

5.	<u>ANNEXURE -A/4</u> Copies of the order dated: 08.01.2024 Passed in W.P (C) No: 26730 of 2023 in the matter of Agarwal Infrabuild Private limited Private Limited, Chattisgarh- Versus- State of Odisha and Others	92 to 98
6.	VAKALATNAMA	99 to 100
7.	MEMO OF APPEARANCE	101

BY THE APPLICANT

Done
12.01.2024

THROUGH ADVOCATE
(Biranchi Narayan Mahapatra)

Date: 12.01.2024

Mob No: 8984383812

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

M.A No: of 2024/EZ

(Arising out of O. A. No: 83 of 2022/ EZ disposed of on 18.04.2023)

IN THE MATTER OF:

An Application under Section 18(1) read with 14 of the NGT Act, 2010.

IN THE MATTER OF:

An Application to dismiss the MA No: 35 of 2023/EZ in compliance to the order dated: 08.01.2024 of the Hon'ble Orissa High Court Passed in W.P (C) No: 26730 of 2023 in the matter of Agarwal Infrabuild Private limited, Chattisgarh- Versus- State of Odisha .

IN THE MATTER OF:

Susanta Kumar Barad, S/O: Sarbeswar Barad, aged about 36 years, at: Sri Krushnapur, Po: Champagarh- 752024, P/S: Chandapur, Dist: Nayagarh, State: Odisha

(Respondent No: 17 in O.A No: 83 of 2022/EZ)

.....Applicant/

(Respondent No: 17 of the O.A)

NOTARY
Susanta Kumar Barad
12/01/24

Done
12.01.24
(for Applicant)

-VERSUS-

1. Dillip Kumar Samantara, S/O: Lingaraj Samantara,
aged about 35 years, At: Bajrakota, Po: Baunsagarh, P/s: Ranapur,
Dist: Nayagarh, Odisha, Pin: 752026

2. Deepak Kumar Routray, S/O: Rabi Narayan Routray,
aged about 27 years, At: Ostapada, Po: Kamaguru., Dist:
Nayagarh, Odisha, Pin: 752026

(Respondent Nos: 1 and 2 of this M.A are Applicant Nos: 1 and 2 in the O.A No: 83 of 2022/EZ)

3. State of Odisha

Represented by its Chief Secretary, Lokaseva Bhawan, State Secretariat, Bhubanswer-751001, Odisha, Email: csori@nic.in

4. Principal Secretary, Revenue and Disaster Management Department, Govt. of Odisha, Lokaseva Bhawan, State Secretariat, Bhubanswer-751001, Odisha, E Mail: revsec.od@nic.in

5. Additional Chief Secretary, Forest and Environment Department, Govt. of Odisha, Kharavela Bhawan, State Secretariat, Bhubanswer-751001, Odisha, E Mail: fsec.or@nic.in

6. Secretary, Ministry of Environment and Forest, Climate Change, Indira Parayabaran Bhawan, Jorbag Road, New Delhi-110003, E Mail: secy-moef@nic.in

7. Deputy Director General of Forests (C), Regional Office, Eastern Zone (EZ) Ministry of Environment, Forest and Climate Change (MOEFF&CC), A/3, Chandrasekharapur, Bhubanswer-751023, Odisha, E Mail: roez.bsr-mef@nic.in

8. Collector-Cum-District Magistrate

Nayagarh Collectrate, At/Po: Nayaragh- 752069,

Dist: Nayagrah, Odisha, E Mail: dm-nayagarh@nic.in

9. Tahasildar, Ranapur Tahasil Office,

At/Po/Ps: Ranapur-752026, Dist: Nayagrah, Odisha

(E mail I.D not available)

NOTAR
Gadga

12/01/2024

12/01/2024
(Adv. for the Applicant)

10. Superintendent of Police

Nayagrah District Police Head Quarter,
At/Po/District: Nayagrah-752069, Odisha, E Mail:
spngr.orpol@nic.in

11. Inspector- In- Charge, Chandpur Police Station,
Chandpur- 752024, Dist: Nayagrah, State: Odisha.
(E mail I.D not available)

12. Divisional Forest Officer, Khordha Forest Division,
At/Po/ Dist: Khordha-752055, Odisha, E Mail:
dfokhordha@gmail.com

13. Member Secretary

Odisha State Pollution Control Board, Paribesh Bhawan,
A/118, Nilakantha Nagar, Unit- 8, Bhubaneswar-
751012, Odisha. E Mail: paribesh1@ospcboard.org,
member.secy@ospcboard.org

14. Regional Officer, State Pollution Control Board,
Berhampur, 2nd Floor, New division Office, IDCO Berhampur
Division, Industrial Estate, Berhampur, Ganjam-760008,
Odisha, E Mail: rospcb.berhampur@ospcboard.org

15. Member Secretary, State Environment Impact
Assessment Authority, Qr No: 5 RF, 2/1, Unit- 9,
Bhubaneswar-751022, Odisha. Email: siaaorissa@gmail.com

16. The Member Secretary, Central Pollution Control
Board, Parivesh Bhawan, East Arjun Nagar, New delhi-
110032, E Mail: mscb.cpcb@nic.in, ccb.cpcb@nic.in

17. Director Geology, Bhubigyan Bhawan, Khordha,
Bhubanser-751001, E Mail:
directorgeology_odisha@yahoo.in

Uda Nain Fulpan
NOTARY
BAMPU Ganja

12.01.2024
(Adv. for the Applicant)

18. Managing Director, Odisha State Cashew Development Corporation Limited, At/Po: Ghatika, Bhubanswer-751029, Dist: Khordha, Odisha, E Mail: contact@oscdc.com

19. Agrawal Infrabuild Private Limited, Registered Office at 1st floor, VR Plaza, Link Road, Bilaspur, Chhatishgarh-495011, Site Office at: Malipada, Khordha, Odisha, Pin: 752020, Email: agrawalinfrabuild@rediffmail.com, info@aiplgroups.com

(Present Respondent No: 03 to 19 are also Respondents in the O.A No: 83 of 2022/EZ)

... Respondents

MOST RESPECTFULLY SHEWETH

1. That the Misc. Application is being filed by the present Applicant with reference under Section 18(1) read with 14 of the NGT Act, 2010.
2. That the present Application is being filed to dismiss the MA No: 35 of 2023/EZ till disposal of the proceedings Pending before the Hon'ble Orissa High Court with reference to the W.P (C) No: 24652 of 2023 in the matter of Susanta Kumar Barad- Versus- State of Odisha and Others, W.A No: 2282 of 2023 in the matter of Jugal Kishore Mishra- Versus- State of Odisha and Others and Misc. Case No: 81 of 2023 Pending before the Court of the Collector- Cum- District Magistrate, Nayagarh in connection of the order dated: : 09.08.2023 passed in WP (C) No: 20909 of 2023 in the matter of Susanta Kumar Barad- Versus- State of Odisha.

Sanjiv Nath Fulnar
NOTARY
Barnhamni Ganja

12/1/24

12.01.2024
(ADV. for the Applicant)

3. That the present Applicant is a Respondent No: 17 in the O.A No: 83 of 2022/EZ and the Present Respondent No: 1 and 2 are Applicants in the O.A and Respondent No: 03 to 19 are also Respondents in the O.A.
4. That the present applicant is acquainted with the facts and proceedings of the O.A No: 83 of 2022/EZ, which has been disposed with reference to the order dated: 18.04.2023 by this Hon'ble Tribunal. Thereafter, the Applicant was filed a Review Application No: 01 of 2023/EZ and which is dismissed on 19.05.2023. The Applicant has been challenged both the orders dated: 18.04.2023 and 19.05.2023 Passed by this Hon'ble Tribunal in O.A No: 83 of 2022/EZ and R.A No: 01 of 2023/EZ respectively before the Hon'ble Orissa High Court and the W.P (C) No: 24652 of 2023 (I.A No: 11819 of 2023) in the matter of Susanta Kumar Barad- Versus- State of Odisha and Others is still Pending before the Hon'ble High Court of Orissa. Copy of the Writ Petition along with Case Status Information report obtained from the website of the Hon'ble Orissa High Court and Hon'ble NGT order dated: 18.04.2023 Passed in O.A No: 83 of 2022/EZ is annexed here to as ANNEXURE-A/1.
5. That it is respectfully submitted here that another W.A No: 2282 of 2023 in the matter of Jugal Kishore Mishra- Versus- State of Odisha and Others is also still pending before the Hon'ble Orissa High Court. In this W.A as per order dated: 12.10.2023 the Hon'ble Orissa High Court after carefully considering to the matter passed stay order of operation of the Hon'ble NGT order dated: 18.04.2023 Passed in O.A No: 83 of 2022/EZ. Copy of the orders Passed by the Hon'ble Orissa High Court in W.A No: 2282 of 2023 is annexed here to as ANNEXURE-A/2.

