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

**O.A. NO. 140/2024/EZ**

**Fakir Mohan Patel**

**... Petitioner**

-Vrs-

**State of Odisha and Others**

**... Opp. Parties**

**I N D E X**

Sl. No.	Description of Documents	Pages
1.	Counter Affidavit filed by the Respondent No. 2	1-9
2.	<u>Annexure-A/2.</u> Copy of Joint Committee Inspection Report.	10-14
3.	<u>Annexure-B/2.</u> Copy of Additional Joint Committee Inspection Report.	15

**Cuttack**

**Dt. 16.9.2024**

  
**ADDL. GOVT. ADVOCATE**

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

**O.A. NO. 140/2024/EZ**

**Fakir Mohan Patel**

**... Petitioner**

**-Vrs-**

**State of Odisha and Others**

**... Opp. Parties**

**COUNTER AFFIDAVIT FILED BY THE  
RESPONDENT NO. 2: -**

I, Sri Aditya Goyal, aged about 31 years, Son of Dr Alok Goyal, at present working as Collector & District Magistrate, Baragarh, Dist-Baragarh, Odisha do hereby solemnly affirm and state as follows: -

1. That I am the Respondent No. 2 in the aforesaid Original Application.
2. That I have gone through the Original Application and understood the contents made thereof. I am also well acquainted with the facts of the case.
2. That the petitioner has filed the aforesaid Original Application challenging the sand mining in Mahanadi River at Chikhili under Ambavona Tahasil of Baragarh District and prayed as follows: -

*“i. Permanently restrain the private respondent from illegal sand mining and trading.*



*Aditya Goyal*  
**COLLECTOR  
BARAGARH**

*Pradipta*  
**PRADIPTA KUMAR MOHANTI  
Notary, Cuttack Town  
Regd.No-ON-04/1995**

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*ii. Direct the Mining Officer to initiate Criminal Proceedings against Private respondent for theft of minerals, causing loss to the exchequer and violation of Environment Norms.*

*iii. Direct the Mining Office to immediately make a public auction of the seized amount of sand at the earliest to prevent further theft and pilferage*

*iv. fix the accountability of Government respondents such as Tahasildar / Mining officer for lapses on their part for their inaction in enforcing the laws regulating the said mining.*


*v. Direct the State Respondent to seize the Excavators / Pay Loaders / Hyva / poclain machine used for sand mining and storage areas.”*

3. That this Hon'ble Tribunal vide order dt.30.08.2024 has been pleased to adjourn the matter to 23.09.2024 and directed the Respondents-State to file their Counter Affidavit in the meantime.

4. That it is humbly submitted that, pursuant to the order dt.16.07.2024 of the Hon'ble NGT, EZB, Kolkata, State Pollution Control Board, Odisha, Head Office, SPCB Letter No. 11703, dtd.30.07.2024, and Office of the Collector & District Magistrate, Bargarh, Office Order No. 14307 dtd.09.08.2024, the Committee conducted the Joint Inquiry on dt.18.08.2024 at the site to submit the fact-finding report.

The following members were present during the joint committee visit.

  
COLLECTOR,  
BARGARH

  
PRADIPTA KUMAR MOHANTY  
Notary, Cuttack Town  
Regd.No-ON-04/1995

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1. Sri Aditya Goyal, IAS, DM & District Collector, Bargarh.
2. Dr. Satya Narayana Nanda, Regional Officer, State Pollution Control Board, Sambalpur.
3. Sri Ajaya Kumar Pradhan, Mining Officer, Bargarh.

Also, the following officials have accompanied the joint committee during the visit.

1. Er. Rakesh Ku. Panda, Asst. Env. Engineer, SPCB, Sambalpur.
2. Sri. Ananda Kumar Panda, OAS(JB), Tahasildar, Ambabhona.

During the visit, the petitioner was not present due to his health condition, however, over the telephonic conversation with the petitioner a detailed discussion was made point to point as reflected in the petition of Sri. Fakir Mohan Patel Vrs. State of Odisha & Ors.

