

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

O.A. No. 153/2023/EZ

Kabiraj Mohapatra ... Applicant
Versus.
Union of India and others ... Respondents

I N D E X

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Kolkata.

Date : 21.04.2025


Advocate

For the Respondent No.10.



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AFFIDAVIT FILED ON BEHALF OF RESPONDENT

NO.10-D.D. BUILDERS LTD.

I, Chirag Agarwal, aged about 33 years, Son of Sri Ramesh Kumar Agarwal, At-Plot No. D-33/F, B.J.B. Nagar, Bhubaneswar, Dist-Khurda, do hereby solemnly affirm and state as follows :

1. That I am the Director of D.D. Builders Ltd. and I have been duly authorized to swear this affidavit for and on behalf of Respondent No.10.
2. That I have gone through the contents of the affidavit filed by the Respondent No.1 to 4 and understood the contents thereof. I am well acquainted with the facts of the present case and competent to swear this affidavit.
3. That the applicant in this original application has moved before this Hon'ble Tribunal against the inaction of Respondent authorities for illegal lifting of sand from the river bed of the river Bahuda in the Siripur area in Chikiti Tahasil,

Chirag Agarwal

Surendra Prasad Dhal
Advocate
NOTARY, CUTTACK

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Ganjam District without clearance from the State Environmental Impact Assessment Authority (SEIAA). The applicant has alleged that illegal lifting of sand from Siripur Sand Depot in Chikiti Tahsil in Khata No. 115, Plot No. 1380/830 and 1334/832.

4. That this Hon'ble Tribunal vide order dated 17.10.2023 has directed the State Respondents to identify all the sand miner in that particular area and submit a report with regard to the miner of the sand sairat involved. The Hon'ble Tribunal has directed that a Committee comprising the following members to be constituted :-

- a) *Senior Scientist, State Pollution Control Board.*
- b) *Senior Scientist, Central Pollution Control Board*
- c) *Senior Scientist State Environment Impact Assessment Authority (SEIAA), Odisha.*
- d) *Collector and District Magistrate, Ganjam or his Representative Officer not below the rank of Additional District Magistrate.*

5. That pursuant to the order passed by this Hon'ble Tribunal dated 17.10.2023 the aforesaid Committee conducted a joint inspection on 30.11.2023 at the alleged site of Siripur Sand Quarry in river Bahuda over Plot No. 130/830, 134/832. Accordingly the Committee found that the sand mining was taking place in two quarries i) Siripur sand

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quarry, ii) River sand bed in village Sundarda Birachaitanyapur.

6. That pursuant to the aforesaid direction of this Hon'ble Tribunal the Respondent No.4-Collector and District Magistrate, Ganjam submitted affidavit enclosing the report of the Committee dated 30.12.2023. The Committee in its report made the following observation in Para 'k' :-

"Para-'k'. The villagers informed the committee members that D.D. builders and ARCC Companies along with Sri Santosh Kumar Behera, Lessee of Sundarda Birachaitanyapur bed were involved in illegal mining from both Siripur sand quarry and Sundarda Birachaitanya river sand bed that was also reflected in the enforcement report of Tahsidlar, Chikiti submitted vide letter No. 6740, dated 29.11.2023 copy enclosed as Annexure-V."

7. That based upon the aforesaid observation in the report this Hon'ble Tribunal vide order dated 1.3.2024 directed the Odisha State Pollution Control Board (Respondent No.3) to indicate in its affidavit the action taken against illegal sand, miners who have been identified in Paragraph-k of the report. This Hon'ble Tribunal has also directed the Respondent-State and SCIAA (Respondent No.7) to file an affidavit in indicating action taken against illegal sand minors.

8. That on the basis of affidavit filed by the Respondent No.4 and the Odisha State Pollution Control Board, this Hon'ble Tribunal vide order dated 1.3.2024 directed the

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applicant to implead D.D. Builders and ARSS Companies as Respondents. This Hon'ble court Tribunal vide order dated 22.4.2024 issued notice to the Respondent No.10, 11 and 12 to file their counter affidavit before the next date of hearing.

9. That pursuance to order passed by this Hon'ble Court the Tahsildar, Chikiti vide Letter dated 16.3.2024 intimated this deponent regarding involvement in illegal lifting of sand by the Respondent No.10 and subsequently vide Letter dated 26.6.2024 intimated that a total of Rs. 9,70,696/- for illegal extraction of sand tune of 2751 cum. is required to be deposited failing which action as deemed proper shall be initiated against him. True copy of the letter dated 26.06.2024 is enclosed herewith as Annexure-A/10.

10. That it is further humbly submitted that the identical letter dated 26.6.2024 has also been issued to M/s. ARSS, Infrastructure project Ltd. – Respondent No.1 and M/s. ARSS Developers Ltd.-Respondent No.12.

