

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

M.A. NO.34/2022/EZ

IN

Original Application No.84/2021/EZ

In the matter of:

Tribunal on its own motion

... Applicant(s)

-Versus-

The Odisha State Pollution Control Board & Others

... Respondent(s)

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Cuttack

Date: 04.01.2023


(TARUN PATNAIK)

ADDL. STANDING COUNSEL

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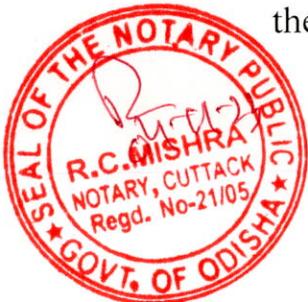
The Odisha State Pollution Control Board & Others

... Respondent(s)

**AFFIDAVIT DATED 04.01.2023 FILED ON BEHALF OF
THE RESPONDENT NO.8**

I, Sri Shankarsan Behera, aged about 43 years, S/o.- Late Kuna Behera, at present working as Assistant Executive Engineer, Akhuapada, At/PO-Akhuapada, Dist.-Bhadrak, Odisha, do hereby solemnly affirm and state as follows:-

1. That, I have been arrayed as the Respondent No.8 in the Original Application.
2. That, I have gone through the order dated 08.12.2022 passed by this Hon'ble Tribunal passed in the present matter and the Original Application and understood the content thereof. I am



Shankarsan Behera

well acquainted with the facts of the case and thus competent to swear this affidavit in my official capacity.

3. That, the present affidavit is being filed by the deponent herein in pursuant to the order dated 08.12.2022 of this Hon'ble Tribunal passed in the present Miscellaneous Application, wherein the present deponent has been directed to file the affidavit stating what action has been taken in response to the reminders sent by the State Pollution Control Board, Odisha.

4. That, this Hon'ble Tribunal vide its order dated 05.08.2022 had directed the following:-

"31. We also find that Environmental Compensation and penalty including royalty for the loss caused to the environment as well as to the State exchequer has not been computed. We are surprised that Environmental Compensation has not been computed by the Odisha State Pollution Control Board being the Regulatory Authority constituted under the Water (Prevention and Control of Pollution) Act, 1974. Similarly, the penalty including royalty for illegal mined sand has not been computed by the District Authorities.

32. We, therefore, direct the Odisha State Pollution Control Board to determine the Environmental Compensation and the District Authorities to determine the



Shankarshan Behera

penalty/royalty etc. and proceed to take action against the illegal miners for recovery of the same in accordance with law."

5. That, it is briefly stated that as a consequence of illegal theft of sand carried out in Jagannath Prasad Sand Sairat Source under the Tahasil Bhandaripokhari in the district of Bhadrak, an F.I.R. No.111/2020 was lodged under Section 379 read with Section 34 IPC on 25.06.2020. Pursuant to said lodging of the F.I.R., investigation was carried out by the Investigating Authority. Thereafter on 30.11.2021, a final form was submitted under Section 379 read with 34 IPC, wherein 38 (thirty eight) nos. persons were arrayed as accused. During the investigation, it may be stated that 23 (twenty three) nos. of tractors were seized by the Investigating Authority.

6. That, in pursuance to the direction of this Hon'ble Tribunal, the State Pollution Control Board (SPCB), Odisha had written letters on 28.09.2022 and 06.10.2022, wherein the Deponent was asked to submit the following information towards determination / calculation of environmental compensation:

- 1) Number of days of violation,
- 2) Quantity of earth material (sand) excavated,



Shankar Sen Behera

3) Market value of the earth material (sand)

Copy of the letter dated 28.09.2022 of the SPCB, Odisha is annexed herewith as Annexure-A/8.

Copy of the Letter dated 06.10.2022 of the SPCB, Odisha is annexed herewith as Annexure-B/8.

7. That, in reply to the aforesaid letters, the Deponent vide his letter No.2464, dated 10.10.2022 intimated the State Pollution Control Board, Odisha, regarding the environmental compensation and penalty in respect of theft of sand amounting to Rs.10,70,768/-. The said computation has been arrived at by calculating the volume of the sand sought to be taken away in 23 (twenty three) nos. of tractors which were seized. During the investigation, it has been found that these 23 (twenty three) nos. of tractors were involved in illegal mining over the period of 9 (nine) days. The environmental compensation has been levied at Rs.999/- per cubic metre as per the decision taken by the District Level Committee meeting held on 22.07.2022 for determination of market value for calculation of compensation amount of illegal mining of sand towards environmental and ecological damage with respect to Bhadrak district. The said meeting was convened as per the order dated 26.02.2021 passed in O.A. No.360/2015 in

Shankerson Behers



the matter of NGT Bar Association –Vrs.- Virendra Singh (State of Gujarat & Ors.

