

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BRANCH, KOLKATA
ORIGINAL APPLICATION NO. 02 OF 2023/EZ

(Application under Section 18 read with 14, 15 of National Green Tribunal
Act, 2010)

In the matter of :

Kartik Majhi ... Applicant

-Versus-

West Bengal Mineral Development & Trading Corporation Limited & Ors.
... Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1.



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BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BRANCH, KOLKATA
ORIGINAL APPLICATION NO. 02 OF 2023/EZ

(Application under Section 18 read with 14, 15 of National Green Tribunal
Act, 2010)

In the matter of :

Kartik Majhi, son of Shasanka Majhi,
residing at Village – Malakarpota,
P.O. Kankabati, P.S. Kotulpur,
District Bankura, Pin – 722141,
email:poushali_b@yahoo.com

... Applicant

-Versus-

1. West Bengal Mineral
Development & Trading Corporation
Limited, through the Chairman and
Managing Director, 3rd floor, WBIIDC
Building, DJ – 10, Sector II, Salt
Lake City, Kolkata – 700 091, Email:
tenderwbmdtcl@gmail.com

2. Directorate of Mines and
Minerals, through the Director, 4,
Abanindranath Tagore Sarani, 2nd
floor, Kolkata – 700 016. Email :
dir.dmm-wb@nic.in

3. Department of Environment,
Government of West Bengal,
through the Chief Environmental
Engineer, Prani Sampad Bhaban,
LB-II, 5th floor, Sector-3, Salt Lake,



Kolkata 700 106. Email: environmentwb@gmail.com

4. The Ministry of Environment, Forest & Climate Change, Government of India, Integrated Regional Office, through the Deputy Director of General Forests (C), IB – 198, Sector III, Salt Lake, Kolkata – 700 106. Email – iro.kolkata-mefcc@gmail.com

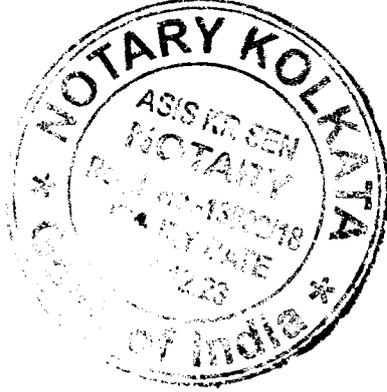
5. The District Magistrate & Collector, Bankura, Administrative Building, Bankura Collectorate, Bankura, West Bengal, Pin 722101. Email – dm-ban@nic.in

6. The Additional District Magistrate and District Land & Land Reforms Officer, Bankura, Administrative Building, Bankura Collectorate, Bankura, West Bengal, Pin 722101. Email – dllrobku@gmail.com

7. Office of the Executive Engineer, Bankura Irrigation Division, through the Executive Engineer, Kenduadihi, Bankura, West Bengal, Pin-722101. Email: ee.bankura.irrigation@gmail.com



3
SL. NO. ||



8. M/s. Northern express
Infra developers Private Limited,
through the Directors, 46-D,
Purudilpur Kali Mandir Gali,
Tirupati Market, Gorakhpur, Bihar,
Pin - 273001. Email:
northernexpressinfra@gmail.com

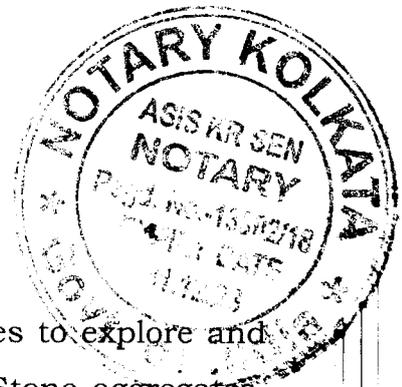
... Respondents

Counter Affidavit on behalf of Respondent no. 1.

I, Samik Panigrahi, son of Shyamal Panigrahi, aged about 43 years, by occupation - Service, having office at DJ - 10, 3rd floor, Sector - II, Salt Lake, Kolkata 700 091, do hereby solemnly affirm and say as follows -

1. That I am the General Manager (Sand/Administration) of West Bengal Mineral Development & Trading Corporation Limited (WBMDTCL), being the Respondent No. 1 herein and as such I am well conversant with the facts and circumstances of the present Original Application. I have been duly authorized by the Chairman & Managing Director of WBMDTCL to affirm this Counter Affidavit to the Original Application, in terms of solemn order dated February 13, 2023 passed by this Hon'ble Tribunal and as such I am competent to affirm this affidavit.

2. I say that WBMDTCL is a Government of West Bengal Undertaking and a company within the meaning of section 2(45) of the Companies Act, 2013 corresponding to section 617 of the Companies Act, 1956. 100% of the shares of WBMDTCL are owned by Government of West Bengal through its Industries, Commerce and Enterprises Department. WBMDTC Ltd., which was incorporated in the year 1973 and is one of the Government Mining Company operating in the field of mining throughout the State of West Bengal.