11. That it is humbly submitted that present action for realization of the royalty, penalty and other charges for illegal mining at Siripur sand bed is only on the basis of the report dated 30.12.2023 in Paragraph-k as stated above.

12. That the Tahsildar, Chikiti on the basis of said observation without any further enquiry has issued the demand of payment of royalty and penalty for the illegal sand

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mining to the Respondent No.10, 11 and 12 from the report it is crystal clear that not only this Respondent No.10 and other private individuals had also been extracted the sand from the Siripur Sand Bed. Instead of imposing penalty from the individuals/persons involved in illegal mining, the Tahsildar, Chikiti has initiated certificate proceeding against this deponent for realizing of the said amount in Certificate Case No. 3/2024. True copy of the notice dated 23.12.2024 in the certificate proceeding is annexed herewith as Annexure-B/10.

13. That it is humbly submitted that the demand notice dated 26.6.2024 to penalize the Respondent No.10 for the purpose of illegal extraction of 2351 cum. is issued in mechanical manner and without application of mind. As per the report submitted by the Tahsildar, Chikiti under Annexure-A/4 the Details of royalty/penalty as per enforcement activities of minor mineral showing that for Siripur sand bed not only the Respondent No.10 but also other private persons namely Durga Kanta Tripathy, Pradip Prdhan, Kunja Bihari Sahoo, Srinibas Sahoo and Sudam Pradhan were also penalized on different of occasions for illegal lifting of sand from the said quarry.

14. That it is further humbly submitted that the Respondent No.10 has already deposited Rs. 1,91,152/- (Rupees One Lakh Ninety-One Thousands One Hundred Fifty-Two only) towards penalty and royalty to the Tahsidlar, Chikiti besides

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other private individuals also deposited in the royalty as referred in the said operator. However the Tahsildar, Chikiti has issued the demand for the entire extraction of the sand to the tune of 2751 cum. against this deponent.

15. That it is pertinent to mentioning here that if the total sand has been extracted as calculated to the tune of 2751 cum. and the total royalty and other charges in the said sum of sand is Rs. 9,70,696/- (Rupees Nine Lakhs Seventy Thousands Six Hundred Ninety-Six only). The Tahsildar, Chikiti has not been deducted the penalty already paid by this Hon'ble as well as that the private persons.

16. That it is humbly submitted that the committee report has merely recorded that some villages informed the committee members for illegal mining by D.D. Builders, ARSS Companies. The report has not reached any finding on the veracity of such allegations. It has not named any such villagers or provided their details or particulars in the report. The Report has not verified such allegations and has not provided an opportunity to the answering Respondent to confront the allegations or respond to them. As such, the impugned demand notice suffers from gross violation of principles of natural justice.

17. That it is further humbly submitted that merely because the name of this Respondent appears in the report of Tahsildar, Chikiti and collected penalties from this


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Respondents, he cannot be saddled with the entire extraction of the sand to the tune of 2751 cum. as has been calculated by the Respondents Authorities.

18. That it is further humbly submitted the demand notice for realization of amount of Rs. 9,70,696/- from this Respondents is arbitrary and baseless as the same has been calculated on the basis of the information of the local villagers during the enquiry.

19. That it is further humbly submitted that the allegation of local people as reflected in the report has not been enquired into and the report has not reached any finding on the veracity of such allegation. The report has also not named any such villager or provided their details or particulars in the report. The report has not verified such allegation and has not provided an opportunity to this respondent to confront allegation or to respondent to them. Such demand notice suffers from gross violation of principle of natural justice and as such realization of the said amount form the Respondent No.10 is arbitrary and unreasonable.

20. That the facts stated in the affidavit are true to the best of my knowledge and belief.

Identified by

Advocate

D.D. BUILDERS LTD.

deponent Director

The above named Deponent

Solemnly affirm on

Being Identified

by

Surendra Prasad Dhal

Advocate

NOTARY, CUTTACK

C. R. Meyside (Adv)



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VERIFICATION

I, Chirag Agarwal, aged about 33 years, Son of Sri Ramesh Kumar Agarwal, At-Plot No. D-33/F, B.J.B. Nagar, Bhubaneswar, Dist-Khurda, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge which derived from official records verified at Bhubaneswar on this 21th day of April, 2025.

D.D. BUILDERS LTD.Verificant. **Director**

Chirag Agarwal
Surendra Prasad Obhi
Advocate
NOTARY, CUTTACK

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ANNEXURE - A/10



OFFICE OF THE EXECUTIVE MAGISTRATE-CUM-TAHASILDAR, CHIKITI

Email: tah_chikiti@yahoo.in

Letter No: - 2057 / 1

Date:- 26.06.2024

To

M/s D.D Builders Ltd.
 Plot No. 33-F,
 BJB Nagar, First Floor
 Bhubaneswar- PIN- 761014

Sub: - Illegal extraction of Sand from the Siripur Sand Bed under Chikiti Tahasil of Ganjam District.

