



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO. 111/2024/EZ

In The Matter of:

Subhas Dutta

... Applicant

Versus

State of West Bengal & Ors.

... Respondents

SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE RESPONDENT NUMBER
09, M/S AARPEE MINERALS & AGGREGATES.

INDEX

SL	PARTICULARS	ANNEXURE	PAGE
1.	Supplementary Affidavit		1-4
2.	Photocopy of the writ petition being W.P.A. No. 02/2023 is annexed herewith	'A'	5-28
3.	Server Copy of Solemn Orders dated 09.01.2023 and 03.04.2023 passed by Hon'ble High Court Calcutta are collectively annexed herewith	'B'	29-32

Filed by

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Advocate

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21 JAN 2025



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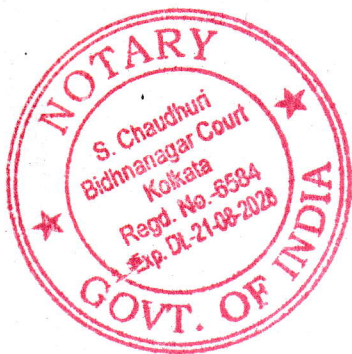
... Respondents

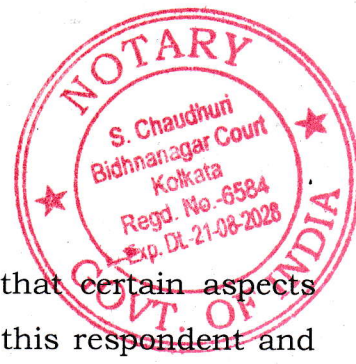
SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE RESPONDENT NUMBER
09, M/S AARPEE MINERALS & AGGREGATES.

I, Madan Sharma, S/o Laxmi Prashad Sharma, aged 52 years by faith-Hindu and by occupation-business, presently residing 7, Oaks, Rose Bank, Near Shiva Mandir, Darjeeling, P.O & P.S- Darjeeling, West Bengal, do hereby solemnly affirm, and submit as follows:-

1. That I am one of the partner's of M/S AARPEE MINERALS & AGGREGATES, and I am duly authorized to sign and affirm this supplementary affidavit.
2. That this respondent was impleaded as a party respondent as per I. A. No. 61/2024/EZ preferred by this respondent.
3. That thereafter this respondent had already filed affidavit dated 07.11.2024 and the same has also been taken on record by the Hon'ble Tribunal vide Solemn Order 22.11.2024.

21 JAN 2025





4. That it is pertinent to mention at this juncture that certain aspects have not been mentioned in the affidavit filed by this respondent and hence this respondent craves leave of the Hon'ble Tribunal to file this supplementary affidavit.

5. That Mr Raja Gupta had already filed an application being W.P.A No. 02/2023 before the Hon'ble High Court at Calcutta.

Photocopy of the writ petition being W.P.A.No. 02/2023 along with all annexure is annexed herewith and marked with the letter 'A'.

6. That subsequently two Orders have been passed in the instant matter vide Solemn Orders dated 09.01.2023 and 03.04.2023 and finally vide Order dated 03.04.2023 the matter has been withdrawn by the writ petitioner.

Server of the Solemn Orders dated 09.01.2023 and 03.04.2023 are collectively annexed herewith and marked with the letter 'B'.

7. That it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to pass necessary Order/Orders as is deemed fit for the ends of justice and that the deponent has high regard to the Order/Orders as passed by this Hon'ble Tribunal.

Identified by me

Krishnendu Bera

Advocate

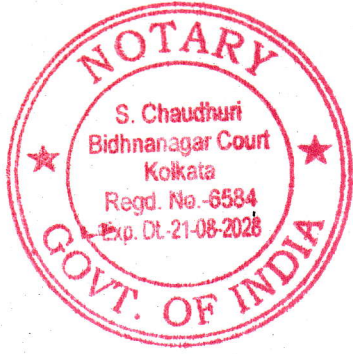
[Signature]
S. CHAUDHURI
 ★ NOTARY ★
 GOVT. OF INDIA
 Regd. No.-6584/08
 Bidhannagar Court
 Dist.-North 24 Pgs.