3. I say that WBMDTCL was set-up with the objectives to explore and extract various Non-Coal Minerals i.e, Rock-phosphate, Stone aggregates, Fire clay, Quartz, Feldspars, Iron Ore, Silica Sand etc. in West Bengal; to examine its commercial possibilities and to convert mineral resources to marketable commodities for generating incomes/revenues from sales proceeds. WBMDTCL is supplying coal from Eastern Coalfield Limited (ECL) to Micro, Small and Medium Enterprises in West Bengal as State Nodal Agency of the Government. WBMDTCL has been notified by the Government of India as an Exploration Agency during 2017-18. The vision of WBMDTCL is to develop and exploit coal and other non-coal minerals in a scientific, economic and eco-friendly manner; to secure, assist and facilitate the growth and development of mining and mineral based industries and trading activities in West Bengal and to explore, mine, crush, smelt, amalgamate and process and market minerals and mineral based products. It is beyond any pale of doubt that the function of WBMDTCL is for a public purpose.

4. I have been served in January, 2023 with a copy of an original application being O. A. No. 02/2023/EZ (hereinafter referred to as the said Application) supported by an affidavit purportedly affirmed by one Kartik Majhi on November 29, 2022. I have read the copy of the said Application and have understood its true scope, meaning, effect and purport.

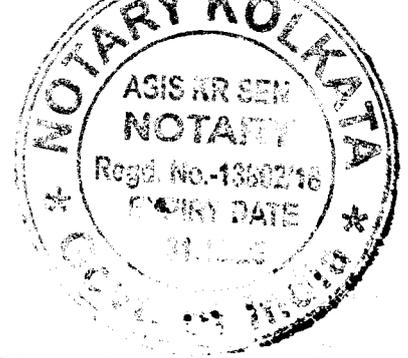
5. At the outset, I state that the said Application is misconceived, frivolous, vexatious, devoid of merits, unsupported by law and has been filed with vested interest and is *mala fide*. It is submitted that the applicant has been set up by some interested person. Proceedings before this Hon'ble Tribunal, primarily being of public interest, the applicant cannot be allowed to abuse the process of this Hon'ble Tribunal on a vague assertion of being an environment friendly and responsible citizen of the society. It is submitted that the applicant is before this Hon'ble Tribunal for personal and private gains. It is submitted that the instant application



seeks to prevent the State and its instrumentalities from legalizing the entire process of allocation of sand mining blocks. The instant application seeks to promote the indiscreet exploitation of sand mines in an illegal manner, at the instance of interested persons.

6. I state that the said Application is not maintainable under Section 14, 15 or 16 read with Section 18 of the National Green Tribunal Act, 2010 (hereinafter referred to as the said Act) for the following reasons:

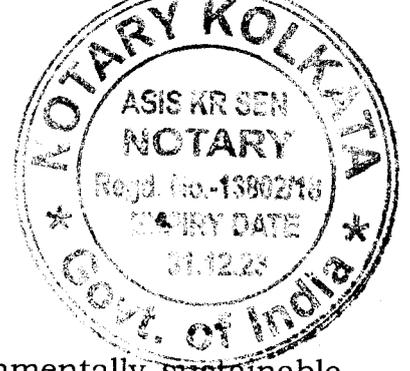
- a. The applicant has failed to disclose any substantial question relating to environment or any violation or non-enforcement of any legal right or question relating to implementation of the enactments specified in Schedule – I of the said Act.
- b. The applicant has failed to establish himself as a “person aggrieved” in terms of Section 18 of the said Act. I state that no pleadings have been made in the application to demonstrate the applicant being aggrieved by issuance of the Tender for Selection of Mine Developer & Operator (MDO). Accordingly, the applicant has no cause of action to maintain the instant proceedings.
- c. The instant Application is premature as the said Tender has been merely issued for selection of MDO in consonance with The West Bengal Sand Mining Policy, 2021 (hereinafter referred to as the said “Policy, 2021”) and The West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021, details whereof are more fully stated hereinafter. It is submitted that issuance of the Tender does not raise any substantial question relating to environment and does not involve adjudicating any issue of enforcement of any legal rights relating to environment.
- d. I state that the Tender process has been undertaken for only making considerable advancement in the entire process of selection of MDOs and in order to tackle, *inter alia*, illegal sand mining. I state that no mining activities have commenced or would be allowed pursuant to the



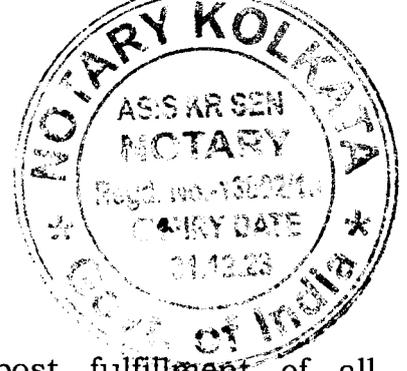
Tender, in any of the districts of State of West Bengal including Bankura, without obtaining all statutory compliances including but not restricted to the duly approved District Survey Report (hereinafter referred to as “DSR”), Mining Plan, Environmental Clearance, Consent to Establish, and Consent to Operate. Thus, no adverse impact can be caused to the environment merely by floating of such tender.