Copy of the proceedings dated 22.07.2022 made by the District Level Committee is annexed herewith as Annexure-C/8.

Copy of the Letter dated 10.10.2022 of the Tahasildar, Bhandaripokhari is annexed herewith as Annexure-D/8.

8. That, it is humbly submitted that the aforesaid computation of environmental compensation has been done on a tentative basis since the fact of illegal mining pertains to June 2020. The assessment of the volume of such illegal mining of sand has been made on the basis of tractors which have been seized by the Investigating Authority. It is pertinent to state that currently, exact assessment of such illegal mining of sand is improbable since during the intervening period, the said sairat source has been affected by various floods and cyclones, which has made it is very difficult to ascertain the exact quantity of sand of illegal mining.

Shankerson Behera

9. That, the delay on the part of the Deponent in bringing the aforesaid facts on record before this Hon'ble Tribunal is inadvertent and the same may be condoned.



10. That, the facts stated above are true to the best of my knowledge and based on official records.

Identified by

Sonal Mishra
04.01.2023
Advocate

Shankaran Behara
Assistant Executive Engineer
Akhropada
DEPONENT 04.01.2023

CERTIFICATE

Certified that cartridge papers are not available.

(TARUN PATNAIK)

Cuttack

Date: 04.01.2023

ADDL. STANDING COUNSEL

Solemnly affirm on in Oath by the Deponent
at Cuttack on... *04.01.23* ...being indentified
by *S. Mishra*
Advocate/Adv's Clerk/S.O., AG's office/Notary
Personally, that the facts stated above are
true to the best of his/her knowledge.

Sonal
RAMA CHANDRA MISHRA, NOTARY
CUTTACK TOWN, REGD. No-21/05



Tel.: 06782-244110

Website: www.ospcboard.org

E-mail: rospcb.balasore@ospcboard.org



REGIONAL OFFICE, BALASORE
STATE POLLUTION CONTROL BOARD, ODISHA
(FOREST, ENVIRONMENT & CLIMATE CHANGE DEPT., GOVT. OF ODISHA)
Plot No.1602, Ganeswarpur, Balasore - 756019

No. 2026 /Estt.(L)/330

Dt. 28-09-2022

By E-mail/Speed Post

To,

The Tahasildar, Bhandaripokhari
At/PO. Bhandaripokhari, Dist. Bhadrak
Odisha 756120

.....
The Asst. Executive Engineer
Akhuapada Irrigation Sub-Division
At/PO. Akhuapada, Dist. Bhadrak
Odisha 756122

Sub: OA No.84/2021/EZ - Akshaya Ku Tripathy vs. State of Odisha & Ors.

Ref. Head Office letter No.16527/VII-L-Misc-957, dt.09.09.2022

Sir,

With reference to the above, this is to inform that the Hon'ble NGT, EZB, Kolkata vide their judgment dated 05.08.2022 has directed the Odisha State Pollution Control Board to calculate/compute the Environmental Compensation in terms of the judgment and to take step for recovery of the assessed Environmental Compensation. The Hon'ble NGT has also directed the Board to file affidavit of compliance by 11.10.2022.

You are, therefore, requested to furnish the following information to the undersigned forthwith towards determination/calculation of Environmental Compensation so that the affidavit of compliance may be filed well in advance.

1. Number of days of violation
2. Quantity of earth material (sand) excavated
3. Market value of the earth material (sand)

Yours faithfully,

28/09/2022
Regional Officer

Memo No. 2027 /Dt. 28.09.2022

Copy forwarded to the Member Secretary, State Pollution Control Board, Odisha, Bhubaneswar for kind information and necessary action.

True Copy Attested

4/10/2023
AEE, Akhuapada

28/09/2022
Regional Officer



REGIONAL OFFICE, BALASORE
STATE POLLUTION CONTROL BOARD, ODISHA
(FOREST, ENVIRONMENT & CLIMATE CHANGE DEPT., GOVT. OF ODISHA)
Plot No.1602, Ganeswarapur, Balasore - 756019

No. 2089 /Estt.(L)/330

DL 06/10/2022

By E-mail/Speed Post
REMINDER

To,
The Tahasildar, Bhandaripokhari
At/PO. Bhandaripokhari, Dist. Bhadrak
Odisha 756120

[Signature]
6.10.2022

.....
The Asst. Executive Engineer
Akhupada Irrigation Sub-Division
At/PO. Akhupada, Dist. Bhadrak
Odisha 756122

Sub: OA No.84/2021/EZ- Akshaya Kumar Tripathy vs State of Odisha & Ors.

