

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

**ORIGINAL APPLICATION NO.- 5 OF 2024**

**IN THE MATTER OF:**

**MADHUSUDAN PALAI**

**APPLICANT**

**VERSUS**

**STATE OF ODISHA AND ORS**

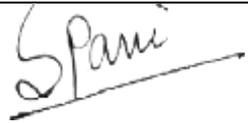
**RESPONDENTS**

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PLACE: Bhubaneswar

DATE: 01/03/2025

  
**SANKAR PRASAD PANI**

**ADVOCATE**

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**

**EASTERN ZONE BENCH, KOLKATA**

*(Under Section 14 , 15, 20 r/w. Section 18(1) & (2) of the National Green Tribunal Act, 2010)*

**ORIGINAL APPLICATION NO.-5 OF 2024**

**IN THE MATTER OF:**

**MADHU SUDAN PALAI**

**APPLICANT**

**VERSUS**

State of Odisha and Others

**RESPONDENTS**

**REJOINDER AFFIDAVIT BY THE APPLICANT**

**IT IS MOST RESPECTFULLY SHOWETH-**

1. That I MADHUSUDAN PALAI S/O LATE BINAYAK PALAI aged about 48 years. At/ JHARIA Po- BADAPARI, Dist-Khordha, Odisha do hereby solemnly affirm, and declare that I am the Applicant in the abovementioned application and I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.
2. That there has been no assessment mining over lapping the lease area hence the report is incomplete and the DDM may be directed to take help of ORSAC to assess quantum of minerals mined beyond the lease area.
3. It is submitted that even though it has been confirmed that the MINING operation has started without having EC and CTO but the committee has

not taken any steps to compute Environmental compensation for mining without having EC and CTO.

4. It pertinent to mention here that the committee report also confirms that the Y form has been issued in favor of the private respondent from dated 04/03/2021 while the Environmental clearance was transferred in favor of the private respondent on dated 02/06/2022, and mining without valid EC should be considered as illegal mining but committee has not taken any steps to compute Environmental compensation for this period.
5. It is further submitted that the CTO was granted only on dated 05/01/2023 but the private respondent continues to extract minerals from the quarry much before the lease agreement was executed.
6. That the last CTO which was granted in favor of the Private respondent was on dated 05/01/2023 and the same was valid till 31/03/2024 but the committee has only assessed the extracted volume of minerals from 2020-2023, as such the images of ORSAC that there is mining in the lease area has exceeded beyond lease area but same has not been acknowledged and assessed. In any case all those mining should be treated as illegal mining
7. It is further submitted that though the committee has observed mining beyond the lease area but the same has not been assessed and tried to escape by saying that these are old mines but the present lessee has continues to source from those plots but the committee has not assessed the quantum of illegal mining.

8. That the Honble NGT constituted a committee with a hope that the committee will have detail fact finding so as to assist the Honble Tribunal to adjudicate the issues raised in OA. However taking advantage of being committee members, the member who are party to the lis are trying to save each other by filing a sketchy report and without annexing relevant documents like mining plan, compliance report and their observations backed by photographs and documents.
9. That the CTO could not have been granted and EC should not be transferred in a project where the mining has already been started by the lessee without prior approval from the CTO and EC granting authorities and the same should be considered as violation category by either the SEIAA or by the SPCB.
10. That in para 9 of the OA it is stated that “That the ongoing Laterite Stone and Morrum Quarry is in gross violation of Environment protection Act 1986 and the standard conditions of environment clearance conditions. Summary of illegalities and violations are as follows
  - i. The extraction of Morrum and Laterite stone is done by clearing the Accacia and cashew and other trees from Govt and private Land
  - ii. There has been no monitoring of compliance of conditions and the requirement of submission of quarterly compliance report has

not been furnished and uploaded by the project proponent as well as Tahasildar for which the EC is liable to be cancelled as per condition no 9.23 of EC letter. though it should be quarterly monitored

- iii. There has been no plantation and green belt done by the project proponent and the progressive mine closure and phased reclamation has not been followed as it should have started once one pit is completed. Currently there are more than 10 different pits on which quarrying activities are going.
- iv. There has been no authorization under Hazardous Waste Management Rules 2016 for disposal of waste oils, used oils generated from machines and mining operation.” That the committee has also not addressed these issues raised by the applicant in the OA.

