

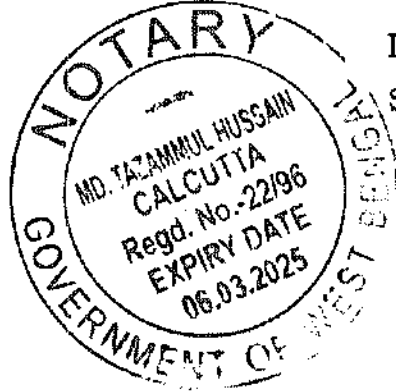
SL. NO. 11

*

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

APPEAL NO. 22/2023/EZ



In the matter of:

Samir Kumar Pradhan &Ors.

... Applicant(s)

Versus

State of Odisha &Ors.

... Respondents

REPLY ON BEHALF OF THE RESPONDENT NUMBER 8.

TO REJOINDER AFFIDAVIT FILED BY THE APPELLANTS

INDEX

SL	PARTICULARS	ANNEXURE	PAGE
1.	Affidavit.		304-312
2.	Copy of the Order passed by the Hon'ble Orissa High Court	'A'	313-336

Filed by:

POOJA SAH

Advocate

For The Respondent No. 8.

Email: sahpooja293@gmail.com

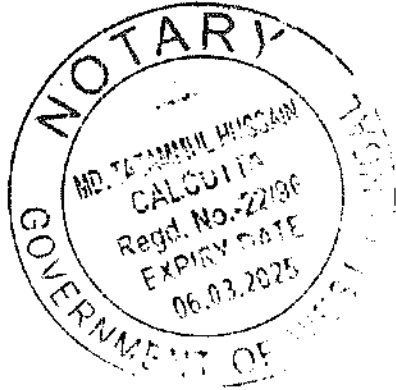
Mob: 9674012194

X

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

APPEAL NO. 22/2023/EZ



In The Matter of:

Samir Kumar Pradhan &Ors

... Applicant(s)

Versus

State of Odisha &Ors.

... Respondents

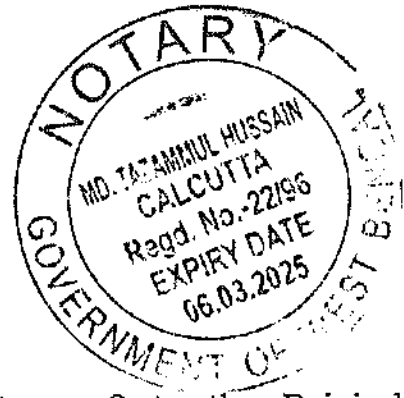
REPLYON BEHALF OF THE RESPONDENT NUMBER 8.

TO REJOINDER AFFIDAVIT FILED BY THE APPELLANTS

I, Laxmipriya Prusty, wife of Ratikant Rout, aged about 38 years, by occupation- Business, residing at – Balaram Prasad, PO. – Patla, PS.- Motanga, District- Dhenkanal, Odisha, do hereby solemnly affirm and state as follows: -

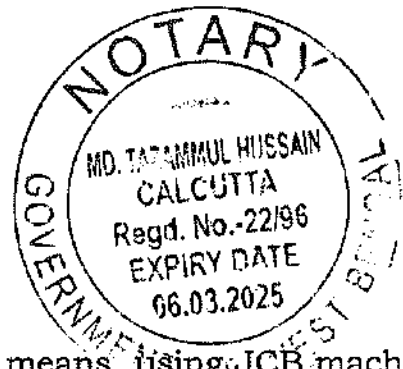
1. That I am respondent no. 8 in the instant Appeal. I am well-acquainted with the facts and circumstances of the case and am competent affirm this affidavit.
2. I have gone through a copy of the Rejoinder Affidavit affirmed by Samir Kumar Pradhan on May 08, 2024 and have understood the contents and purport thereof.

✕



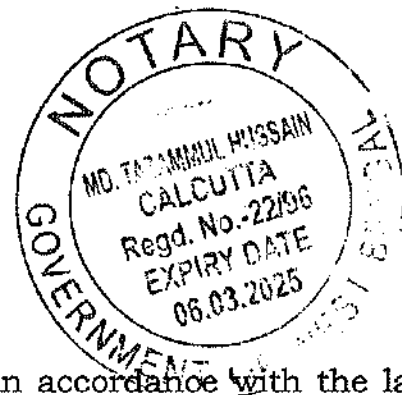
3. That this Reply by the respondent no. 8 to the Rejoinder Affidavit filed by the Appellant is being filed in compliance of the solemn Order dated July 11, 2024 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata.
4. I deny each and every allegation contained in the said Rejoinder Affidavit save what are matters of record and/or what are specifically admitted by me herein and repeat and reiterate the contentions stated in the Counter Affidavit filed on behalf of the Respondent No. 8 dated March 11, 2024.
5. It is categorically denied that the no Reply whatsoever has been filed by any of the respondents after the Hon'ble Tribunal was pleased to direct on August 09, 2023 that notice be issued upon all respondents to file their replies within a period of 4 weeks. In fact, a Counter Affidavit dated March 11, 2024 was filed by the respondent no. 8 and the same has been taken on record by the Hon'ble Tribunal.
6. I deny that based on the Modified Mining Plan, no mining operation can be done, as alleged or at all.
7. I deny that the Counter Affidavit filed by the respondent no. 8 is not a Counter Affidavit and that it appears to be Supplementary Affidavit bringing on record subsequent developments after grant of Environmental Clearance.
8. I deny that the respondent no. 8 being the project proponent has least regard for the conditions stipulated in the Environmental Clearance and utter disregard to the proceedings before this Hon'ble tribunal and I put the appellant to strict proof thereof.
9. I deny that the quantity of mining already done is much more than the permissible quantity and that the respondent no. 8 is carrying

*



out mining activities through mechanical means, using JCB machine, in contravention of the stipulated terms and conditions, as alleged or at all.