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12.01.2024
(Adv. for the Applicant)

6. That the Present Applicant of the M.A was also filed another W.P (C) No: 20909 of 2023 before the Hon'ble Orissa High Court and the said Writ Petition was disposed of on 09.08.2023. By virtue of the order dated: 09.08.2023 the Present Applicant was filed a Misc. Case No: 81 of 2023 before the Court of the Collector- Cum- District Magistrate, Nayagarh and the said Case is Pending for adjudication according to law. Copies of Writ Petition and its order dated: 09.08.2023 along with Petition Copy of Misc. Case No: 81 of 2023 and in this connection Notice dated: 06.10.2023/ 25.10.2023 issued by the office of the Collector- Cum- District Magistrate, Nayagarh with reference to the letter No: 2426/ dated: 06.10.2023 (Revenue Section) is annexed here to as ANNEXURE-A/3.
7. That the M.A No: 35 of 20923/EZ has been filed basing upon the order dated: 18.04.2023 of this Hon'ble Tribunal Passed in O.A No: 83 of 2022/EZ. Even though the Applicants of the O.A No: 83 of 2022/ EZ are Respondent No: 19 and 20 in the W.A No: 2282 of 2023, but they have suppressed the orders dated: 12.10.2023 Passed in W.A No: 2282 of 2023 while Passing orders dated: 06.12.2023 by this Hon'ble Tribunal in M.A No: 35 of 2023/EZ. The Applicant of the M.A No: 35 of 2023/EZ was misleading to this Hon'ble Tribunal while Passing the orders dated: 06.12.2023 by this Hon'ble Tribunal in M.A No: 35 of 2023/EZ. It is evident from the Proceeding of the M.A No: 35 of 2023/EZ the Applicant of the said M.A by placing misleading facts before this Hon'ble Tribunal while Passing orders on 06.12.2023 before this Hon'ble Tribunal. Even though, the Hon'ble Orissa High Court Passed orders on 12.10.2023 in respect of the stay of operation of the order dated: 18.04.2023 Passed by this Hon'ble Tribunal in O.A No: 83 of 2022/EZ.

NOTARY
Barnamu Saris

12/1/24

12.01.2024
Adv. for the Applicant.

8. That the Respondent No: 18 of the O.A No: 83 of 2022/EZ was also filed another W.P (C) No: 26730 of 2023 in the matter of Agarwal Infrabuild Private limited Private Limited, Chattisgarh- Versus- State of Odisha and Others and the Said Case has been disposed of by the Hon'ble Orissa High Court as per order dated: 08.01.2024 and observed there in to decide the O.A No: 83 of 2022/EZ a fresh in accordance with law. Copies of the said orders of the Hon'ble Orissa High Court are annexed here to as ANNEXUREA/4.
9. Hence, this application is in time.

P R A Y E R

Hence, it is prayed that the Hon'ble Tribunal may be pleased to admit the Misc. Application and after hearing both parties and pass order/orders to dismiss of the M.A No: 35 of 2023/ EZ taking in to consideration of the order dated: 08.01.2024 of the Hon'ble Orissa High Courts Passed in W.P (C) No: 26730 of 2023 in the matter of Agarwal Infrabuild Private limited, Chattisgarh- Versus- State of Odisha ,which has been stated under Annexure-A/4 for the ends of justice.

Pass such other orders in favour of the present Applicant as deemed fit and proper in light of the facts and circumstances of the case.

And for this act of kindness, the humble applicant as in duty bound shall ever pray.

BY THE APPLICANT

Do
12.01.2024

THROUGH ADVOCATE

(Biranchi Narayan Mahapatra)

Date: 12.01.2024
mob No - 8984383812
Enrollment No - 0-04/8013

India Nain Fulnar
NOTARY
Bampos Garia

12/1/24

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

M.A No: of 2024/EZ

(In Original Application No: 83 of 2022/EZ disposed of on 18.04.2023)

IN THE MATTER OF

Susanta Kumar Barad Applicant

-Versus-

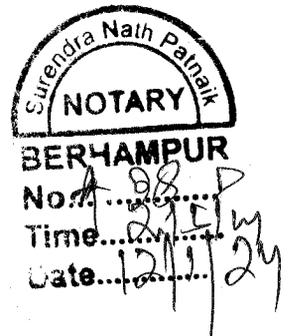
Dillip Kumar Samantra and others Respondents

AFFIDAVIT



I, Susanta Kumar Barad, S/O: Sarbeswar Barad, aged about 36 years, at: Sri Krushnapur, Po: Champagarh-752024, P/S: Chandapur, Dist: Nayagarh, State: Odisha do hereby state on solemn affirmation as under:-

1. That I am the Applicant of M.A and deponent of this affidavit.
2. That I am acquainted with the facts of the case basing on the records available. I am competent to swear this affidavit.
3. That the facts stated here and above are true to the best of my knowledge and belief and information, which I believe to be true.



Susanta Kumar Barad

DEPONENT

DECLARATION

The declarant has been identified by Sri B. N. Mishra, Advocate who has solemnly affirmed before me on this 12th day of Nov 2024 at 2.15 P.M. Contents having been read over and explained to the declarants who have perfectly understood the contents there and the then of moving this affidavit.

S. N. Patraik, NOTARY, BERHAMPUR (G.O.)

12/11/24

9

VERIFICATION

Verified on this the 12.01.2024 at Berhampur that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed there from.

IDENTIFIED BY

12.01.2024

- Susanta Kumar Barot

ADVOCATE

DEPONENT

(Biranchi Narayan Mahapatra)

Advocate, Orissa High Court

Enrolment No: O-04/2013

12/1/24
Biranchi Narayan Mahapatra
NOTARY
Berhampur, Ganjam

10

Annexure-A/21

Item No.05

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

**ORIGINAL APPLICATION NO.83/2022/EZ
(I.A. NO.189/2022/EZ)**

IN THE MATTER OF:

1. DILIP KUMAR SAMANTARAY,
S/o Lingaraj Samantara,
At - Bajtakot, PO - Baunsagarh,
PS - Ranpur, Dist - Nayagarh

2. DEEPAK KUMAR ROURTRAY,
S/o Rabi Narayan Rourtray,
Aged about 27 years,
At - Ostapada, PO - Kamaguru,
Dist - Nayagarh,

.... Applicant(s)

Versus

1. STATE OF ODISHA

Represented by Chief Secretary,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar

2. PRINCIPAL SECRETARY

Revenue and Disaster Management,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar,
Pin - 751001

3. ADDITIONAL CHIEF SECRETARY

Forest and Environment Department,
Govt. of Odisha,
Kharavela Bhawan,
Bhubaneswar,
Odisha - 751 001

4. SECRETARY

Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan,
Jorbag,
New Delhi,
Pin - 110003

5. DEPUTY DIRECTOR GENERAL OF FORESTS (C)

Ministry of Environment, Forest and Climate Change,
Regional Office (EZ),
A/3, Chandrasekharapur,
Bhubaneswar - 751023

*Tic Affid
2022
by Advocate
for Applicant.*

6. COLLECTOR & DIST. MAGISTRATE, NAYAGARH

At/PO/Dist - Nayagarh,
Pin - 752069

7. TAHASILDAR, RANPUR

At/PO/PS - Ranpur,
Dist - Nayagarh,
Pin - 752026

8. SUPERINTENDENT OF POLICE, NAYAGARH

At/PO/PS - Nayagarh,
Pin - 752069

9. INSPECTOR IN CHARGE,

Chandpur Police Station,
Chandpur,
Dist - Nayapur,
Pin - 752024

10. DIVISIONAL FOREST OFFICER, KHORDHA

At/PO/PS - Khordha,
Pin - 752055

11. MEMBER SECRETARY

Odisha State Pollution Control Board,
A/118, Unit - VII, Nilakantha Nagar,
Bhubaneswar,
Pin - 751012
Odisha

12. REGIONAL OFFICER

State Pollution Control Board, Berhampur,
2nd Floor, New Division Office,
IDCO Berhampur Division,
Industrial Estate,
Berhampur, Ganjam,
Pin - 760008

13. MEMBER SECRETARY,

State Environment Impact Assessment Authority (SEIAA), Odisha
Bhubaneswar,
5RF-2/1, Acharya Vihar, Unit - IX,
Pin - 751022

14. THE MEMBER SECRETARY

Central Pollution Control Board,
Parivesh Bhawan, East Arjun Nagar,
Delhi - 110 032

15. DIRECTOR OF GEOLOGY

Bhubigyan Bhawan,
Bhubaneswar, Khordha,
Pin - 751001

16. MANAGING DIRECTOR

Odisha State Cashew Development Corporation Ltd.,
At/PO - Ghatikia,

*The Appraiser
Done
by Ashwini Kumar
Appraiser*

Bhubaneswar, Dist - Khordha,
Pin - 751029

17. SUSANT KUMAR BARAD

Lessee of Mayurjhalla Laterite Stone Quarry,
At/- Srikrushnapur,
PO - Champagarh,
Dist - Nayagarh,
Odisha

18. AGRAWAL INFRABUILD PVT. LTD.

Registered Office at 1st Floor,
VR Plaza, Link Road,
Bilaspur,
Chhatisgarh - 495011

Site Office at Malipada, Khordha,
Odisha, Pin - 752020

.... Respondent(s)

Date of hearing: 18.04.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Mr. Sankar Prasad Pani, Advocate (in Virtual Mode)

For Respondent(s): Ms. Saswata Patnaik, AGA for R-1-3,6-10,15-16, (in Virtual Mode),
Mr. Soumitra Mukherjee, Adv. for R-4 (in Virtual Mode),
Ms. Papiya Banerjee Bihani, Adv. for R-11 & 12 (in Virtual Mode),
Mr. Apurba Ghosh, Adv. for R-13 (in Virtual Mode),
Mr. Ashok Prasad, Adv. for R-14,
Mr. Biranchi Narayan Mahapatra, Adv. for R-17 (in Virtual Mode),
Ms. Paushali Banerjee, Adv. for R-18,

ORDER

1. The allegation in this Original Application is that Respondent No.17, Private Respondent, is the lessee of the Laterite Stone Quarry in question while the Respondent No.18, Agrawal Infrabuild Pvt. Ltd., is the road contractor, engaged for laying six lane of National Highway No.16 from Tangi to Bhubaneswar, (355 Kilometers to 414 kilometers), over a stretch of 60 kilometers road.
2. It is stated that the Respondent No.16, Odisha State Cashew Development Corporation Ltd., has raised cashew plantation in Khata No. 495, Plot No. 1689 over an area of 144.49 acres which is shown as 'Kisam Patita' reserved for 'Gramya Jungle' in Mayurjhalla-Mouza, Ranpur-Tahasil, District-Nayagarh, Odisha.