Ref: - 1. Order of the Hon'ble NGT in O.A Case No. 153/23/EZ, Kolkata

This is to inform you that, in compliance to the Order of the NGT, a Committee has visited the Sand site to assess the quantum of extraction of Sand from the aforesaid Sand Bed.

During the course of enquiry, the local people has alleged that the illegal lifting of Sand has made by you and it is also evident from record available in this Office, that you have been penalised for illegal lifting of Sand from the above said Source in different occasions.

Further this is to intimate that, authorised persons has calculated the illegal extraction of Sand to a tune of **2751 Cum**.

As you had involved in illegal lifting of Sand from the said Source and as admitted by you through depositing the penalty and Royalty in different dates, you have liable to deposit the Royalty, Additional Charges, Penalty, DMF, EMF, Compensatory Aforestation & IT as calculated by the Mining Officer, Ganjam, Berhampur, Steel & Mines Department, Govt. of Odisha, Berhampur- 760011 vide his Letter No. 976/Mines Dated. 24.06.2024 for the aforementioned quantum of Sand as calculated below and deposit before the undersigned immediately. Failing which action as deemed proper shall be initiated against you for realisation of the amount.

1. Royalty (@ 35/- per CuM) = Rs. 96, 285/-
2. Addl. Charges (120/- per CuM) = Rs. 3, 30, 120/-
3. Penalty = Rs. 5, 00, 000/-
4. DMF (@ 10 % of Royalty) = Rs. 9, 629/-
5. EMF (@ 5 % of Royalty) = Rs. 4, 814/-
6. Compensatory (@ 5 % of Royalty + Addl.) = Rs. 21, 320/-
7. IT (2 % of Royalty + Addl.) = Rs. 8, 528/-

Total = Rs. 9, 70, 696/- (Rupees Nine Lakh Seventy Thousand Six Hundred Ninety Six) only.

Tahasildar, Chikiti

26/6/24
 TAHASILDAR
 CHIKITI (GANJAM)

ANNEXURE-B/10

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To
The M/s D.D Builders Ltd, Plot No 33F,
BIB Nagar, First Floor, Bhubaneswar, PIN- 761014

C.Dr

(Name of the certificate-Debtor)

You are hereby informed that a certificate against you for Rs. 9,70,696/- from you on account of payment of gratuity has this day been filed in my office under section 6 of the Odisha Public Demands Recovery Act, 1962 if you deny your liability to pay the said sum of Rs. 9,70,696/- you may, within thirty days from the service of this notice file in my office a petition denying liability, in whole or part, on one or more of the ground specified below:-

- a) The Certificate dues have been fully or partly paid.
- b) The person or whom such notice has been served is not the person named as certificate debtor in the certificate.
- c) A Certificate debtor in respect of dues other than those in relation to which the liability under any law for the time being in force is no open to question in civil court may also deny his liability on any other ground.

If within the said thirty days you fail such a petition or if you fail to show cause or do not show sufficient cause, why such certificate should not be executed it will be executed under the provisions of the said act, unless you pay Rs. 9,70,696/- with the interest @ 12.5%. On account of the demand and Rs. 23/- on account of costs of realization into my office, until the said amount is so paid you are hereby prohibited from making any private transfer or delivery of any of your immovable Property situated in this district or in case of a property and should you make any such transaction, it shall be void against any claim enforceable in execution of this certificate, if you in the meantime conceal, remove or dispose of any part of your moveable property the certificate will be executed immediately.

A copy of the certificate above mentioned is here to annexed.

You may remit the amount by money order, quoting the number any year of the certificate.

Dated this 23rd December 2024
Through Tahashdar, Bhubaneswar
for service and return on or before the
date . If required

Sub-Collector, Cum Sp. Certificate officer
S.Bethampur, Nampur

RI, Concern.

11865
23/12/2024

(See Section 4)

To

The Certificate Officer of the district of Ganjam

Name of certificate-debtor	Address of certificate-debtor	Name of surety	Address of surety	Amount of public demand for which this requisition is made	Nature of the public demand for which this requisition is made
				5	6
M/S D.D. Builders Ltd.	President- AT/- Plot No. 33F STS Nagar, Bhubaneswar Dist. Puri Permanent AT/A- Ladugaon, Kalahandi Dist. 766024			Rs. 9,70,696/- only Toward Six hundred Ninety Six only	Excess Illegal Building of house (in ranch)

I request to recover the above-mentioned sum of Rs. 9,70,696/- which I am satisfied, after enquiry, is due from the said purpose in respect of Illegal Building of Land

Verified by me on the 04/11/2024 day of Nov

A.B. [Signature]
(Designation)
Tahasildar,
CHIKI, (Or.)