**11.** That in para 10 of the OA it is stated that “That the laterite stone and morrum loaded vehicles use to ply on PMGSY road through densely populated villages in violation of EC condition. **The vehicles use to cause air pollution and noise pollution while plying on the village road**”, but the committee has not addressed to this issue raised by the applicant.

**12.** That in para 17 of the OA it is stated that “It is submitted that there has been no measures taken to mitigate the Air Pollution such wet drilling, the stone is cut in dry method, No water sprinkling in the quarry area as well

as the roads, overloading vehicles are rampant, roads are already damaged and not graded to mitigate the dust emission, no water sprinklers in the mining site, the quarrying activity does not meet the ambient air quality standard, loading and unloading areas do not have dust suppression measures, Mining beyond 6metres, six monthly environmental statement has not been submitted and no green belt developed by the lessee.” This issues is also not addressed by the committee.

**13.**That the issue of specific denial was considered by Honble Supremecourt in **Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar(1993) 4 SCC 6** after the 1976 Amendment Act in CPC whereby the existing Rule 5 of Order VIII of the CPC was numbered as sub-rule (1) and three more sub-rules were added dealing with different situations where no written statement is filed. In paras 14 and 15 of the aforesaid judgment, the position of law as stated earlier was reiterated. The same are extracted below: “14. What is stated in the above is, what amount to admit a fact on pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth. 15. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea

is not taken in that manner, then the allegation shall be taken to be admitted.”

**14.** That there is no para wise reply/response filed by the Respondents and in **the garb of committee report, the state respondents and regulatory authorities are trying to file a sketchy and evasive report.** The contentions which were not specifically denied to be considered as admission as per Order VIII Rule 3 of CPC and the essence of the provision is as follows

*Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted, are not required to be proved.”*

**Bhubaneswar**

**By the Applicant Through**

**01/03/2025**



**ADVOCATE**

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO ...5..... OF 2024

IN THE MATTER OF:

MADHUSUDAN PALAI

APPLICANT

VERSUS

STATE OF ODISHA AND ORS

RESPONDENTS

AFFIDAVIT 01 MAR 2025

I MADHUSUDAN PALAI S/O LATE BINAYAK PALAI aged about 48 years. At/ JHARIA Po- BADAPARI, Dist-Khordha Odisha do hereby solemnly affirm, and declare as under:

- 1. That I am the Applicant in the abovementioned application and I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.
- 2. That I have read over the contents of the accompanying affidavit and the same is true and correct and is drafted on my instruction.

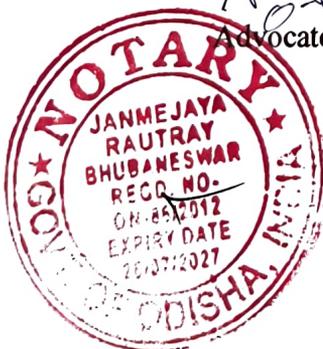
Madhu sudan palai  
DEPONENT

VERIFICATION

Verified on this the 01 day of MAR 2025 at BBR that the contents of the above rejoinder are true and correct. No part of it is false and nothing material has been concealed there from.

Identified By  
Advocate

Madhu sudan palai  
VERIFICANT



The above named deponent(s) being duly identified by me as an Advocate on 01 MAR 2025 at BBR on oath that the contents of the above rejoinder are true to the best of my knowledge and belief. Notary, Bhubaneswar. Mob. No. - 9337121273



Sankar Pani &lt;sankarprasadpani@gmail.com&gt;

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**Rejoinder affidavit by applicant in OA 5 of 2024.**

1 message

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**Sankar Pani** <sankarprasadpani@gmail.com>

Mon, Mar 3, 2025 at 11:28 AM

To: advparthaohc@gmail.com, Dipanjan Ghosh &lt;dpnjnghsh0@gmail.com&gt;, apurba ghosh &lt;apu7law@gmail.com&gt;, Anup Pattnaik &lt;anuppattnaik.757@gmail.com&gt;

Dear Sir/Madam, please find the attachment.

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**REJOINDER OA 5\_merged.pdf**

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