The observations made during the visit were as follows;

**Observations:**

Following observations were made by the committee during joint enquiry: -

Sl. No.	Description	Observations
1	The Original Application has been filed by the Applicant	On 09.06.2024. Mining Officer,

*Aditya Goyal*  
COLLECTOR  
BARGARH

PRADIPTA KUMAR MOHANTY  
Notary, Cuttack Town  
Regd.No-ON 01/1995

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	<p>alleging that illegal sand mining has been carried out in Mahanadi River at Chikhili in Ambabhona Tahasil of Baragarh District, Odisha. It is stated that on 09.06.2024 the Mining Officer, Bargarh, along with the Mining Squad and Ambabhona Police Station, raided the sand stock of Respondent No. 8, Private Respondent, and penalized him for 1,000 CM of sand. It is stated that the said Private Respondent has paid a fine of Rs. 2,10,000/- on 11.06.2024</p>	<p>Bargarh, in presence of the Ambabhona police squad, seized the sand of about 1000 CuM which was stacked at the Plot no-146/195, Khata no-01, Mouza-Chikili (one side of the Chikili river bridge), Dist-Bargarh and collected Rs.2,70,320/- after being compounded from the offender as per Rule 51(i) &amp; (iv) of OMMC Rule 2016 &amp; Amendment Rule 2023.</p>
2	<p>It is also stated that thereafter a further complaint was received and on 22.06.2024 the Mining Officer, Bargarh, found huge sand stock in the presence of one Mr. Rohit Patel, (father of the Respondent No. 8) to be around 8,688 CM in quantity. It</p>	<p>During subsequent visit to the spot on 22.06.2024, it was observed that about 7688 CuM of sand was found gathered again which was seized and</p>

*Ashwini*  
COLLECTOR  
BARGARH

*Pradipta*  
PRADIPTA KUMAR MOHANTY  
Notary, Cuttack Town  
Regd.No-ON-04/1995

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<p>is also stated that the Mining Officer was requested to inspect three more spots of sand hoarding by Respondent No. 8 but he did not do so saying that one site is in Jharsuguda District and is not within his jurisdiction. It is stated that the bridge near which the illegal sand mining is taking place connects Bargarh and Jharsuguda District. It is stated that on the other side of the river is Mahulpali in the Jharsuguda District where there are sand stocks of Respondent No. 8 to cater to the demand of that district. It is stated that on the date of measurement, there was one Tata Hitachi Poclain state to be engaged in the loading of sand onto trucks, but the Mining Officer ignored seizing of the said vehicle.</p>	<p>compounded to Rs.11,74,700. The compounded amount was deposited by the offender on dt.03.07.2024 &amp; dtd 05.07.2024 as per Rule 51(i) &amp; (iv) of OMMC Rules, 2016. The Tata Hitachi proclain machine as alleged by the Complainant was found parked nearby the stacked sand and was not involved in any sand shifting or lifting.</p>
<p>3. It is also stated that photographs of 08.06.2024, 20.06.2024 and 22.06.2024</p>	<p>This point relates to the point no-2 narrated above.</p>

*Abhaya Kumar*  
COLLECTOR,  
BARGARH

4  
PRADIPTA KUMAR MOHANTI  
Notary, Cuttack Town  
Regd.No-ON-04/1995

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	<p>show mining operation in Mahanadi River is ongoing and there is vehicular transportation continuing even after 22.06.2024 after the previous raid conducted on 09.06.2024.</p>	<p>Consequently, penalty was imposed and realized as mentioned in point no-2. However, there was no mining operation observed during the visit.</p>
4.	<p>It is further alleged that the Respondent No. 8 has illegally mined sand about 2 lakhs cubic meters, considering the annual trading and mining of sand. i.e., 50,000 CM, and thereby caused a loss at least Rs. 10 crores to the State exchequer. It is also stated that Chikhili is a flood prone area and in 2022 a severe flood occurred in that area. It is also stated that satellite pictures retrieved from google earth on 25.01.2024 show that sand mining is being carried out using suction pump laid on boat inside the Mahanadi River and sand is being dumped on the riverbank for subsequent</p>	<p>The case land is not a declared sand source and it is coming under flood prone area, so no permission was accorded to the Respondent no 8 for mining operation. On the day of the inspection of the Joint Committee on 18.08.2024 to the site, it was observed that approx. 2816 Cum (60m x 16m x 2.1m + 50 hyva trip x 16 cum/trip) was stacked on the</p>

*Abhaya Chandra*  
COLLECTOR  
BARGARH

*M*  
PRADIPTA KUMAR MOHANTI,  
Notary, Cuttack Town  
Regd.No-ON-04/1995

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transportation.	<p>alleged area .The stacked sand was not freshly gathered rather it was un-lifted part of the sand ,which was already seized and compounded on dt 22/06/2024</p> <p>Further ,it was also not possible to ascertain that suction pump was used for extraction of sand from the riverbed or not.</p>
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*Ambabhona*  
COLLECTOR  
BARGARH

A copy of the Joint Committee Inspection Report is annexed herewith as Annexure-A/2.