Aarpee Minerals and Aggregates

Madan Sharma

Deponent

21 JAN 2025



BEFORE THE NOTARY PUBLIC
AT BIDHANNAGAR
DIST.-NORTH 24 PARGANAS

VERIFICATION:

I, the deponent within named, do hereby verify and declare that the statements made in the aforesaid paragraphs are true and correct to the best of my knowledge and information and I believe that nothing material has been concealed there from.

Verified at Kolkata on the 21st Day of January, 2025.

Identified by me

Krishnendu Bera

Advocate

Aarpee Minerals and Aggregates

Madan Kumar

Deponent

Partner

S. Chaudhuri
S. CHAUDHURI
★ NOTARY ★
GOVT. OF INDIA
Regd. No.-6584/08
Bidhannagar Court
Dist.-North 24 Pgs.

21 JAN 2025

Amuagore - A 5

DISTRICT:-DARJEELING

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)

W.P. A. No. 2 of 2023

IN THE MATTER OF:

An application under Article 226 of the
Constitution of India;

- AND -

IN THE MATTER OF:-

Raja Gupta, Son of Late Kartaram Gupta,
permanent resident of Village-Oodlabari,
Debibasti, P.O. Manabari, P.S- Malbazar,
Dist- Jalpaiguri, 735222, presently
residing at Sri Sri Vatika Apartment,
Block- A, 3rd Floor, P.S. Bhaktinagar,
Iskcon Mandir Road, Siliguri, Dist-
Jalpaiguri, 734001.

.....PETITIONER

-VERSUS-

1. The State of West Bengal through its
Chairman, West Bengal Pollution Control

2 6

Board, Paribesh Bhavan, 10A, LA Block, Sector-III, Bidhan Nagar, Kolkata, 700106.

2. The Additional Chief Secretary to the Government of West Bengal also being the Member of the West Bengal Pollution Control Board, Department of Environment, Prani Sampad Bhavan, 5th Floor, LB-2, Sector-III, Salt Lake City, Kolkata, 700106.

3. The Principal Chief Conservator of Forests, Directorate of Forests, Government of West Bengal also being the Member of the West Bengal Pollution Control Board, Aranya Bhawan, 4th Floor, 10A, Block-LA, Sector-III, Salt Lake City, Kolkata, 700106.

4. The Member Secretary, West Bengal Pollution Control Board, Paribesh Bhavan, 10A, LA Block, Sector-III, Bidhan Nagar, Kolkata, 700106.

5. The Chief Engineer, West Bengal Pollution Control Board, Paribesh Bhavan, 10A, LA Block, Sector-III, Bidhan Nagar, Kolkata, 700106.

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6. The Additional Principal Chief Conservator of Forests, North Bengal, Upper Nivedita Road, P.O. Siliguri, Dist- Darjeeling, 734403.
7. The Chief Conservator of Forests, Hill Circle, Sankar Villa, Laden La Road, PO & Dist- Darjeeling, 734101.
8. The Principal Chief Conservator of Forests, Wildlife & the Chief Wildlife Warden, Bikash Bhawan, North Block, 3rd Floor, Salt Lake, Kolkata, 700091.
9. The Additional Principal Chief Conservator of Forests, Wildlife, Bikash Bhawan, North Block, 3rd Floor, Salt Lake, Kolkata, 700091.
10. The Chief Conservator of Forest, Wildlife (North), Government Saw Mill Campus, Mahananda Para, Siliguri, 734001.
11. The Divisional Forest Officer, Darjeeling Wildlife Division, Bengal Natural History Museum, Behind Bhanu Bhawan, Chauk Bazar, Meadow Bank, Darjeeling, 734101.



12. The Divisional Forest Officer, Kalimpong Division, Kalimpong, Dist - Kalimpong, 734301.

13. The Divisional Forest Officer, Kurseong Division, Dowhill, Divisional Forest Office Road, Bara Shibkhola Forest, Dist- Darjeeling, 734203.

14. The Divisional Forest Officer, Darjeeling Division, Barakakjhora, P.O. & Dist- Darjeeling, 734101.

15. The District Magistrate, Darjeeling also being the Chairman of the District Level Biodiversity Management Committee (DBMC), Office of the District Magistrate, Kutchery Building, Lebong Cart Road, Darjeeling, West Bengal, 734101.

16. The District Land & Land Reforms Officer (D.L.& L.R.O) & the Additional District Magistrate (L.R), Darjeeling, Chauk Bazaar, Darjeeling, West Bengal 734101.