7. I say that in the said Application, material facts have been suppressed and distorted. In order to assist this Hon’ble Tribunal to effectively adjudicate the said Application, I state the relevant facts of the case, which are as follows -

- a) The Ministry of Environment Forest & Climate Change (hereinafter referred to as the “MOEF&CC”) to regulate the management and systematic mining practices, formulated the Sustainable Sand Management Guidelines, 2016 (hereinafter referred to as the said “Guidelines, 2016”). The said Guidelines, 2016 was implemented for preventing illegal mining, transportation and storage of minerals.
- b) In order to supplement the existing Guidelines, 2016, a further Enforcement and Monitoring Guidelines, 2020 (hereinafter referred to as the “Guidelines, 2020”) was promulgated for identification and quantification of mineral resources and its optimal utilization; regulation of the sand and gravel mining in the country; use of IT enabled services and latest technology for surveillance or sand mining; for setting up procedure for replenishment of sand, environmental clearance monitoring and environmental audit; and to control the instances of illegal mining.
- c) The Government of West Bengal having considered the importance of framing a sand mining policy for the State of West Bengal, came up with the said Policy 2021, to improve the effectiveness of monitoring of mining and transportation of sand and to ensure that the



- extraction is carried out in a scientific, environmentally sustainable, and socially responsible manner.
- d) Subsequently the said Policy 2021 received statutory recognition by way of promulgation of the West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021 (hereinafter referred to as the "Rules, 2021"), in exercise of the powers conferred by Section 15 and Section 23C of Mines and Minerals (Development and Regulation) Act, 1957, which was notified by a Gazette Notification bearing no. 48-ICE/O/MIN/GEN-MIS/17/2021 dated 25.01.2022 for, *inter alia*, sand mining, transportation, storage and sale of sand, regulation and monitoring of sand mining, prevention of illegal sand mining.
- e) As per the said Policy 2021, West Bengal Mineral Development & Trading Corporation Ltd. (hereinafter referred to as "WBMDTCL") was to be the designated agency of Government of West Bengal to, *inter alia*, deal with the issue of indiscriminate mining of sand, black-marketing, artificial supply shortage through hoarding, to ensure compliance with regulations and affordable pricing for end consumers. Hence, the Policy, 2021 and subsequently the Rules, 2021, provided that WBMDTCL shall be the appropriate agency to achieve such objectives and would be solely responsible for the entire mining process, *inter alia*, contracting out the excavation of sand and transportation of sand from the mines to the stockyard, without involvement of any private agencies.
- f) Validity of the said Policy 2021 and notice inviting 'Expression of Interest' from interested sand miners fell for challenge before the Hon'ble High Court at Calcutta which were upheld by the Hon'ble Court.
- g) The process as envisaged under the said Policy, 2021, and the Rules, 2021 (as notified subsequently) was that WBMDTCL would appoint MDOs with whom sand mining agreements would be executed, upon

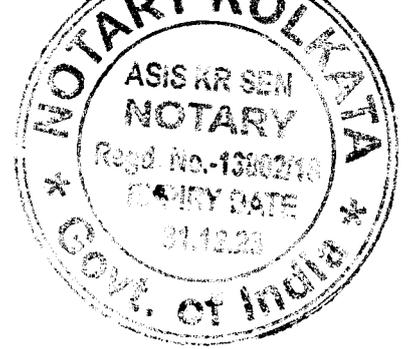


receipt of all statutory clearances and post fulfillment of all environmental clearances, for carrying out the aforementioned process of, *inter alia*, excavation & transportation of sand from sand blocks to stockyards, setting up and maintenance of stockyards, loading sand on the vehicle and sale of sand to end-consumer.

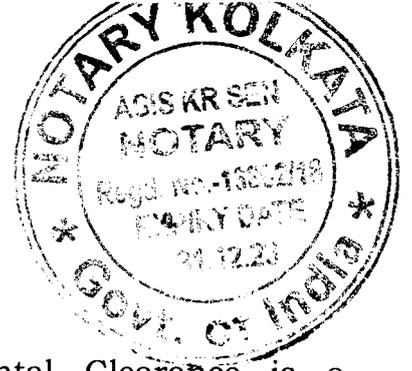
- h) Since the aforesaid process would be time consuming and would result in a considerable delay in effectively implementing legal mining, till which time illegal mining would continue to grow, causing huge losses to the public exchequer, WBMDTCL in order to prepare itself with a list of identified MDOs for participation in the subsequent stage of awarding work, took preparatory steps for empanelment of MDOs under 2 (two) distinct categories based on the area of the Sand Mines, i.e. (i) Category A comprising of area of each block/ group of blocks less than and equal to 20 Hectares; and (ii) Category B comprising of area of each block/ group of blocks greater than 20 Hectares.
- i) Based on the applications received, WBMDTCL empanelled MDOs *vide* memo no: MDTC/Sand/002/1027 dated 30th December 2021 for participation in the subsequent RFP stage for awarding work.

