

BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOKATA.

O.A NO.142 OF 2022/EZ

PRATAP CHANDRA MOHANTY & OTHERS
----- APPLICANTS

VRS.

STATE OF ODISHA & OTHERS

-----RESPONDENTS

I N D E X

<u>SL.</u> <u>No.</u>	<u>Description of Documents</u>	<u>Pages.</u>
1.	AFFIDAVIT FILED BY THE RESPONDENT NO. 02	01 - 6
2.	<u>ANNEXURE -1/2</u> Copy of Reply letter No. 107/ 23.01.2023 from NHAI and the Letter no. 439 dated 30.01.2023 from EPC Contractor M/s. Gammon Infrastructure Projects Ltd. GECPL JV	7-9

Cuttack

Date: 21 .03.2023.


Advocate

**BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOKATA.**

O.A NO.142 OF 2022/EZ

PRATAP CHANDRA MOHANTY & OTHERS

----- APPLICANTS

VRS.

STATE OF ODISHA & OTHERS

-----RESPONDENTS

AFFIDAVIT FILED BY THE RESPONDENT

NO.02 IN PURSUANCE TO THE ORDER DATED

05.01.2023 PASSED BY THE HON'BLE

TRIBUNAL

I, Chakravarti Singh Rathore, aged about 33 years, S/o-Hari Singh Rathore, at present working as Collector & District Magistrate, Jajpur, At/P.O./P.S./ Dist-Jajpur do hereby solemnly affirm and state as follows:

1. That, I am the Respondent No.2 in the aforesaid case. I have gone through the contents of Original Application as well as the documents annexed thereto and understood the contents and purport thereof and competent to swear this affidavit in my official capacity as per records available with me in compliance to the Order dated 05.01.2023 passed by the Hon'ble Tribunal.

Chakravarti Singh Rathore

**COLLECTOR & DISTRICT MAGISTRATE
JAJPUR**

AR

**Tankadhar Mishra
Notary, Cuttack Town**

2. That this Hon'ble Tribunal by its order dated 05.01.2023 has directed the Respondents No. 02 to file a fresh affidavit disclosing the action taken with regards to the mining activity done without environmental clearance.
3. That in pursuance to the direction passed by the Hon'ble Green Tribunal, a Joint Environmental Impact Assessment Committee was called upon on 09.02.2023 to examine the documents and data received by the employer agency- NHAI and executing agency- M/s. Gammon Infrastructure Projects Ltd. GECPL JV with regards to the quantity of minor minerals utilized till date and decide on the revenue demand (royalty and penalty) to be imposed for the unauthorized utilization of the minor minerals in the widening work from Duburi to Chandikhole section of NH-53.
4. That, it is pertinent to mention here that, as a part of the reply to the multiple demand letters, the employer agency-NHAI has submitted vide letter no 107/ 23.01.2023 that post technical examination of the Authority's Engineer and Contractor report, the following construction materials have been utilized, in total, by the EPC

Chakrawarti High Court

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Tankadhar Mishra
Notary, Cuttack Town

Contractor M/s. Gammon Infrastructure Projects
Ltd. GECPL JV till date:

- Borrowed Earth = 1,86,347.10 cum
- Crusher Stone = 1,49,705.18 cum
- Stone Dust = 1,47,468.34 cum
- Sand = 28,742.90 cum
- Fine slag = 4,49,385.14 cum
- Crushed Slag= 2,40,423.99 cum
- Fly Ash/Pond ash = 12,30,445.56 cum
- Roadway Cutting earth= 73,985.85 cum

This quantity of material usage has also been corroborated by the contractor concerned vide letter no 439 dated 30.01.2023

Copy of Reply letter No. 107/
23.01.2023 from NHAI and the
Letter no. 439 dated 30.01.2023
from EPC Contractor M/s.
Gammon Infrastructure Projects
Ltd. GECPL JV are annexed
herewith as ANNEXURE-1/2

Unkrawati Singh Rathore

COLLECTOR & DISTRICT MAGISTRATE
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5. That, it is pertinent to mention here that, on examination of the letter received from contractor concerned it is found the requisite

permission/clearance with proper authentication has been produced by the Contractor concerned- M/s. Gammon Infrastructure Projects Ltd. GECPL-JV for **129208 cum of earth and 108669 cum of blackstone only.** Additionally, the monetary compensation withheld by NHAI till date has been submitted but the corresponding quantity of materials for which the amount has been withheld, is not clear. After the receipt of due clarification from NHAI, the remaining materials can be adjudged as sourced illegally and will be liable for royalty, penalty and environmental compensation (as assessed by the Odisha State Pollution Control Board). In the meantime, the tentative total royalty and penalty based on govt approved rate is estimated as **Rs 2,18,60,112.00.** Finally, it is submitted that, subject to the following, the above demand amount and the accompanying Environmental Compensation amount, as assessed by the Odisha State Pollution Control Board, is to be imposed on the contractor:

- a. Final order of the Hon'ble High Court, Odisha in WP(C) no.29310 of 2022 filed by M/s Gammon Infrastructure Projects Limited-GEPCL (JV)
- b. Realization of the pending demand amount of Rs 10,46,40,101.00 imposed on the same contractor for the expansion work for Chandikhole-Duburi

Chakravarti s/o Retiree

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Notary, Cuttack Town

in IA case No. 12/2022 filed by Srinath Mishra and others.

c. Authentication for the remaining quantity of minor minerals utilized without any authorization, if submitted by the executing agency/contractor.

6. That, it is pertinent to mention here that, the NH widening work from 40 km stretch from Chandikhole to Duburi on NH-53 has been presently subcontracted by the Contractor Agency to M/s Infra Engineers Pvt Ltd. In the OA case no 12 of 2022 filed by Srinath Mishra & others in the Hon'ble Court, a total demand amount of Rs 11,14,53,914.00 for royalty, penalty and environmental compensation, as assessed by the Odisha Sate Pollution Control Board has already been imposed on the same agency for unauthorized extraction and utilization of moorum/earth.

7. That, it is pertinent to mention here that, subsequently, the Opposite party No. 11 has been successful in receiving a grant of stay from the Hon'ble High Court in WP(C) 29310 of 2022 on the grounds that party had not been provided with optimum opportunities of hearing prior to the imposition of demand leading to denial of natural justice, wherein the Hon'ble High Court, Odisha has issued the following directions-

"As an interim measure it is directed that operation of the orders at Annexure-21, Annexure-22 and Annexure-24 (penalty demand notice and following reminders) shall remain stayed till next date. Pending of the litigation

Chakravarti s/o Retiree

COLLECTOR & DISTRICT MAGISTRATE
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Notary, Cuttack Town

here shall not be construed as a stay of further proceeding pending before the NGT.”

Therefore, the assessment of the tentative demand amount (royalty and penalty) in the present case, was made after giving the Contractor agency (executant) due opportunities to put forth their case through multiple correspondences which has led to the inordinate delay in the imposition of the calculated amount based on the authenticated facts and figures received from opposite parties 10 and 11.

- 8. That the facts stated above are true to the best of my knowledge, belief and based on Official records.

Identified by
 SM (Samapika Mishra)

Chakravarti sign Rathore

DEPONENT

COLLECTOR & DISTRICT MAGISTRATE
 JAJPUR

ADVOCATE

CERTIFICATE

Certified that Cartridge papers are not available.

Cuttack

Date: 21.03.2023.

SM

Advocate



Solemnly Sworn before

me by... *C-S-Rathore*

being identified by... *S. Mishra - Advocate*

at Cuttack, dated... *21/3/2023*

Tankadhar Mishra
 Notary, Cuttack Town

PROCEEDING OF DISTRICT LEVEL COMMITTEE MEETING FOR ASSESSMENT OF UNAUTHORISED USE OF MINOR MINERALS IN NH PROJECT WORK FROM DUBURI TO CHANDIKHOLSECTION OF NH-53.

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On 09.02.2023, at 11 am one meeting was held under the chairmanship of Collector Jajpur for assessment of environmental damage compensation for unauthorized use of minor minerals in NH project work from Duburi to Chandikhhol section of NH-53.

The Project Director, NHAI Dhenkanal was requested to furnish the detailed utilisation of minor mineral along with the requisite documents with regards to the expansion of Duburi to Chandikhole section of NH-53 via multiple correspondences vide L Nos. 635/17.01.2023, 17590/ 26.11.2022, 170/17.08.2022 and 6548/19.05.2022.