17. The Sub-Divisional Officer (S.D.O), Kurseong also being the Member of the District Level Biodiversity Management Committee (DBMC), Office of the Sub-

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Divisional Officer, P.O.- Kurseong, Dist-Darjeeling, 734203.

18. The Block Development Officer (B.D.O), Kurseong, Office of the Block Development Officer, P.O.- Kurseong, Dist-Darjeeling, 734203.

19. The Chairperson, National Tiger Conservation Authority, B-1 Wing, 7th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi-110003.

20. The Vice Chairperson, National Tiger Conservation Authority, B-1 Wing, 7th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi-110 003.

21. Member Secretary & Additional Director General of Forests (A.D.G.F) (Project Tiger), National Tiger Conservation Authority, B-1 Wing, 7th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi-110 003.

22. Inspector General of Forests (I.G.F), Eastern Zone, National Tiger Conservation Authority (Regional Office), 4th Floor, HOUSEFED Building, Rukminigaon, G.S.

6 10

Road, Guwahati, Guwahati, Assam,
781036.

23. Assistant Inspector General of Forests
(A.I.G.F), National Tiger Conservation
Authority, B-1 Wing, 7th Floor, Pt.
Deendayal Antyodaya Bhawan, CGO
Complex, New Delhi, 110003.

24. The Superintendent of Police, Office of
the Superintendent of Police, Darjeeling,
Richmond Hill, Darjeeling, West Bengal,
734101.

25. The Inspector In-Charge, Kurseong
Police Station, P.B Road, Thana Line,
Kurseong, Dist- Darjeeling, 734203.

26. The Officer In-Charge, Sevoke Police
Fari/ Outpost, NH- 10, Sevoke Bazar,
Sivok Hill Forest, Dist- Darjeeling, West
Bengal 734005.

27. Project Director, National Highways
Authority of India, PIU- Jalpaiguri,
Jyotinagar, Near Don Bosco School, 2.5
Mile, Sevoke Road, Siliguri, Dist-
Jalpaiguri, 734001

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28. Aarpee Minerals & Aggregates (stone crushing unit/ the project proponent), a partnership firm having place of business at Oodlabari, P.O- Manabari, P.S. Mal, Dist- Jalpaiguri, 735222 represented by its partner one amongst the another i.e., Sourav Garg, S/o. Ratan Kumar Garg and Ratan Kumar Garg, S/o. Late Roshan Lal Garg being the another partner of the firm both partners are the residents of Oodlabari, P.O- Manabari, P.S. Mal, Dist- Jalpaiguri, 735222.

.....RESPONDENTS

To,
The Hon'ble Prakash Shrivastava, Chief Justice, and His Companion
Justices at the Calcutta High Court.

The humble petition of the Petitioner
above named most respectfully -

S H E W E T H :

1. Your Petitioner is a peace loving and law abiding citizen of India and permanently residing at the address mentioned in the cause title herein above.

A copy of *Aadhar* card; registration certificate of vehicle of Your Petitioner; driving license and rent receipt are collectively ANNEXED with this petition and MARKED as ANNEXURE P/1.

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2. Being aggrieved by the illegal, unlawful and unauthorized stone crushing unit by the Private Respondent No. 28 in the close proximity of the National Highway- 10 that connects *Oodlabari* with *Siliguri*, Your Petitioner is facing immense inconvenience and apprehension of road accident being the daily commuter of the said highway. It becomes very difficult for Your Petitioner to drive the car to his workplace as the smoke, dust, emissions, smug emerging from the alleged illegally operating stone crushing unit makes it difficult in the winter season to even drive the car on the highway as dust emissions leads to poor visibility on the stretch of the Highway and in addition to the noise, shouting and warnings which are often impossible to hear. Further, the grits, mucks and gravels carried out by the Heavy Goods Vehicle from the illegally operating stone crusher is done in such a fashion that the debris falling from the vehicle makes it danger for the drivers as the road becomes skiddy that too on the mountainous terrain. Also the slightest wind or movement of vehicles in the crusher unit or on the approach road fills the National Highway with dust as the illegal stone crusher is ill-equipped to control fugitive dust emissions. The maximum distance between the alleged illegal stone crusher and National Highway- 10 is hardly 195 meters which is also against the siting criteria for setting up of new stone crusher units in blatant violation of the NGT order. Further, the alleged unit has violated all the environmental norms which are pre-requisites to set up those units. Therefore, Your Petitioner moves this present writ petition.

