

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

ORIGINAL APPLICATION NO. 145 OF 2024 / EZ

IN THE MATTER OF :

Sapan Kumar Ghosh

...Appellant

VERSUS

State of Odisha & Others

...Respondents

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5.	Photocopy of the letter dtd.04.03.2025 issued by the Regional Officer, Balasore of the R-4 Board to the R-5 unit. (ANNEXURE – R4/4)	
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By the Respondent No.4

Through

Kolkata
Date:

Sri Dipanjan Ghosh,
Advocates for the Respondent No.4
(State Pollution Control Board, Odisha)
e-mail: dpnjnghsh0@gmail.com
Phone No.:990308097

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO. 145 OF 2024 / EZ

06 MAR 2025

IN THE MATTER OF :

Sapan Kumar Ghosh ...Appellant

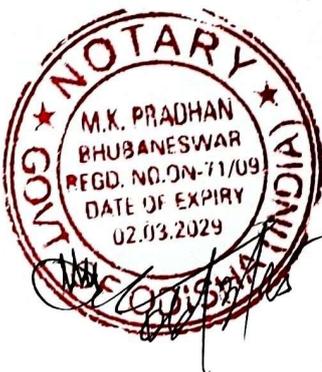
VERSUS

State of Odisha & Others ...Respondents

AFFIDAVIT ON BEHALF OF THE STATE
POLLUTION CONTROL BOARD, ODISHA,
R.NO.4.

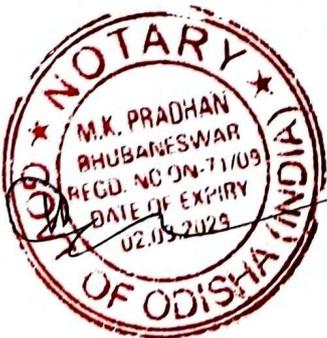
I, Dr. Kailasam Murugesan, IFS, son of late Paramasivam Kailasam aged around 56 years, at present working as Member Secretary, State Pollution Control Board, having my office at Paribesh Bhawan, A/118, Nilakantha Nagar, Unit-VIII, P.O. Nayapalli, Bhubaneswar, Dist – Khurda, Odisha-751012, do hereby solemnly affirm and state as under:

1. That I am the Member Secretary of the Respondent No.4 Board and, as such, am well-acquainted with the facts and



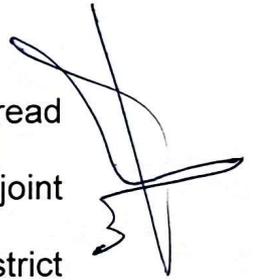
circumstances with the case and competent to swear this affidavit.

2. That I have gone through the OA and understood the contents thereof.
3. That this Hon'ble Tribunal while adjudicating the OA vide their order dtd.25.07.2024 read with 27.08.2024 has been pleased to constitute a committee consisting of i) Senior Scientist, Odisha State Pollution Control Board; ii) District Magistrate, Mayurbhanj, Odisha or his representative Officer not below the rank of Additional District Magistrate (A.D.M.); and iii) Representative of Factories & Boilers, Odisha; and directed the committee to visit the site and submits its factual and action taken report with regard to the allegations made in the OA. Further the District Magistrate, Mayurbhanj has been declared as the Nodal Body for all logistic purposes and filing the inspection report of the committee on affidavit.
4. That soon after receipt of the copy of order dtd.25.07.2024 and copy of OA, the R-4 Board has nominated the Regional Officer, Balasore to represent the Board in the



Committee constituted by the Hon'ble Tribunal and intimated the same to the Collector & District Magistrate, Mayurbhanj vide Board's letter No.11885 dtd.01.08.2024, who is the Nodal Officer in this case for compliance of the direction dtd.25.07.2024 of the Hon'ble Tribunal. A memo of the letter dtd.01.08.2024 has also been forwarded to the Regional Officer, Balasore of the R-4 Board. A copy of the letter No.11885 dtd.01.08.2024 is annexed to this affidavit and marked as **ANNEXURE – R4/1**.

