

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
ORIGINAL APPLICATION NO- 89 OF 2024**

**IN THE MATTER OF:**

**GOPINATH MAJHI**

**APPLICANT**

**VERSUS**

**STATE OF ODISHA &ORS ...**

**RESPONDENTS**


**INDEX**

<b>SI NO</b>	<b>PARTICULARS</b>	<b>PAGE NO</b>
1	Rejoinder affidavit on behalf of applicant.	1-9

**PLACE: BHUBANESWAR**

**SANKAR PRASAD PANI  
ASHUTOSH PADHY**

**DATE: 08/05/2024**



**ADVOCATE**

**Bubaneswar 751002, Cell-9437279278,  
email: sankarprasadpani@gmail.com**

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**REJOINDER AFFIDAVIT ONBEHALF OF THE APPLICANT TO THE  
AFFIDAVIT DATED 17/02/2025 FILED BY DIVISIONAL FOREST  
OFFICER, HIRAKUD WILDLIFE DIVISION**

I, **Gopinath Majhi**, S/o Late Bimbadhar Majhi, aged about 67 years, At- Jaibudia(Bartap), Po- Banjari, Via- Belpahad Dist- Jharsuguda 768217, Odisha, hereby solemnly affirm and declare as under;

1. That I am the Applicant in the above mentioned Original Application. I am fully conversant with the facts and circumstances of the case .
2. That the applicant has raised the following issues in the present Original Application,
  - I. That the original application has been filed in the backdrop of breach of Ash pond of OPGC on dated 09/12/2023.
  - II. The prominent issue raised in the OA is that the industry has failed to manage the fly ash leading to breach of the Ash pond and the

applicant alleged it to be deliberate and intentional other than it is a clear case of negligent on the part of respondent industry and the concept of absolute liability applies in the instant case

- III. That the very positioning of Ash pond was in clear violation of environment clearance conditions No. xlvii of EC dated 22/01/2014, as well as the wetland rules 2010 which was repealed with new rule in 2017
  - IV. The ash pond has been constructed right within the area of Hirakud Reservoir, the largest earthen dam and subsequently notified as Ramsar site.
  - V. The breach of ash pond has led to damage of the adjoining agricultural land and mixed with the water of Hirakud reservoir, hence it is a case of polluting the water which has been the life of half of population of Odisha.
3. It is further submitted that in the affidavit dated 18/06/2024 filed by District Magistrate Jharsuguda wherein the committee report has been annexed. That during the inspection the committee has observed certain remedial measures taken by OPGC where in it is mentioned that “The industry has engaged TERI-SAS for carrying out an Environment damage assessment study. The study will be carried out in 3 seasons ie. Pre-Monsoon, Monsoon &

Post-Monsoon. The final study report will be available by 31" March 2025 & the Pre-Monsoon report will be available by August 2024." But as on date no such report has been filed.

4. That the DFO Hirkud Wildlife Division in its affidavit dated 17/02/2025 in Para-5 has stated that *"That the OPGC thermal power plant, which is the subject of O.A. No. 89/2024(EZ), along with its ash pond units, is situated in Jharsuguda District. This area does not come under the administrative control of the Hirkud Wildlife Division. The said power plant and its ash ponds are located at a distance of 20 km from the jurisdiction of this Division."* hence in view of the above submission of the DFO Hirkud Wildlife Division affidavit dated 17/02/2025 may be rejected and DFO Jharsuguda who also is the Manager of Hirkud Wetland be directed to file the affidavit.
5. It is further submitted that on dated 02/07/2024 state Government took time to file additional affidavit bringing on record the current status and the submission of the learned Counsel appearing for the State government is also recorded in paragraph 6 of the order dated 02/07/2024. After that on dated 17/02/2025 State government filed one affidavit but the same nowhere indicates about the current status as well as environment damage assessment

study of three season to be completed one of the study to be completed by August 2024 and the other by 31<sup>st</sup> March 2025.

6. That the MOEF in its affidavit dated 01/08/2024 in paragraph 6 has stated that “ It is humbly submitted that, in pursuance of the above mentioned SoP, the Answering Respondent has issued a letter dated 31.07.2024 to the Regional Office of the Ministry at Bhubaneshwar, requesting them to furnish a factual status report concerning the issues raised in the application, along with a condition-wise compliance status report (s) for all the ECs associated with the project.” But as on date the compliance report has not been filed by the MOEF.
7. That the MOEF in its affidavit dated 01/08/2024 in paragraph 7 has stated that “It is further submitted that the monitoring report for the Environmental Clearances granted to Respondent No. 14, M/s Orissa Power Generation Corporation Ltd., is awaited from the RO, Bhubaneshwar. Therefore, in the present case, necessary action will be initiated by the Answering Respondent upon completion of all the due procedures in line with the SoP dated 25.11.2022” but as on date no such report has been filed by the Respondents.
8. That, in pursuance of the Ministry's letter dated 31.07.2024, the project was monitored by the Regional Office (RO), Bhubaneshwar on 08.08.2024.