3. That the Chapter IV of the Control of National Highways (Land & Traffic) Act, 2002 deals with the "Control of Access to the National Highways" and in furtherance to this the Respondent No. 27 is vested

with the powers under Sections 30 & 31 to regulate or control the plying of vehicles for proper management or refuse or divert any proposed or access to highway in the interest of the public safety and convenience of the traffic.

4. That it is also pertinent to mention here that the area in which illegal stone crushing unit is operating is bounded by the green hills, forest sanctuary with river *Teesta* flowing, flora, fauna (mainly monkeys) and a number of viewing points where the people come to spend their time for leisure, Your Petitioner wants to bring to fore that the industrial construction/ stone crusher unit is operating on the stream of River *Teesta*. The entire river bed of river *Teesta* was roughly dug and excavated in such an unscientific manner by the illegal stone crusher unit and the river bed materials were dumped hither and thither. These unscientific industrial activities by the Private Respondent No. 28 are noxious and unpleasant for passerby and also to Your Petitioner and are in complete aberration of environmental laws. It was also found by Your Petitioner upon some enquiry that the illegal stone crushing unit was discharging high fugitive emission and was operating without adhering to minimum basic norms pertaining to pollution control measures. To this effect Your Petitioner preferred to shot some photographs of the alleged illegal and unauthorized unit/ stone crusher of Respondent No. 28 which led to devastation of natural environment and dropping muck all along the National Highway making difficult to drive along the National Highways.

The photographs of the alleged illegal and unauthorized unit/ stone crusher are collectively ANNEXED with this application and MARKED as ANNEXURE P/2.

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5. That the Respondents Nos. 1 to 4 are the members of the West Bengal Pollution Control Board hereinafter referred to as the 'State Board' who all are executing the different provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, for the prevention and control of pollution in the state of West Bengal. Further, as per the provisions of Section 25 and Section 26 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, any industry, operation and or process or any treatment and disposal system or any extension or addition thereto, which is likely to generate sewage or trade effluent or emission within the state of West Bengal are required to obtain prior consent from the State Board before establishment and also before operation. The Respondents Nos. 17 & 18 are the authorities who are responsible and vested with the powers to grant the 'Consent to Establish' & 'Consent to Operate' in case of stone crushing units.

6. That Your Petitioner after having due diligence about the illegal stone crushing unit of the project proponent i.e., the Private Respondent No. 28 came to learn that the illegal and unauthorized stone crushing industry is running in its full swing without obtaining the mandatory 'Consent to Establish', 'Consent to Operate' from the State Board (popularly termed as NOC), without any/proper no objection certificate from the concerned authorities and necessary Environmental Clearances (EC) from the competent authorities. The alleged illegal stone crushing unit had applied for the 'Consent to Establish' for establishment of new unit with the Respondent Authorities on 28.04.2022 which was registered as application No.

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1943383 which was lastly forwarded by the Respondent Authorities on 25.05.2022 and is still pending with the Respondent Authorities vide WB042 with a note pending with the industry for re-submission. It is pertinent to mention here that the Private Respondent No. 28 had since then never afforded suitable steps to re-submit its application for consideration. Therefore, the alleged unit is being run in a palpably illegal manner without any consent to establish and/or consent to operate in an eco-sensitive zone adjacent to a National Highway.

A copy of screenshot from online consent management & monitoring system showing the pendency of application regarding 'Consent to Establish' is ANNEXED with this Application and MARKED as ANNEXURE P/3.