5. That in compliance to the direction dtd.25.07.2024 read with 27.08.2024 of this Hon'ble Tribunal the joint committee report has been filed by the Collector & District Magistrate, Mayurbhanj. The Hon'ble Tribunal while taking note of the joint committee report of the inspection carried out on 22.08.2024 in respect of the R-5 unit vide their order dtd.04.12.2024 at para-4 and 5 has passed the following direction. The relevant para-4 & 5 of the order dtd.4.12.2024 is given below



4. The Joint Committee Report of an inspection carried out on 22.08.2024 of the unit of the Respondent No.5, M/s. Das Cold



Storage, Palbani, Baripada has been filed which is taken on record. However, we find that the Odisha State Pollution Control Board has not filed any counter-affidavit regarding the same. The Joint Committee Report mentions that the allegation made by the Applicant regarding leakage of Ammonia Gas from the Cold Storage Unit is not true and is not based on fact. This finding of the Committee is prima facie contradictory to the report of the Assistant Director of Factories and Boilers, Keonjhar Zone dated 17.04.2023 which already finds mention in the order of this Tribunal dated 25.07.2024 in Paragraph Nos.3 and 4.

5. We, therefore, grant the Respondent No.1, Odisha State Pollution Control Board four week's time for filing counter-affidavit along with an Action Taken Report explaining this discrepancy and what action has been taken with reference to the report of the Assistant Director of Factories and Boilers, Keonjhar Zone in his Inspection Report dated 17.04.2023.

6. That it is humbly submitted that the joint committee constituted by the Hon'ble Tribunal after inspection of the

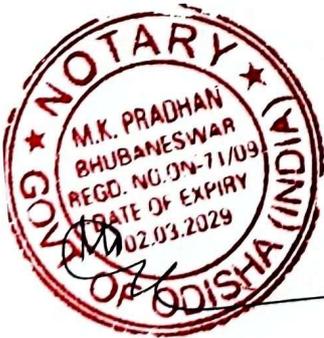


R-5 unit on dtd.22.08.2024 has submitted its report before the Hon'ble Tribunal mentioning that the allegation made by the applicant regarding leakage of Ammonia gas from the cold storage unit is not true and is not based on fact. As regards the said observation of the committee, it is stated that the joint committee during inspection inspected all machineries and equipment installed in the cold storage like Ammonia Storage Tank area, Refrigeration Equipment Assembly, Loading and Unloading Site, Ammonia Gas Transmission Pipeline and found that

- (i) No ammonia gas was found in the process equipment during the visit as ascertained from the gas level indicator.
- (ii) No sign of ammonia gas leakage was notice or felt during inspection of the cold storage and its periphery.

As there was no ammonia gas in the process equipment, there is no possibility of leakage of ammonia gas.

As regards the observation made by the Assistant Director of Factories & Boilers, Keonjhar in his enquiry



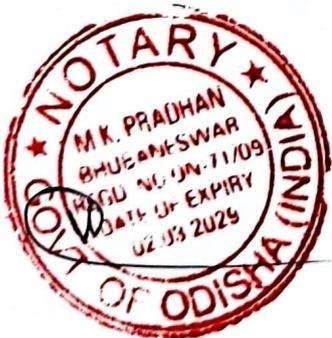
report dtd. 06.05.2023 annexed as Annexure-2 of the OA read with para-3 & 4 of the order dtd.25.07.2024, it is humbly submitted that the deficiencies / violations observed in the enquiry report is only pertaining to the safety measures to be adopted by the R-5 unit in the plant as provided under the Factories Act, 1948 and nowhere specifically mentioned / observed about the leakage of ammonia gas during his visit on dtd.01.05.2023. Otherwise also the inspecting officer who visited on 01.05.2023 is also one of the member of the joint inspection carried out on dtd.22.08.2024 in compliance to the direction of the Hon'ble Tribunal vide Order dtd.25.07.2024. As such, there is no contradiction on the report of the joint committee and the report of enquiry of the Assistant Director, Factories & Boilers, Keonjhar as observed by the Hon'ble Tribunal in their order dtd.4.12.2024 at para-4.