8. I say that once such MDOs were empanelled by WBMDTCL, Tenders were floated by the WBMDTCL for participation by such empanelled MDOs for selection in Category "A" and Category "B" sand blocks in Bankura district. Such selection of MDOs by WBMDTCL is a mere process of identifying the MDOs with whom a sand mining agreement would be executed in future, once all statutory and environmental clearances had been obtained from the appropriate authorities.

9. Now I shall proceed to deal with the process, that was adopted by WBMDTCL prior to floating of RFP documents for selection of the MDOs in Category "A" and Category "B" sand blocks in various districts of State of West Bengal including Bankura:



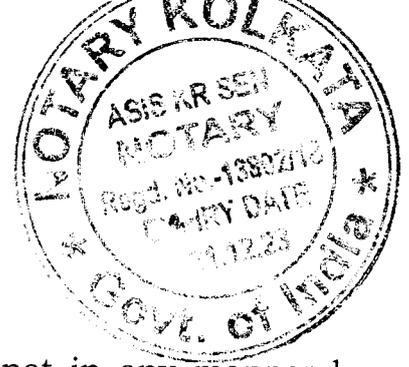
- a. WBMDTCL selected an ISO 9001:2015, 14001:2015 & OHSAS 18001:2007 Certified QCI-NABET Accredited EIA Consultant Organization which was empanelled with MOEF&CC for preparation of the DSRs for various districts in the State of West Bengal including Bankura.
- b. Upon selection of such agency, all relevant data as necessary for preparation of DSR was provided to the agency from time to time and the draft DSRs were prepared taking into consideration all claims & objections received from field level and statutory requirements and notifications issued by the MOEF&CC from time to time.
- c. Based on such draft DSRs, potential sand mining sites were identified by WBMDTCL in consultation with the District Authorities and notified to the concerned District Authorities.
- d. Upon receipt of approvals from the concerned District Authorities, Tenders were floated by WBMDTCL, for appointment of the MDO with whom sand mining agreements would be executed, only upon obtaining all statutory compliances and approvals.
- e. At present, no sand mining agreement has been executed by and between WBMDTCL and the empanelled MDOs. It is pertinent to note that the draft DSRs are now approved by State Environment Impact Assessment Authority (SEIAA). However, sand mining agreement would only be executed between WBMDTCL and the MDO, once all necessary compliances and statutory approvals are undertaken including but not restricted to Environmental Clearance. It is further clarified that as per the said Policy, 2021, and the Rules, 2021, no sand mining lease will be granted in favour of such MDOs. Only an agreement shall be executed for making the sand mines operational.
- f. Further, upon execution of such sand mining agreement Consent to Operate and Consent to Establish shall be mandatorily obtained before commencement of any mining activity.



- g. Needless to mention here that Environmental Clearance is a mandatory requirement for commencement of sand mining activity and to apply for such Environmental Clearance, a proponent must submit a mining plan and a duly approved DSR and hence, simultaneously the process of obtaining approval of DSR and preparation of mining plan was being undertaken by WBMDTCL to save time.
- h. The entire process of floating of Tender to select the appropriate MDOs was undertaken as a preparatory measure to achieve a considerable advancement in the entire process once approvals were granted. I submit that there is no bar upon an authority for selection of an MDO as a preparatory measure before all requisite approvals are granted. Further, under Clause 4.1.1 of the Guidelines, 2020, there is no bar for issuance of tender documents to merely empanel/select an MDO before finalization of DSR. I submit that the requirement of preparing and approving DSR can be fulfilled prior to any of the three stages, the last being before granting mining lease.

10. I reiterate that the answering respondents or the MDOs selected cannot commence mining operations unless all statutory compliances are followed. In this regard I would like to point out that previously on the same cause of action, with regard to Paschim Bardhaman district, one Original Application being O.A. No. 74/EZ/2022 was filed before this Hon'ble Tribunal by one Shiv Dayal Singh. Considering the stand adopted by WBMDTCL, as aforesaid the Hon'ble Tribunal was pleased to dispose of the said Original Application, inter-alia holding that in view of the stand taken by WBMDTCL that without obtaining any Statutory Clearance no sand mining activities would be permitted to commence and therefore nothing remains in the Original Application and hence the same is disposed of.

Photostat copy of the solemn order passed by this Hon'ble Tribunal in O.A. No. 74/EZ/2022 is enclosed and marked as Annexure A.



11. I Say that the mere selection of MDOs cannot in any manner be construed as a dispute wherein substantial questions relating to environment can be alleged to have arisen or violation of or non-enforcement of legal rights can be alleged or question relating to implementation of enactments be alleged to have arisen.

