



**BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO.90 OF 2023 EZ**

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

.....APPLICANT

- V E R S U S -

STATE OF ODISHA & OTHERS

.....RESPONDENTS

**COMPOSITE REJOINER AFFIDAVIT FILED ON
BEHALF OF APPLICANT TO THE COUNTER
AFFIDAVIT FILED BY RESPONDENT NO.4 – SPCB.**

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.4 and have understood the contents therein and I am swearing the present affidavit in reply thereof.

Kalakar Barik
Secretary
RURAL ORGANISATION FOR SOCIAL EMPOWERMENT

PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No-ON-04/1995

3. That, the aforementioned Original Application has been filed with the following prayer:-

I. direct the Opposite Parties to stop all mining activities within the Kuldhia Wildlife Sanctuary the Eco-sensitive Zone linked to it and the conservation reserve as declared vide notification no.1166 dated 20.01.2023 as under Annexure-A/7 and further not to grant any mining lease in the said area;

II. direct the Opposite Parties to discharge their obligations by exercise of powers conferred upon them under the respective enactments mentioned under Schedule I of the NGT Act, 2010 and the Notification of the Ministry of Environment Forest and Climate Change, dated 09.08.2017 for the protection and preservation of the Kuldiha Wildlife Sanctuary and its Eco-Sensitive Zone and the Conservation Reserve; and

III. pass any other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case for the effective protection of the Environment and the Ecology with respect to the Kuldhia Wildlife

Kalankar Borvik
Secretary
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Notary, Cuttack Town
Regd. No-ON-04/1995

Sanctuary, Eco-sensitive Zone linked to it and the Similipal – Hadgarh – Kuldia- Conservation Reserve;

And for this act of kindness of this Hon'ble Tribunal, the applicant shall in duty bound ever pray.

4. That, instead of para-wise reply the applicant humbly seeks to file a composite rejoinder affidavit and the applicant humbly craves leave the Hon'ble Tribunal to file a detailed rejoinder affidavit as and when required.
5. That, it is humbly submitted here that, there was a earlier round of litigation in O.A No.02 of 2019 / EZ & connected matter wherein this Hon'ble Tribunal in the Principal Bench had vide order dated 18.02.2020 been pleased to direct that no mining activity shall be permitted within and in the vicinity of the elephant corridor and the process under Section-36A of Act, 1972 be completed within a period of three months alongwith other directions. This order was subject to challenge before the Hon'ble Supreme Court by some of the quarry owners in Binay Kumar Dalei -Versus- State of Odisha. The Hon'ble Supreme Court was pleased to direct that the comprehensive wild life

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Secretary

RURAL ORGANISATION FOR SOCIAL EMPOWERMENT

PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No-ON-04/1995

management plan be first implemented and the quarrying operations be allowed only after such implementation.

6. That, it is humbly submitted here that the Hon'ble Supreme Court in the matter of **Binay Kumar Dalei -Versus- State of Odisha & Ors.** as reported in **2022 (5) SCC 33** has clearly stated that the State Government should first implement the comprehensive Wild Life Management plan and complete the process as provided under Section-36(A) of the Wild Life Protection Act, 1972, and it is only thereafter that any mining activities can be permitted. The provisions of Section-36(A) of the Wild Life Protection Act, 1972 clearly stipulate that the area which has been declared as a conservation reserve would be treated as a sanctuary and as such the mining operations being clearly prohibited either inside or in the vicinity of a sanctuary none of the 97 quarries including the 14 numbers of quarries that are claimed to be operating can be allowed to operate, since allowing such operations would be on the teeth of the statute as well as the direction of the Hon'ble Supreme Court. The relevant provision is reproduced herein under for ready reference of this Hon'ble Tribunal.

Ka Lakshya Dasik
Secretary
RURAL ORGANISATION FOR SOCIAL EMPOWERMENT


PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No-ON-04/1995

36.A. Declaration and management of a Conservation

Reserve:-

“xx xx xx xx xx xx xx xx xx xx xx xx

(2) The provisions of sub-section (2) of section 18, sub-sections (2), (3) and (4) of section 27, sections 30, 32 and clauses (b) and (c) of section 33 shall, as far as may be, apply in relation to a Conservation Reserve as they apply in relation to a sanctuary.”

Section-18. Declaration of sanctuary.-

(1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.

(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area.

Section-30. Causing fire prohibited.-

“No person shall set fire to a sanctuary, or kindle any fire, or leave any fire burning, in a sanctuary, in such manner as to endanger such sanctuary.”

Section-32. Ban on use of injurious substances.-

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Secretary
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Notary, Cuttack Town
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No person shall use, in a sanctuary, chemicals, explosives or any other substances which may cause injury to, or endanger, any wild life in such sanctuary.

Section-33. Control of sanctuaries.-

XX XX XX XX XX XX XX XX XX XX XX XX

“b. shall take such steps as will ensure the security of wild animals in the sanctuary and the preservation of the sanctuary and wild animals therein;

c. may take such measures, in the interests of wild life, as he may consider necessary for the improvement of any habitat;”

As per the mandate of sub-rule-2 as reproduced herein above activities such as lighting of any fire or use of any injurious substances such as chemicals and other explosives is completely banned inside of conservation reserve. Therefore, if any mining activities is permitted inside the conservation reserve that will obviously be in violation of such mandatory provisions.