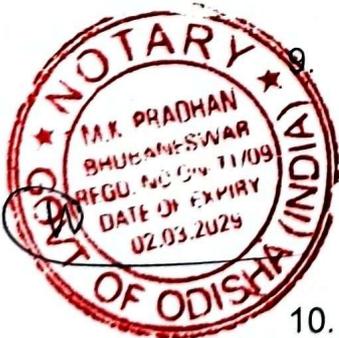
7. That it is further humbly submitted that as regards R-5 unit is concerned, the same is categorised as Orange Category of industry and is coming under the consent administration of the R-4 Board. But as per records the R-5 unit has not obtained any consent to establish / operate from this

Board as provided U/s-25 of Water (PCP) Act, 1974 and Section-21 of the Air (PCP) Act, 1981, although the committee in the report stated that the R-5 unit is operating since 02.03.1980. In the joint committee report after verification of the documents, the committee has observed during inspection on 22.08.2024 that the unit of R-5 was not in operation since January 2024 and the R-4 Board through Sri Anil Barik, Dy. Env. Engineer, Regional Office, Balasore has carried out inspection on dtd.04.03.2025 and it was also found that the unit was not in operation. The report of inspection of the Dy. Env. Engineer is annexed to this affidavit and marked as ANNEXURE – R4/2.

8. That since the unit has failed to obtain consent from the R-4 Board, the matter was examined for levying Environmental Compensation (EC) as per office order No.1162 dtd.04.09.2019 of the CPCB and it was found that none of the six cases stipulated in the said order as (a) to (f) is applicable to R-5 unit because there is no discharge and violation of prescribed standard, no closure direction has been issued for non-installation of OCEMS (Online Continuous Emission Monitoring System), no action plan



has been submitted by the unit, there is no data manipulation by tampering the OCEMS, there is no intentional discharge to outside and there is no injunction of waste water into ground water. Therefore, the environmental compensation on the basis of the guidelines of CPCB dtd.04.09.2019 could not be assessed by the R-4 Board against the R-5 unit. But the R-4 Board through its Regional Officer, Balasore has directed the R-5 unit not to operate the plant without previous consent to operate of the R-4 Board provided under Water (PCP) Act, 1974 and Air (PCP) Act, 1981. A copy of the office order No.1162 dtd.04.09.2019 issued by the CPCB and the letter dtd.04.03.2025 issued by the Regional Officer, Balasore of the R-4 Board to the R-5 unit are annexed to this affidavit and marked as ANNEXURE-R4/3 and ANNEXURE- R4/4 respectively.



- That the Respondent No. 4 Board craves leave of this Hon'ble Tribunal to file further affidavit if required for proper adjudication of this case.
10. That the Annexures annexed to the present affidavit are true and correct copies of their originals.

MANJULA KUMAR PRADHAN
NOTARY PUBLIC
BHUBANESWAR
REGD. NO. ON/71/200
PH - 9437627419 (M)

[Handwritten signature]

11. That the contents of the above paragraphs are true and correct to the best of my knowledge, as derived from the official records, and that nothing material has been concealed therefrom.

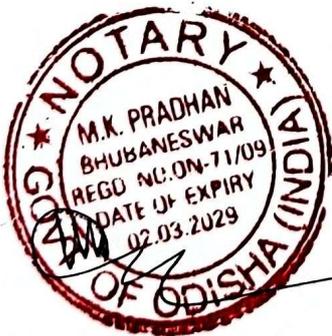
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DEPONENT

VERIFICATION:

I, the above named deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge, as derived from official records, and that nothing material has been concealed therefrom.

Verified at Bhubaneswar on this the 6th day of March, 2025.

SWORN BEFORE ME



[Handwritten signature]
DEPONENT

MANJULA KUMAR PRADHAN
NOTARY PUBLIC
BHUBANESWAR
REGD. NO. ON/71/200
PH - 9437627419 (M)

[Handwritten signature]
06/03/25



ANNEXURE-R4/1

EPABX: 2561909/2562847

Tel: 2562822, 2560955

Email: Paribesh1@ospcboard.org

Website: www.ospcboard.org

STATE POLLUTION CONTROL BOARD, ODISHA

[DEPARTMENT OF FOREST AND ENVIRONMENT, GOVERNMENT OF ODISHA]

Paribesh Bhawan, A/118, Nilakanthanagar, Unit – VIII,
Bhubaneswar – 751 012, INDIA

No. 11885
VII – L – Misc – 1124

Date: 1-8-24

E-mail / Speed Post

To

The Collector & District Magistrate
Mayurbhanj.

