

BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO.46 OF 2023 EZ

RURAL ORGANISATION FOR
SOCIAL EMPOWERMENT (R.O.S.E)

.....APPLICANT

-VERSUS-

STATE OF ODISHA & OTHERS

.....RESPONDENTS

**COMPOSITE REJOINER AFFIDAVIT FILED ON
BEHALF OF RURAL ORGANISATION FOR SOCIAL
EMPOWERMENT – APPLICANT TO THE COUNTER
AFFIDAVIT FILED BY RESPONDENT NO.9**

I, Kalakar Barik, S/o Late Sukhadev Barik, At-
Sukadeipur, P.O.-Sribantapur, P.S.- Kuakhia, Dist.- Jajpur,
Odisha, do hereby solemnly affirm and state as follows:

1. That, I am Secretary of the abovenamed Organisation / Applicant in the accompanying rejoinder and being aware of the facts thereof, I am competent to swear the present affidavit.
2. That, I have gone through the averments made in the Counter Affidavit filed by the Respondent No.9 and have



Kalakar Barik
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understood the contents therein and I am swearing the present affidavit in reply thereof.

3. That, the petitioner humbly craves leave the Hon'ble Tribunal a file a composite rejoinder affidavit in reply the Counter Affidavit filed by the Respondent No.9.

4. That, the outset it is most humbly and most respectfully submitted here that this Hon'ble Tribunal while issuing notice vide order dated 01.05.2023 was pleased to direct the Constitution of the Committee for visiting and inspection of the site of the Respondent No.9. Pursuant to such orders of this Hon'ble Tribunal the Members of the Committed so constituted visited to the site of Respondent No.9 and after visit and inspection of the site of Respondent No.9 have submitted their report which forms part of the affidavit dated 04.07.2023 filed by the A.D.M Dhenkanal. The said report has been summarized on the following points:-

- a. Violation of Rule-34 of OMMC Rules, 2016 and Production of forged / fraudulent documents such as Contract Award etc.

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- b. Violation of terms and conditions under blasting activities involved in the quarrying.
 - c. Violation in terms and conditions stipulated in the Environmental Clearance granted by the SEIAA.
 - d. Illegal excavation and transportation of road metal beyond the quarry area of Nihalprasad Road Metal Quarry V & VI.
 - e. If violation is found, assessment of the Environmental Compensation on account of environment.
5. That, it is humbly submitted here that the Respondent No.8 – OPTCL vide letter no.642(4) dated 17.07.2023 have stated that the Respondent No.9 has fabricated two letters for the purpose of obtaining renewal of temporary permit for excavation of the miner mineral. It is therefore, submitted that the Respondent No.9 has committed fraud for obtaining renewal of the temporary permits basing on which it has excavated the miner mineral. It is, means of elucidation submitted here that, the Tahasildar, Gondia had requested the OPTCL to verify the genuineness of 3 letters of OPTCL which were produced by the Respondent No.9 for the purpose of obtaining renewal of

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temporary permit for extension on excavation of miner mineral contract award, out of these 3 letters which were produced by the Respondent No.9, two letters were subsequently found to be fabricated. These 2 letters are (1) letter no.2449(11) dated 26.11.2015 and (2) letter no.1014(12) dated 29.12.2022. The OPTCL Authority go on to say that the aforesaid fabricated letters bearing false numbers and fake signature have been produced by the Respondent No.9 before the Tahasildar, Gondia for taking illegal advantage of the goodwill of the OPTCL.

6. That, it is relevant to mention here that the Respondent No.9 has also filed an Interim Application seeking dismissal of the present O.A as being not maintainable and recall of the order dated 01.05.2023 by which this Hon'ble Tribunal was pleased to issue notice. In the said interim application the Respondent No.9 has relied upon two judgments one passed by the Principal Bench of this Hon'ble Tribunal and another by the Hon'ble Supreme Court in support of his claim. It is humbly submitted here that neither of those two judgments come to the aid of the Respondent No.9 since the present O.A involves the issue of fraud committed by the Respondent No.9, which was not the

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Secretary
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Dr. B. B. B.



case in the aforesaid judgments relied upon by the Respondent No.9 in the Interim Application.