Ref. This office letter No.2026 dt.28.09.2022

Sir,

In continuation to the above referred letter, this is to inform that the Hon'ble NGT while disposing the O.A.No.84/2021/EZ-Akshaya Ku. Tripathy vs. State of Odisha & Ors. Vide their judgment dated 05.08.2022 has directed the State Pollution Control Board, Odisha to determine Environmental Compensation and proceed to take action against illegal mines for recovery of the same in accordance with the Law. The Hon'ble NGT has also directed the State Pollution Control Board to file affidavit of compliance by 11.10.2022.

It may be mentioned here that the undersigned has information related to Respondent No.7. However, from the judgment at Para 14, it is found that the Hon'ble NGT has observed that so far as Respondent No.7 is concerned, there is absolutely no illegality in his mining operations since the inspection reports confirm that minimum distance of sand sariat source in question from the adjacent left embankment of river Brahmani is about 100 mtrs etc. In the order the Hon'ble Tribunal has observed that FIR was lodged against unknown persons when there was so much panic created due to illegal mining among the local villagers. Further, in the judgment dtd.05.08.2022 at Para-15, the Hon'ble Tribunal has referred to the letter of the Asst. Executive Engineer, Akhupada dtd.10.03.2021, which mentions that some

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[Signature]
04.10.2022
AEE, Akhupada

miscreants are lifting sand from the Bali Pokhari and nearby areas creating panic among local people etc.

In view of the above, you were requested vide this office letter under reference (photocopy enclosed) to furnish information to the undersigned to determine Environmental Compensation so that affidavit of compliance can be filed before the Hon'ble Tribunal by 11.10.2022. But the said information has not yet been received. Hence, you are once again requested to please expedite the matter and submit the required information as called for in the above referred letter dtd.28.9.2022 forthwith for further action at this end.

Encl: As above

Yours faithfully,

[Signature]
06/10/2022

Regional Officer

Memo No. 2090 /Dt. 06/10/2022

Copy forwarded to the Member Secretary, State Pollution Control Board, Odisha, Bhubaneswar for kind information and necessary action.

[Signature]
06/10/2022

Regional Officer

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[Signature]
04.01.2023
A.P.P., Akhucyada

- 10 - ANNEXURE C/8

PROCEEDINGS OF THE DISTRICT LEVEL COMMITTEE MEETING HELD ON 22.07.2022(5.00 PM) AT SADBHABANA SABHA GRUHA, COLLECTORATE, BHADRAK FOR DETERMINATION OF MARKET VALUE OF COMPENSATION CHARGES FOR ILLIGAL MINING OF SAND TOWARDS ENVIRONMENTAL AND ECOLOGICAL DAMAGES IN RESPECT OF BHADRAK DISTRICT

The District Level Committee meeting for determination of Market value of compensation charges for illegal mining of sand towards environmental and ecological damages in respect of Bhadrak District was held on dated 22.07.2022(5.00 PM) under the Chairmanship of Collector, Bhadrak at Sadbhavana Sabha Gruha, Collectorate, Bhadrak. The list of members present is annexed at Annexure-"A".

Welcoming all the participants, the Chairman-cum-Collector, Bhadrak briefed the objectives of the meeting. He told that Hon'ble Green Tribunal, Principal Bench, New Delhi by order dated 26.02.2021 passed in O.A. No. 360/2015 in the matter of 'National Green Tribunal Bar Association Vrs. Virendra Singh (State of Gujarat) and 18 other OAs', have considered the issue relating to enforcement and monitoring mechanism to control and regulate illegal sand mining (including riverbed sand mining) activities. With the direction to strictly follow the "Sustainable Sand Mining and Management Guidelines-2016 (SSMG-2016) and "Enforcement of Monitoring Guidelines of Sand Mining-2020"(EMGSM), the Hon'ble NGT, by the said order has accepted the report of the Central Pollution Control Board (CPCB) and has directed that the scale of compensation calculated with reference to Approach-2 be adopted by all the States and U.Ts. As per Approach-2, compensation amount on illegally mined sand is to be fixed at 3.33 times of the market value towards environmental and ecological damages as per CPCB. In order to facilitate such determination of compensation charge, the market value of sand is to be fixed by the District Level Committee.

The Deputy Collector, Revenue, Collectorate, Bhadrak stated that the Tahasildars are collecting the charges of sand for illegal mining of sand as follows:- Tahasildar, Bhandaripokhari Rs. 650/-, Tahasildar, Bhadrak Rs. 650/-, Tahasildar, Bonth Rs. 650/-, Tahasildar, Chandbali Rs. 600/- & Tahasildar, Dhamnagar Rs. 600/- each for 2.5. cubic meter

Basing on the above information the average rate is arrived at Rs. 252/- per cubic meter. The District Level Committee unanimously determined the market value of sand as Rs. 300/- per cubic meter taking into account the royalty and additional charge. As per Approach-2, compensation amount on illegally mined sand is to be fixed at 3.33 times of the market value i.e. Rs. 999/- per cubic meter. Accordingly it has been decided by the Committee that all the Tahasildars for Bhadrak district will collect @ Rs. 999/- per cubic meter towards compensation charges of sand for illegal mining of sand henceforth.