5. That it is humbly submitted that, the State Pollution Control Board, Odisha has not given any permission for sand mining in the Chikili area as that is not a declared sand source. Further, from the field visit, it was found that no mining activity was going on around the Chikili area. Accordingly, Instruction was issued to the Tahasildar Ambabhona and OIC Ambabhona Police Station vide District Office Letter

*4*  
PRADIPTA KUMAR MOHANTI  
Notary, Cuttack Town  
Regd.No-ON-04/1995


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No. 14825 dt.23.08.2024 to monitor and inform this office regarding further mining activity if any taken place in that locality. In reply to the above letter, the Tahasildar Ambabhona vide Letter No. 1561 dt.28.08.2024 and the OIC Ambabhona Police Station vide Letter No. 1707/PS dt.28.08.2024 have intimated that no further illegal sand mining was detected in the said Chikili area.

6. That it is further humbly submitted that, this Hon'ble Tribunal by virtue of order dt.30.08.2024 further directs the Committee to visit all the sites of illicit mining. In obedience to the direction issued by this Hon'ble Tribunal, the committee visited the sites such as Prakashpur, Salepali and Antaradi villages of Ambabhona Tahasil on 03.09.2024, which were alleged to be not visited by the team. Moreover, it is submitted that the site at village Mahulpali which was also an alleged site for illegal sand dumping is not coming under Bargarh District rather it is coming under Jharsuguda District. It was observed in course of the visit that there was no illegal stacking or dumping of sand in these sites. A copy of the Joint Committee additional Inspection Report is annexed herewith as Annexure-B/2.

7. That this deponent craves leave of this Hon'ble Tribunal to file further affidavit, if required at the later stage.


  
COLLECTOR  
BARGARH

  
PRADIPTA KUMAR MOHANTI,  
Notary, Cuttack Town  
Regd.No-ON-04/1995



8. That the facts stated in this Affidavit are true to my knowledge and belief and based on official records.

Identified by

  
Advocate  
(Saswal Das)

  
Deponent  
COLLECTOR  
BARGARH

**CERTIFICATE**


Certified that Cartridge papers are not readily available.

Cuttack

Dt. 16.9.2024

  
ADDL. GOVT. ADVOCATE



Solemnly sworn before   
me by.....  
being Identified by.....  
at Cuttack Town Dated.....  
P.K. MOHANTY, Notary, Cuttack Town  
Regd. No-ON-04/1995

Annexure - A/2

- 12 -

**Inspection report of Joint Committee visit regarding illegal sand mining carried out in Mahanadi River at Chikhili in Ambabhona Tahasil of Bargarh District.**

In pursuance of the order dtd. 16.07.2024 of the Hon'ble NGT, EZB, Kolkata in the matter of O.A. No. 140/2024/EZ – Sri. Fakir Mohan Patel – Vrs. State of Odisha & Ors., SPCB, Odisha, Head Office, SPCB vide letter no. 11703, dtd. 30.07.2024, Office of the Collector & District Magistrate, Bargarh, Office order no. 14307 dtd. 09.08.2024, the committee conducted the joint inquiry on dtd.18.08.2024 at the site to submit the fact-finding report.

The following members were present during the joint committee visit.

1. Sri Aditya Goyal, IAS, DM & District Collector, Bargarh
2. Dr. Satya Narayana Nanda, Regional Officer, State Pollution Control Board, Sambalpur
3. Sri Ajaya Kumar Pradhan, Mining Officer, Bargarh

Also, the following officials have accompanied the joint committee during the visit.

1. Er. Rakesh Ku. Panda, Asst. Env. Engineer, SPCB, Sambalpur.
2. Sri. Ananda Kumar Panda, OAS(JB), Tahasildar, Ambabhona

During the visit, the petitioner Sri. Fakir Mohan Patel was not present due to his health condition, however, over the telephonic conversation with the petitioner a detailed discussion was made point to point as reflected in the petition of Sri. Fakir Mohan Patel Vrs. State of Odisha & Ors.