7. That, it is humbly submitted here that the Respondent No.9 in its counter affidavit has further relied upon a judgment of this Hon'ble Tribunal dated 14.03.2023 passed in O.A No.140 / 2022 / EZ to question maintainability of the present Original Application. In this context it is humbly submitted here that such contention of the Respondent No.9 is fallacious in as much as this Hon'ble Tribunal was not seized with the question of the fraud while rendering the aforesaid judgment in O.A No.140 of 2022 / EZ.

8. That, it is further humbly submitted here that the Respondent No.9 has in its counter affidavit stated that it has valid work order of sufficient amount from OPTCL and therefore, there was no occasion and reason for furnishing any fraudulent document. However, the letter of the Respondent No.8 – OPTCL dated 17.07.2023 stares on the face negating their such contention.

9. That, it is humbly submitted here that the basis upon which the Respondent No.9 has obtained the renewal of

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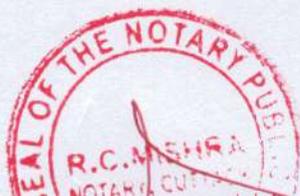
temporary permits to carry out mining operations is a fraudulent document. The Hon'ble Courts in a catena of decisions have clearly laid down the law that fraud unravels everything and vitiates even the most solemn acts.

10. That, it is humbly submitted here that the Respondent No.9 has submitted fraudulent work orders purported to be issued by OPTCL. This is clearly evident from the letter dated 17.07.2023 of the OPTCL. It is pertinent to submit here that the quarry permit and the subsequent statutory clearances i.e. the Environment Clearance as per Section -29 of the OMMC Rules, 2016 have been obtained by the Opp. Party No.9 on the basis of the fraudulent work order in their possession produced to the concerned authorities by them. Hence, the quarry permit and the consequential environment clearance are untenable in law having been issued on the basis of fraudulent work order produced by Opp. Party No.9, thereby deceiving the concerned authorities and initiating illegal and unlawful mining activities causing adverse impact on the environment. Therefore, this Hon'ble Tribunal's interference in the matter is of utmost importance as a substantial question of protection of

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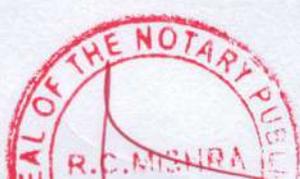
environment from illegal and unlawful mining activities is at hand.

11. That, it is further relevant to submit here that it is a case where the environment clearance has been fraudulently obtained by deceiving the concerned authority with a sham work order. An individual act of fraud vitiates all other acts arising out the said act of fraud since the subsequent acts are based upon fraud and fraud vitiates even the most solemn acts. In the instant case, quarry permit and the statutory clearances like the Environment clearance have been obtained on the basis of the fraudulent document which is the work order. Therefore, all the documents issued in favour of Opp. Party No.9 for conducting mining operation are fraudulent, thereby declaring the entire mining operation, carried out by the Opposite Party No.9, to be illegal and unlawful. The adverse impact of illegal and unlawful mining activities on the environment is known to all and this being the subject matter of the present dispute, which clearly comes within the ambit of NGT Act, this Hon'ble Tribunal has very many reasons to adjudicate the present matter.

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12. That, it is further humbly reiterated here that the Google maps as at Annexure-13 & 14 of the Original Application clearly depicted there has been large scale illegal mining by the Respondent No.9 beyond the lease area of approximately Acr.3.75dec. or 15164 sqmtr.

13. That, the Hon'ble Supreme Court has time and again underscored the principal that fraud and justice cannot dwell together. The Hon'ble Court has also been pleased to observed that fraud in relation to statute must be a colourable transaction to evade the provisions of a statute. If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. In the present case the Respondent No.9 had deliberately and intentionally used a fraudulent document to his advantage in as much as procuring the temporary permit, environmental clearance etc. for the purpose of illegal mining activities.

14. That, it is humbly submitted here that the Respondent No.9 being fully aware that he has intentionally and deliberately

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used a fraudulent document to form the basis of his mining activities is now trying to wriggle out of it by questioning the locus of the present applicant in filling of the present O.A. It is important to state here that the present applicant had approached this Hon'ble Tribunal by filling O.A No.2 of 2019 highlighting the illegal mining activities in and around the traditional elephant corridor known as Similipal – Hadgarh – Kuldhia – Similipal Elephant Corridor, which was allowed by the Principal bench of this Hon'ble Tribunal vide order dated 18.02.2020. The order dated 18.02.2020 was subject matter of challenged before the Hon'ble Supreme Court in Civil Appeal No.1627-28 of 2022 wherein the Hon'ble Supreme Court vide order dated 02.,03.2022 have been pleased to confirm the order of this Hon'ble Tribunal vis-à-vis comprehensive wildlife management plan in respect of the Similipal – Hadgarh – Kuldhia – Similipal Elephant Corridor. The orders of the Hon'ble Supreme Court have been reported in (2022) 5 SCC 33.