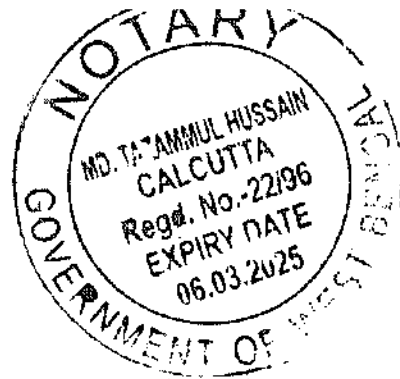
10. I state at the very outset that the appellants have filed the instant Appeal, interalia, praying for quashing of the Environment Clearance (hereinafter referred to as EC) dated June 23, 2023 issued by SEIAA (Respondent No. 5) in favour Respondent No. 8. The instant appeal filed by the appellants is misconceived and based on falsehood and incongruously in variance and in stark contradiction to the reality and is thus liable to be dismissed with cost.
11. I state that another Appeal, being Appeal No. 19/2023/EZ (Ashis Kumar Ghosh &Anr. Vs State of Odisha &Ors) has also been filed, interalia, challenging the EC granted by the SEIAA to the respondent no. 8 and the same is pending adjudication.
12. I state that as a matter of fact, SEIAA has issued Environment Clearance in favour of the respondent no. 8 for mining of sand from Rajnagar River Sand Quarry over an area of 13.55 acres or 5.48 Ha bearing Khata No. 377, Plot No. 1295/1300 in Village – Rajnagar, Tahasil – Jaleswar, District – Balasore, Odisha. Before issuance of the such EC in favour of the respondent no. 8, public hearing was duly conducted in accordance with the extant rules and as per Environmental Impact Assessment (EIA) notification.
13. I state that the Collector, Balasore/ Respondent No. 2 has filed a Counter Affidavit in Appeal No. 19 of 2023 (Ashis Kumar Ghosh vs State of Odisha &Ors) wherein it has, interalia, been narrated as to



how such public hearing was conducted in accordance with the law. SEIAA has also filed a counter affidavit in the aforementioned Appeal, interalia, denying the allegations made by the appellants and also justifying the legality of the Environment Clearance granted by the Authority in favour of the respondent no. 8 herein. The chronological events giving rise to the issuance of Environment Clearance in favour are narrated in the counter affidavits filed by Collector, Balasore and SEIAA.

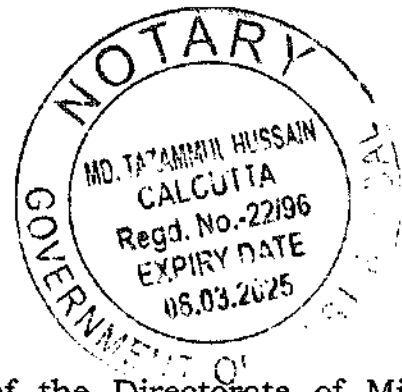
I crave leave to rely upon the said counter-affidavits filed by the respondent authorities in Appeal 19/2023/EZ at the time of hearing, if necessary.

14. I state that as indicated above, the concerned respondent authorities have already placed on record that no illegality or irregularity had been committed in conducting the public hearing. Besides such public hearing was conducted at the appropriate place and in presence of the villagers and local inhabitants. The villagers welcomed the initiative of granting the lease and the local Sarpanch, Panchayat members amongst others expressed their gratitude and appreciation for the same. The local community also supported the proposal and the said that the sairat source is a potential project to contribute positively to the economic development of the locality.
15. I state that the new District Survey Report (DSR) was approved by SEIAA, Odisha on 26.04.2023 and thereafter a modified mining plan was obtained by the lessee / Respondent No. 8 on 29.05.2023. Thus the mandatory requirement of a revised mining plan as per new DSR has been duly complied with by the respondent no. 8.
A copy of the modified mining plan dated 29.05.2023 in respect of the sairat source in question is annexed to the Counter Affidavit filed by the Respondent no. 8 and marked with the letter "R/1".
16. I state that in fact, the said schools are situated near about 350 meters away from the sairat source.



17. I state that it is pertinent to mention here that the respondent No. 8 filed a writ petition being No. W.P.(C) NO.41390 OF 2023 (LaxmipriyaPrusty VS State of Odisha and Ors.) before the Hon'ble High Court, Orissa (*hereinafter referred to as the said writ petition*), interalia, praying for issuance of 'Y' form (e-pass) to the petitioner therein/respondent no. 8 herein and for consideration of representation dated October 01, 2023 in accordance with law .
A copy of writ petition along with all annexure is annexed to the Counter Affidavit filed by the respondent no. 8 and marked with the letter "R/2".
18. I state that the said Writ petition came up for hearing on December 20, 2023 and after hearing the parties, the Hon'ble High Court was, interalia, pleased to direct the opposite party No. 2 therein (being Director, Minor Minerals, Steel and Mines Department, Govt. of Odisha) to consider the representation of the petitioner within a stipulated time and pass appropriate orders in accordance with law within a period of 6 weeks from the date of production of certified copy of the said solemn order.
A copy of the solemn Order dated December 20, 2023 is annexed to the Counter Affidavit filed by the respondent no. 8 and marked with letter "R/3".
19. I state that Respondent no. 8 made a representation dated November 1, 2023, interalia, expressing his grievances to Director, Minor Minerals, Steel and Mines Department, Govt. of Odisha which was duly received by Directorate of Minor Minerals, Odisha on November 4, 2023. For better appreciation of the facts, representation dated November 01, 2023 of the respondent no 8 was forwarded to DDM, Bhadrak with a request to cause an immediate inquiry into the matter personally and to take immediate necessary action in the matter as per rules and also to furnish action taken report in the matter to Directorate of Minor Minerals, Odisha for the appraisal of Director, Minor Minerals, Odisha.

✕



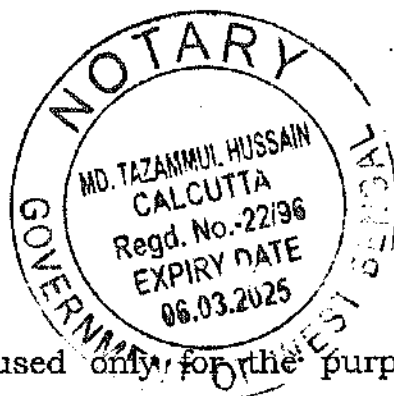
I state that pursuant to the inquiry of the Directorate of Minor Minerals, Odisha, the DDM, Bhadrak revealed that since the matter was sub-judice before the Hon'ble National Green Tribunal, inter alia, challenging the issuance of Environmental Clearance, The Rajnagar River Sand Quarry has not been taken over by the Mining Officer, Balasore. It is pertinent to mention herein that the matter was further referred to Steel and Mines Department for necessary clarification/instruction in the matter. The Steel and Mines Department vide its letter being No. 1258 dated February 08, 2024 has intimated that even though the matter is sub-judice under National Green Tribunal, Eastern Zone Bench, Kolkata challenging the issuance of Environmental Clearance, as there is no order for stay of operations yet. It further requested the Director, Minor Minerals, Odisha to dispose of the representation of the respondent No.8 without delay by instructing Mining Officer, Balasore/DDM Bhadrak to issue e-transit permit to the lessee to avoid any legal complicity.