Based on the observations made during the monitoring, RO, Bhubaneswar submitted a factual status report and a monitoring report vide letter no. 101-361/08/EPE dated 09.09.2024 to the Ministry. That in factual status report the following non compliances were observed by the Regional Office (RO), Bhubaneswar,

- I. The height of the existing ash pond has been increased without prior intimation to the Ministry. (Specific condition-ii of EC dated 04.02.2010)
- II. Dust suppression system at the ash pond A and C has not been provided. (Specific condition-vii of EC dated 04.02.2010, Specific condition-xiii of EC dated 22.01.2014)
- III. 100% ash utilization has not been achieved by PP. (Specific condition- viii of EC dated 04.02.2010)
- IV. Adequate safety measure has not been taken by PP to protect the ash dyke from getting breached. (Specific condition-x of EC dated 04.02.2010)
- V. Cr has not been monitored, Piezometric monitoring data has not been furnished. A network of existing wells and constructing new piezometers has not been established. (Specific condition-xix of EC dated 04.02.2010)

- VI. SO<sub>2</sub> and PM<sub>10</sub> exceeded the standard. Hg analysis data has not been furnished by PP. (Specific condition-xxiv, Specific Condition-iii of EC dated 30.01.1987)
- VII. Expenditure on the CSR programme has not been done as per the stipulated condition. (Specific condition-xxvi of EC dated 04.02.2010)
- VIII. Year wise expenditure on the implementation of environmental protection has not been furnished. (Specific condition-xxviii of EC dated 04.02.2010)
- IX. Heavy metal analysis in and around the ash pond by reputed institute has not been furnished. (Specific condition-xlii of EC dated 22.01.2014)
- X. Green belt around the ash pond has not been developed. (Specific condition- xviii of EC dated 22.01.2014)
- XI. Details of the common Green Endowment Fund as stipulated in EC condition has not been provided. (Specific condition-xlix of EC dated 22.01.2014)
- XII. Annual social audit from the nearest government institute of repute has not been carried out. (Specific condition-1 of EC dated 22.01.2014)

XIII. Details of resettlement package of rehabilitation of dispersed families.

(condition-v Solid Waste Management of EC dated 30.01.1987).

9. It is submitted that on dated 01/04/2024 CPCB wrote a letter to Member Secretary Odisha State Pollution Control Board regarding conducting an environmental damage assessment study through an institute of national repute, based on which Odisha SPCB may impose environmental compensation/penalty on the plant for restoration of the environment/affected area/person. But as on date no environmental compensation/penalty has been imposed on M/S OPGCL for causing damage to the environment.
10. That in the same letter of CPCB it is also mentioned that **“Further, as per the Annual Ash Compliance Audit Report 2022-23 submitted by M/s OPGCL, the plant had got conducted the ash dyke stability study of the ash pond/dyke through IIT Madras during April 2023 i.e. before the incident of breach held on 09.12.2023. In view of the breach in the same ash pond/dyke, the plant may be asked to also consult the expert to provide comments on the cause of breach.”** In view of the above mentioned observation of CPCB it is submitted that no report has been filed by the respondents clearly showing the cause of ash pond breach.

APPLICANT THROUGH

ADVOCATE

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO -89 OF 2024/EZ

IN THE MATTER OF:

GOPINATH MAJHI

APPLICANT

VERSUS

STATE OF ODISHA &ORS ...

RESPONDENTS

AFFIDAVIT 08 MAY 2025

I, Gopinath Majhi, S/o Late Bimbadhar Majhi, aged about 67 years, At- Jaibudia(Bartap), Po- Banjari, Via- Belpahad Dist- Jharsuguda 768217, Odisha, do hereby solemnly affirm, and declare as under:

- 1. That I am the applicant in the above-mentioned application. 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 Rejoinder Affidavit and the same is true and correct and is drafted on my instruction.

Gopinath Majhi  
DEPONENT

VERIFICATION:-

Verified on this the \_\_\_\_\_ day of 08 MAY 2025 2024 at \_\_\_\_\_  
----.that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed there from.

Gopinath Majhi  
DEPONENT



Identified By  
Advocate 0-10/8/23

The above named deponent(s) being  
duly identified by Sri. \_\_\_\_\_  
Advocate, Bhubaneswar.

Appears before me on dt. 08 MAY 2025  
at \_\_\_\_\_ A.M./P.M. 08 States  
on oath the contents of the affidavit  
are true to the best of his/her/their  
knowledge and belief

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

Notary, Bhubaneswar



Sankar Pani <sankarprasadpani@gmail.com>

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**Rejoinder affidavit filed on behalf of the applicant in oA89/2024/EZ.**

1 message

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

Fri, May 9, 2025 at 11:02 AM

To: officeoframanyadav@gmai.com, shakti panda <sppanda13@gmail.com>, apurba ghosh <apu7law@gmail.com>, pbanerjeebihani@gmail.com, "Rajib Ray, Advocate" <rajib.ray.official23@gmail.com>

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