7. That the location at which the alleged illegal and unauthorized stone crushing unit is situated falls within the protected area of *Mahananda Wildlife Sanctuary* which falls under the Darjeeling Forest Division under the control of Respondent No. 11. The *Mahananda Wildlife Sanctuary* is located on the foothills of the Himalayas, between the *Teesta* and *Mahananda* rivers, situated in the Darjeeling district of West Bengal, India. The sanctuary sprawls over 159 Km² of reserve forest. In 1959, it got the status of a sanctuary mainly to protect the Indian Bison and Royal Bengal Tiger, which were facing the threat of extinction. The forest type in *Mahananda Wildlife Sanctuary* varies from riverain forests like Khayer-Sisoo to dense mixed-wet forest in the higher elevation in 'Latpanchar' area of Kurseong hills. The variation in altitude and forest types helps the existence of a large number of species of mammals, birds and reptiles. The important mammalian species

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include Royal Bengal Tiger, Indian elephants, Indian bison, spotted deer, barking deer, many species of lesser cat, Himalayan black bear, leopard including clouded leopard and many other smaller animals like rare mountain goat (Serow), porcupines, snakes, etc. The Sanctuary also holds hundreds of feathered species. The exciting list includes some much endangered species like fairy blue bird, Himalayan pied hornbill etc. Among the others; swallow, swift, thrush, babbler, warbler, roller, minivet, sunbird can be found in abundance. Further, the astounding diversity of butterflies attracts wildlife enthusiasts from across the world. The illegal stone crusher is constructed and operating in such a manner that the main stream of river *Teesta* has been diverted from its original stream and the free flow of river *Teesta* is disturbed and digressed by the alleged unit to sub-serve its own needs and also the illegal construction disturbs the right to life of the species present in the region of *Mahananda Wildlife Sanctuary*. The illegal, unscientific and unauthorized mining and de-silting of mines and minerals from the river *Teesta* would be disastrous, tragic and catastrophic. Flash flood in the river *Teesta* is common and natural phenomenon as it is a glacier-fed river. On the top of that, the '*Teesta Low Dam - IV Hydropower Plant*' is a run-of-the-river hydroelectric station built on the *Teesta* River at *Kalijhora*, *Kalimpong* district which also endangers the life of the peoples working in the stone crusher, The approximate distance between the '*Teesta Low Dam - IV Hydropower Plant*' and the alleged illegal stone crusher according to Google maps is 7 Kilometers, further the ariel distance would be much lesser than distance covered by road.

A copy of Google GPS Map showing distance between '*Teesta Low Dam - IV Hydropower Plant*' and the illegal stone crusher; Photograph of '*Teesta Low Dam - IV Hydropower Plant*' at *Kalijhora*; the Map of

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Mahananda WLS downloaded from the government official website 'wildbengal.com/mahananda-wls.php' along with site map prepared showing distance between illegal stone crusher and National Highway and *Mahananda Wildlife Sanctuary* are collectively ANNEXED with this Application and MARKED as ANNEXURE P/4.

8. That the discharge of effluent and stone dust would cause harm to river *Teesta* and its water reptiles, fishes which would tantamount to the water pollution violating the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and also adjoining nations like Bangladesh would face concerns as river *Teesta* joins the *Brahmaputra* in Bangladesh before it flows into the Bay of Bengal after meeting with the *Ganges* and the *Meghna*. Furthermore, new construction activity like installing illegal stone crusher without according NOC/ Consent also is a huge threat as blasting and excavating material are all catastrophic activities in the fragile Himalaya. The *Teesta* is no longer the lifeline of the locals but has now morphed into an economic resource of national importance. The clanking sound of stones and metals in the region would cause distress to the species present in the Himalayas and the Sanctuary. If the essential pre-conditions are not met before constructing the stone crusher then the entire construction is illegal and liable to be demolished.

9. It is further submitted that the State and its instrumentalities and the local authorities are supposed to anticipate and prevent the cause of environment degradation. They are supposed to check the activity which is damaging for environment but the authorities shunned their eyes due to which the illegal unit is operating full fledgedly. It is further submitted that sustainable development is an

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inbuilt element of precautionary as well as preventive measures. None of them needs to be ignored.

10. That operation of the illegal and unlawful stone crushing unit at the cost of *rule of law* are not looked into by the State and its instrumentalities, then it would set a bad precedent and also virtually gives a *carte blanche* to the people to flout environmental norms. Therefore, this practice must be disdained at any cost.