12. I say that the existing mining leases in the State of West Bengal which were granted mostly in the period of 2016 to 2018 are expiring by end of 2022, hence the process of identification of new MDOs will only assist WBMDTCL to expedite the entire process including obtaining requisite Environmental Clearances on time, upon receiving approval for the DSRs and Mining Plan. I state that the aforesaid flow of work would only prevent illegal mining activities being carried out in the existing mined out area which would otherwise become freehold playground for the illegal miners upon expiration of the existing mining leases and till such time the entire process of selection of MDOs can be undertaken.

13. I say that the Tender documents specified that the execution of the sand mining agreements shall be subject to obtaining all statutory approvals to commence the production of sand and that such agreement shall be signed and executed between WBMDTCL and MDOs upon obtaining the Environmental Clearance for such sand block. Further, the commencement date of work as per the Tender, i.e. the date on which sand excavation, transportation etc. can be started by the MDO is the date on which all statutory clearances and approvals have been obtained for commencement of mining operation and sand stockyard. Hence, at no point of time can mining activities commence without DSRs being approved or without a valid environment clearance being taken by WBMDTCL or the selected MDO.

14. At the cost of repetition, I say that the sole intention of WBMDTCL towards selection of MDOs on the basis of draft DSRs is to prevent continued illegal mining on the said sand block in terms of the objective of



Guidelines, 2020 and the said Policy 2021.I further state that in any event, Clause 4.1.1 of the Guidelines, 2020, DSRs have already been prepared and there is no bar in issuance of such Tenders for selection of MDOs.

15. The fact remains that in the absence of advance empanelment of MDOs, there are high chances that illegal mining would continue to increase since the details of such sand blocks are already available in the public domain and it is thus necessary that the time gap between approval and execution of sand mining agreement, be minimized, to prevent environmental damage.

16. Without being prejudiced to the aforesaid but fully relying upon the same, now I propose to deal with the various statements and/or allegations, as contained in the said application. Before dealing with the statements and/or allegations made in the said application, I state that all allegations contained in the said application are denied.

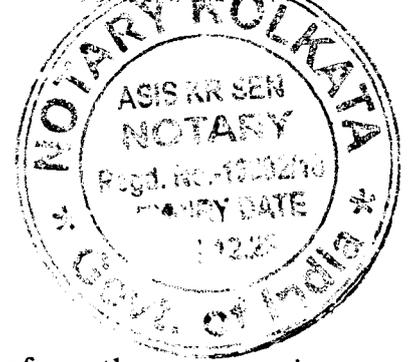
17. With reference to paragraphs 1 and 2 of the said application, I say that the same are matters of record and I deny anything contrary to the admitted records.

18. With reference to paragraphs 3 and 4 of the said application, save and except what are matters of record, all allegations contained in the paragraphs under reference which are contrary thereto and/or inconsistent therewith, are denied. I deny that the said application has been filed by the aggrieved persons, being interested in the protection of the environment and ecology. I also deny that the applicant in the said application is interested in the protection of the environment and in protection of the right to a clean environment and in protection of the right to a clean environment guaranteed to them by the Constitution of India under Article 21 and in performance of his duty under Article 51, as alleged in the said application.



19. With reference to statements made in paragraph 5 (a) and (b) of the said application, save and except what are matters of record, all allegations contained in the paragraphs under reference which are contrary thereto and/or inconsistent therewith, are denied. It is denied that the said policy is in contravention of section 6 of the Mines and Minerals (Development & Regulation) Act, 1957. I further deny that the said policy has in effect driven away the scope of sand mining leasing and makes a provision of vesting of all mines with WBMDTCL. I strongly deny that the said policy is per se arbitrary and in direct contravention to the Mines and Minerals (Development & Regulation) Act, 1957, as alleged. It is categorically denied that the said policy takes away the right of citizen to participate in the mining process through leases or bidding. Such statement on the part of the applicant clearly proves that either he is an interested person in the sand mining business or has been set up by the interested persons. On this ground alone, the said application is liable to be dismissed. I however deny that the said policy creates a monopoly of the respondent no. 8 (wrongly stated as respondent no. 7) thereby eradicating a healthy competition and growth of the individuals and other small enterprises who used to participate in the auction process for obtaining lease. The aforesaid statement on the part of the applicant proves his vested right of sand mining towards institution of the present proceeding. In this regard I say that the respondent no. 8 has been selected for dredging/de-silting of riverbed materials, which has been recommended by the River Research Institution, a wing of Irrigation & Waterways Department, Government of West Bengal. Such selection has nothing to do with sand mining.

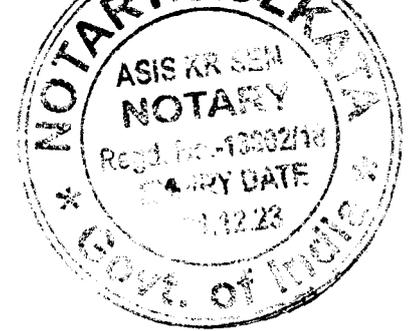
I also deny that the said policy and West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021 both grants unfettered right on WBMDTCL to exploit a natural resources most arbitrary and whimsically thereby rendering the said policy and rules as ultra vires. In this regard, I say that this Hon'ble Tribunal is not the appropriate authority to decide the issue, as alleged. Therefore, it would be appropriate to dispose of said application upon granting liberty to the applicant to



challenge the vires of the said Policy and rules before the appropriate forum.

