

28 JAN 2025

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

NOTARISED

ORIGINAL APPLICATION NO. 218/2024/EZ

Sanjay Kumar Nayak

... Applicant

Versus

State of Odisha and Ors.

... Respondents

Counter affidavit filed on behalf of Respondent no.7

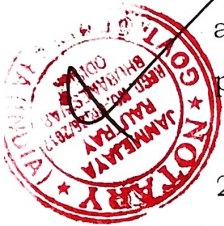
I, Subasis Ray, son of Late Shri S.C. Routray, presently working as Dy. Chief Controller of Explosives in the Petroleum and Explosives Safety Organization, Office of the Deputy Chief Controller of Explosives, Office Space-201, 2nd Floor, NSIC -IMDC Building, Dharmapada Bhawan, Plot No-6, Block -D, Mancheswar Industrial Estate, Bhubaneswar-751010, Dist- Khurda do hereby solemnly affirm and state as under:

1. That the deponent is working as Dy. Chief Controller of Explosives in the Petroleum and Explosives Safety Organization (herein after called PESO), Bhubaneswar, in Odisha, (herein after referred as the "Respondent No.07" and as such fully conversant with the facts and circumstances of the present case and competent to affirm this affidavit.

2. That the deponent states that he has read over and understood the contents of the subject of Original Application.

The deponent craves leave to set out the following pertinent facts for determination of the subject petition.

1. That as per power conferred vide Section 6(B) of Explosives Act, 1884 and in pursuance of Rule 7 of Explosives Rules, 2008, the licenses are



Subasis Ray

granted for manufacture, possession, sale, use, transport, import and export of explosives for period as mentioned therein along with conditions of license as applicable for the purpose.

2. That in pursuant to Rule 9(5) of Explosives Rules, 2008 no licence is needed for possession of fireworks not exceeding one hundred kilogram for own use and not for sale and in pursuant to Rule 9(9) of Explosives Rules, 2008 no licence is needed for possession and sale of amorces and sparklers from a shop in quantity not exceeding one hundred kilogram.

3. That in pursuant to Rule 127 and 128 under Explosives Rules 2008, the power to prevent dangerous practices is also vested with the District Magistrate and all District Magistrate, all Executive Magistrate, all Commissionerate of Police and Police Officer not below rank Sub-Inspector of Police are empowered within their jurisdiction to seize, detain and remove any explosive or ingredients thereof found therein together with connected documents thereof in respect of which he has reason to believe that any of the provisions of the Act or these rules have been contravened.

Sub-inspector

PARAWISE REPLY

4. That in response to the averments made in Para 1 & 2 of the OA, it is most respectfully submitted that the answering respondents have no further comments to offer. Anything contrary to the records are wrong and denied.



5. That in response to the averments made in Para 3 & 4 of the OA, it is most respectfully stated that no license for manufacture, possession and sale of fire crackers have been granted by PESO in license Form LE-1(Licence to manufacture fireworks), LE-3(Licence to possess for sale of fireworks in a magazine or possess fireworks not exceeding 5000 kilogramme in a storehouse for transfer to licensed fireworks shop) and LE-5 (Licence to possess and sale fireworks from a shop) under Explosives Rules 2008 in the District of Puri, Odisha. Further it is stated

that there is no valid license for manufacture of fireworks in license Form LE-1 in the entire State of Odisha granted by PESO under Explosives Rules, 2008. The fireworks are procured from licensed fireworks manufacturing factories located at Sivakasi, Tamil Nadu.

6. That in response to the averments made in Para 5 & 6 of the OA, it is most respectfully stated that in pursuant to Rule 127 and 128 under Explosives Rules 2008, the power to prevent dangerous practices is also vested with the District Magistrate and all District Magistrate, all Executive Magistrate, all Commissionerate of Police and Police Officer not below rank Sub-Inspector of Police are empowered within their jurisdiction to seize, detain and remove any explosive or ingredients thereof found therein together with connected documents thereof in respect of which he has reason to believe that any of the provisions of the Act or these rules have been contravened.