*TIC Attached
by Advocate*

3. It is also stated that the Respondent Nos. 17 & 18 are mining the plot in question by felling trees and clearing the forest area without obtaining any approval as required under Section 2 of the Forest (Conservation) 1980.
4. Reference has been made to Khatiyani filed at page no. 45 of the Original Application, and it is alleged that the morrum quarrying is being carried on in Plot No. 1689 on a permit of extraction of 2500m³ of morrum issued by the Tahasildar-Ranpur in favour of the Respondent No.18 on 01.11.2021 without there being any Environmental Clearance or Consent to Operate.
5. It is also alleged that the Environmental Clearance has been granted in favour of the Respondent No.17 for mining of Laterite Stone Quarry on 02.02.2021 over an area of 4 acres for an extraction quantity of 7704m³/per annum for a period of five years which will come to 38520m³ from Plot No. 1689 which is "Patit Kisan Reserved for Gramya Jungle" but the area over which the illegal laterite stone quarrying is being carried on by the Respondent No.17 is 144.49 acres of Plot No. 1689 which is absolutely illegal.
6. In para 7 of the Original Application, it is alleged that the Respondent No.18, Agrawal Infrabuild Pvt. Ltd. has been granted quarry permit for extraction of 2500m³ of morrum by the Tahasildar, Ranpur, but he has extracted 100 times more than the permissible limit and more than 15 lakhs cubic meters of morrum has been extracted for six laning work of NH-16 by the Contractor and Respondent No.18.
7. The Odisha State Pollution Control Board, Respondent No.11, has filed its counter-affidavit dated 17.09.2022. Along with this affidavit,

TRUE COPY ATTESTED

BY ADVOCATE

51/14

Annexure-A/2

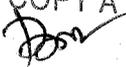
an Inspection Report of an inspection carried out on 13.09.2022 has been filed which reads as under:-

"SALIENT FEATURES OF THE LATERITE QUARRY:

M/s Mayurjhalia Laterite quarry, at-Mayurjhalia, Tehsil-Ranpur, Dist-Nayagarh has obtained Environmental Clearance from the State Environmental Impact Assessment Authority (SEIAA), Bhubaneswar vide letter no.271/SEIAA dtd. 02.02.2021 and is valid for the lease period as granted by the lease granting authority. The mining plan of M/s Mayurjhalia Laterite quarry for the period of five years has been duly approved by Deputy Director Geology, Director of Geology, Bhubaneswar on 13.07.2020 over Plot No.1689 under Khata No.495 of Minor Mineral Mine lease area of Ac. 4.0 res or (1.62) Hectares, Mouza- At-Mayurjhalia, Tahasil-Ranpur, Dist-Nayagarh. Lease agreement has also executed between Government of Odisha represented by the Tehsildar, Ranpur (Lessor) and Sri Susanta Kumar Barad (Lessee) which is valid for a term of five years i.e. from 2021-22 to 2025-26 over Plot No.1689 under Khata No. 495 of Minor Mineral Mine lease area of Ac. 4.0 res or (1.62) Hectares, Mouza- At-Mayurjhalia, Tahasil-Ranpur, Dist-Nayagarh.

CONSENT STATUS OF THE QUARRY:

The lessee had submitted complete Consent to Establish online application with adequate CTE fees of Rs.6000/- and also submitted complete Consent to Operate online application adequate CTO fees of Rs.22500/- for the period 2021-22 to 2024-25 with all statutory clearances like Environmental Clearance, approved mining plan from the competent authorities and also executed lease agreement with the Tehsildar, Ranpur which is valid upto 31.03.2026. Based on the above, Consent to Establish under Sec 25 of Water (PCP) Act, 1974 & under Sec 21 of Air (PCP) Act, 1981 was granted vide Office Memorandum No.2354/CTE-1550/2021 dtd.29.07.2021 in favour of M/s Mayurjhalia Laterite Quarry for Excavation / Quarrying of Laterite Stone @ 7704 cum/Annum and Consent to Operate under Sec 25/26 of Water (PCP) Act, 1974 & under Sec 21 of Air (PCP) Act, 1981 was granted vide letter No.2356/CTO-

TRUE COPY ATTESTED

BY ADVOCATE

15

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Annexure-A/2

2080/2021 dtd. 29.07.2021 valid up to 31.03.2025 for
Excavation / Quarrying of Laterite Stone @ 7704 cum/Annum.

The allegation made in the above mentioned O.A. No.83/2022/EZ is that the consent to establish and operate were granted to M/s Mayurjhalia Laterite quarry without carrying out any inspection and proper procedure was not followed for processing of consent to operate application by the CPCB. It is to mention that the procedure which has been uploaded in the website for processing consent to operate application is not applicable for the minor mineral mines. Generally minor mineral mines are auctioned in every 5 years which were earlier operational. Consent to establish is granted based on all required documents and adequate consent fees. However, the mine operates after obtaining valid consent to operate from the Board. Generally no inspection is required before granting of consent to operate as the sources were previously operational. As the lessee has applied for consent to establish and consent to operate application through online, accordingly consent to establish and operate were granted in favour of lessee with subject to strict compliance of the consent conditions.

OBSERVATIONS:

Following observations are made during inquiry:

- i. During visit M/s Mayurjhalia Laterite Quarry was found non-operational from the surrounding appearance.
- ii. As ascertain by the Revenue Supervisor, Ranpur and Revenue Inspector, Jhadapada Revenue circle during Inspection that the M/s Mayurjhalia Laterite Quarry is not in operation since June 2022.
- iii. As informed by the Revenue Circle Inspector, Jhadapada the mining activity is carried out within the lease hold area.
- iv. Pillar posting has been carried out around the mining area to demarcate ML area as observed during inspection.
- v. Mayurjhalia village is about 2.0 km away in North direction and Raj-Jankla village is about 1.5 km away from the lease hold area of M/s Mayurjhalia Laterite Quarry.
- vi. No other mine is located within 500 meters from the periphery of the existing mine area.

TRUE COPY ATTESTED
BY ADVOCATE

53 (16)

Annexure-A/2

- vii. A mobile water tanker of capacity 3KL has been engaged by the lessee of mine for regular water sprinkling around the mining area to control fugitive emission.
- viii. Cashew plants observed about a distance of 500 meter from the lease hold area of M/s Mayurjhalia Laterite Quarry in North direction.
- ix. One no. of Morrur quarry was located about a distance of 700 m from the lease hold area of M/s Mayurjhalia Laterite Quarry in west direction which was non operational during the time of inspection.
- x. Topsoil generated from the mining activity has been found stocked outside the lease hold area.

CONCLUSION & RECOMMENDATIONS:

From the above observations, it is noticed that the mining activity is carried out with valid Consent to Operate of the Board. Ambient Air Quality monitoring could not be conducted during inspection as the mine was not in operation. The lessee has obtained statutory clearance like Environmental Clearance, approved mining plan from the competent authorities and also executed lease agreement with the Tehsildar, Ranpur which is valid upto 31.03.2026. However, the solid waste management practices i.e. topsoil adopted by the lessee of M/s Mayurjhalia Laterite Quarry was not in accordance of approved mining plan.

In view of the above following recommendations are made:

1. Immediate steps shall be taken for disposal of topsoil generated from the mining activity as per approved mining Plan and conditions stipulated in consent order.
 2. The mining operation shall be carried out as per approved mining plan and in compliance to conditions stipulated in consent order issued by State Pollution Control Board and in accordance with special conditions stipulated in EC."
8. The Collector & District Magistrate, Nayagarh, has filed counter-affidavit dated 06.12.2022, stating therein that in place of 4 acres as against the lease of 6 acres on Plot No.1689, the Respondent Lessee has mined 23.439 acres and a quantity of 53,484.399m³ of laterite stone and 2,41,768.372m³ of morrum illegally. In

TRUE COPY ATTESTED
BY ADVOCATE

17

Annexure-A/2

paragraph 9 of the affidavit, the Collector and District Magistrate, Nayagarh, has also recorded that illegal mining has been carried out by the Opposite Party No.17 and 18.

9. The Collector & District Magistrate, Nayagarh, has filed further affidavit dated 16.04.2023, stating that the Director, Geology, Odisha, had submitted a Detailed Survey Report (DSR) dated 30.11.2022 on the basis of which the Collector and District Magistrate, Nayagarh, has filed his previous affidavit dated 06.12.2022.
10. The Report of the Director, Geology, Odisha, has been filed at page no. 811-816 of the paper book, clearly showing illegal extraction of minor mineral found from the return 'Y' Form as being 13,000.231m³ out of total minor mineral extraction being 14,067.000m³.
11. The Ministry of Environment, Forests and Climate Change, Respondent No.4, has filed affidavit dated 18.08.2022, stating therein that the matter relates to SEIAA, Odisha, which is competent to look into the allegations made in the Original Application and issue show cause notice to the Project Proponents, in case of violation of the conditions of Environmental Clearances.
12. The Central Pollution Control Board, Respondent No.14, has filed affidavit dated 24.08.2022 to the same effect, stating that as per the EIA Notification 2006, the Projects being in Category 'B' SEIAA is the competent authority to issue Environmental Clearance.
13. The Inspector-in-Charge, Chandpur Police Station, has filed affidavit dated 25.08.2022, denying the allegation of connivance with the Tahasildar-Ranpur or of being involved in the illegal quarry mining on Khata No. 495, Plot No. 1689 over an area of

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Annexure- A/2

144.49, Mouza-Mayurajhalia under Chandpur Police Station,
District-Nayagarh.