I state that thereafter Mining Officer, Balasore was, inter alia, requested to take immediate necessary steps for issuance of e-transit pass to the lessee (respondent no. 8 herein) in respect of Rajnagar Sand Quarry over an area of 13.55 acres or 5.48 Ha bearing khata no: 377 , plot no. 1259/1300 in village - Rajnagar , Tahasil- Jaleswar, District - Balasore provided the lessee fulfilled all the requisite conditions, obtained all statutory clearances, deposited required dues including outstanding and there is no other legal impediments against the source.

A copy of the order dated February 23, 2024 is annexed to the Counter Affidavit filed by the respondent no. 8 and marked with letter "R/4".

20. I state that there is no violation whatsoever of any of the conditions as stated in the Environmental Clearance and, as such, the question of revocation of Environmental Clearance on that ground does not arise.

X



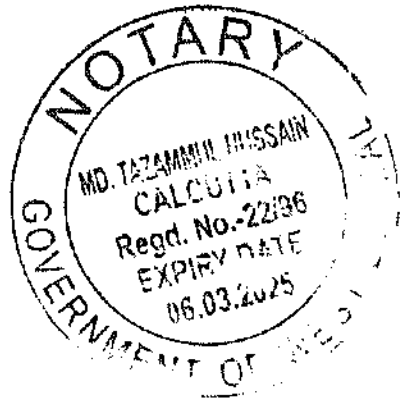
21. I state that JCB machine is used only for the purpose of construction of roads in order to enable the mined sand to be transported and all mining activities are carried out manually in strict conformity with the stipulated terms and conditions.
22. I state that the vehicles carrying the mined sand are plying only at night in strict conformity with the solemn Order dated February 06, 2024 passed by the Hon'ble High Court at Orissa, wherein, the Hon'ble High Court has, interalia, been pleased to restrict movement of vehicles carrying sand from 7 A.M in the morning to 9 P.M at night. A copy of the solemn Order passed by the Hon'ble High Court is annexed hereto and marked with the letter "A".
23. I state that at present, due to the ongoing rainy season, no mining activity whatsoever is being carried out and the same will commence only after October 15, 2024.
All other allegations contrary thereto and/or inconsistent therewith are denied.
24. Under such facts and circumstances as stated hereinabove, the contentions of the applicant as sought to be agitated against the respondent no. 8 in the instant Appeal are not maintainable and sustainable in law and the said Appeal is liable to be dismissed on that score alone.
25. That it is therefore most humbly prayed that this Hon'ble Tribunal may pass such Order/Orders as it deems fit and proper in the interest of justice and fair play.

Identified by me
for a Self
 Dependent Advocate

Laxmipriya Prusty

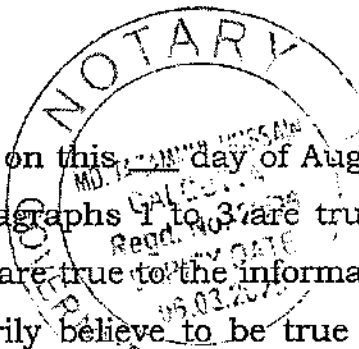
For The Respondent No. 8

*



VERIFICATION

Verified at Kolkata by the deponent above named on this 28th day of August, 2024 and state that the statements made in paragraphs 1 to 3 are true to my knowledge, those made in paragraphs 4 to 23 are true to the information derived from the records of the case which I verily believe to be true and those made in paragraph 24 and the rest are my respectful submissions before this Hon'ble Tribunal.



Identified by me

Bojia Saha

Advocate
For The Respondent no. 8

f158618-0712820

Laxmipriya Prusty

Deponent

28 AUG 2024

Solemnly affirmed and declared
before me on Identification

[Signature]

MD. T. HUSSAIN Notary
City Civil Court
Kolkata
Regd. No. 22/96 Govt. of W B

28 AUG 2024

✱ Annexure A

ORISSA HIGH COURT: CUTTACK

AFR

W.P.(C) No. 6375 of 2023

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Prasanta Kumar Das Petitioner

-Versus-

State of Odisha and others Opp. Parties

For petitioner : M/ Sankanta Kumar Dalai
and S. Manapatra Advocates

For opp. parties : M/s. G. Parija,
Advocate General along with
M/s. P. Mohanty,
(O.P. Nos. 1 to 13)

M/s. S.P. Mishra,
Padmanav Sethy and R. Dash,
Advocates

(O.P. No. 14)

M/s. Sanjay Das-2,
Padmanav Sethy, T.K. Sahoo,
Advocates (O.P.Nos. 18 & 19)

Mr. S.P. Mishra, Sr. Advocate
along with M/s. Soumya Mishra,
A. Agarwal, R.K. Agarwal,
M. Mishra and B. Behera,
Advocates (O.P. No.20)

Mr. P.K. Mohapatra, Advocate
(For Intervener)



X

//X//

PRESENT:

**THE HONOURABLE ACTING CHIEF JUSTICE DR. B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE MURAHARI SRI RAMAN**

Date of Hearing and Judgment :: 06.02.2024

DR. B.R. SARANGI, ACJ. The petitioner has filed this writ petition in the nature of public interest litigation seeking following relief(s):-

"It is most respectfully prayed that this Hon'ble Court may graciously be pleased to issue Rule Nisi calling upon the Opposite Parties to show cause as to why appropriate direction shall not be given to the Opposite Parties more especially Opposite Party No. 1 to take prompt action to stop illegal mining by way of mechanized means and to adopt guided and controlled methods of transportation of sands and to cause an independent enquiry in relation to alleged illegal practice adopted by the Opposite Party (a.s.o) and to declare the present auction process as illegal, arbitrary and malafide and against larger public interest"

2. The factual matrix of the case, in brief, is that the State authorities, while granting sand sairats on lease to different lessees by making public auctions for different periods, are allowing the lessees to operate the lease in violation of the terms and conditions of the lease deed executed between the parties. Though the lease conditions stipulate that the lessee has to operate the mining manually as far as practicable, but the lessees