20. With reference to statements made in paragraphs 5(c), (d) and (e) of the said application, save and except what are matters of record, all allegations contained in the paragraphs under reference which are contrary thereto and/or inconsistent therewith, are denied. I specifically and categorically deny that the Respondent No. 8 namely Northern Express Infra Developers Pvt. Ltd, was granted the contract to extract huge quantity of sand covering the Damodar river-bed area, sand block Mejia, within mouza Balarampur, Purunia, Dighalgram, Japarnali, Banjora, Jalanpur, as alleged. On the contrary I say that the Respondent No. 8 namely Northern Express Infra Developers Pvt. Ltd has been selected pursuant to a competitive bidding process, invited by WBMDTCL for dredging/de-silting of riverbed materials.

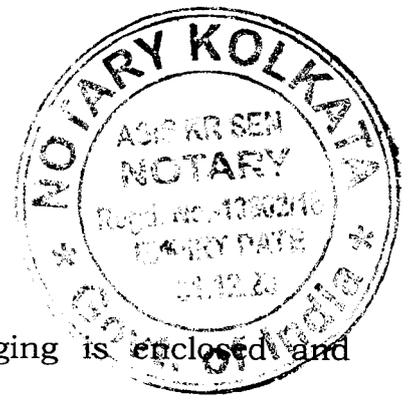
It is stated that the auction for dredging/de-silting had been conducted by WBMDTCL after the joint inspection carried out by the Irrigation & Waterways Department, River Research Institute (RRI) and Technical Advisor of WBMDTCL. The River Research Institute thereafter prepared the Feasibility Report on prospective De-siltation site from the river Damodar in the District of Bankura and other districts. By virtue of the said report, detailed description was pointed out as to how and in what manner and up to what level, the proposed de-siltation work would be carried out. Subsequent to submission of the Report, as aforesaid, the Secretary of the Irrigation Department issued proposal for dredging/de-siltation works at river Damodar, strictly in terms of the Report. Needless to mention here that the dredging/de-siltation works are required for the maintenance and upkeep of the river health and to increase its carrying capacity to avoid natural disaster like flood. Needless to mention here that the entire dredging/de-silting work shall be carried out as per the methodology, technical specification of the proposed dredging work, suggested by Dept of I&WW. WBMDTCL would ensure that the dredging



work would not affect the safety of the adjoining river bank/embankment or any structure like, bridge, barrage, weir etc. It is stated that for the purpose of carrying out of dredging/de-silting in a scientific and arranged manner, WBMDTCL decided to select and engage reputed and experienced dredging/de-silting/removal of river bed materials contractor, possessing adequate technical and financial strength and past experience in such work. Accordingly, the Respondent No. 8 was selected as the dredging contractor for removal of riverbed material.

It is however denied that in case of Damodar river, the DSR consists of sand blocks in Mejia, but Mouzas possible for auction of sand in Mejia block in accordance with the DSR are not those included in the e-auction, as alleged.

21. With reference to statement made in paragraph 5 (f), (g), (h), (i), (j) and (k) of the said application, save and except what are matters of record, all allegations are denied which are contrary thereto and/or inconsistent therewith. I strongly deny that the e-auction conducted by WBMDTCL was completely illegal as preparation of DSR, which is a prerequisite for auction/e-auction/ granting of mining lease/LoI under Enforcement & Monitoring Guidelines for Sand Mining 2020 and Sustainable Sand Mining Management Guidelines 2016, as alleged. I further deny that the plots are illegally e-auctioned and illegal extraction of sand are done rampant in the said plots in Damodar river. In this regard, I say that the applicant has thoroughly confused Dredging operation with Sand Mining. It has been stated earlier that without obtaining the Statutory clearances, no sand mining lease would be executed by WBMDTCL in favour of any successful bidders. So far as the dredging/de-silting are concerned, the specific site has been identified by RRI, a research wing of Dept of I&WW, followed by a scientific process and every single riverbed material is being removed against valid QR-coded e-challan, issued by WBMDTCL through its online portal.



Photostat copy of such e-challan for dredging is enclosed and marked as Annexure B.

22. With reference to statement made in paragraph 5 (l), (m), (n), (o), (p), (q) and (r) of the said application, save and except what are matters of record, all allegations are denied which are contrary thereto and/or inconsistent therewith. I specifically and categorically deny that sand is being smuggled in guise of e-challan for dredging, de-silting material for mouza Bakulia, as alleged. In this regard, I say that the e-auction was held for selection of MDO for grant of prospective sand mining lease, whereas the respondent No. 8 was selected pursuant to another tender for dredging/de-silting purpose. The site for sand mining and dredging are completely different. As in case of dredging, no EC is required as per MOEF&CC guidelines, the respondent has been allowed to dredge riverbed material. So far as sand mining are concerned, the same would be allowed only after all Statutory clearances are made available.