In reply, the concerned office has submitted vide letter no 107/ 23.01.2023 that post technical examination of the Authority's Engineer and Contractor report, it has been ascertained that the following construction material has been used by the EPC Contractor M/s. Gammon Infrastructure Projects Ltd. GECPL IV till date:

1. Borrowed Earth = 1,86,347.10 cum
2. Crusher Stone = 1,49,705.18 cum
3. Stone Dust = 1,47,468.34 cum
4. Sand = 28,742.90 cum
5. Fine slag = 4,49,385.14 cum
6. Crushed Slag = 2,40,423.99 cum
7. Fly Ash/Pond ash = 12,30,445.56 cum
8. Roadway Cutting earth = 73,985.85 cum

This quantity of material usage has also been corroborated by the contractor concerned vide letter no 439 dated 30.01.2023

It has also been reported that, for the above utilized quantity of minor minerals a total of, Rs 3,32,17,772.00 (Rupees three crores thirty two lakhs seventeen thousand seven hundred and seventy two) has already been withheld from the final payment amount, as it is the sole responsibility of the contractor to obtain all necessary applicable permits as required under the laws of the State Government.

As per the definition of minor mineral under Odisha Minor Minerals Concession Rules 2016 only earth, stone and sand are categorized as "MINOR MINERALS" which require mandatory permission from competent authorities prior to extraction and utilization of any kind. On examination of the letter received from contractor concerned it is found that permission for utilization of the following minor minerals have been granted by the concerned competent authorities on separate occasions:

- I. Permission to transport 70000 cum of Borrowed earth, which was generated as a by product of execution of Angul-Duburi-Sukinda New BG Railway Line project granted vide a 60 days Transportation Permit no

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764 dated 10.03.2021 by the Tahasildar, Danagadi after payment of all requisite government dues.

- II. Permission to transport 25608 cum of earth, from a Privately owned plot under the jurisdiction of Tahasildar, Dharmasala vide Order no.3307 dated 18.09.2020 after payment of all requisite government dues.
- III. Royalty and Penalty realized for unauthorized extraction and transportation of 33600 cum of borrowed earth(morrum) on 08.04.2022 vide Money Receipt nos. 0196705 and 0196706 of Dharmasala Tahasil.
- IV. Permission to extract and transport of 25926 cum Black stone from Dankari Black stone quarry no 6/11 and 82743 cum of Black stone from Rahadpur Black stone quarry vide Lease agreement executed on 08.02.2017 and 24.06.2022 respectively after obtaining all mandatory clearances and payment of requisite government dues.
- V. Tax Invoices have been submitted highlighting the purchase of stone products from various crusher units and sand from suppliers units by the Contractor concerned, However, no transit passes have been attached therewith, hence, their authenticity cannot be ascertained at this stage.

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JAIPUR

Conclusion-

Therefore, it is concluded that the requisite permission/clearance with proper authentication has been produced by the Contractor concerned- M/s. Gammon Infrastructure Projects Ltd. GECPL-JV for 129208 cum of earth and 108669 cum of blackstone only.

Additionally, the monetary compensation withheld by NHAI till date has been submitted but the corresponding quantity of materials for which the amount has been withheld, is not clear. After the receipt of due clarification from NHAI, the remaining materials can be adjudged as sourced illegally and will be liable for royalty, penalty and environmental compensation (as assessed by the Odisha State Pollution Control Board).

In the meantime, as per the available verified data:

- 1. Net quantity of illegally sourced and utilized earth material
= (186347.10 + 73,985.85) - (70000 + 25608+ 33600)=131124.95 cum
- 2. Net quantity of illegally sourced and utilized sand= 28,742.90 cum
- 3. Net quantity of illegally sourced and utilized boulders/stone
= 1,49,705.18 - (25926 + 82743) = 41036 cum

Hence, the tentative royalty and penalty based on govt approved rate is estimated as :

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For a. earth, royalty (@ Rs 35/cum) = Rs 45,89,374.00

b. sand, royalty @Rs 35/cum) = Rs 10,06,002.00

c. stone, royalty (@Rs 130/cum)= Rs 53,34,680.00

total royalty for unauthorized utilization = Rs 1,09,30,056.00

penalty (@ 100% of royalty) = Rs 1,09,30,056.00

Total revenue demand =Rs 2,18,60,112.00

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Finally, it is submitted that, subject to the following the above demand amount and the accompanying Environmental Compensation amount, as will be assessed by the Odisha State Pollution Control Board is to be imposed on the contractor:

1. Final order of the Hon'ble High Court, Odisha in WP(C) no.29310 of 2022 filed by M/s Gammon Infrastructure Projects Limited-GEPCL (JV)
2. Realization of the pending demand amount of Rs 10,46,40,101.00 imposed on the same contractor for the expansion work for Chandikhole-Duburi in IA case No. 12/2022 filed by Srinath Mishra and others.
3. Authentication for the remaining quantity of minor minerals utilized without any authorization, if submitted by the executing agency/contractor.


Collector & District Magistrate,
Jajpur