Sub: OA No.145/2024/EZ – Sapan Kumar Ghosh v. State of Odisha & Others regarding leakage of Ammonia gas from one cold storage unit operated by the R.No.5 i.e. M/s. Das Cold Storage, At/Po-Palbani, Baripada, Mayurbhanj.

Sir,

The Hon'ble NGT, EZB, Kolkata while adjudicating the aforesaid OA vide their order dtd.25.07.2024 has been pleased to constitute a committee at para-12 of the order comprising of the following members:

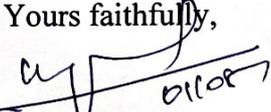
- i) Senior Scientist, West Bengal Pollution Control Board;
- ii) District Magistrate, Mayurbhanj, Odisha or his representative Officer not below the rank of Additional District Magistrate (ADM); and
- iii) Representative of Factories & Boilers, Odisha

Although the Hon'ble Tribunal while constituting the committee has mentioned Senior Scientist, West Bengal Pollution Control Board but since the cause of action has arisen in the State of Odisha, it appears the same has been inadvertently mentioned as West Bengal Pollution Control Board instead of Odisha Pollution Control Board. Accordingly, Er.Manmohan Murmu, Regional Officer, Balasore (Mob-9438025035) has been nominated to represent the Board in the committee constituted by the Hon'ble Tribunal.

The committee has been directed to visit the site in question and submit its factual and action taken report with regard to the allegations made. The District Magistrate, Mayurbhanj shall be the nodal body for all logistic purposes and shall file the inspection report of the committee on affidavit. Copy of OA and order dtd.25.07.2024 are enclosed for compliance of the direction of Hon'ble Tribunal.

Encl: As above.

Yours faithfully,


Member Secretary

Memo No. 11886 / Date: 1-8-24

E-mail/Speed Post

Copy along with copy of enclosure forwarded to the Regional Officer, SPC Board, Balasore for information and necessary action.

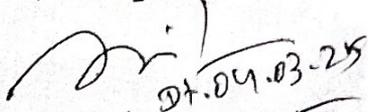
Encl: As above.

O/c


Member Secretary

**INSPECTION REPORT ON OA NO. 145/2024/EZ IN THE MATTER OF SAPAN
KUMAR GHOSH Vs STATE of ODISHA & Others.**

In connection with the aforesaid Hon'ble NGT matter M/s Das Cold Storage unit located as Baripada, Dist. Mayurbahnj was inspected by the undersigned today i.e on dt. 04.03.2025 to verify the operational status of the said unit. Sri Kartikeswar Parida, Supervisor of the unit was present during inspection. It was observed that the aforesaid unit was not operating during inspection. All the machineries installed there were in not functioning and no storage of any goods were found in the storage room of the unit.


Er. Anil Ku Barik
Dy. Env. Engineer

04.03.25

CENTRAL POLLUTION CONTROL BOARD
DELHI

F.No.B-400(S)/IPC-III/2019-20 1162

September 04th, 2019

OFFICE ORDER

POLICY FOR LEVYING ENVIRONMENTAL COMPENSATION (EC) FOR INDUSTRIES

In compliance of Hon'ble NGT order in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, *Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.*) a Committee was constituted by CPCB for developing a formula for imposing penalty and environmental compensation on industrial units.

As per the Committee recommendations, following cases are considered for levying environmental compensation,:

- a) Discharges in violation of consent conditions, mainly prescribed standards/ consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission/ Effluent Monitoring systems.
- d) Accidental discharge lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment – land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated/ partially treated/ untreated effluents in to ground water.

In the instances as mentioned at a, b and c above, Pollution Index shall be used as a basis to levy the Environmental Compensations. CPCB has published guidelines for categorization of industries into Red, Orange, Green and White bases on concept of Pollution Index (PI). The Pollution Index is arrived after considering quantity & quality of emissions/ effluents generated, types of hazardous wastes generated and consumption of resources. Pollution Index of an industrial sector is a numerical number in the range of 0 to 100 and can be represented as follows:

PI = f (Water Pollution Score, Air Pollution Score & IIW Generation Score)
Pollution Index is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution hazard from the industrial sector.