15. That, it is humbly submitted here that the foundation of the mining operation and the subsequent environmental permissions enabling the Respondent No.9 to conduct the

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mining operations are based on fraud. Therefore, such environmental clearance / permissions are vitiated by fraud. The resultant mining operation also falls foul of the Environmental Protection Act, the Water (Prevention and Control of Pollution) Act, 1974 and Air Prevention and Control of Pollution Act, 1981, since the operations are being carried out without a valid E.C the Respondent No.9 is also carrying out illegal mining by excavating minerals both in excess and outside the lease area. Thereby causing serious damage to the already fragile flora and fauna. Such actions of the Respondent No.9 are in clear violation of the Environmental Protection Act. Therefore, the jurisdiction of this Tribunal cannot be assailed by the Respondent No.9 since it has committed fraud and does not have any right to maintain such a challenge.

Kalavathi B. Chaitan
 Secretary
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16. That, the Respondent No.9 in its counter affidavit in Para-V at page-18 has stated that it is immaterial as to which work order has been referred to while issuing the temporary permit such contentions are completely fallacious in as much as the statute specifically provides how such permits are to be issued and the authorities concerned while issuing the permit, was



fraudulently deceived by the Respondent No.9 into believing that since the Respondent No.9 has a valid work order the temporary permit is required to be issued in his favour.

17. That, it is further reiterated here that the Google Map as under Annexure-A/15 clearly depicts that the crusher unit of the Respondent No.9 is situated at a mere distance of 240 mtr. From the approved quarry. This fact finds credence from the contention of the Respondent NO.9 in its counter affidavit to the effect that it has sought for and amendment of the condition no.9.21 of the E.C wherein there is a bar for establishment of a crusher unit within a distance of the one kilometre from the quarry site. As such the Respondent No.9 has admitted to having violated the specific terms and condition of the E.C.

18. That, it is most humbly and most respectfully submitted here that the Respondent No.9 has relied upon the order of the Hon'ble High Court of Orissa dated 09.02.2023 passed in W.P.(C) No.2753 of 2023 wherein the Hon'ble Court has been direct the Tahaildar, Gondia to consider and deal with the petition of the Respondent NO.9 filed U/s.-3 B of the OGLS Act.

In this context it is submitted here that a bare perusal of the order

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shows that the Respondent No.9 had approached the Hon'ble Court claiming that it had been granted a quarry lease and demarcation is being sought for in respect of the said quarry. Such grant of quarry lease having being actuated by fraud the whole basis of the orders of the Hon'ble High Court stands vitiated.

19. That, it is most humbly and most respectfully submitted here that the Hon'ble Supreme Court in a catena of decisions has ruled that fraud vitiates even the most solemn acts and an order obtained by fraud can be challenged at any stage and in any proceedings even in collateral proceedings. The Hon'ble Supreme Court in Hamza Haazi v. State of Kerela as reported in (2006)7 SCC 416 has quoted with approval that:

"21. No judgment of a Court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

The Hon'ble Court went to the extent of confirming that if an order/judgment is obtained by fraud or suppression of material fact or a Court has been misled into rendering such an order/judgment, then such order/judgment can be challenged at

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any stage even in collateral proceedings and that it is always competent to any Court to vacate any judgment or order, if it be proved that such judgment/order was obtained by manifest fraud.