14. In para 5 of the affidavit, it is stated that on receipt of information regarding illegal laterite stone mining within his jurisdiction, the following cases have been registered which are as follows:-

(I) "Chandpur PS case No.59 dt. 13.07.2020 u/s-379/411/34 IPC/sec.12 OMMPTS Act/Sec. 51 (1) OMMC Rule has been registered on the written report of informant Rabindra Ku Kabi ASI of Police PS-Chandpur, Dist-Nayagarh. During course of investigation he has visited the spot, examine the informant and other witnesses and record their statements u/s-161 Cr.P.C. He has arrested the accused persons Rabindra Behera s/o Gola Behera of village Khatia, PS Ranpur, Dist-Nayagarh and accused Siba Prasad Barik s/o-Lt. Gopal Barik of Bherupada, PS Ranpur, Dist-Nayagarh and forwarded them to the Court. He has seized one old 407 mini truck bearing Regd. No.-OR 02 BX 7940 loaded with Laterite stone. After completion of investigation the case has been Charge Sheeted vide Chandpur PS C.S. No-133 dt.29.09.2020 u/s-379/411/34 IPC/sec.12 OMMPTS Act/Sec. 51(1) OMMC Rule.

(II) Chandpur PS case No.97 dt. 16.09.2020 u/s-379/411/34 IPC/sec.12 OMMPTS Act/Sec. 51(1) OMMC Rule has been registered on the written report of informant SI S.S. Horo of Chandpur PS Dist-Nayagarh. During course of investigation the I.O has visited the spot, examine the informant and other witnesses and record their statements u/s-161 Cr.P.C. on 16.09.2020 I.O of this case arrested the accused persons Sapana Parida s/o-Ratnakar Parida of Karadapalla, 2. Prakash nayak s/o-Lt. Paknaj Nayak of village Karadapalla, 3. Bansi muduli s/o-Lt. Naba Muduli of Narsinghpur all are of PS-Ranpur, Dist-Nayagarh and forwarded them to the Court. In this connection one TATA 909 bearing Regd. No-OR - 02 BZ 8957 loaded with 170 nos. of Laterite stone have been seized from the possession of accused. After completion of investigation the case has been Charge

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Sheeted vide Chandpur PS C.S. No.-181 dt.06.12.2020
u/s-379/411/34 IPC/Sec.12 OMMPTS Act/Sec. 51(1)
OMMC Rule.

(III) Chandpur PS case No.-05 dt. 10.01.2021 u/s-
379/411/294/506/353/34 IPC/sec.12 OMMPTS
Act/Sec. 51(1) OMMC Rule has been registered on the
written report of informant Ramesh Behera ASI of Police
Chandpur PS, Dist-Nayagarh. Informant has
apprehended 5 persons namely 1. Ramesh Pradhan s/o-
Nakula Pradhan, 2.Amrendra Pradhan s/o-Harihar
Pradhan both of village Mayurjhalla PS-Chandpur,
3.Sarat Ku Das s/o-Haribandhu Behera 4.Pankaj Behera
s/o-Kamadaba Behera of Komaguru, 5.Mantu Bhujabala
s/o-Pradip Bhujabala of village Badheisandha Sahi,
(Komaguru) all are PS-Jankia, Dist-Khurdha and also
seized one Swaraj Tractor bearing Regd. No-OR 02 BJ
8106. During course of investigation the I.O has visited
the spot, examine the informant and other witnesses and
record their statements u/s-161 Cr.P.C and the case is
now under investigation.

(IV) Chandpur PS case No-60 dt. 20.04.2021 u/s-
379/411/34 IPC/sec.12 OMMPTS Act/Sec. 51 (1) OMMC
Rule has been registered on the written report of
informant Anjali Saa SI of Chandpur PS, Dist-Nayagarh.
During course of investigation the I.O has visited the spot,
examine the informant and other witnesses and record
their statements u/s-161 CrPC. On 16.09.2020 I.O of this
case arrested the accused persons. The I.O has seized
one TATA 909 bearing Regd. No-OD 02 V 5288 loaded
with 200 laterite stones and one TATA 407 Mini Truck
bearing Regd. No-OR 02 BB 6811 loaded with 150
laterite stones. On dt. 26.05.2021 at 11 30 PM he has
arrested the accused Anil @ Amrendra Pradhan s/o-
Harihar Pradhan of Mayurjhalla, PS-Chandpur, Dist-
Nayagarh and forwarded him to the Court. After
completion of investigation the case has been Charge
Sheeted vide Chandpur PS C.S. No-200 dt.15.12.2021
u/s-379/411/34 IPC/sec.12 OMMPTS Act/Sec.51(1)
OMMC Rule the accused persons 1.Anil @ Amrendra
Pradhan s/o-Harihar Pradhan of Mayurjhalla, PS-
Chandpur, 2.Prasana Singh s/o-Sanyasi Singh of village

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52 Annexure-A/4

- Damasahi, PS-Ranpur, 3.Alok Ku patra s/o-Krushna ChPatra of Hariharpur, PS-Chandpur, 4.Kanhu Chmajhi s/o-Lt. Bansidhar majhi of village Raj-jankia, PS-Chandpur amd 5.Kalu @ Akhaya Pradhan s/o-Duryodhan Pradhan of village Mayurjhalia, PS-Chandpur, Dist-Nayagarh.
- (V) Chandpur PS case 08 DT 18.01.20, U/S 447/379/34 IPC, r.e section 12 OMM (PTS) Act On the written report of **E.M Susantaku Pati**, Ranpur regd the case against 06 accused persons. Vide C.S no165/dt 25.10.2021 against 06 persons. **P.O-Jankia**
- (VI) Chandpur PS case 14 DT 30.01.20 U/S 341/294/232/253379/34 IPC, r.w section 12 OMM(PTS) Act On the written report of **Anil Acharya, Tahasildar** Ranpur regd the case against 07 accused persons. Vide c.s no 51/dt 21.03.2021 against 7 accused persons. **P.O-Srikrushnapur**, Seized-02 vehicle.
- (VII) Chandpur PS case 67 DT 21.08.20 U/S 379/411/IPC, r.w section 12 OMM(PTS) Act On the written report of **CASI Kabiraj Behera** of Chandpur P.S regd the case against one accused person. Vide c.s no 180/dt 27.09.2020 against 02 accused persons. **P.O-Kerendatangi Road chhowk.**
- (VIII) Chandpur PS case 72 DT 14.08.20 U/S 379/34 IPC, r.w section 12 OMM(PTS) Act On the written report of **S.I SS. Horoof** Chandpur P.S regd the case against 1 accused dirver. Vide c.s no 138/dt 30.9.2020 against the accused driver. Seized 1 vehicle. **P.O-Infront of Royal Dhaba.**
- (IX) Chandpur PS case 90 Dt 20.09.20 U/S 379/411/34 IPC, r.w section 12 OMM(PTS) Act/51(I) OMMC Rule On the written report of **Sanjayakumar Samantara, OAS, Tahasildar, Ranpur** regd the case against 1 accused person. Vide c.s no. 147/dt 19.10.20 against 01 accused person. Seized One stone cutter machine, **P.O-Kadamjhol Saharsahi, under Patia G.P.**
- (X) Chandpur PS case 127 DT 4.11.20 U/S 379/411/34 IPC, r.w section r.w section 12 OMM(PTS) Act/51(I)OMMC Rule On the written report of **Sanjayakumar Samantara, OAS, Tahasildar, Ranpur** regd the case against driver of Tripper. Vide c.s no. 105 dt.26.6.21 against 04

accused persons. Seized-maruti alto and one Tractor.

P.O-Champatipurchhowk.

- (XI) Chandpur PS case 129 DT 8.11.20 U/S 379/411/468/471/34 IPC, r.w section 12 OMM(PTS) Act/51(I) OMMC Rule On the written report of **Sanjaya Kumar Samantara, OAS, Tahasildar, Ranpur** regd the case against 04 accused persons. Vide c.s no 41/dt 25.02.21 against 11 accused persons. Seized -4 nos. Hawa Truck. **P.O-Old Patrol Pump on NH-16 Near kandhanayagarh.**
- (XII) Chandpur PS case 139 DT 10.11.20 U/S 379/411/34 IPC, r.w section 12 OMM(PTS) Act/51(I) OMMC Rule On the written report of **Sanjaya Kumar Samantara, OAS, Tahasildar, Ranpur** regd the case against 03 accused persons. Vide c.s no 03/dt 14.01.21 against 02 accused persons. Seized-One Truck **P.O-Samantarapur, Natim**
- (XIII) Chandpur PS case 147 DT 27.12.20 U/S 379/411/34 IPC, r.w section 12 OMM(PTS) Act/51(I) OMMC Rule On the written report of **Sanjaya Kumar Samantara, OAS, Tahasildar, Ranpur** regd the case against 04 accused persons. Seized One Tata Truck and One JCB, **P.O-Kusapalla, Patia G.P Area.**
- (XIV) Chandpur PS case 10 DT 30.01.21 U/S 379/411/34 IPC, r.w section 12 OMM (PTS) Act-1989/51(I)OMMC Rule-2016 On the written report of **S.I S.K. Mallik** regd the case against 03 accused person and others and c.s no 217/dt 31.12.2021 against 03 accused persons seized-One TATA truck, Stone cutter machine-2 **P.O-Backside of Kandhanayagarh Patrol Pump(storage Trading).**
- (XV) Chandpur PS case 140 dt. 11.10.21 U/S 379/411/294/506/353/34 IPC, r.w section 12 OMM(PTS) Act-1989/51(I) OMMC Rule-2016 On the written report of **Chandra Bariksekhar Tahasildar Ranpur (Enforcement)** regd the case against 7 accused persons. Vide c.s no 212/dt 30.12.2021 against 6 accused persons, Seized-One Power tiller **P.O-Ostapada.**
- (XVI) Chandpur PS case 148 DT 4.11.21 U/S 379/411/34 IPC, r.w section 12 OMM (PTS) Act-1989/51(I) OMMC Rule-2016 On the written report of **S.I Anjali Sa** regd the case against 03 persons. Vide c.s no 195/dt 30.11.2021

against 03 accused persons. Seized-One JCB Machine, One Tractor, **P.O_Gramya Junglener village Ranigadia.**