After considering various factors including the policy implementation issues, Committee has derived following formula for levying the Environmental Compensation in instances as mentioned at a, b and c including non-compliance of the environmental standards / violation of directions.

$$EC = PI \times N \times R \times S \times LF$$

Where,

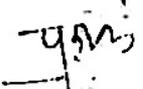
PI (pollution Index), N (number of days of violation), R (Rupees factor),
S (Scale of operation), LF (location factor).

✓ In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.

Conditions/ policy / operational protocol for levying EC shall be as below:

1. Prior to imposition of EC, a Show Cause Notice (SCN) for imposing EC alongwith an opportunity to reply/ hearing be given.
2. Method adopted for calculation of EC may be shared with the concerned industry/ agency if asked during hearing or through reply.
3. Unless there is substantial evidence, date of non-complying days would start w.e.f. date of non-compliance observed during inspection.
4. In Sugar industry, number of days of violation is calculated based on actual number of days operated during crushing season(s) based on Excise Form RT-8C submitted by the unit.
5. EC for non-compliance to CPCB's closure direction regarding installation & connectivity of OCEMS shall apply till establishment of initial uninterrupted data connectivity for all the specified parameters in all the permitted outlets /stacks, as verified by the IT division.
6. EC for the closure direction issued on the ground of non-compliance of prescribed discharge/ emission norms shall apply for the period between date of inspection & monitoring to date of closing of manufacturing operation.
7. Direction for closure or revocation and direction for imposition of EC to be dealt separately.

This issues in supersession of the earlier approach & methodology being followed in calculation of EC amount on the ground of non-compliance of closure direction regarding OCEMS and circular no. B19004/NGRBA/CPCB/2015-16(part file) dated 15.05.2019 regarding calculation of EC amount on the ground of non-compliance of notified norms for sugar mills.


(PRASHANT GARGAVA)
MEMBER SECRETARY

To,

- 1 ✓ All Divisional heads : For necessary action please
2. All Regional Directors : For necessary action please
3. Divisional Head IT : For uploading on CPCB's website please

Copy for information to:

1. PS to CCB
2. PS to MS

ANNEXURE-R4/4

Tel/Fax: 06782-244110
Website: www.ospcboard.org
E-mail: rospcb.balasure@ospcboard.org



REGIONAL OFFICE, BALASORE
STATE POLLUTION CONTROL BOARD, ODISHA
(FOREST, ENVIRONMENT & CC DEPARTMENT, GOVERNMENT OF ODISHA)
Plot No.1602, Ganeswarpur, Balasore -756019, INDIA

No. 770 /Esst.(L)/405

dt. 04/03/2025
By Speed Post/E-mail

To,

Sri Girish Chandra Das, Proprietor
M/s Das Cold Storage
At/PO. Palbani, Baripada
Dist. Mayurbhanj, Odisha 757001

Sub: OA No.145/2024/EZ-Sapan Kumar Ghosh vs. State of Odisha & Others

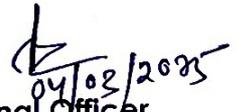
Sir,

During the visit of the committee constituted by the Hon'ble Tribunal to your unit on 22.08.2024 and by Er. Anil Kumar Barik, Dy. Env. Engineer of this Board on 04.03.2025 it was found that your unit was not in operation. Although you have established your Cold Storage Unit in the name and style M/s Das Cold Storage in the year 1980 and operating since then, you have failed to obtain any consent from the Board.

Prior to resumption of operation you are required to submit application in the prescribed form along with requisite consent fees and levy of pollution charges as applicable to you for obtaining consent to operate from this Board. Only after obtaining consent to operate you will resume operation of your unit.

Hence, you are directed not to operate the unit without obtaining previous consent to operate from this Board as provided under Section 25 of the Water (P&CP) Act, 1974 and Section 21 of the Air (P&CP) Act, 1981.

Yours faithfully,


04/03/2025
Regional Officer