltd. and M/s Godavari Commodities for operation of the coal stack yards. Therefore, the Applicants filed an impleadment application, I.A. No. 70 of 2023 before this Hon'ble Tribunal, praying to implead M/s Sendoz Impex Ltd. and M/s Godavari Commodities as necessary parties. The Hon'ble Tribunal vide order dated 15.02.2024 accepted such Impleadment and therefore, M/s Godavari Commodities was impleaded as Respondent No. 11 in the above-mentioned Original Application.

9. That therefore, the Respondent No. 11 cannot claim the defence that they were not made party to the proceedings. They have only filed their Counter Affidavit dated 24.05.2024, after being impleaded, and notice being sent by this Hon'ble Tribunal.

c. Response to the contention that the Response to the Joint Committee Report filed by the Applicant dated 8.12.2023 is without affidavit:

10. That as per the claim of the Respondent No. 11 that since no affidavit has been filed with the Response to the Joint Committee Report dated 8.12.2023, therefore, it is submitted that it was a bona fide mistake on part of the Applicants to not annex an affidavit with the said Response. However, such mistake has been rectified by the Applicants, as the Applicants have again submitted the Response along with an Affidavit as on 12.07.2024.

d. Response to the contention that the stack yard is in accordance with the siting criteria, as observed by the Joint Committee:

11. That the Respondent No. 11 has claimed that the Joint Committee has verified the siting criteria, and has confirmed that the stack yards are in terms thereof. It is submitted that the Joint Committee has given clear finding that Respondent No. 11 is operating within 376 and 440 m aerial distance from the Bilteruan primary school.

12. That it can be clearly seen from the Report, that the Joint Committee has not accepted nor denied that whether the stackyard is located as per the siting criteria mentioned in the Guidelines for Environmental Management in Mineral Stack Yards and Railway Sidings, dated 16/4/2010 for railway siding and mineral stack yard issued by the State Pollution Control Board. It is submitted that such distance is still in violation of the siting criteria, which states that no stack yard can be present within 500 meters from any school or sensitive area.

13. That therefore, since the stack yard of M/s Godavari Commodities Ltd. is within 500 m from the Bilteruan primary school, it is illegal and contrary to the siting criteria of the Guidelines issued by the State Pollution Control Board and hence, any consent/NOC issued to them is likely to be revoked.

e. Response to the contention that the Applicants have undertaken speculative litigation by filing the above-mentioned Original Application:

14. That the Respondent No. 11 has alleged that the Applicants have undertaken speculative litigation by filing this above-mentioned Original Application before this Hon'ble Tribunal. The Applicants submit herein that the Writ Petition filed before the Hon'ble High Court was filed by other residents of the Bilteruan village which the Applicants were not party to.

15. That further, the Applicants had filed the above-mentioned Original Application under Section 14 of the National Green Tribunal Act, 2010 wherein a substantial question of environment has been raised, implementing the enactment under Schedule I. Such application can be invoked by a victim of pollution for the restoration of environment. Therefore, the Applicants, being interested in the protection of environment and public health, had filed the above-mentioned Original Application, on realizing the immense air pollution being caused to the Bilteruan village by the operation of the Nergundi Railway siding and the stack yards so established.

16. It is also submitted that the Applicants got to know about the decision made in the Writ Petition after the Joint Committee Report dated 2.09.2023 was filed before this Hon'ble Tribunal. On a perusal of the order dated 24.08.2023 mentioned in Annexure IV of the Joint Committee Report, it can be seen that the Pollution Control Board has issued 'long term measures' as directions for the management of air pollution control. However, as per Page 44 of the Report, such directions have been directed only to the Nergundi Railway Siding. No such directions have been issued for the stack yards in operation as well. Therefore, this present Application seeks direction for compliance of dust control measures, as it is a grave concern for the residents of the village Bilteruan.

17. That therefore, the Hon'ble Tribunal, in the interest of justice may consider the above submissions and objections on behalf of the Applicants for further adjudication of the matter.

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
ORIGINAL APPLICATION NO. 85 OF 2023

IN THE MATTER OF:

SAHEEN TARANNUM & ANR ... APPLICANTS
VERSUS
STATE OF ODISHA & ORS RESPONDENTS

AFFIDAVIT

I, Saheen Tarannum, D/o Late Abdul Azad Khan, aged about 38 years, R/o Village Bilteruan, Po- Harianta, Dist. Cuttack, Odisha-754025, do hereby solemnly affirm and declare as under:

1. That I am the Applicant No. 1 in the above titled Application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Response are true and correct and nothing material has been concealed therefrom.

Saheen Tarannum

DEPONENT

VERIFICATION

Verified on this 12th day of July, 2024 that the contents of the present affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.

Saheen Tarannum

M. S. Ghose
12/7/24
NETAJI S. S. GHOSE
NOTARY, ADVOCATE
GOVT. OF ORISSA
Regd. No-ON-28703
CUTTACK



443

DC Law Chambers <dclaw160@gmail.com>

Copy of Rejoinder on behalf of the Applicant in OA No. 85 of 2023 Saheen Tarannum & Anr. Vs. State of Odisha & Ors.

1 message

DC Law Chambers <dclaw160@gmail.com>

Tue, Aug 6, 2024 at 11:52 AM

To: Dipanjan Ghosh <dpnjnghsh0@gmail.com>, ASHOK PRASAD <ashokadvhc@gmail.com>, Deepak Gupte <advgupte@gmail.com>, Surendra Kumar <surendra_kr15@rediffmail.com>, Tarun Patnaik <tarun.patnaik87@gmail.com>, shakti panda <sppanda13@gmail.com>, dm-cuttakc@nic.in, "ipsit91@yahoo.co.in" <ipsit91@yahoo.co.in>, Abhishek Jain <abheejain21@gmail.com>

Dear All,

Please find attached- Copy of Rejoinder on behalf of the Applicant in OA No. 85 of 2023 Saheen Tarannum & Anr. Vs. State of Odisha & Ors.

Thanks & Regards

Counsel for the Applicant

2 attachments**Rejoinder to R-10 by Applicant.pdf**

518K

**Rejoinder to R-11 by Applicant.pdf**

703K