7. That, it is humbly submitted here that in the earlier matter i.e., O.A No.02 of 2019 / EZ and connected cases this Hon'ble Tribunal in the Principal Bench vide order dated 22.01.2019 and 12.03.2019 was pleased to direct the Principal Chief Conservator of Forests, Head of Forest & Forces (PCCF) (HoFF) to conduct an inspection of the area. Such inspection was

12-10-2019 B.S.K.

Secretary
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Notary, Cuttack Town
Regd. No-ON-04/1005

conducted on 10.05.2019 and a compliance affidavit was submitted before this Hon'ble Tribunal by the Principal Chief Conservator of Forests (Head of Forest Forces) as at Annexure-A/3 to the Original Application. In the said compliance affidavit, it has been clearly stated that due to the location of the quarries there was every likelihood in future of further higher ingress of the quarry into the Eco- Sensitive Zone. Such report in the form of affidavit as submitted by the PCCF clearly states that there is imminent threat to the fragile ecology of the Kuldhia Wild Life Sanctuary, the Eco-sensitive Zone attached thereto. In fact, this Hon'ble Tribunal was pleased to direct the inspection of the area only in order to determine whether or not the mining operations were being carried out in the Eco-sensitive Zone and / or sanctuary. At present it also includes within its ambit the conservation reserve as notified vide notification no.1166 dated 20.01.2023 (Annexure-A/7).

8. That, it is humbly submitted here that this Hon'ble Tribunal in Principal Bench vide order dated 18.02.2020 while disposing O.A No.02 of 2019 and other connected matter had been pleased to take judicial notice of the report of the PCCF (HoFF) wherein the factum of 11 quarries ingress into the Eco-

Kalokor Borik
Secretary
RURAL ORGANISATION FOR SOCIAL EMPOWERMENT


PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No-ON-04/1298

sensitive Zone has been clearly demonstrated in a tabular format. It is important to state here that post-facto the notification dated 20.01.2023 as under Annexure-A/7 where by the area has been notified as a conservation reserve the whole area has to now be treated as a sanctuary in consonance with the scheme of the Wild Life Protection, Act 1972 (Section-36(A)) and therefore no mining operations can be permitted inside such Conservation Reserve or within its vicinity.

9. That, it is humbly submitted here that notwithstanding the fact that the provisions of the statute Wild Life Protection Act, 1972, as well as the orders of the Hon'ble Supreme Court passed in *Binay Kumar Dalei (Supra)* mandate that mining activities are prohibited in a conservation reserve the Respondent No.4 has issued the Consent to Operate (CTO) in respect of 14 numbers of quarry as stated in their counter affidavit and that too merely because the Collector & District Magistrate, Balasore vide his order dated 21.04.2023 had directed the Tahasildar, Khaira to extend the validity period of the lease for the further period of 2 years 4 months 12 days or the actual number of days as per calculation w.e.f. the date of closure 21.10.2019 till validity period such lease deed. Such action of the Respondent No.4 is a

KALAKO BORKIK
Secretary
RURAL ORGANISATION FOR SOCIAL EMPOWERMENT


PRADIPTA KUMAR MOHANTI
Notary, Cuttack Town
Regd. No-ON-0471001

result of non-application of mind, mechanical and is dehors the statutory provision.

10. That, it is humbly submitted here that Consent to Operate (CTO) has been granted by the Respondent No.4 – SPCB in the absence of a valid Environment Clearance (E.C) existing in favour of the lessee. In this context it is further stated here that as per Office Memorandum dated 28.04.2023 issued by the MoEF and C.C Government of India as at Annexure-III of the counter affidavit of the Respondent No.3 – SEIAA, it is only the SEIAA which can grant a valid E.C and in case the DEIAA has granted the E.C then the proposal has to be re-appraised by the SEIAA and since there has been no such re-appraisal by the SEIAA as required, the grant of CTO and the consequential mining operations are illegal and liable to be stopped. Further, such order granting CTO is a void order which could not have been granted on the teeth of the statutory provisions, and the and its validity can be questioned in any proceeding or at any stage as has been held by the Hon'ble Supreme Court in the case of State of Orissa -Versus- Brundaban Sharma reported in 1995 Sup (3) SCC 249.

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Secretary
RURAL ORGANISATION FOR SOCIAL EMPOWERMENT

PRADIPTA KUMAR MOHANTI
Notary, Cuttack Town
Regd. No. ON/04/1995

11. That, under the facts and circumstances any mining activities that has been permitted as claimed is completely illegal.

12. That, the averments which are not specifically denied are hereby denied.

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

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

Identified by

S. N. Nayak

Advocate's Clerk

Kalankos Basik

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:02.04.2024

AP
Advocate



Solemnly sworn before *Kalankos Basik*
me by.....
being Identified by..... *S. Nayak A.C.*
at Cuttack town Dated..... *02.04.2024*
(W) *02.04.2024*
P.K. MOHANTY, Notary, Cuttack Town
Regd. No-ON-04/1995