(XVII) Chandpur PS case 04 DT 08.01.22 U/S 379/411/120-B/34 IPC, r.w section 12 OMM(PTS) Act-1989/51(I) OMMC Rule-2016 On the written report of **S.I Anjali Sa** of Chandpur P.S. Registered the case against 4 accused persons and c.s no 32/dt 30.04.2022 against 4 persons, seized-1 JCB, One Stone Cutter Machine, **P.O-Near Phulachandisahi, Patia.**

(XVIII) Chandpur PS case 36 DT 25.03.22 U/S 379/411/120-B/34 IPC, r.w section 12 OMM(PTS) Act-1989/51(I) OMMC Rle-2016 On the written report of S.I anjali Sa of Chandpur P.S stered the case against 3 accused persons and c.s no 49 dt.31.05.2022 against 3 accused persons(Two stone cutter machine seized), P.O.-**Krushnachandrapur Stone quarry.**

(XIX) Chandpur PS case 61 DT 28.05.22 U/S 379/411/120-B/34, IPC, r.w section 12 OMM (PTS) Act-1989/51(I) OMMC Rule-2016 On the written report of **S.I Anjali Sa** of Chandpur P.S Registered the case against 14 accused persons. Seized-2 vehicle and one stone cuter machine, **P.O-Dungurpari Raj Jankia."**

15. We find that while in the cases mentioned at Sl. No. I, II, III, IV, IV, the names of accused persons against whom action has been initiated or who have been arrested have been given but thereafter in cases from Sl. No. V to XIX, the names of the accused persons have not been disclosed. The name of the Respondent No.17 does not figure in this list and so far as Respondent No.18 is concerned, the Inspector-in-Charge, has also not disclosed as to who is the proprietor of the said firm, Agrawal Infrabuild Pvt. Ltd. Why their names have not been disclosed certainly does not show bonafide conduct of the Inspector-in-Charge, Chandpur Police Station.

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Annexure- A/2

16. The State Environment Impact Assessment Authority (SEIAA), Odisha, Respondent No.13, has filed affidavit dated 25.08.2022.

Para 2 of the affidavit is extracted herein below:-

- i) *"The project proponent Sri Susant Kumar Barad had submitted project proposal along with required documents (Form-1, checklist, pre-Feasibility Report (PFR), District Survey Report (DSR), Environmental Management Plan (EMP, Approved Mining Plan and other documents) for environmental clearance (EC) for Mayurajhalia Laterite Stone Quarry-3 over lease area 1.62 ha/4.00 acres in village-Mayurjhalia under Ranpur Tahsasil, Dist-Nayagarh with attaching forwarding letter of Tahasildar, Ranpur on dated 11.01.2021 and application received at SEIAA, Odisha on dated 12.01.2021. Based on the documents and clarification submitted by project proponent/concerned Tahasildar and State Level Expert Appraisal Committee (SEAC) appraisal report, the environmental clearance was issued by SEIAA, Odisha vide letter no.271/SEIAA dated 02.02.2021 for the said project.*
- ii) *During environmental clearance application the Divisional Forest Officer (D.F.O.), Khordha has submitted District Level Committee (D.L.C.) report on forest land with mentioned that the said laterite stone quarry bearing Hal status Khata no.495, Plot No.1689, Kissam-Pattia is not coming in D.L.C. list. However, the Sabik Kissam forest land could not be verified as the said status has not been rectified in the joint verification report.*
- iii) *The D.F.O. is the competent authority to verify the status of the land whether it is coming in forest or non-forest land.*
- iv) *Environmental Clearance issued based on information submitted by the project proponent and approved by concerned Tahasildar and SEAC recommendation. Presuming the peripheral situations some stipulated conditions was given in environmental clearance letter to mitigate any adverse environmental impact during mining activities and that should be followed and monitored by the concerned Tahasildar."*

17. The affidavit of the SEIAA, Odisha, clearly mentions that during consideration of the Environmental Clearance, the Divisional Forest Officer, Khordha, submitted the District Level Committee (DLC)

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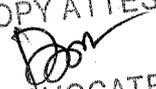
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Annexure- A/2

report on forest land mentioning therein that the said lateriate stone quarry bearing Hal status Khata No. 495, Plot No. 1689, Kissam-'Patita' is not falling in D.L.C. list. However, the Sabik Kissam forest land could not be verified as the said status has not been rectified in the Joint Verification Report.

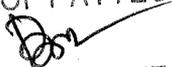
We are indeed surprised that Environmental Clearance was granted by the SEIAA, Odisha, so casually without insisting for production of the records from the Office of the Divisional Forest Officer concerned to ascertain for itself as to what was the nature of the land in the Sabik Records. This shows clear the lackadaisical and casual attitude of the SEIAA, Odisha, in granting Environmental Clearance.

18. The Divisional Forest Officer, Khordha Division in his counter-affidavit dated 17.09.2022 has stated that the land in question belongs to the Revenue Department and is situated under Ranpur Tahasil of Nayagarh District and since the Plot No. 1689, Khata No. 495, area 144.99 in Mouza-Mayurjhalia, Tahasil-Ranpur, District Nayagarh, was recorded as Kissam 'Patita' the same belongs to the Revenue Department and, therefore, the Tahasildar-Ranpur, granted quarry permit for extraction of morrum in favour of Agrawala Infrastructure Pvt. Ltd. and the Divisional Forest Officer has no knowledge about the lease. It is stated that the said Revenue 'Patita' land has neither been notified under any Forest Act nor handed over to the Forest Department for forestry activities. The said land does not find place in the District Level Committee (DLC) report of Nayagarh District, and no plantation programme has been carried out over the area by the Forest Department and there is no existing vegetation present over the area.

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19. The Director of Mines & Geology, Respondent No.15 has filed affidavit dated 05.12.2022, stating therein that the cadastral map of the site in question was received by the Scientist of Odisha Space Application Centre ('ORSAC' for short) on 18.10.2022 for Differential Global Positioning System ('DGPS' for short) survey and accordingly DGPS survey and Total Station survey was undertaken on 30.10.2022 and 01.11.2022 for detection of the extent of illegal mining and based on the same a report was submitted on 11.11.2022 wherein it was found that two areas have been leased out in Plot No. 1689 by the Tahasildar, namely, one is Mayurjhallia for 'laterite quarry' over Ac.4.00 acres and another for 'ordinary earth' quarry comprising over Ac.2.00 acres in the same village. It is also stated that Mining has been done over 23.439 acres against the lease area of 6.00 acres and a quantity of 53,484.399m³ of laterite and 2,41,768.372m³ of morrum were excavated illegally from the aforesaid quarries.
20. The Respondent No.17, Private Respondent, in his additional counter-affidavit dated 25.02.2023 has denied the allegations made in the Original Application wherein it is stated that FIR has been lodged against him in the Chandpur Police Station and it is stated that the Respondent No.17 has also lodged an FIR.
21. The Respondent No.18, M/s Agrawal Infrabuild Pvt. Ltd., has filed affidavit dated 27.02.2023, disputing the findings of illegal excavation of morrum. In addition, it is stated that as per the land records, the Plot No.1689 is 'Patita' land i.e., waste land and referring to the document filed as Annexure-1 (page no. 45), to the Original Application, which mentions the land in question as reserved for 'Gramya Jungle' it is submitted that this does not

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imply that the land in question is to be treated as forest land. Along with this affidavit, deliberations of the DIGF (FC) Agenda No.6 has been filed as Annexure-B (page 446 of the paper book).

22. Learned Counsel for the Respondent No.18 specifically referred to the para 7, 8 and 9 of the Agenda-6 as also the recommendations of the Forest Advisory Committee (FAC) and submitted that it has been held that recording of 'Gramya Jungle Jogya' cannot be stretched to mean that the said land is recorded as forest land and it has been observed therein that the lands recorded as 'Gramya Jungle' are forest lands whereas 'Gramya Jungle Jogya' lands are lands identified for future forest growth such as - for plantation purpose and are not included in the D.L.C. The recommendation of the FAC on this issue also is that 'Gramya Jungle Jogya Jamin' should not be treated as recorded 'forest land' unless they actually have natural forest growth thereon for the purpose of provisions of Forest (Conservation) Act, 1980.
23. The Respondent No.18, M/s Agrawal Infrabuild Pvt. Ltd., has also filed affidavit dated 11.11.2022, stating therein that it was granted permit on 01.11.2021 valid upto 01.02.2022 for quarrying of 'ordinary earth' and not 'morrum' and, therefore, Environmental Clearance was not required as per the Ministry of Environment, Forests and Climate Change Notification dated 28.03.2020. It is denied that there is cashew plantation on Plot No. 1689, Khata No. 495 i.e., the land in question or that there has been any excess quarrying of ordinary earth.
24. The stand of the Respondent No.17, Private Respondent, in his affidavit dated 04.12.2022 is that he is a lease holder of Laterite Stone Quarry of Plot No. 1689, Khata No. 495, area 4 acres of

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Mauyurjhalia Mouza under Ranpur Tahasil of Nayagarh District and that he has a valid Environmental Clearance, Consent to Operate and Consent to Establish. Allegation of illegal stone quarrying has been denied and it is also denied that the land in question is forest land.