11. That the grief of Your Petitioner leaps no bound that despite the application for 'Consent to Establish' has already been pending with the Respondent Authorities vide WB042 with a note pending with the industry for re-submission and since then the Private Respondent No. 28 has never afforded suitable steps to re-submit its application for consideration, the industry is operating seamlessly and the Respondent Authorities has not taken any suitable steps to stop such illegal construction and operation of the industry and further the Respondents Authorities are remaining as a silent spectators and allowing the said unauthorized work to continue. Your Petitioner therefore moves the present Writ Petition invoking the Extraordinary Writ Jurisdiction of the Hon'ble Court on one among the following

G R O U N D S

- I. For that the State or the Instrumentality of State cannot act in an arbitrary and capricious manner in complete aberration of law.
- II. For that the State or its instrumentality has bounden duty to check safety standards on the National Highways and oversees and

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forthwith stop the illegal activities as public safety is of paramount importance.

III. For that the balanced development is a pre-requisite for harmony between nature and us.

IV. For that it is a settled proposition of law that no industrial activities can be carried out in the eco-sensitive zones (ESZ) surrounding the wildlife sanctuaries and national parks.

V. For that the mining within and adjacent to the national parks and wildlife sanctuaries and its eco-sensitive zones shall not be permitted.

VI. For that the protection and improvement of environment and safeguarding of forests and wildlife, the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

VII. For that it is the bounden duty of the state or its instrumentalities to check and vigil against the person violating and flouting the environmental norms.

VIII. For that the alleged illegal stone crushing unit is set-up against the siting criteria.

IX. For that the State Pollution Control Board has failed to take adequate remedial action against illegal mining and crusher unit and also failed to realize Environmental Compensation on 'Polluter Pay Principle'.

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X. For that it is enshrined in the fundamental duties that it is the bounden duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

XI. For that the environment protection is mentioned in the Indian Constitution as part of Directive Principles of State Policy as well as Fundamental Duties.

XII. For that the illegal stone crushing unit is indulging in indiscriminate mining and operating stone crusher without due regard to the environmental norms.

XIII. For that the State machinery and the regulatory authorities had allowed a free run to the operation of mines and crusher units resulting in the present sordid condition.

XIV. For that the photographs placed before by Your Petitioner demonstrate an alarming situation where the sand and river bed mining from river done illegally and unscientifically is found to affect riverine ecology drastically.

XV. For that it is patent that the violation of environmental norms is rampant.

XVI. For that the damage to the environment and public health cannot be brushed aside and effective measures are required to be taken for realizing the guaranteed Fundamental Right to clean

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environment which is part of Right to life under Article 21 of the Constitution of India.

XVII. For that if the situation is not remedied at the earliest then the entire situation can anytime burst into devastation and would cause huge loss to the environment.

XVIII. For that the alleged illegal construction is without 'Consent to Establish', 'Consent to Operate', proper no objection certificate from the concerned authorities and necessary Environmental Clearances (EC) from the competent authorities which is *ex-facie* bad in law and tantamount to criminal offence and is liable to be demolished and the violator of law shall be dealt with iron hands.

XIX. For that the state or its instrumentalities cannot shun eyes upon the illegal acts of people which infringes the right of clean environment and safety of the Petitioner and other people which is the part of their rights guaranteed under Article 21 of the Constitution of India.

12. That there is no other alternative, speedy and efficacious remedy available to Your Petitioner and relief/reliefs sought for herein, if granted will afford complete relief for the stated cause of action as the illegal, unlawful stone crushing unit is continuing rampantly at the cost of *rule of law*. This apart, the Respondent Authorities have not initiated any step for stopping such unit.

13. That the records of the case of Your Petitioner are lying in the Offices of the Respondents within the Appellate Side Jurisdiction of

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this Hon'ble Court, and therefore this Hon'ble Court has Jurisdiction to try and entertain the instant Writ Petition.

14. That on the self-same cause of action Your Petitioner has not moved any application before any court of law.

15. That the present application is filed against the continuing and recurring violation of the environmental norms therefore, a fresh period of limitation begins to run at every moment of time during which the violation of laws is continuous. Hence this application is within the period of limitation and Your Petitioner has not committed inordinate delay in moving this Writ Petition and there are no laches. Your Petitioner finding no other way out to deal with the present situation where alleged illegal activity is continuing despite the knowledge of the Respondent Authorities. Your Petitioner approaches this Hon'ble Writ Court at the earliest possible opportunity. Therefore, any demand of justice from the Respondent Authorities would be an empty formality. Your Petitioner seeks exemption from notice under Rule 26 of the Writ Rules relating to application under Article 226 of the Constitution of India may be dispensed with.