✕

// ✕ //

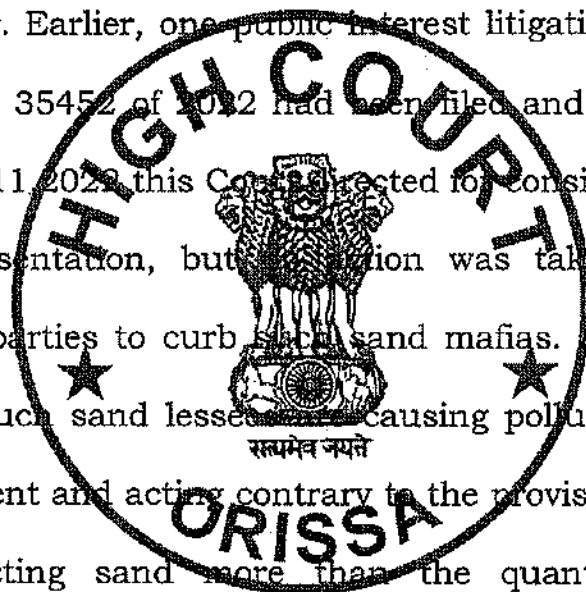
are using the machinery in a mechanized manner for extraction of sand from the sand sairats, which is a great concern in the present writ petition. There is also unorganized movement of vehicles transporting the sand in the school and habitable areas in day time. Similarly, uncontrolled extraction of sand from the leasehold areas in a mechanized manner is not only causing threat to the environment but also causing threat to the river embankment affecting larger public interest. The petitioner has received information that the lessees, who have been allotted with sairats by the Tahasildars of the various Tahasils, are utilizing the machines to extract sand in their leasehold areas. That itself contravenes the conditions stipulated in the lease deed executed between the parties. Aggrieved by such action, though the petitioner approached the authorities on several occasions, no action was taken, for which the petitioner has filed this writ petition in the nature of public interest litigation alleging inaction of the authorities and also bringing to the notice of this Court the violation of conditions stipulated in sand sairat lease deeds by the lessees. The lessees, while extracting sand,



✽

// ✽ //

are violating the conditions stipulated by the Pollution Control Board, more particularly, the provisions contained under Section 25 of the Air (PCP) Act, 1981. Inaction on the part of the authorities has occasioned rampant mis-utilization of the source and it so happened that the lessees are extracting more than the quantum allotted in their favour causing huge loss to the State exchequer. Earlier, one public interest litigation bearing WP(C) No. 35452 of 2022 had been filed and vide order dated 22.11.2022 this Court directed for consideration of the representation, but no action was taken by the opposite parties to curb the sand mafias. As a result thereof, such sand lessees are causing pollution to the environment and acting contrary to the provisions of law by extracting sand more than the quantity to be extracted in a mechanized manner, by which also they are causing loss of revenue to the State. Though sand sairats are leased out to augment revenue for the State to be utilized for the development of the public, such sairats having been mis-utilized, the State's revenue is being siphoned to the so called land mafias causing hardship to the general public, due to uncontrolled



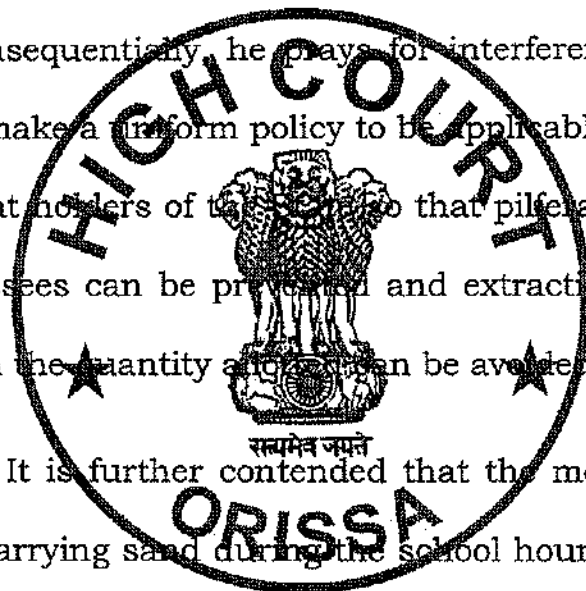
X

//X//

extraction of sand and movement of sand carrying vehicles as per their sweet will. Hence, this writ petition.

3. Mr. S.K. Dalai, learned counsel appearing for the petitioner vehemently contended that in the State of Odisha auction of the sand queries, selection of lessees and extraction of sand in mechanized manner are all being done detrimental to the interest of the public at large. Consequentially, he prays for interference of this Court to make a uniform policy to be applicable to all the sand sairat holders of the State so that pilferage of sand by the lessees can be prevented and extraction of sand more than the quantity allowed can be avoided.

3.1 It is further contended that the movement of vehicles carrying sand during the school hour as well as office hour at day time, is causing immense difficulties for the general public. The same should be prevented and the lessees should not be allowed to have extraction of sand and movement thereof during day time, when traffic is in force. Apart from the same, it is further contended that there is no dispute that the State should utilize all its larges for the public, but that should be



❌

// ❌ //

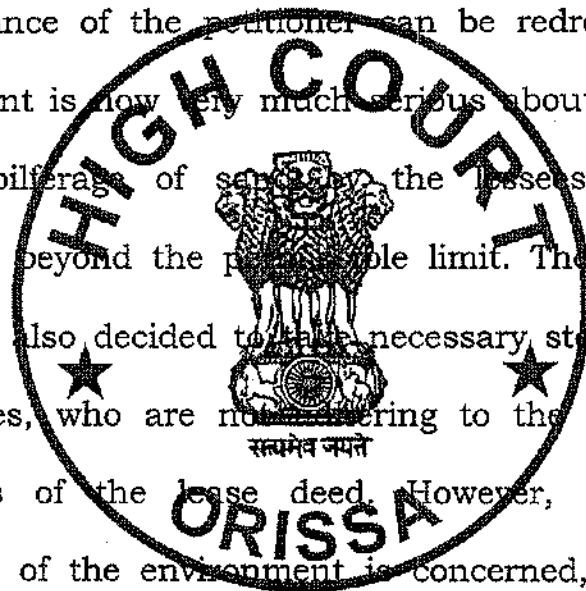
done in the manner it is required to be done in accordance with law. But, without following the same, if any larges of the State is utilized detrimental to the interest of the public, the same should be curbed down. Attention of the Court has been drawn to the situation of Cuttack Town, so far as sand sairats of Kathajodi and Mahanadi are concerned. Though some instances are placed on record, it is contended that similar state of affairs is going on throughout the State. Therefore, stringent action has been sought for as against the erring officials, who are indulged in such type of activities and not discharging the responsibilities assigned to them, and against the lessees, who are violating or exceeding the conditions of lease, so that they can be handled with care and no further mishandling of sources can be done by any of the lessees. It is further contended that unless those lessees are dealt with very strong hands, the sources cannot be preserved for the future generation.