25. The stand of the Respondent No.17 further is that the land in question is recorded as 'Patita' in the revenue records and further that there are no trees standing on the said land. It is also stated that as per the Odisha Minor Mineral Concession Rules, 2016, ('OMMC Rules, 2016' for short), Mining Plan has been approved after following due formalities by the State Authorities. Allegations of fraud have been made and it is alleged that the Applicant has not come to the Court with clean hands and case law to that effect has been cited.

26. The Respondent No.17 has filed a further affidavit dated 05.03.2023, bringing on record translated copies of documents which he states have been filed with his affidavit dated 21.01.2023. However, we find that the said affidavit has not been taken on record as it was defective since translated copies Odiya documents had not been filed.

Merely filing the translated copies in the affidavit dated 05.03.2023 does not mean that the affidavit dated 21.01.2023 is taken on record. The Respondent No.17 has not re-filed his affidavit. However, we may refer to these documents (page no. 502 & 504 of the paper book), which show a deposit of Rs. 6,83,160/- (Rupees Six Lakhs Eight Three Thousand One Hundred Sixty Only) made by the Respondent No.17 towards royalty, additional charge, surface rent, dead rent, security deposit and cost of mining plan

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Annexure- A/2

etc. and another deposit of Rs.30,81,960/- (Rupees Thirty Lakhs Eight One Thousand Nine Hundred Sixty only) towards royalty, additional charge and surface rent. The said Respondent has also filed copies of complaints made by him against certain accused persons as well as copy of a representation made by some of the villagers of Chandpur to the Tahasildar-Ranpur, complaining of illegal operation of laterite stone quarry and to penalize the offender.

27. Be that as it may, we may refer to the affidavit of the Collector & District Magistrate, Nayagarh, dated 06.12.2022, wherein it is stated that quarry permit for extraction of 2500m³ and 10,000m³ of ordinary soil over an area of Ac. 2 out of Ac. 144.99 from Plot No. 1689 of Village-Mayurjhalia, was issued on 01.11.2021 and 13.06.2022 by the Tahasildar-Ranpur, in favour of Respondent No.18 for taking up developmental activities of NH-16. Grant of Environmental Clearance is not required and the Kissam of the land in question though recorded as 'Patita' in the remarks column it is 'Reserved for Gramya Jungle' (page no.45 of the Original Application). It is further stated that Plot No. 689, Kissam-'Patita' reserved for 'Gramya Jungle' corresponds to Sabik Plot No. 626 area Ac. 88.78; Plot No. 770 area Ac. 52.56; Plot No. 626/785 area Ac. 6.17 having Kissam 'Bada Jungle & Chhota Jungle' respectively. Out of these total Sabik Plots, Ac. 110.10 of land was leased out in favour of Odisha State Cashew Development Corporation Limited (OSCDC) for cashew plantation leaving the rest area of Ac. 39.89 which is lying without tree growth till date but having rich minor minerals. It is stated that the Hal Plot No.1689 does not come under D.L.C. It is further stated that Respondent

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Annexure- A/7

No.18 has extracted ordinary soil with morrum illegally from the leased out area as well as outside the lease area which came to light after DGPS Survey. The lessee has deviated from almost all the conditions of the lease and the local Revenue Authorities failed to watch and protect the Government property.

28. It is also stated that the then Tahasildar, Ranpur, although competent to issue temporary permit he has not given intimation with regard to issue of permit to the Controlling Authority which was mandatory. The Tahasildar concerned has not followed guidelines before and after issuance of temporary permit which helped the Respondent No.18 in extracting morrum etc. The local authorities remained silent without taking any corrective action but after coming to notice of the authorities after the DGPS survey report, the present Tahasildar has been instructed to impose penalty as per Rule 51 of Odisha Minor Mineral Concession Rules, 2016, and issue demand accordingly. It is further stated that the then Tahasildar, Ranpur, has also granted quarry lease (laterite stone) by creating a new source for an area of Ac. 4.00 out of Ac. 144.99 from the same Plot No. 1689 of Village-Mayurjhalla and from the DGPS Survey it is ascertained that lessee (Respondent No.17) has extracted laterite stone, morrum etc. from the lease area and outside the lease area. It is also stated that the then Tahasildar Sri Jugal Kishore Mishra, OAS, Retd. has issued 108 Y Form Books (each containing 50 Y Forms in triplicate) and Sri Sanjaya Kumar Samantaray, OAS, Ex-Tahasildar has issued 7 Y Form Books in excess which have helped the lessee to loot the minor mineral illegally from outside the source. No register or quarterly return as per OMMC Rules, 2016, was found in the Tahasil Office, thus the

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illegal extraction of laterite stone and morrum by the concerned Respondent is established. It is stated that the local Revenue Authorities have not properly supervised the work and not intimated anything to the higher authority (controlling authority).

29. It is further stated in the affidavit that the present Tahasildar has stopped the illegal operation after field verification and has also suspended the temporary permit order issued to M/s Agrawal Infrabuild Pvt. Ltd., Respondent No.18 herein, and has also lodged FIR in the local Police Station, Chandapur and Ranpur to stop the illegal transportation of minor minerals in the night hours. Special Task Force has also been engaged in this regard to safeguard the minor minerals in the area. It is stated that the Tahasildar, Ranpur, has also imposed restraint order over Ac. 37.61 of land under Section 144 CrPC on the illegally operated quarries located over different Khata/Plot in Mayurjhalia and other adjacent revenue villages such as - Barborjhar, Ostapada, Krushnachandrapur, Patia, Raj-Jankia, Ektal, Kataksahar, Kadamjhola, Muktapur, Brundabanbiharipur and Kuspala, and a squad has also been formed comprising of Tahasildar, Ranpur, Additional Tahasildar, Ranpur, IIC, Chandpur, IIC, Ranpur, and Revenue Supervisor, Ranpur Tahasil, to monitor and accelerate the enforcement activities on illegal lifting and transportation of minor minerals from Ranpur Tahasil.
30. The allegation of the Applicants that depth of the quarry is 15 meters instead of permissible depth of 6 meters is denied and photographs have been filed in this regard with the affidavit. It is also denied that except Ac. 110.10 of land, there was no existence of cashew nut plant. It is stated that the Applicant himself has

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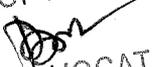
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~~3~~ Annexure- A/7

stated in para 4 that cashew plantation was raised about 40 years ago and due to lease of land the productivity gradually declined.

31. It is further stated that Sri Sanjaya Kumar Samantaray, OAS, Sri Jugal Kishore Mishra, OAS (retd.) and Sri Ashok Kumar Pattanaik, ORS, are squarely responsible for illegal extraction of morrum by Respondent No.18 and have not followed the rules and regulations in this matter. In addition, the concerned Revenue Inspector, Revenue Supervisor and Dealing Assistant/Section Officer are also equally responsible for such lapses.

32. As regards the allegations of excess mining by Respondent Nos.17 & 18, it is stated that the survey report received from Director of Mines & Geology, Odisha, Bhubaneswar, envisaged that the Respondent No.18 has extracted morrum beyond the permitted quantity and the present Tahasildar shall prepare estimate and issue demand accordingly to collect the same from the said Respondent. It is stated that the quarry permit has been issued for 2500m³ and 10,000m³ in favour of Respondent No.18 to extract ordinary soil from Plot No. 1689 over an area of Ac. 2.00 out of Ac. 144.99 and as per Government of India, Department of Environment, Forests & Climate Change, Information and Broadcasting & Heavy Industries and Public Enterprises order dated 15.07.2020, no Environmental Clearance is required for extraction of ordinary soil for developmental works. It is further stated that instead of lifting of ordinary soil, the Respondent No.18 has extracted morrum from different places of the same plot including the lease area beyond the quantity permitted for which action will be taken and the cost with penalty will be realized from him.

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32

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Annexure- A/1

33. It is stated that quarry permit issued in Village-Mayurjhalia to Respondent No.18 was particularly for ordinary soil and accordingly the Mining Plan has been approved. In order to avert Environmental Clearance, the Respondent No.18 has 'cunningly' mentioned the requirement of ordinary soil but has lifted morrum from the lease plot as well as outside of the same plot illegally as per the DGPS Survey Report.
34. It is further stated that the survey report of Director, Steel & Mines Department, Odisha, discloses that Respondent No.17 (lessee Sri Sushanta Kumar Barad), has extracted laterite stone beyond the lease area and accordingly the Tahasildar, Ranpur, has been instructed to prepare estimate and send demand to the lessee as per guidelines. It is, however, denied that there was any cashew tree over the lease area.
35. The stand of the Collector & District Magistrate, Nayagarh, further is that Environmental Clearance was granted in favour of Respondent No.17 for laterite stone quarry over an area of Ac.4.00 from Plot NO. 1689 having KISSAM-'Patita' and in the remarks column of the said plot it is mentioned that 'Reserved for Gramya Jungle' as per Hal Record of Rights. The Tahasildar, however, did not verify the Sabik Record of Rights and based only on Hal Record of Rights and D.L.C. Report that the land in question is not coming within the purview of the D.L.C., permitted the auction and if he had correlated the Sabik Record of Rights and intimated the same to the higher authority the said quarry would not have been auctioned. It is also stated that the then Tahasildar, Sri Sanjaya Kumar Samantaray, OAS and Sri Ashok Kumar Pattanaik, ORS, Addl. Tahasildar-in-Charge, Tahasildar, have unilaterally taken the

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decision for auction of the quarry ignoring the Sabik Record of Rights.