23. With reference to paragraph 7 and the grounds contained in the said application, I deny that the applicant is entitled to move the present application on any of the grounds as it has been mentioned in the application. I say that none of the grounds mentioned in the said application are justified, valid and sufficient to sustain the said application, which has been filed with vested and mala-fide intention. As such the said application is liable to be dismissed.

24. With reference to limitation of the said application, it is denied that the present application has been filed within the prescribed period of time or that the petition has been filed with bona fide intention or in the interest of justice, as alleged or at all.

25. I state that the reliefs sought for by the applicant in paragraph 9 and 10 of the said application are illegal, misconceived and beyond the jurisdiction of this Hon'ble Tribunal. I state that this Hon'ble Tribunal does

not have residuary power and only reliefs as specified under Section 18 of the said Act. I say that none of the reliefs as sought for by the applicant are within the scope of Section 18 of the said Act and therefore cannot be granted.

26. In view of the discussions made herein above, the instant Original Application is an abuse of the process of this Hon'ble Tribunal and the instant Original Application should be dismissed *in limine* with the exemplary costs.

27. The statements made in paragraphs 1 to 22 and 24 are true to my knowledge and the rest are my humble submissions before this Hon'ble Tribunal.

The deponent is known & Deponent Identified by me:

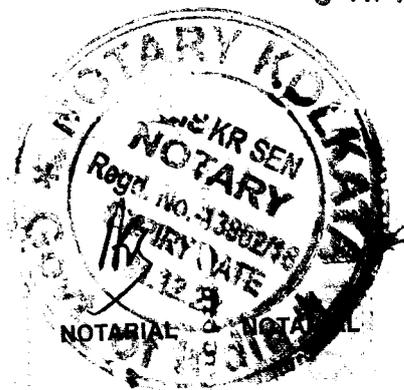
Sanjiv Sen
Advocate
Enrollment No. WB/1307/2001

[Signature]
DEPONENT
(SAMIK PANIGRAHI)

Solely attested and declared before me on identification

ASIS KUMAR SEN
ASIS KUMAR SEN
City Civil Court, Kolkata
Notary
Reg. No. 13802/18

13 APR 2023



Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, FINANCE CENTRE
KOLKATA**

(By Video Conference)

Original Application No. 74/2022/EZ

Shiv Dayal Singh

Applicant

Versus

West Bengal Mineral Development and
Trading Corporation Limited & Ors

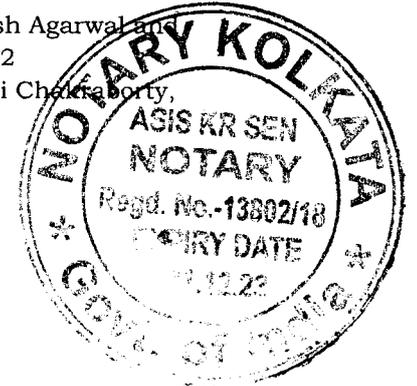
Respondent(s)

Date of hearing: 14.02.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Bikas Kargupta, Mr. Azim H. Laskar and Ms.
Debanjana Ray Chaudhuri, Advocates

Respondent(s): Mr. Kishore Datta, Sr. Advocate, Mr. Piyush Agarwal and
Ms. Shrivalli Kajaria, Advocates for R-1 & 2
Mr. Nayan Chand Bihani and Mr. Sibojyoti Chakraborty,
Advocates for R-3,5 &6
Mr. Dipanjan Ghosh, Advocate for R-4
Mr. Apurba Ghosh, Advocate for R-7
Mr. Prithwish Basu, Advocate for R-8



ORDER

1. Challenge in this application is to the tender process floated vide notice dated 18.04.2022 by the West Bengal Mineral Development and Trading Corporation for granting sand mining rights as per particulars mentioned therein in Sand Blocks in question. According to the applicant, floating of tenders without finalizing District Survey Reports (DSRs) is illegal in view of Enforcement and Monitoring Guidelines for Sand Mining dated January, 2020 and judgment of the Hon'ble Supreme

Court dated 10.11.2021 in *Civil Appeal Nos. 3661-3662 of 2020, State of Bihar & Ors. v. Pawan Kumar & Ors.*¹.

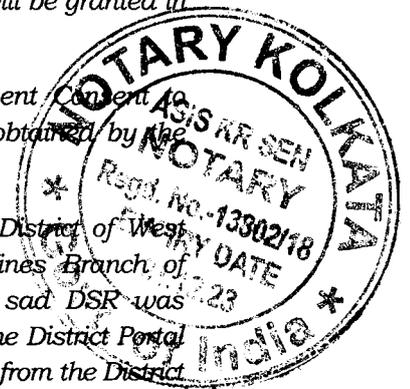
2. Vide order dated 08.08.2022, the Tribunal issued notice and directed Chief Secretary, West Bengal to file his personal affidavit as there were different Departments and uniform stand was required.