The observations made during the visit were as follows;

**Observations:**

Following observations were made by the committee during joint enquiry,

SI.No.	Description	Observations
1.	The Original Application has been filed by the Applicant alleging that illegal sand mining has been carried out in Mahanadi River at Chikhili in Ambavona Tahasil of Baragarh District, Odisha. It is stated that on 09.06.2024 the Mining Officer, Bargarh, along with the Mining Squad and Ambavona Police Station, raided the sand	On 09.06.2024. Mining Officer, Bargarh, in presence of the Ambabhona police squad, seized the sand of about 1000 CuM which was stacked at the Plot no-146/195, Khata no-01, Mouza-Chikili (one side of the Chikili

TRUE COPY ATTESTED

*Ashyama*

COLLECTOR  
BARGARH

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	stock of Respondent No. 8, Private Respondent, and penalized him for 1,000 CM of sand. It is stated that the said Private Respondent has paid a fine of Rs. 2,10,000/- on 11.06.2024	river bridge), Dist- Bargarh and collected Rs.2,70,320 ( <b>Annexure – I</b> - Challan copy is enclosed) amount after being compounded from the offender as per Rule 51(i) & (iv) of OMMC Rule 2016 & Amendment Rule 2023.
2.	It is also stated that thereafter a further complaint was received and on 22.06.2024 the mining officer, Bargarh, found huge sand stock in the presence of one Mr. Rohit Patel, (father of the Respondent No. 8) to be around 8,688 CM in quantity. It is also stated that the Mining Officer was requested to inspect three more spots of sand hoarding by Respondent No. 8 but he did not do so saying that one site is in Jharsuguda District and is not within his jurisdiction. It is stated that the bridge near which the illegal sand mining is taking place connects Bargarh and Jharsuguda District. It is stated that on the other side of the river is Mahulpali in the Jharsuguda District where there are sand stocks of Respondent No. 8 to cater to the demand of that district. It is stated that on the date of measurement, there was one Tata Hitachi Poclain state to be engaged in the loading of sand onto trucks, but the Mining Officer ignored seizing of the said vehicle.	During subsequent visit to the spot on .22.06.2024 ,it was observed that about 7688 CuM of sand was found gathered again which was seized and compounded to Rs.11,74,700 ( <b>Annexure – II</b> - Challan copy is enclosed). The compounded amount was deposited by the offender on dt.03.07.2024 & dtd 05.07.2024 as per Rule 51(i) & (iv) of OMMC Rules, 2016. The Tata Hitachi proclain machine as alleged by the Complainant was found parked nearby the stacked sand and was not invoved in any shifting or lifting..
3.	It is also stated that photographs of 08.06.2024, 20.06.2024 and 22.06.2024	This point relates to the point no-2 narrated above.

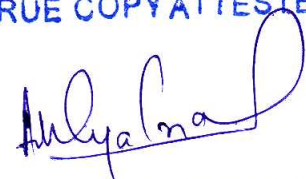
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COLLECTOR  
BARGARH

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	<p>show mining operation in Mahanadi River is ongoing and there is vehicular transportation continuing even after 22.06.2024 after the previous raid conducted on 09.06.2024.</p>	<p>Consequently, penalty was imposed and realised as mentioned in point no-2. However, there was no mining operation observed during the visit.</p>
4.	<p>It is further alleged that the Respondent No. 8 has illegally mined sand about 2 lakhs cubic meters, considering the annual trading and mining of sand. i.e., 50,000 CM, and thereby caused a loss at least Rs. 10 crores to the State exchequer. It is also stated that Chikhili is a flood prone area and in 2022 a severe flood occurred in that area. It is also stated that satellite pictures retrieved from google earth on 25.01.2024 show that sand mining is being carried out using suction pump laid on boat inside the Mahanadi River and sand is being dumped on the riverbank for subsequent transportation.</p>	<p>The case land is not a declared sand source and it is coming under flood prone area, so no permission was accorded to the Respondent no 8 for mining operation. On the day of the inspection of the Joint Committee on 18.08.2024 to the site, it was observed that approx. 2816 Cum (60m x 16m x 2.1m + 50 hyva trip x 16 cum/trip) was stacked on the alleged area .The stacked sand was not freshly gathered rather it was un-lifted part of the sand ,which was already seized and compounded on dt 22/06/2024</p> <p>Further ,it was also not possible to ascertain that suction pump was used for extraction of sand from the riverbed or not.</p>

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COLLECTOR  
BARGARH

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**Some Photographs taken during the visit to Chikhili in Ambabhona Tahasil**



