

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

O. A. No. 104/2024/EZ



IN THE MATTER OF:

Nilamani Mahapatra

...APPLICANT(S)

Vs.


State of Odisha & Ors.

.....Respondent(s)

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Through :


(Ashok Prasad)
Advocate,
Counsel for U.O.I.

Place : KOLKATA
Dated : 10/09/24

SL. NO. 36 DT. 10.09.2024

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**COUNTER AFFIDAVIT / REPLY FOR AND ON BEHALF OF THE
RESPONDENT NO. 12**

MOST RESPECTFULLY SHOWETH:

I, Krishnendu Mondal, Son of Sri Bimalendu Mondal, aged about 51 years, employed / appointed as the Director of Mines Safety, South Eastern Zone, Bhubaneswar Region-1, Under Ministry of Labour and Employment, Govt. of India, do hereby solemnly affirm and declare as under:-

1. That I am the authorised signatory in the aforementioned matter. On the basis of records, I am well conversant with the facts of the case and hence, competent to swear this affidavit.
2. That I have read and understood the order dated 28.05.2024 of Hon'ble NGT, Eastern Zone Bench, and filed this Counter Affidavit in compliance of directions under Para 13 of the order dated 28.05.2024.
3. That I have read and understood the contents of the present Affidavit and state that the contents mentioned in the Affidavit are true and correct to the best of my knowledge.

PARA WISE REPLY

4. That the averments made under Paras 1 to 9 are relating to matter of record and hence, do not warrant any reply from this answering respondent No. 12.

5. That the averments made in para 10 (I) & (II) of the application are matter of record and hence, do not warrant any reply from this answering respondent No. 12.

6. That the averments made in para 10 (III) of the application, it is humbly submitted that:-

A. Mining/quarrying operations in mines other than a coal or an oil mine are regulated by the Mines Act, 1952 and the Metalliferous Mines Regulations (MMR), 1961 made thereunder and Directorate General of Mines Safety (DGMS) oversees the enforcement of these statutes in mines by the respective mine management.

B. The provisions of Regulation 109(1) of the Metalliferous Mines Regulation (MMR), 1961 are reproduced below –

"No workings shall be made and no work of extraction or reduction of pillars shall be conducted at, or extended to, any point within 45 metres of any railway, or of any public works in respect of which this regulation is applicable by reason of any general or special order of the Central Government, or of any public road or building, or of other permanent structure not belonging to the owner of the mine, without the prior permission in writing of the Chief Inspector/Director General of Mines Safety(DGMS), Directorate General of Mines Safety, Ministry of Labour and Employment, Government of India and subject to such conditions as he may specify therein."

No permission under Regulation 109(1) of the MMR, 1961 has been given by the DGMS to Kundakundi Kunda Decorative Stone Mine of M/s.O.M.C.Ltd.

C. The provisions of Regulation 164(1B) of the MMR, 1961 regarding blasting in mines near permanent surface structures are reproduced below –

"(a) In the case of an opencast working, where any permanent building or structure of permanent nature, not belonging to the owner, lies within the danger zone (the entire area falling within a radius of 300 metres as defined under Regulation 164(1A)(b) of MMR 1961), the aggregate maximum charge in all the holes fired at one time shall not exceed two kilograms unless permitted in writing by the Chief Inspector or the Regional Inspector Director General of Mines Safety(DGMS), Directorate General of Mines Safety, Ministry of Labour and Employment, Government of India and subject to such conditions as he may specify therein:

Provided that if blasting is done with delay detonators or other means and that there is a delay of at least half a second between successive shots fired, a maximum charge of two kilograms can be used in each hole;



Provided further that if the shortest distance from the place of firing to any part of such building or structure is less than 50 metres irrespective of the amount of the charge, no blasting shall be done except with the permission in writing of the Chief Inspector or the Regional Inspector and subject to such conditions as he may specify therein."