4. Mr. Ashok Parija, learned Advocate General appearing for the State-opposite parties contended that

✕

// ✕ //

considering the gravity of the situation and looking at the policy framed by the Ministry of Forest and Environment of the Union of India and the consequential guidelines issued thereof, the Government has framed a fresh guidelines on 21.12.2023 and the same has been placed on record for consideration. He contended that adhering to the fresh policy, if leases are granted, then the grievance of the petitioner can be redressed. The Government is now very much serious about the issue relating pilferage of sand by the lessees who are extracting beyond the permissible limit. Therefore, the State has also decided to take necessary steps against the lessees, who are not adhering to the terms and conditions of the lease deed. However, so far as protection of the environment is concerned, it is also contended that the Environment Department will take care of the issue and necessary statutory permission has to be obtained by the lessees. The Government will also look into the issue, if any of the lessees contravenes the conditions of environmental clearance, and deal him/her in accordance with law. Thereby, it is contended that since a new policy has to be formulated for the entire



✕

// ✕ //

State and even though said policy will apply prospectively, but the lessees, who are already in operation and their term has not been over, will also be intimated about the said policy, so that they will adhere to the terms and conditions mentioned therein in addition to the terms and conditions already existed in the lease deed.

4.1 It is also further contended that if any of the lessees contravenes any of the conditions stipulated in the lease deed or in the policy of the Government, then, it shall be open to the petitioner to approach the appropriate forum alleging violation of such condition(s) by the lessee so that the court will take its own course and the violator can be dealt with in accordance with law.

5. Mr. H.S. Mishra, learned counsel appearing for opposite party no. 17 vehemently contended that the petitioner has no *locus standi* to file this writ petition making bald allegations. Learned counsel also drew our attention to the prayer made in the writ petition and contended that the relief, which has been sought by the

X

//X//

petitioner, is no more subsisting after the new policy has been formulated, therefore, the writ petition has to be dismissed in *limini* by imposing cost. It is further contended that if the petitioner has got any grievance as against any of the lessees, he has other remedies available instead of filing the present public interest litigation before this Court. In any case, since the Government has formulated a new policy and new guidelines, certainly the same will be adhered to by the lessees and any contravention thereof will be taken care of by the authorities in accordance with law.

6. Mr. Sanjay Das, learned counsel appearing for the opposite parties nos. 18 and 19 also accepted the argument advanced by Mr. H.S. Mishra, learned counsel for opposite party no.17, and contended that whatever principle will be laid down by this Court in the present proceeding that will be adhered to and in case of any violation that may be dealt with in accordance with law.

7. Mr. S.P. Mishra, learned Senior Counsel appearing for opposite party no.20 also accepted the contention advanced by Mr. H.S. Mishra, learned

❌

// ❌ //

counsel appearing for opposite party no.17, and contended that law provides that if there will be contravention of any of the conditions by the lessee, the same is to be dealt with in conformity with the provisions of law. If the Government framed a new policy, that will be adhered to by all the lessees. Meaning thereby, the lessees will definitely adhere to such conditions and in the event of any contravention thereof, action will be taken in accordance with law.

8. Mr. P.K. Das, learned counsel appearing for the intervener contended that the intervener has filed an application for intervention since he is a public spirited person and supports the case of the present petitioner. However, the intervention petition has not been allowed, learned counsel appearing for the intervener has been given opportunity of hearing in this case.

9. This Court heard Mr. S.K. Dalai, learned counsel appearing for the petitioner; Mr. A.K. Parija, learned Advocate General appearing along with Mr. Kishore Mohanty, learned Additional Standing Counsel

2X

// X1 //

for the State-opposite parties no. 1 to 13; Mr. H.S. Mishra, learned counsel appearing for opposite party no. 17; Mr. Sanjay Das-2, learned counsel appearing for opposite party nos. 18 and 19; Mr. S.P. Mishra, learned Senior Advocate appearing along with Mr. A. Agrawal, learned counsel for opposite party no.20; and Mr. P.K. Mohapatra, learned counsel appearing for the intervener. With the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

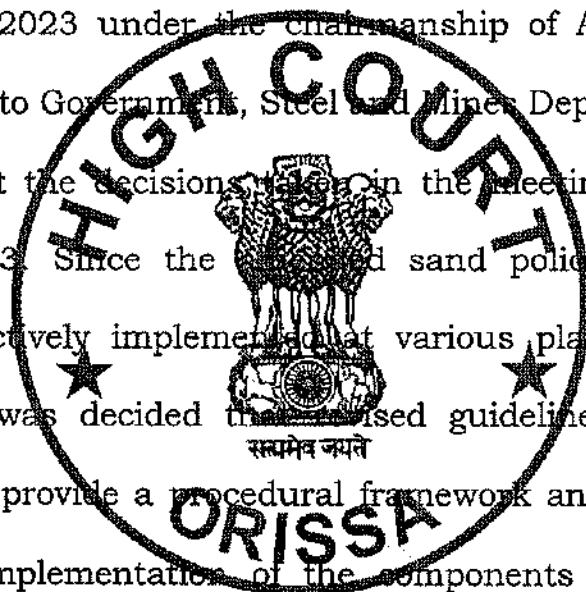
10. On being notified all the parties have appeared. It is made clear since this Court raised concern over the mechanized manner of extracting sand from the river bed, on 02.09.2021, Special Secretary to the Government in Steel & Mines Department directed all the Collectors to be vigilant and monitor regularly to curb illegal sand mining from river bed and see that the same shall be in consonance with the Odisha Sand Policy, 2021, which was issued by the Revenue & Disaster Management Department vide resolution No. 26723 dated 02.09.2021. Thereafter, a meeting regarding