3. The Chief Secretary, West Bengal has filed affidavit dated 24.08.2022 to the effect that Sand Mining Agreement will be executed only after DSRs are approved by the SEIAA and all other compliances and approvals are undertaken as per judgment of the Hon'ble Supreme Court and the Guidelines, referred to above. The tender process is merely to identify and select Mine Developer and Operator (MDOs) under the West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021. Relevant extracts from the same are quoted below:-

"e. At present, no sand mining agreement has been executed by and between WBMDTCL and the MDO. It is pertinent to note that the sand mining agreement would only be executed between WBMDTCL and the MDO, once the draft DSRs are approved by State Level Environment Impact Assessment Authority (hereinafter referred to as "SEIAA") and all necessary compliances and statutory approvals are undertaken including but not restricted to Environmental Clearance 1S further clarified that as per the Policy, 2021, and the Rules, 2021, no sand mining lease will be granted in favour of such MDOs.

f. Further, upon execution of such sand mining agreement, Consent to Operate and Consent to Establish must be mandatorily obtained by the MDO before commencement of any mining activity."

8. I state that a draft DSR for Paschim Bardhaman District of West Bengal was already prepared and submitted to the Mines Branch of Industry, Commerce & Enterprises on 06.08.2021. The said DSR was forwarded to the District Authority and was uploaded on the District Portal for the requisite period of 30 days. Upon receipt of comments from the District Authority, a modified DSR was submitted to the State Environment Impact Assessment Authority for preliminary (SEIAA) examination on 03.12.2021. Subsequently, the DSR was forwarded to the State Expert Appraisal



¹ (2022) 2 SCC 348

Committee (SEAC) for its comments and thereafter the said DSR was approved on 23.08.2022 by SEIAA.”

4. We have heard learned counsel for the parties.
5. In view of stand of the State that no mining has been undertaken in violation of laid down procedure and before allowing mining, all compliances will be ensured, no further order appears to be necessary.

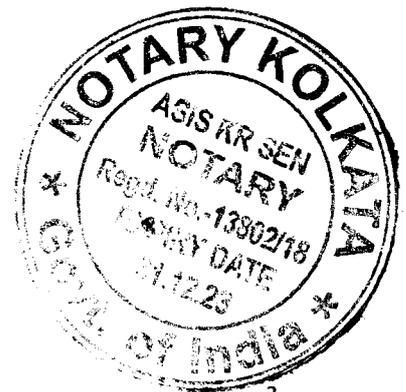
The application is disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

February 14, 2023
Original Application No. 74/2022/EZ
A



Road E-Challan for sand / riverbed materials Transport

E-Challan No. : 353721/T/22-23/261220221948/PS
Issue Date : 26/12/2022 02:20 AM
Validity Till : 26/12/2022 02:20 PM
Quantity of Sand : 550.00 cft (Five Hundred Fifty cft)
Vehicle No. : WB33B2174 (12 Wheels)



SAND STOCK & PERMISSION HOLDER DETAILS

VEHICLE & DESTINATION DETAILS

Sand Stock Id : 245/SS2022
Mouza : Bakulia
GP/Ward : SALMA
Sub-Division : Sadar
Police Station : Saltora
District : BANKURA
Name of the Permission Holder : Northernexpress Infradevelopers Pvt Ltd
Mobile No : 9142792866
Address : 46D, Purdilpur Kalimandir Gali, Tirupati Market, Gorakhpur, Uttar Pradesh

Name of Purchaser : A LAXMI
Mobile No. : 7908441088
Police Station : North Port
District : KOLKATA
State : West Bengal
Vehicle Type : 12 Wheels
Registration No. : WB33B2174
Capacity (in Kg) : 35000

Note :

- 1) Prior approval for stock was accorded by : **ADM and DL & LRO, BANKURA** vide permit no. 651/T/22-23/231222085905/PT.
- 2) Loaded vehicle must depart for its destination within 30 minutes from issuance of this E-challan. To verify authenticity of the E-challan, please scan above scan QR Code using smart phone.
- 3) This is a system generated document and does not require any signature.
- 4) Self Certification by Lessee : I/We (Permission/Q.P.) hereby declare that the above statements are correct and complete to best of my/our knowledge and belief. **Northernexpress Infradevelopers Pvt Ltd**



(This Is Road E-Challan For Seized Sand)

Issued by
Northernexpress Infradevelopers Pvt Ltd
 Sand Stock Id 245/SS2022

**** On QR code scanning pl check that the website address bar shows muckwb.gov.in as that is the only genuine website of the government.**

BEFORE THE NATIONAL GREEN
TRIBUNAL, EASTERN ZONE BRANCH,
KOLKATA
ORIGINAL APPLICATION NO. 02 OF 2023/EZ

Application under Section 18 read with
14, 15 of National Green Tribunal Act,
2010

In the matter of :

Kartik Majhi

-Versus-

West Bengal Mineral Development &
Trading Corporation Ltd & Ors

... Respondent

Counter affidavit on behalf of
Respondent No. 1.

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