(b) Notwithstanding anything contained in clause (a) the Chief Inspector may, by an order in writing and subject to such conditions as he may specify, exempt any mine or part thereof from the operation of all or any of the provisions of clause (a) on the ground that the observance of its provisions is not necessary or reasonably practicable on account of the special conditions existing thereat."

No permission under Regulation 164(1B) of the MMR, 1961 has been given by the DGMS to Kundakundi Kunda Decorative Stone Mine of M/s.O.M.C. Ltd. Moreover, as per the information available in this office, the mining operations in this mine are carried out without blasting, hence Regulation 164(1B) of the MMR, 1961 does not apply to it.

7. That the averments made in para 10 (IV) to (X) of the application are matter of record and hence, do not warrant any reply from this answering respondent No. 12.
8. That the averments made in para 11 to 17 of the application are matter of record and hence, do not warrant any reply from this answering respondent No. 12.
9. That the averments made in para 18 of the application, it is humbly submitted that:-

- A. The provisions of Regulation 124(6)(f) of the Metalliferous Mines Regulation, 1961 are reproduced below-

No process of crushing, breaking, disintegrating, opening, grinding, screening or sieving of ores, minerals or stone or any operation incidental thereto shall be carried out at any mine unless appropriate and effective dust control measures, such as, but not limited to isolation, enclosure, exhaust ventilation and dust collection are designed, provided, maintained and used.

- B. The provisions of Regulation 124(8) of the Metalliferous Mines Regulation, 1961 are reproduced below -

The manager of every mine where airborne dust is generated, shall formulate and implement a scheme specifying -

- (a) the location, frequency, timing duration and pattern of sampling ;*
- (b) the instruments and accessories to be used for sampling ;*
- (c) the laboratory at which respirable dust content of samples and quartz content shall be determined ;*

- (d) the format in which the results of measurements of dust concentration and other particulars have to be recorded ;
(e) the organization for dust monitoring and for the examination and maintenance of dust prevention and suppression measures and dusts respirators ; and
(f) the manner of making all persons concerned with the implementation of the dust control measures fully conversant with the nature of work to be performed by each in that behalf.

No permission/exemption under Regulation 124 of the MMR, 1961 has been given by the DGMS to Kundakundi Kunda Decorative Stone Mine of M/S O.M.C.Ltd.

10. That the averments made in para 19 to 32 of the application are matter of record and hence, do not warrant any reply from this answering respondent No. 12.
11. That the deponent craves liberty to raise additional submission or file supplementary affidavits in case need arises during the course of arguments.
12. In view of the above facts indicated in earlier paras, it is respectfully prayed that this Respondent shall abide by any order or direction, passed by the Hon'ble Tribunal.



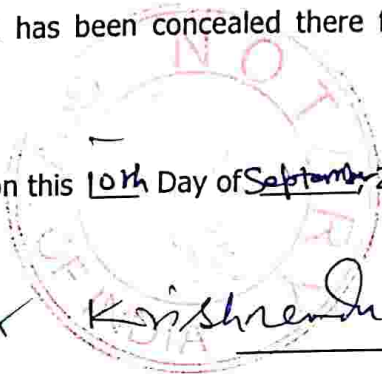
DEPONENT

Krishantu Mondal
Director Mines Safety
Bhubaneswar Region I
DGMS, Bhubaneswar

VERIFICATION

I, Krishnendu Mondal, son of Sri Bimalendu Mondal, aged about 51 years, the above-named deponent, do hereby verify that the contents of above this Counter Affidavit are true and correct on the basis of official record maintained by the answering respondent in the daily course of its business and state that neither any material has been concealed there from nor is any part of it false.

Signed and verified on this 10th Day of September 2024 at Kolkata.


Krishnendu Mondal

DEPONENT

Director & Mines Safety
Bhubaneswar Region
Bhubaneswar, BMS

Identified by Me

Advocate

Advocate



Solemnly Affirm & Declared
Before Me on Identification
of Ld. Advocate

Shyam Narayan Pandey
SHYAM NARAYAN PANDEY
NOTARY, GOVT. OF INDIA
REGN. NO. 13824/2018

10.09.2024

10 SEP 2024