✕

// ✕ //

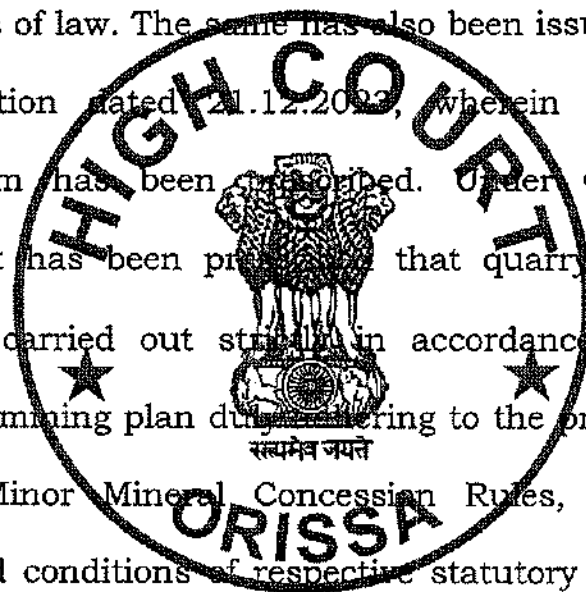
the sand mining guidelines and policy was convened, on 18.12.2023, under the chairmanship of Chief Secretary, Government of Odisha. In the said meeting a decision was taken to formulate revised guidelines in supersession of the existing guidelines of Revenue & Disaster Management Department for implementation of the Odisha Sand Policy, 2021. Another meeting was held on 19.12.2023 under the chairmanship of Addl. Chief Secretary to Government, Steel and Mines Department to implement the decisions taken in the meeting held on 18.12.2023. Since the said sand policy had not been effectively implemented at various places in the State, it was decided that the revised guidelines may be issued to provide a procedural framework and modality for the implementation of the components of Odisha Sand Policy, 2021. The said guidelines are in accordance with the provisions of Sustainable Sand Management Guidelines, 2016; the Enforcement and Monitoring Guidelines for Sand Mining, 2020 and directives issued by the National Green Tribunal from time to time as well as the judgment of the apex Court relating to sand mining. The said revised guidelines were put up for



24

// 13 //

approval of the Minister, Steel & Mines Department on 21.12.2023 and the same was approved and published on 21.12.2023. Therefore, revised guidelines has been issued on 21.12.2023 in order to implement the sand policy, which was existing since 2021, and further to regulate sand mining activities for the betterment of the public at large and, as such, it is in accordance with the provisions of law. The same has also been issued by way of resolution dated 21.12.2023, wherein the entire mechanism has been prescribed. Under Clause-4(g) thereof, it has been provided that quarry operation shall be carried out strictly in accordance with the approved mining plan duly conforming to the provisions of Odisha Minor Mineral Concession Rules, 2016 and terms and conditions of respective statutory clearances and approvals. The mining plan shall be prepared by following the guidelines of MoEF & CC, Government of India, formulated in the Sustainable Sand Mining Guidelines, 2016 and the said guidelines prescribed standard environmental condition for sand mining at SI No. 19 which clearly envisages "Depending upon the location, thickness of sand, deposition, agricultural






// 14 //

land/riverbed, the method of mining may be manual, semi-mechanized or mechanized; however, manual method of mining shall be preferred over any other method. Thereby, it is contended that semi-mechanized and mechanized way of mining is permissible in the Sand Mining Guidelines, 2016.

11. Mr. Dalai, learned counsel appearing for the petitioner brings to the notice of this Court the Sustainable Sand Mining Management Guidelines, 2016, more particularly, Page 33 thereof, wherein under the heading "About river sand mining it says that" it has been provided as follows:-


 " (iii) No river sand mining project, with mine lease area less than 5 ha, may be considered for granting EC. The river sand mining projects with lease area more than equal to 5 ha but less than 25 ha will be categorized as 'B2'. In addition to the requirement of documents, as brought out above under sub-para (ii) above for appraisal, such projects will be considered subject to the following stipulations:

- (a) The mining activity shall be done manually. The depth of mining shall be restricted to 3 m / water level, whichever is less.
- (b) For carrying out mining in proximity to any bridge and / or embankment, appropriate safety zone shall be worked out on case to case basis to the satisfaction of SEAC / SEIAA, taking into account the structural parameters, locational aspects, flow rate etc., and no mining shall be carried out in the safety zone so

✕

// 15 //

worked out. No in-stream mining shall be allowed.

According to him, since mining activities in the riverbed has been prescribed to be done manually, if at all any river is leased out and the lessee is allowed to go for mechanized mining, then it will be in violation of the above condition and will cause further difficulty. Therefore, the very purpose of coming to this Court by filing this public interest litigation will become frustrated.

12. Taking into consideration the above clauses, it is made clear that at so far as the resources are concerned, mining activities "shall" be done manually. By using the word "shall" the mandatory provision has been made for river sand mining as "manually".

13. In *Mohan Singh v International Airport Authority of India*, (1996) 10 JT 311: (1996) 8 Scale 251, the apex Court held that the word "shall" though prima facie gives impression of being mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the



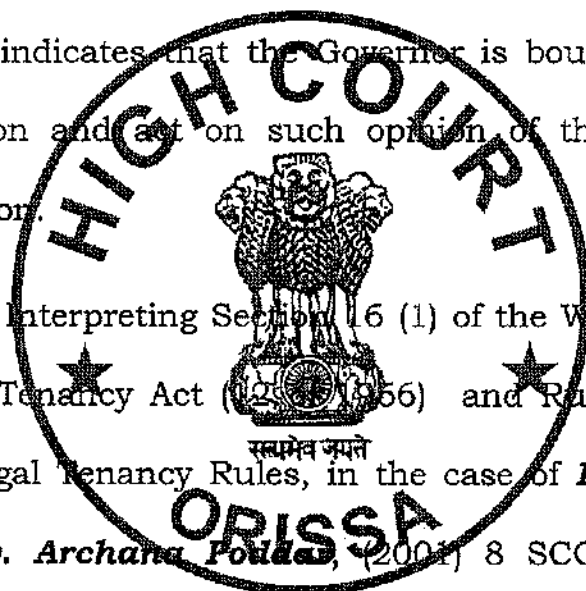
// 16 //

scope of statute, its nature and design and the consequences that would flow from the construction thereof one way or the other.

13.1. In *Election Commission of India v. Subramanian Swamy*, AIR 1996 SC 1810, while constructing Article 192 (2) of the Constitution of India, the apex Court held the use of expression “shall” in the provision indicates that the Governor is bound to take the opinion and act on such opinion of the Election Commission.

13.2. Interpreting Section 16 (1) of the West Bengal Premises Tenancy Act (12 of 1956) and Rule-4 of the West Bengal Tenancy Rules, in the case of *Biswanath Poddar v. Archana Poddar*, (2001) 8 SCC 187, the apex Court held that the use of word “shall” in Section 16 of the Act and Rules, indicates that the legislature intended the requirement of notice under Section 16 of the Act to be mandatory.