36. The Collector & District Magistrate, Nayagarh, however, denied that 5,000 cashew trees were felled in Mayurjhalia Village due to illegal mining. The OSCDC Ltd. who has planted the cashew nut plants have never alleged felling of cashew plants. It is also denied that the enforcement authority remained silent by collecting nominal amount of penalty or have any nexus with offenders; on the other hand, and it is stated that the S.P., Nayagarh and IIC, Chandapur, have given specific affidavit on initiation of number of criminal cases against the persons unauthorisedly excavated and transported the laterite stone from Chandapur Police Station area. It is denied that timely action has not been taken by the field functionaries at Tahasil level and, in fact, after getting the field survey report from the Director, Mines & Geology, Odisha, the Tahasildar, Ranpur, has been instructed to prepare the estimate of the cost of the minor mineral lifted illegally and impose demand against the lessee.
37. Mr. Sankar Prasad Pani, learned Counsel for the Applicants has referred to the photographs filed as Annexure-1 (page no. 240 to 243) to the Additional Affidavit of the Applicants' dated 19.09.2022 and submitted that the scale map thereof would clearly show that vast forest area has been cleared by the Respondent Nos. 17 & 18 which fact is confirmed in the report of the Collector and District Magistrate, Nayagarh, to the effect that the said Respondents have mined earth and morrum in excess of the mine lease area.
38. Reference has also been made to the Mining Plan of Mayurajhalia Laterite Quarry i.e., the quarry in question, and it is submitted that

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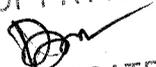
Annexure- A/2

referred to Table-1 and Table-2 thereof would show that the thickness of Geological Reserves of Laterite in Table No.1 was 6 meter and Volume of Saleable Rock Mass was 72,900m³ and the thickness of Mineable Reserve of Laterite in Table No.2 was 6 meter and Volume of Saleable Rock Mass was 54,436m³, which is for the entire period of the Mining Plan i.e., five years, and the Quarry Floor Level (RL) at the end of the plan period of the concession at its lowest level would be 36mRL over 0.856 hectare.

39. Mr. Sankar Pani, learned Counsel further submitted that Chapter-8 of the Mining Plan under the hearing 'OMS' provides that the average ore production/annum - 7704m³; working days per year - 300 days (on an average); production per day - 7704/300=25.65m³; and overall output per man shift (OMS) - 25.68/9 nos.=2.85m³, but the Respondent Nos. 17 & 18 have mined mineral far beyond the permissible capacity for which they are liable for payment of Environmental Compensation.
40. The Applicant has filed additional affidavit dated 04.04.2023, giving a list of dates with regard to the auction of the present quarry and other relevant dates with regard to grant of Consents and Environmental Clearance which is as under:-

"LIST OF DATES IN RESPECT OF R-17"

08/08/2020	<i>Auction Notice for different quarry sources including the present source in Ranpur Tahasil</i>
02/02/2021	<i>Grant of Environmental Clearance for the laterite Stone Quarry over 4 Acres of land in plot no. 1689 without forest Clearance</i>
24/02/2021	<i>Lease deed executed</i>
25/02/2021	<i>Work order issued by Tahasildar Sanjay Samantara</i>
2/03/2021	<i>Y Form Issued</i>

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07/03/2021	Transit Book No. 42030 issued by Tahasildar and the Transit Pass No. 2101490 issued by Lessee prior to grant of CTO
29/07/2021	Consent to Establish granted for the quarry
29/07/2021	Consent to Operate granted on the same day without verifying the site and compliance of CTE conditions
10/08/2021	Google earth image suggesting more than the permitted area under quarry along with three more illegal quarry pits
15/03/2022	DM forwarded the public complaint to Tahasildar but no action taken by the Tahasildar
26/08/2022	Direction by Hon'ble NGT for initiating criminal prosecution against the illegal miners but no action as of now
13/09/2022	Inspection by Regional Office of SPCB and filing of false report
19/09/2022	SEIAA reply under RTI saying no quarterly compliance report submitted even though mining started from March 2021, that is almost 18 months and at least 6 compliance reports are due
31/10/2022	Site Measurement by Director of Mines along with ORSAC team
01/11/2022	Electronic Total Station Survey with a team of 9 members including 5 from ORSAC, two from techno chamber and DDG."

41. A Joint Committee Report has also been filed as Annexure-A/4 to the affidavit by way of illustration to show computation of Environmental Compensation for laterite @ Rs. 6,00,98,923/- (Rupees Six Crore Ninety Eight Thousand Nine Hundred Twenty Three only) and compensation for morrum @ Rs. 1,24,61,378/- (Rupees One Crore Twenty Four Lakhs Sixty One Thousand Three Hundred Seventy Eight only); the total compensation charge comes to Rs. 7,25,60,301/- (Rupees Seven Crore Twenty Five Lakhs Sixty

36
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Annexure- A/P

Thousand Three Hundred One only) in another case Original Application No.10/2023 where also there were allegations of illegal mining. This Joint Committee Report was submitted computing Environmental Compensation in pursuance of directions given by this Tribunal in Original Application No.10/2023 dated 23.01.2023.

42. The Joint Committee Report is extracted herein below:-

***“Joint Committee verification report on Sahadaghai
Laterite Quarry in the matter of Dillip Kumar
Samantray&OrsVrs State of Odisha &Ors of NGT case
O.A. No.10/2023 order dated 23.01.2023***

.....xxx.....xxx.....xxx.....xxx.....

2.0 Present Status of the allegation against Stone Quarry:

As to the direction of Hon'ble National Green Tribunal, assessment of quantum of extraction was conducted at Sahadaghai by the Inspecting Team consisting of Addl. SP, Khordha, Sub-Collector, Khordha, RO, SPCB, BBSR, Dy. Director Mines and Geology, BBSR, Tahasildar, Tangi, Scientist, SEIAA, BBSR, ACF, Khordha, Assistant Mining Officer, Cuttack, Geologist, Khordha over plot no 712, 713, 714, 716 and 717 on 13.02.2023 at 9.00 AM to calculate the Quantum of laterite and Morrum excavated. The entire excavated area was measured with the help of Total Station and hand-held GPS. From the field verification following observations were made:

Sl. No.	Issues	Present status
1.	The Respondent No.11 (Sri Patitapaban Barik, lessee/successful bidder of Sahadaghai laterite quarry-A) was carrying on illegal laterite stone quarries	1. Environmental Clearance (EC) was issued for the Sahadaghai Laterite Stone Quarry-A over a lease area of 6.325 acres or 2.56 Ha at village-Sahadaghai, Tahasil-Tangi, Dist-Khordha vide SEIAA, Odisha letter no. 10394/SEIAA dated

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37
24

Annexure- A/1

<p>mining in Mouza- Sahadaghai, Tahasil- Tangi, Dist-Khordha, in absence of Consent to Establish (CTE), Consent to Operate (CTO) and prior of Transfer of Environmental Clearance (EC) dated 11.05.2022.</p>	<p>17.12.2020 in favour of Tahashildar, Tangi.</p> <p>2. Transfer of EC from the name Tahasildar, Tangi to Sri Patitapaban Barik (successful bidder) was made vide SEIAA, Odisha letter no. 4522/SEIAA dated 11.05.2022 (Online application no. SIA/OR/MIN/271033/2022).</p> <p>3. Consent to Establish (CTE) was issued on 12.10.2022 by SPCB, Odisha but Consent to Operate (CTO) has not been issued for the said quarry (plot no.719, Khata no.278).</p> <p>4. During inspection it was observed that the EC, CTE and Y form was issued for Sahadaghai Laterite Stone Quarry-A bearing Plot No.719 but no mining activity was observed over the said plot.</p> <p>5. Illegal mining was noticed over plot no. 712, 713, 714, 716 & 717 and during inspection there were no mining activities and no machineries found at that place.</p> <p>6. Based on observation the committee suggested the Mines Dept. to calculate the illegally mined out material (without EC, CTO and approval from Tahasil) in that area and accordingly the concerned Dept. calculated illegally mined out material. The details are mentioned below.</p>
<p>2. The petitioner alleged that the area in question is full of acacia, cashew and</p>	<p>1. The committee observed that some acacia, cashew and other associate trees were existing over the area and some species were fallen due</p>

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<p>other associate trees and the said land is forest land recorded in the Sabik Record.</p>	<p>to illegal mining to clear that area for easily extraction of materials.</p> <p>2. That area is not coming under forest according to the Hal record. But in Sabik record it is found that Khata No.165, Plot No.384, corresponding to Plot No.712, 713, 714, 716 and 717 comes under Kisam-Chhota Jungle.</p>
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3.0 Overall observations:

The Committee members observed the following at the time of inspection:

- Environmental Clearance (EC) was issued for the Sahadaghai Laterite Stone Quarry-A over a lease area of 6.325 acres or 2.56 Ha at village-Sahadaghai, Tahasil-Tangi, Dist-Khordha vide SEIAA, Odisha letter no. 10394/SEIAA dated 17.12.2020 in favour of Tahasildar, Tangi.
- Transfer of EC from the name Tahasildar, Tangi to Sri Patitapaban Barik (successful bidder) was made vide SEIAA, Odisha letter no. 4522/SEIAA dated 11.05.2022 (Online application no. SIA/OR/MIN/271033/2022).
- Consent to Establish (CTE) was issued on 12.10.2022 by SPCB, Odisha but Consent to Operate (CTO) has not been issued for the said quarry (Plot No. 719, Khata No. 278).
- EC, CTE issued only for plot no. 719 and no mining activity was observed over the said plot. Illegal mining was noticed over Plot No. 712, 713, 714, 716 & 717 except plot no. 719, Khata no. 278 and the Committee concluded that there was illegal mining occurred and accordingly suggested for calculation of illegally mind out material.
- The extent of the quarry was identified by concerned RI. Boundary pillars mentioned in the approved mining plan were not found at quarry lease area which reveals that the lessee has intentionally not posted the boundary pillars and operated quarry outside the lease area.
- The Quarry operation was made at several patches over the plot no. 712, 713, 714, 716 and 717. The quantum of excavation was estimated over these plots. The details of calculation are given in the Table below.