7. That in response to the averments made in Para 7 & 8 of the OA, it is most respectfully submitted that in pursuant to section 8 of Explosives Act 1884, where any accident occurs in or about or in connection with any place, aircraft, carriage or vessel under the control of the Armed forces of the Union an inquiry into the causes of the accident shall be held by the naval, military or air force authority concerned, and where any such accident occurs in any other circumstances, the District Magistrate shall in cases attended by loss of human life, or may, in any other case, hold or direct a Magistrate subordinate to him to hold, such an inquiry. It is also most respectfully submitted that in pursuant to Hon'ble Supreme Court Judgment dated 23-10-2018 vide para 42(XVI), all the officials respondents, and particularly the Police, shall ensure that there is no sale of banned fire crackers. In case any violation is found, the Station House Officers (SHO) of the concerned Police Station of the area shall be held personally liable for such violation and this would amount to committing contempt of the Court, for which such SHO(s) would be proceeded against. Furthermore Hon'ble Supreme Court vide order dated 29.10.2021 directed all the States/Union Territories to see



Subscribed

that the directions issued by the Hon'ble Supreme Court are strictly complied with in its true spirit and in toto.

8. That in response to the averments made in Para 9 of the OA, it is most respectfully submitted that the directions issued by Hon'ble Supreme Court in regards to manufacturing of green crackers are duly complied with by the Licensed Fireworks Manufactures and accordingly green crackers duly certified by NEERI (National Environment Engineering Research Institute) are supplied by Licensed Fireworks Manufactures at Sivkasi, Tamilnadu to state of Odisha for possession and sale of fireworks by the license holders under Explosives Rules 2008.
9. That in response to the averments made in Para 10 & 11 of the OA, it is most respectfully submitted that the answering respondents have no further comments to offer and anything contrary to the records are wrong and denied.
10. That in response to the averments made in Para 12 of the OA, it is most respectfully submitted that the answering respondents have no further comments to offer. Anything contrary to the records are wrong and denied.
11. That in response to the averments made in Para 13 of the OA, it is most respectfully submitted that the directions issued by Hon'ble Supreme Court in regards to manufacturing of green crackers are duly complied with by the Licensed Fireworks Manufactures and the green crackers duly certified by NEERI (National Environment Engineering Research Institute) are supplied by Licensed Fireworks Manufactures at Sivkasi, Tamilnadu to state of Odisha for possession and sale of fireworks by the license holders under Explosives Rules 2008.
12. That in response to the averments made in Para 14 & 15 of the OA, it is most respectfully submitted that the answering respondents have no



Subrajit K

further comments to offer. Anything contrary to the records are wrong and denied.

13. That in response to the averments made in Para 16 of the OA, it is most respectfully submitted that the directions issued by Hon'ble Supreme Court in regards to manufacturing of green crackers are duly complied with by the Licensed Fireworks Manufactures and the green crackers certified by NEERI are supplied from Licensed Fireworks Manufactures at Sivkasi, Tamilnadu to state of Odisha for possession and sale of fireworks by the license holders under Explosives Rules 2008. Furthermore Hon'ble Supreme Court vide order dated 29.10.2021 directed all the States/Union Territories to see that the directions issued by the Hon'ble Supreme Court are strictly complied with in its true spirit and in toto.

14. That in response to the averments made in Para 17, 18 & 19 of the OA, it is pertinent to mention that the provisions laid down in the Explosives Rules 2008 are for regulating and implementing the safety requirements to be adopted during manufacturing, possession/storage and sale of fireworks so as to avoid untoward incidents, accidents in the interest of safety.

Therefore, it is most humbly prayed that this Hon'ble court may be graciously pleased to accept the contentions raised by this respondent and pass order as deemed proper in the interest of natural justice and fair play.



Subasis
DEPONENT

28 JAN 2025

VERIFICATION

Sworn, Verified and signed at _____ on this _____ day of January, 2025 that the contents of the above affidavit are true and correct to the best of my knowledge. No part of it is false and nothing material has been concealed there from.

Subasis

DEPONENT

IDENTIFIED BY

Behra
ADVOCATE, BHUBANESWAR

EN. NO-0-

Name.....

Identified By

Advocate

Behra
28/01/2025
Enrolment No - 1153/2018

The above named deponent(s) being duly identified by Sri.....

Advocate, Bhubaneswar

Appears before me on dt. 28 JAN 2025

at..... A.M./P.M. states on oath the contents of this affidavit are true to the best of his / her / their knowledge and belief

Deponent(s) Notary, Bhubaneswar



Janmejaya Rautray
JANMEJAYA RAUTRAY
NOTARY, GOVT. OF ODISHA
BHUBANESWAR
REGD. NO-CN 86/2012
Mob. No. - 9337121273