



**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 REJOINDER AFFIDAVIT FILED ON
BEHALF OF APPLICANT TO THE COUNTER
AFFIDAVIT FILED BY RESPONDENT NO.5, 6 & 7.**

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.5, 6 & 7 and have understood the contents therein and I am swearing the present affidavit in reply thereof.


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

Kalakar Barik
 Secretary
 RURAL ORGANISATION FOR SOCIAL EMPOWERMENT

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

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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, the Respondent No.5,6&7 are State Government Authorities and have by way of present counter affidavit contended that the Original Application is not maintainable and no relief can be granted to the applicant on the basis of following broad points.

- a. 14 numbers of lease holder who are operating quarries have not been impleaded as parties and therefore the Original Application is bad for non-joinder of necessary parties.
- b. The Administrative Department in respect to minor minerals has been transferred to the Department of Steel and Mines and the said department of Steel of

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PRADIPTA KUMAR MOHANTI
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Mines not been to the parties in the Original Application. The said department of Steel of Mines not being the parties present Original Application. The present Original Application hit by non-joinder necessary parties.

- c. In absence of challenge 2 letters dated 01.05.2023 and 04.05.2023 issued by the Additional District Magistrate, Balasore no relief can be granted to the applicant.
- d. Section-36(A) of the Wild Life Protection Act, 1972, is not applicable to the present case.
- e. All the 97 quarries are outside the co-ordinate of the Eco-Sensitive Zone as per notification dated 09.08.2017.

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

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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.

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

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PRADIPTA KUMAR MOHANTI
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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.-

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

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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 the 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 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. At present

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also it includes within its ambit the conservation reserve as notified vide notification no.1166 dated 20.01.2023 (Annexure-A/7). As such the claim of the Respondent No.5 to 7 that the quarries are outside from the Eco-sensitive Zone is wholly fallacious and merits no consideration. 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.

8. That, it is humbly submitted here that this Hon'ble Tribunal in Principal Bench vide order dated 18.02.2020 while disposing vide O.A No.02 of 2019 and other connected matter had taken judicial notice of the report of the PCCF (HoFF) wherein the factum of 11 quarries ingress into the Eco-sensitive Zone has been clearly demonstrated in a tabular format. It is therefore completely fallacious on the part of the Respondent No.5 to 7 to contend that none of the quarries violate the boundaries of the Eco-sensitive Zone. It is important to state here that post-facto the notification dated 20.01.2023 as under Annexure-A/7 whereby 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

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Protection, Act 1972 (Section-36(A)) and therefore no mining operations can be permitted inside such Conservation Reserve.

9. That, as regards the contentions raised by the Respondent No.5 to 7 with regard to non-joinder of the 14 quarry owners presently working, it is humbly submitted here that in the earlier round of litigation i.e., O.A No.02 of 2019 /EZ and other connected matter looking at the urgency none of the quarry owners were heard while passing the order dated 18.02.2020 by this Hon'ble Tribunal whereby the operation of all the quarries was stopped. An application for recall of the said order by some of the quarry owners / mine owners on the ground that they were not heard was also rejected by this Hon'ble Tribunal. However, challenge to the order dated 18.02.2020 passed by the Hon'ble Tribunal in Principal Bench was carried to the Hon'ble Supreme Court by some of the aggrieved mine owners / quarry owners on the ground that this Hon'ble Tribunal had not heard them before passing an order which is detrimental to their interest. The Hon'ble Supreme Court was pleased not to interfere with the direction of this Hon'ble Tribunal on the ground of the mine owners having not been heard, rather, in fact the Hon'ble Supreme Court specifically directed the enforcement of the

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PRADIPTA KUMAR MOHANTY
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provisions of the Act, 1972 and recommendation of the standing committee of NBWL.

10. That, it is further humbly submitted here that the area having been declared as a Conservation Reserve by following the provision of Section-36(A) of the Wild Life Protection, Act 1972 and the said section postulating implication of such declaration it is not only mandatory but also binding and the provisions of Section-36(A) apply to the case in hand with full force.

11. That it is humbly submitted here that, even though there has been notification regarding change of administrative department for minor minerals but on the ground the transfer of matters especially involving litigation are being undertaken in the last 15 - 20 days only.

12. That, it is humbly submitted here that the permissions for mining operations as granted by the Tahasildar – Respondent No.7 and what is being challenged is the bona-fide / justification or lack of it, in the exercise of power by the Tahasildar and therefore it is the Tahasildar who has to file affidavit showing such bona-fide or justification for exercise of power in granting permission for such mining operation. Without prejudice to any

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RURAL ORGANISATION FOR SOCIAL EMPOWERMENT

PRADIPTA KUMAR MOHANTY
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Regd. No-ON-04/1995

of the abovementioned contentions it is submitted here that, as regard to the Department of Steel Government of Odisha not being made a party and instead the Revenue & Disaster Management Department having been impleaded as a party, it is only a forma question of formal addition of parties but basically it is the question of the Tahasildar – Respondent No.7 filing counter affidavit to justify the exercise of its administrative authority on the teeth of the Hon'ble Supreme Court judgments and the statutory provisions. The Department of Steel & Mines Government of Odisha would be merely a proper party not a necessary party in the peculiar facts and circumstances in the present case.

13. That, it is of subliminal importance to mention here that the Respondent No.3 – SEIAA which is the authority under the statute to issue environment clearance certificate (E.C) for carrying out mining operations has in its counter affidavit dated 09.10.2023 clearly stated that there has been no grant of E.C certificate to any of the sairat sources (Minor Minerals) in respect of Sarisua-Kapilajhari-Bandhanat-97 Sairat Sources (Minor Minerals). As such any number of quarries / mines in operation are doing so in a clear violation of the statutory norms

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and therefore conducting illegal operations and thus liable to be shut-down.

14. That, further humbly submitted here that there cannot be any blasting inside the conservation area as mandated under Section-32 of the Wild Life Protection Act, 1972. This is so because Section-36(A) which deals with declaration and management of a Conservation Reserve under sub-section-(2) mandates that the provisions of Section-18(2), Section-27(3), (4), Section-30, Section-32 and Section-33, Clause-(b) and (c) shall apply as far as may be in relation to a conservation reserve as they apply to a sanctuary.

15. That, it is further humbly submitted here that the action of the Respondent No.5 to 7 in showing haste in allowing mining activity of the 97 mines / quarries immediately after the declaration of the conservation reserve and then contending in their counter affidavit to the effect that the Hon'ble Supreme Court had directed in its order dated 02.03.2022 that mining operation can be permitted only after declaration of the conservation reserve shows that such declaration of the conservation reserve is an empty formality for these Authorities and they do not attach any sanctity to the whole process as

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envisaged under the Act, 1972 and spirit of the orders of the Hon'ble Supreme Court as well as of this Hon'ble Tribunal.

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

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

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

Identified by

S.K. Nayak
Advocate's Clerk

Kalakesh Bantik

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

Asst
Advocate

Solemnly sworn before
me by..... *Kalakesh Bantik*
being identified by..... *S.K. Nayak A/c*
at Cuttack Town Dated..... *02/04/2024*
Not 02/04/2024
P.K. MOHANTY, Notary, Cuttack Town
Regd. No-ON-04/1995