20. That, it is humbly submitted here that the Opp. Party No.9 having committed fraud and obtained the quarry permit as well as the relevant statutory clearances including the Environment Clearance (E.C) from the appropriate authorities has engaged itself in quarrying operation. As is well known, fraud vitiates the most solemn acts. In the present case, apart from the contentions made by the applicant the Opp. Party No.8 OPTCL has also stated that the document basing on which the quarry permit had been obtained by Opp. Party No.9 is a fraudulent document. As such it is humbly submitted here that Opp. Party No.9 is engaging in quarrying activities without any Environment Clearance for the same. Furthermore, even if for the sake of agreement without conceding to the least. It is accepted that the Opp. Party No.9 has a valid quarry permit and all the relevant statutory clearances including the Environment Clearance (E.C) then also the Opp. Party No.9 has engaged itself in unscientific

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quarrying activities by use of methods of blasting for mining / quarrying. The Opp. Party No.9 has also extracted minerals from large patches of land outside his leased area to the extent of 4 to 5 acres.

21. That, it is humbly submitted reiterated here that the Opp. Party No.9 is excavating road metal from vast areas outside the lease area even to the extent of 4 to 5 acres as is evident from the report dated 07.10.2022 as at Annexure-A/3 of the Original Application. This is also evident from the joint inspection report submitted by the committee form pursuant to the order of this Hon'ble Tribunal read with the revenue map and the google map as under Annexure-A/12 to Annexure-A/14. Such activities of the Opp. Party No.9 not only falls foul of the mining plan and quarry lease granted in his favour but also violates the terms and conditions stipulated under the environmental clearance granted to him and the O.P No.9 has consciously chosen to destroy and damage the sensitive ecology existing in and around the leased out area.

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22. That, it is humbly reiterated here that a conjoint reading of Annexure-A/8 and A/9 demonstrate that the Tahasildar,



Gondia – Respondent No.6 vide letter no.4915 dated 11.11.2020 seeking necessary clearance and clarification from GAIL since the proposed site for allotment of sairat source has a natural gas pipe line of GAIL lying at a private plot near it. The GAIL Authorities while responding to such letter of the Tahasildar, Gondia, vide their letter dated 14.12.2020 gave their clearance / no objection for using the proposed site as the sairat source / quarry source. It is relevant to point out here that most curiously in Annexure-B to the aforesaid report the Opp. Party No.6 – Tahasildar, Gondia has chosen not to mention regarding the blasting activities that would be required carried out on the quarry site for doing excavation works. Therefore, the Tahasildar, Gondia has misrepresented by suppression of relevant information regarding blasting. As such the no objection of the GAIL was given without disclosure of the fact that there would be blasting at the quarry site which would in every likelihood have an impact on the natural gas pipe line lying nearby at a distance of almost 100 meters. Subsequently, on dated 02.11.2022 the Tahasildar, Gondia vide his letter no.3649 again sought a clarification from the Chief General Manager of

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GAIL with regard to blasting permission to operate and excavate from the road metal quarry adjacent to the area used by M/s.- GAIL India Ltd. for gas pipe line project. This letter for the first time disclosed that the blasting operations would be conducted at the quarry site for the purpose of excavation and further that the villagers Nua Kastipal while filed allegations petition with regard to the adverse impact that the blasting may cause to the natural gas pipe line of GAIL. Strangely even though there is no reply from GAIL to such letter dated 02.11.2022, as on date but the Opp. Party No.6 – Tahasildar, Gondia has gone ahead and granted permission to the Opp. Party – Respondent No.9 to operate his quarry. In this connection the report of the Joint Enquiry Committee on the feasibility of the source is important to notice wherein the Committee has specifically taken note of the fact that the local people have raised concern regarding the presence of natural gas pipe line of GAIL on a private plot in the vicinity of the quarry area. Accordingly, the committed have recommended that necessary permission be obtained from GAIL prior to even considering grant of lease. However, the Opp. Party No.6 – Tahasildar, Gondia has gone ahead and granted

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permission for quarrying operations without any permission / no objection from GAIL as highlighted above.

23. That, the applicant humbly craves leave to file any further affidavit as may be required in the facts and circumstances of the case.

24. That, the facts stated above are true to the best of my knowledge and belief.

Identified by

S.K. Nayak
Advocate's Clerk

Keenan Borik
Deponent
Secretary
RURAL ORGANISATION FOR SOCIAL EMPOWERMENT

CERTIFICATE

Certified that due to want of cartridge papers thick and durable plain papers have been used.

Cuttack
Date:12.09.2023

AK
Advocate



Solemnly affirm on in Oath by the Deponent at Cuttack on *12.9.23* being Identified by *S.K. Nayak* 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.

MA CHANDRA MISHRA, NOTARY
CUTTACK TOWN, REGD, No-21/05