13.3. In *Hemalatha Gargya v. C.I.T.* (2003) 9 SCC 510, the apex Court held that the use of word “shall” in a



❌

// 17 //

statute ordinarily means that the statutory provision is mandatory.

13.4. In *State Inspector of Police v Surya Sankaram Karri*, (2006) 7 SCC 172 while considering the proviso of Section 17 of the Prevention of Corruption Act (49 of 1988), the apex Court held that the expression "shall" in proviso of Section 17 of the Act makes the provision mandatory.

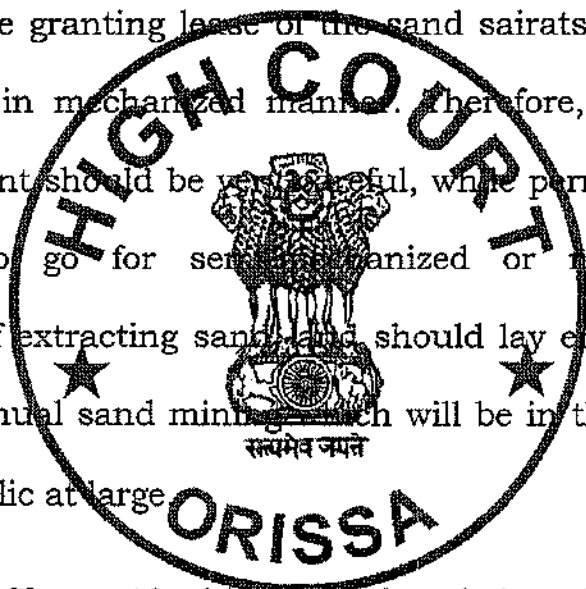
14. Taking into considering the use of word "shall" in the expression made, as discussed above, it implies a mandatory nature for river and sand mining as been prescribed to be done "manually".

15. The purpose behind the river sand mining manually has some meaning to the extent that if the sand mining will be done manually, then some local people will get some job and the same will minimize the unemployment problem to some extent and further the quantum of sand which will be extracted manually, that will have its own effect and the river bed will not be damaged. It is true that rejuvenation of river bed may be required during the flood time, but still then the question

३७

// 18 //

of semi mechanized or mechanized mining of sand will be detrimental to the interest of the public as well as the State Exchequer. More particularly, it will affect the future generation of the State, reason being if the resources, which are made available at present, are consumed during this generation, then future generation will face a lot of difficulties and that should be taken in mind while granting lease of the sand sairats to extract the sand in mechanized manner. Therefore, the State Government should be very careful, while permitting the lessees to go for semi mechanized or mechanized manner of extracting sand and should lay emphasis to go for manual sand mining which will be in the interest of the public at large.



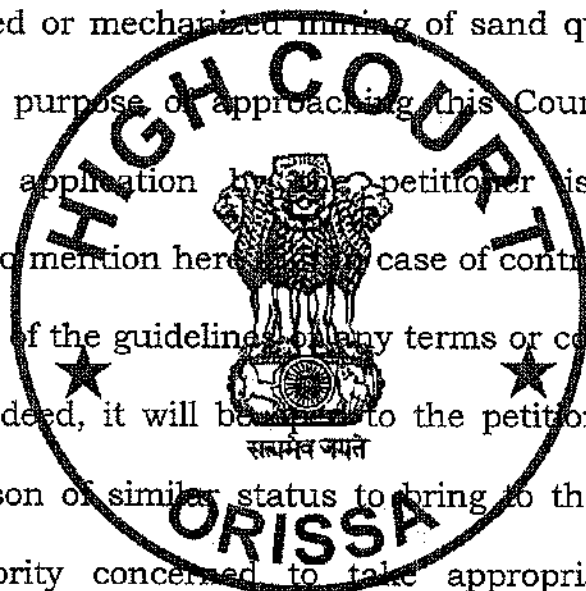
16. Clause-19 although referred that the method of mining may be manual, semi mechanized or mechanized, but, however, manual method of mining should be preferred over other two methods. Therefore, exercise of the preference for operation of sand quarries in manual method will be definitely a better method than that of semi-mechanized or mechanized manner.



// 19 //

17. An affidavit has been filed by the State Government indicating therein that in the event the Government decided to allow the lessees to go for semi-mechanized or mechanized mining operation, then mining plan clearance and environment clearance would be required to be obtained by the lessees. Thereby, some restrictions have been imposed for going for semi-mechanized or mechanized mining of sand quarries. As such, the purpose of approaching this Court by filing this writ application by the petitioner is justified. Needless to mention here, in case of contravention of any terms of the guidelines or any terms or conditions of the lease deed, it will be to the petitioner or any other person of similar status to bring to the notice of the authority concerned to take appropriate action against the lessees indulged therein, but not in the shape of public interest litigation, as specific forums are available, so that the violators can be taken care of in accordance with law.

18. In view of such provision, it is made clear that to protect the livelihood of the human being as provided

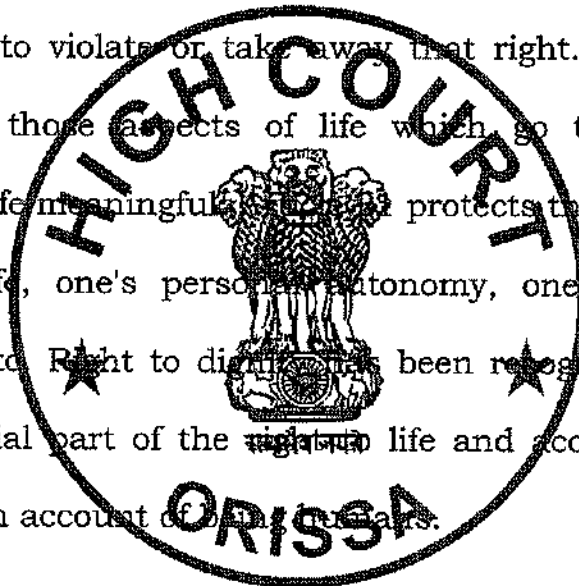


❌

// 20 //

under Article 21 of the Constitution, right to life being the basic concept to be taken care of, the State is to take necessary steps in that aspect.

19. Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right. Article 21 takes all those aspects of life which go to make a person's life meaningful, ~~and~~ protects the dignity of human life, one's personal autonomy, one's right to privacy, etc. Right to dignity has been recognized to be an essential part of the right to life and accrues to all persons on account of ~~human nature~~.



19.1. In *Chameli Singh v. State of Uttar Pradesh*, AIR 1996 SC 1051: (1996) 2 SCC 549, the apex Court held that "right to life" means to live like a human being and it is not ensured by meeting only the animal needs of man. It includes the right to live in the civilized society implies the right to food, water, decent environment, education, medical care and shelter.

3X

// 21 //

19.2. In *M.C. Mehta v. Union of India*, AIR 1987 SC 965 : 1986 (1) SCJ 383, the apex Court held that right to pollution free environment comes under Article 21 of the Constitution of India. The same view has also been taken by the apex Court in *Milkmen Colony Vikas Samiti v. State of Rajasthan*, AIR 2007 SC 1046: (1999) 2 SCC 718.

19.3. In *Subhash Kumar v State of Bihar*, AIR 1991 SC 420 : (1991) 1 SCC 598, the apex Court expanding the provisions of Article 21 of the Constitution of India, held that right to pollution free water and air comes within the purview of Article 21 of the Constitution of India.



19.4. May it be noted that basically Article 21 States the Protection of Lives and personal liberty. That means, Article 21 mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law.

19.5. In *State of Maharashtra V. Chandrabhan*, AIR 1983 SC 803, the apex Court held that Right to Life,

31

// 22 //

enshrined in Article 21 means something more than survival or animal existence.

19.6. The same view has also been taken in ***Olga Tellis v. Bombay Corporation***, AIR 1986 SC 180, ***D.T.C. v. Mazdoor Congress Union D.T.C.***, AIR 1991 SC 101, ***Re Noise Pollution (V)***, (2005) 5 SCC 733 and ***Re Noise Pollution (VI)***, (2005) 8 SCC 794.

19.7. In ***Francis Coraie Mullin v. Union Territory Delhi, Administrator***, AIR 1981 SC 760; (1981) 1 SCC 608, the apex Court held that the right to life would include the right to live with human dignity.

19.8. In ***Maneka Gandhi v. Union of India***, AIR 1978 SC 597; 1978 1 SCC 248, the Apex Court held that the right to life would include all those aspects of life which go to make a man's life meaningful, complete and worth living.

20. Now, coming to the question of protection of environment and checking of the movement of vehicles during the day time, Mr. Asok Parija, learned Advocate General very fairly stated that there should be restriction

४२

// 23 //

of movement of vehicles carrying sands from 7.00 A.M. in the morning till 9.00 P.M. in the night. That apart during the movement of vehicles carrying sand, the sand should be properly covered. No vehicle carrying sand should be allowed during day time from 7.00 A.M. in the morning till 9.00 P.M. in the night. If at all any lessee violates any condition, he/she will be dealt with properly in accordance with law. Apart from the same, it is the moral responsibility of the State authorities to see that environment is being protected and it is made pollution free. While doing so, the authorities also take necessary steps to protect the environment and make the environment pollution free.

21. Mr. Dalai, learned counsel appearing for the petitioner has also given some suggestions, which are also in adherence to the guidelines issued by the Government on 21.12.2023 and the conditions stipulated therein.

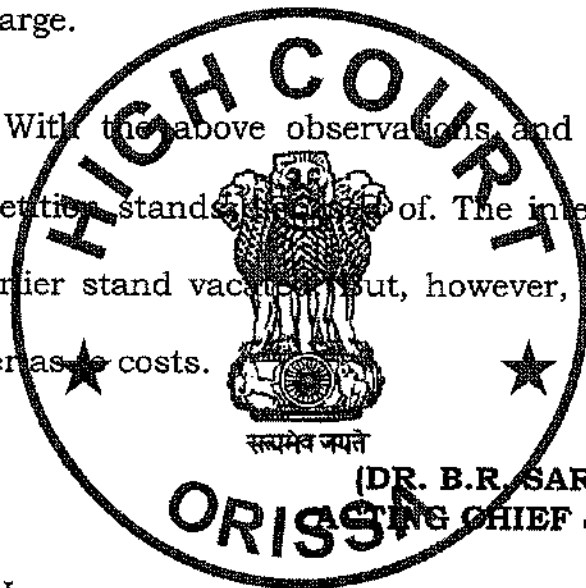
22. In view of such position, this Court disposes of the writ petition directing the State Government to scrupulously follow the guidelines framed by them on

४३

// 24 //

21.12.2023 and also adhere to the conditions stipulated in the lease deed executed between the lessee and the State giving priority to the sand mining by manually. Further, the State authorities should take necessary steps with regard to vehicular movements from 7.00 A.M. in the morning till 9.00 P.M. in the night and also protect the environment to provide a quality life to the public at large.

23. With the above observations and directions, the writ petition stands allowed. The interim orders passed earlier stand vacated. But, however, there shall be no order as to costs.



(DR. B.R. SARANGI)
JUDGE IN CHIEF JUSTICE

M.S. RAMAN, J. I agree.

(M.S. RAMAN)
JUDGE

Orissa High Court, Cuttack
The 06th February, 2024, Arun

Signature Not Verified

Digitally Signed
Signed by: ARUN KUMAR MISHRA
Designation: ADR-cum-Addl. Principal Secretary
Reason: Authentication
Location: Orissa High Court, Cuttack
Date: 12-Feb-2024 11:17:48

3A

BEFORE THE HON'BLE NATIONAL GREEN

TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

APPEAL NO. 22/2023/EZ

In the matter of:

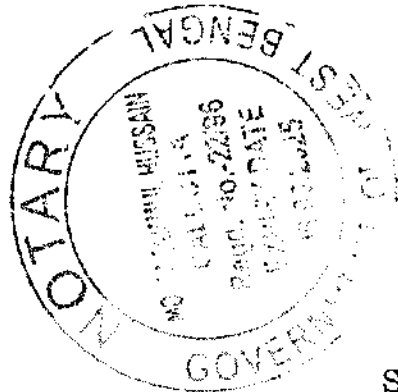
Samir Kumar Pradhan &Ors.

... Applicant(s)

Versus

State of Odisha &Ors.

... Respondents

REPLY ON BEHALF OF THE RESPONDENT
NUMBER 8.TO REJOINER AFFIDAVIT FILED BY THE
APPELLANTS

Pooja Sah,

Advocate

High Court, Calcutta

9674012194

Sahpooja293@gmail.com