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[Signature]
21/07/2022
AEE, AKHARPOODI

- 11 -

Thereafter the Chairman expressed that the compensation amount so collected by the Tahasildars from the illegal sand mining shall be deposited in 'Interest' bearing bank account opened separately by Forest, Environment and Climate Change Department named 'Environment Compensation' bearing Account No. 06640110075074, IFSC-UCBA0000664, MICR Code- 751028004, Forest, Environment and Climate Change, Government of Odisha-751001 to utilize the amount for restoration of environment by preparing action.

The meeting ended with vote of thanks to the Chair.

V. S. J. J.
J. S. J.

[Signature]
Collector, Bhadrak

Memo No. 7602 / Touzi Date 8/8/22

Copy forwarded to all Tahasildars of Bhadrak District/Sub-Collector, Bhadrak for information and necessary action.

Copy to D.F.O, Bhadrak(Wildlife) Division, Chandali/ Superintending Engineer, (R&B) Division, Bhadrak/ Superintending Engineer, Jajpur Irrigation Division, Jajpur/ Superintending Engineer, R.D., Bhadrak/ Deputy Director of Mines, Baripada for information.

[Signature]
Collector, Bhadrak

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[Signature]
04.08.2023
A.E.E., Akhucapada

OFFICE OF THE TAHASILDAR, BHANDARIPOKHARI
No. 2464 /Touzi(NGT), Dt. 10.10.22 //

To

The Regional Officer,
State Pollution Control Board, Odisha,
Plot No.1602, Ganeswarpur, Balasore-756019

Sub: O.A. No.84/2021/EZ, filed by Akshay Kumar Tripathy & others - Vrs.- State of Odisha and others.

Ref: Your Letter No.2026/Estt.(L)/330, Dt.28.9.2022, Letter No. 2089/Estt.(L)/330, Dt.6.10.2022 & this Office Letter No.2444/Touzi, Dt.6.10.2022.

Sir

With reference to your letters and this Officer Letter on the subject cited above. I am to say that basing on the F.I.R. lodged by the then Tahasildar, Bhandaripokhari before the I.I.C., Bhandaripokhari P.S. vide Tahasil Office Letter No 1035, Dt.25.6.2020 against 23 number of vehicles involved in illegal theft of sand, the I.I.C., Bhandaripokhari seized 23 number of vehicles and charge sheeted against them. After getting bail from the competent court, the vehicles were released by the I.I.C., Bhandaripokhari P.S.

Basing on the F.I.R. report of the then Tahasildar and the Charge Sheet of I.I.C., Bhandaripokhari P.S., it is ascertained that (1)number of days violation is -9, (2)quantity of sand excavated including overloading @ 4 CumX23X9days =552 Cum and (3)the approximate market value of sand may be 552CumXRoyalty Rs 35 = Rs.19,320 + Compensation Charge Rs.999X552 = Rs.5,51,448 and Penalty Rs 5,00,000/-, thus Total (Rs.19,320 + Rs.5,51,448 + Rs.5,00,000) = Rs 10,70,768/- as the matter is of the year 2020 and the then Tahasildar, Bhandaripokhari, has already retired from Govt. Service on attaining the age of superannuation.

Therefore you are requested to take appropriate action for determination/calculation of Environmental compensation as per law.

Sl. No.	No. of days of violation	Quantity of earth material(sand) excavated	Approximate Market value of the earth material(Sand)	Total
1	9 days, 23 tractors	4CumX23X9days = 552Cum	Royalty - 552CumXRs.35 = Rs 19,320/- Compensation Charge Rs.999X552Cum = Rs.5,51,448/- Penalty Rs.5,00,000/-	Rs.10,70,768/-

Yours faithfully,


Assistant Executive Engineer
Akhuapada Irrigation Sub-Division, Akhuapada


Tahasildar, Bhandaripokhari

True Copy Attested


04.01.2023
AEE, Akhuapada

Memo No. 2465 /Touzi(NGT), Dt. 10.10.22 //

Copy submitted to Sri Tarun Patnaik, Addl. Standing Counsel, Office of the A.G. Odisha, Cuttack for kind information and necessary action.

Copy submitted to the Sub-Collector, Bhadrak for kind information.

Copy submitted to the Collector, Bhadrak for kind information.



Tahasildar, Bhandraripokhari

True Copy Attested


04.09.2023
A.E.E., Akharpada