16. In view of the Facts and Circumstances mentioned above and in view of the fact that the Respondents have acted in an complete capricious manner by not taking stern action against the Private Respondent No. 28 and further aiding in continuing the illegal and unlawful construction of stone crushing unit is in its full swing this is a fit case where the Hon'ble Court may direct the Respondent Authorities to take stern action against the Private Respondent No. 28 who made their best effort in putting the life of Your Petitioner and

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others in danger. This Hon'ble Court in exercise of its extraordinary powers under Article 226 of the Constitution of India may direct the Respondents Authorities to act in accordance with law forthwith and immediately.

17. That the present Writ Application is made *bonafide* and in the interest of justice.

In the facts and circumstances mentioned above, Your Petitioner humbly prays that Your Lordship may graciously be pleased to issue:

a) An order under Rule 26 of the Writ Rules framed by this Hon'ble Court on the Appellate side form raising any notice of demand before Respondent Authorities as the illegal stone crushing unit is in operation in its full swing putting the life of Your Petitioner in danger as he is the daily commuter of the NH-10 and further polluting the environment without adhering to basic norms of environmental laws i.e., without 'Consent to Establish' and 'Consent to Operate' therefore, making any representations may kindly be dispensed with and the writ petitioner may be permitted to be move *ex-parte* and without being listed.

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b) A writ of /in the nature of Certiorari and/or order or orders and/or direction or directions of like nature commanding the Respondents to certify and transmit the entire record relating to the instant case of the Petitioner before this Hon'ble Court pertaining to an application for 'Consent to Establish' vide application No. 1943383 dated 28.04.2022 which is still pending with the Respondent Authorities particularly Respondents No. 17 & 18 vide WB042.

c) A writ in the nature of Certiorari calling for records from the Respondent Authorities and upon perusal thereof quash and /or set aside the irrelevant parts thereof which may stand in the way of immediate demolition and stoppage of unauthorized/ illegal stone crushing unit of the project proponent i.e., Private Respondent No. 28.

d) A writ in the nature of mandamus directing the Respondent Authorities to cause inspection and close and further demolish the illegal/

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unauthorized stone crushing unit of the project proponent i.e., Private Respondent No. 28 and further impose polluter pay principle and ask to pay the compensation against the losses and damages that has been caused due to illegal commencement of the project/industry and further restore the environment.

e) A writ in the nature of mandamus directing the Respondent Authorities to confiscate the earth moving equipments, crushing units and other machineries of the alleged illegal/unauthorized stone crushing unit of the project proponent i.e., Private Respondent No. 28 lying within or in the periphery of the sanctuary.

f) A writ in the nature of mandamus directing the Respondent Authorities to take stern steps to initiate appropriate action against the partners of the alleged illegal/unauthorized stone crushing unit.

g) The writ in the nature of mandamus directing the Respondent Authorities to recover from the project

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proponent i.e., Private Respondent No. 28 to pay relief and compensation to the victims of such environmental damage.

h) Ad-interim stay upon the operation of the illegal/ unauthorized stone crushing unit/ seal the illegal unit which is rampantly operating flouting all the environmental norms and statutory mandates until the further disposal of the instant application.

i) Ad-interim direction upon the Respondent Authorities concerning the seizure of earth moving equipments, crushing units and other machineries of the alleged illegal/unauthorized stone crushing unit of the project proponent i.e., Private Respondent No. 28 lying within or in the periphery of the sanctuary.

j) Any other appropriate Writ/Writs, order/orders, and/or directions as your Lordship may deem fit and proper.

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k) Cost, Interest and incidentals to this application may be paid by the Respondents.

And for this act of kindness, Your Petitioner as in duty bound shall ever pray.

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28

A F F I D A V I T

I, Raja Gupta, Son of Late Kartaram Gupta, aged about 50 years by Faith Hindu and by Occupation Businessman, permanent resident of Village-Oodlabari, Debibasti, P.O. Manabari, P.S- Malbazar, Dist- Jalpaiguri, 735222, presently residing at Sri Sri Vatika Apartment, Block- A, 3rd Floor, P.S. Bhaktinagar, Iskcon Mandir Road, Siliguri, Dist- Jalpaiguri, 734001 do hereby solemnly affirm and declare as under:

1. That I am the Petitioner herein and as such I am well acquainted with the facts and circumstances of this case. I am competent to swear this affidavit.