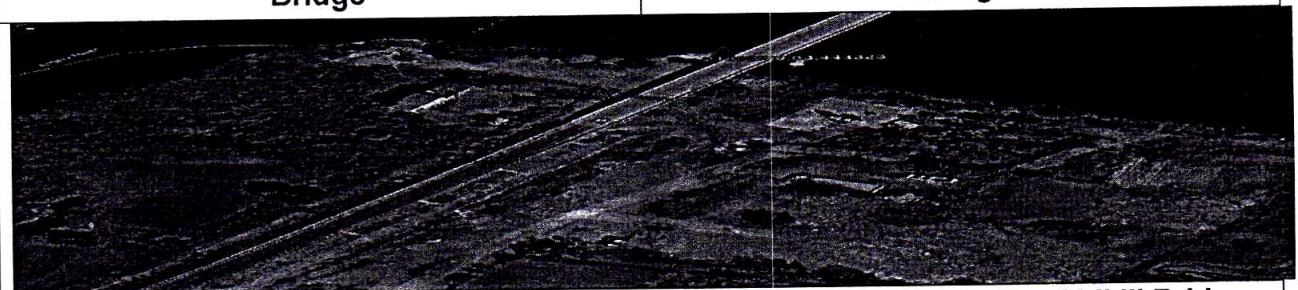
**Fig. Joint Committee inspection of the team at the site**



**Fig. View of Mahanadi River from Chikhili Bridge**



**Fig. Enquiry with the villagers of Chikhili Village**



**Fig. 5. Google Earth image showing sand stock on the right side of the Chikhili Bridge**

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*Abhaya Prasad*

COLLECTOR  
BARGARH

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**Other Observations:**

1. The State Pollution Control Board, Odisha has not given any permission for sand mining in the Chikili area as that is not a declared sand source.
2. From the field visit it was found that no mining activity was going on around the Chikili area
3. Instruction was issued to Tahasildar Ambabhona and OIC Ambabhona vide district office letter no-14825 dtd 23.08.2024 to monitor and inform this office regarding further mining activity if any taken place in that locality.

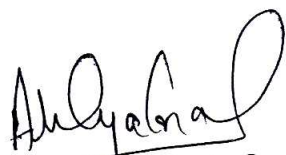
In reply to the above letter the Tahasildar Ambabhona vide his letter no-1561 dt 28.08.2024 and the OIC Ambabhona PS vide his letter no -1707/PS dt 28.08.2024 have intimated that no further illegal sand mining was detected in the said Chikili area.

  
**Regional Officer**  
**SPC Board, Sambalpur**

Regional Officer  
 State Pollution Control Board  
 Regional Office, Sambalpur

  
**Mining Officer,**  
**Bargarh**

Mining Officer  
 Bargarh, Dist-Bargarh

  
**District Magistrate &**  
**Collector,**  
**Bargarh**

**COLLECTOR**  
**BARGARH**

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**COLLECTOR**  
**BARGARH**

Annexure - B/2

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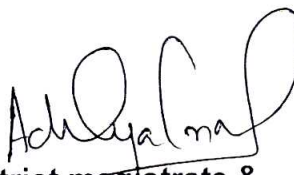
**Additional inspection report of Joint Committee visit regarding illegal sand mining carried out in Mahanadi River at Chikhili in Ambabhona Tahasil of Bargarh District**

In pursuance of the order dtd. 30.08.2024 of the Hon'ble, NGT, EZB, Kolkata in the matter of O.A. No. 140/2024/EZ-Sri. Fakir Mohan Patel- Vrs. State of Odisha & Ors., the joint inspection committee visited the sites such as Prakashpur, Salepali and Antaradi villages of Ambabhona Tahasil on dtd. 03.09.2024, which were alleged to be not visited by the team. Moreover, it is submitted that the site at village Mahulpali which was also an alleged site for illegal sand dumping is not coming under Bargarh District rather it is coming under Jharsuguda District. It was observed in course of the visit that there was no illegal stacking or dumping of sand in these sites.

Submitted for kind perusal and order of the Hon'ble Court.

  
Regional Officer  
SPC Board, Sambalpur  
Regional Officer  
State Pollution Control Board  
Regional Office, Sambalpur

  
Mining Officer,  
Bargarh  
Mining Officer  
Bargarh, Dist-Bargarh

  
District magistrate &  
Collector, Bargarh  
**COLLECTOR  
BARGARH**

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COLLECTOR  
BARGARH