2. That the statements made in the foregoing paragraphs 2, 3, 5, and 8 to 17 are GROUNDS and PRAYER CLAUSE are true to the best of my knowledge and my humble and respectful submissions before this Hon'ble Court. Statements made in paragraphs 1, 4, 6 and 7 are matter of record.

Prepared in my office

SUBHAM GUPTA, ADVOCATE

Deponent is known to me
Identified by me

I certify that all ANNEXURE are legible

SUBHAM GUPTA

Advocate

Solemnly affirmed before me on

This 2nd day of January, 2023

COMMISSIONER

Sl. No.07
09.01.2023
Court no.1
(Suvendu)

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI*

WPA 2 of 2023

Raja Gupta
Vs.
The State of West Bengal & Ors.

*Mr. Jagriti Mishra
Mr. Subham Gupta
Mr. Debayan Goswami
Mr. Reshab Kumar
Mr. Raj Kumar Mitra*

... for the Petitioner

Ms. Supriya Singh

...for the NHAI

*Mr. Anup Mitra
Mr. Sandip Mandal
Ms. Ritwika Ghosh*

....for the respondent no. 28

*Mr. Subir Kumar Saha
Mr. Bikramaditya Ghosh*

.....for the State

The petitioner claims to be a daily commuter from Siliguri to Oodlabari in North Bengal. The petitioner complains of pollution/environmental concerns by reason of operation of a Stone Crushing Unit on Sevoke Road. The petitioner also complains that the resulting pollution from the Stone Crushing Unit contributes to loss of visibility and that the location of the Stone Crushing Unit is against the provisions of The National Highways Act, 1956 and the Wildlife (Protection) Act, 1972.

Counsel relies on a decision of the Supreme Court in *T. N. Godavarman Thirumulpad Vs. Union of India and Others*, (2022) 10 SCC 544, where the Supreme Court in a Public Interest Litigation gave certain directions in respect of the location of any construction and manufacturing activities from protected forests and wildlife sanctuaries. The Supreme Court relied on the guidelines of the Ministry of Environment and Forests dated 9th February, 2011 in that regard.

It appears from the submissions of learned counsel appearing for the private respondent no. 28, which is the entity operating the Stone Crushing Unit, that the private respondent was given the contract by the Indian Railways for construction of a tunnel from Sevoke to Rangpo and from Rangpo to Nathula in Sikkim. It is also submitted that the land belongs to the Indian Railways and not the National Highways.

According to counsel appearing for the private respondent, the Stone Crushing Unit is yet to start operations and hence the question of dust and pollution is misplaced.

Learned counsel appearing for the State submits that any construction in the area must be undertaken upon the consent and authorization of the appropriate authorities which in this case is the Sub-Divisional Officer, Kurseong.

Upon hearing learned counsel, this court is of the view that interim relief can only be considered after

affidavits are filed by the parties. Moreover, since the land admittedly belongs to the Railways, the petitioner should add the Railways namely the Indian Railways Construction Company (IRCON), as a party respondent to the writ petition. The affidavit of the private respondent should also indicate whether the private respondent has obtained necessary permission from the appropriate authorities.

Let affidavit-in-opposition be filed within three weeks from date, reply within a week thereafter.

List this matter before the next available Circuit Bench.

(Moushumi Bhattacharya, J.)

32

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jks.
Ct-1

03.04.2023

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

W.P.A. 2 of 2023

**Raja Gupta
Vs.
The State of West Bengal & Ors.**

Ms. Supriya Singh
.... For the Respondent N.H.A.I

Mr. Subir Kumar Saha, Id. AGP
Mr. Bikramaditya Ghosh
... .. for the State

On the prayer of the learned counsel
appearing for the petitioner the matter is dismissed
as withdrawn.

(Rajarshi Bharadwaj, J.)

BEFORE THE HON'BLE NATIONAL
GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO.
111/2024/EZ

In The Matter of:

Subhas Dutta

... Applicant

Versus

State of West Bengal & Ors.

... Respondents

SUPPLEMENTARY AFFIDAVIT ON
BEHALF OF THE RESPONDENT
NUMBER 09, M/S AARPEE
MINERALS & AGGREGATES.

Krishenendu Bera
Advocate
High Court, Calcutta
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krishnendubera87@gmail.com
(M): 9804470595