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- The details calculation of illegally mined out material as follows:

1. Table of Calculation: Plot No.712, 713 and 714 (Laterite)

Sl. No.	PATCH	Excavated area in Sq.M	THICKNESS in M	VOLUME of excavation in cu.m
1	A	159	3	477
2	B	42	1	42
3	C	143	3	429
			TOTAL	948

2. Table of Calculation: Plot No.716 and 717(Laterite)

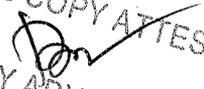
Sl. No.	PATCH	Excavated area in Sq.M	THICKNESS in M	VOLUME of excavation in cu.m
1	A	1337	2	2674
2	B	515	2	1030
3	C	834	0.5	417
4	D	314	0.5	157
5	E	635	1	635
			TOTAL	4913

3. Table of Calculation: Plot No.712, 713 and 714(Morrum)

Sl. No.	PATCH	Excavated area in Sq.M	THICKNESS in M	VOLUME of excavation in cu.m
1	A	159	1	159
2	B	42	1	42
3	C	143	1	143
			TOTAL	344

4. Table of Calculation: Plot No.716 and 717 (Morrum)

Sl. No.	PATCH	Excavated area in Sq.M	THICKNESS in M	VOLUME of excavation in cu.m
1	A	1337	2	2674
2	B	515	2	1030

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Annexure- A/2

3	C	834	0.5	417
4	D	314	0.5	157
5	E	635	1	635
			TOTAL	4913

Total Laterite excavated : 948+4913 = **5861cu.m**

Total Morrum excavated :344+4913 = **5257cu.m**

1. Calculation for compensation of Laterite according to the order of Hon'ble NGT in O.A. No.150/2019 and CPCB guidelines:

Market value of illegally mined Laterite (D) = 5861 x Rs.3080/-
(Scale of compensation regime towards environmental and ecological damage for laterite was calculated @ Rs.3080/- in the meeting held on 17.10.2023)

Annual value of Foregone Ecological value
 $D^*/RF=Rs.1,80,51,880/- \times 1(RF=1, Sever Impact) =$
Rs.1,80,51,880/-

- Present value of Foregone Ecological values (@ 5% discount rate and over 5 years)

$$PV = \sum_{t=1}^5 (D^*RF)/(1+r)^t$$

$$= \sum 18051880/ (1+0.05)^1 + 18051880/ (1+0.05)^2 + 18051880/ (1+0.05)^3 + 18051880/ (1+0.05)^4 + 18051880/ (1+0.05)^5 =$$

$$17192266 + 16373587 + 15593892 + 14851370 + 14139688 =$$

Rs.7,81,50,803/-

- Net present value (after netting out market value of illegally mined material) - i.e., Total Compensation to be levied

$$= NPV = PV-D$$

$$= Rs.7,81,50,803.00 - Rs.1,80,51,880.00 = Rs.6,00,98,923/-$$

Compensation Charge in above case for **Laterite:**
Rs.6,00,98,923/-

2. Calculation for compensation of Morrum according to the order of Hon'ble NGT in O.A. No.150/2019 and CPCB guidelines:

Market value of illegally mined Morrum(D) = 5257 x Rs.712/-
(Scale of compensation regime towards environmental and ecological damage for morrum was calculated @ Rs.712/- in the meeting held on 17.10.2023)

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Annual value of Foregone Ecological value $D^*/RF=Rs.37,42,984$

• Present value of Foregone Ecological values (@ 5% discount rate and over 5 years)

$$PV = \sum_{t=1}^5 (D^*RF)/(1+r)^t$$

$$= \frac{3742984}{(1+0.05)^1} + \frac{3742984}{(1+0.05)^2} + \frac{3742984}{(1+0.05)^3} + \frac{3742984}{(1+0.05)^4} + \frac{3742984}{(1+0.05)^5} = 3564746 + 3394996 + 3233330 + 3079362 + 2931929 =$$

Rs.1,62,04,362/-

• Net present value (after netting out market value of illegally mined material) - i.e., Total Compensation to be levied

$$= NPV = PV-D$$

$$= Rs.1,62,04,362.00 - Rs.37,42,984.00 = Rs.1,24,61,378/-$$

Compensation Charge in above case for **Morrum:**

Rs.1,24,61,378/-

Total Compensation Charge in above case for Laterite and

Morrum = 6,00,98,923 + 1,24,61,378 = Rs.7,25,60,301/-.

Conclusion:

A letter no. 2255 dated 20.02.2023 has been issued to Sub-Collector, Khordha for promulgation Section-144 CrPC over the plots of Sahadaghai mouza immediately to stop further illegal mining over the said area and intimate the action taken report within three days.

Another letter no.2252 dated 20.02.2023 has been issued to TahasildarTangi to realize the dues from the lessee and take all possible steps to stop illegal mining in the Sahadaghai mouza under TangiTahasil and intimate the action taken report within three days."

43. Mr. Sankar Prasad Pani, learned Counsel submits that in the present case even assuming that Environmental Clearance was granted on 02.02.2021 and lease was executed on 24.02.2021, it is quite clear that upto filing of the present Original Application in 2022 and when the direction of the Tribunal issued i.e., on 26.08.2022, to initiate criminal action against the Private Respondent Nos. 17 & 18, if illegal extraction of morrum is established, the period of mining is just about one year and six months and in this period the Respondent Nos. 17 & 18 have

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illegally mined 53,484.399m³ of laterite and 2,41,768.372m³ of morrum as per the affidavit of the Director, Mines and Geology, Odisha, therefore, while computing the compensation the authorities have also to take into consideration the period during which such illegal mining has taken place.

44. The affidavit of the Collector & District Magistrate, Nayagarh, dated 06.12.2022, clearly shows that the quarry permit was issued for 2500m³ and 10000m³ in favour of Respondent No.18 to extract ordinary earth from Plot No. 689 of Village-Mayurjhalia but the said Respondent, as per the report of the Director of Mines & Geology, Odisha, has extracted morrum beyond the permitted quantity. The affidavit further mentions that in order to avoid the mandatory requirement of taking Environmental Clearance, the Respondent No.18 has 'cunningly' mentioned the requirement of 'ordinary soil' in his application for lease but instead has lifted 'morrum' from the lease plot as well as outside the same plot illegally. It is further stated as per the survey report of the Director, Steel & Mines Department, Odisha, the Respondent No.17 has extracted laterite stone beyond the lease area.
45. So far as the question as to whether the land in question is forest land i.e. 'Gramya Jungle' or 'Gramya Jungle Jogya' is concerned, the affidavit of the Collector & District Magistrate, Nayagarh, categorically mentions that though the Hal Plot No.1689 mentions Kissam-'Patita' or reserved for 'Gramya Jungle' corresponding to Sabik Plot No.262 area Ac. 88.78, Plot No.770 area Ac. 52.65, Plot No. 626/785 area Ac. 6.17, having Kissam-'Bada Jungle & Chhota Jungle' respectively, this fact was concealed from the authorities by the then Tahasildar and Additional Tahasildar and if this fact

had been disclosed by the then Tahasildar and Additional Tahasildar, in-Charge Tahasildar and the Hal record correlated with Sabik Record of Rights, such quarry would not have been auctioned. The name of the Tahasildar and Additional Tahasildar have been disclosed in the affidavit as Sri Sanjaya Kumar Samantaray, OAS Tahasildar and Sri Ashok Kumar Pattnaik, ORS, Additional Tahasildar-in-Charge, Tahasildar, respectively and it is categorically stated that these aforesaid persons have unilaterally taken the decision for auction of the quarry ignoring the Sabik Record of Rights.

46. Thus, connivance and collusion of Sri Sanjaya Kumar Samantaray, OAS Tahasildar and Sri Ashok Kumar Pattnaik, ORS, Additional Tahasildar-in-Charge, Tahasildar, in fudging the records and concealing the correct records from the authorities have rendered themselves liable for criminal prosecution for causing financial benefit to the Respondent Nos. 17 & 18 and also causing loss to valuable State resources thereby causing huge loss to the Public Exchequer under the Odisha Minor Mineral Concession Rules, 2016. Section 51 of the OMMC Rules, 2016, reads as under:-

“51. Penalties:— (1) (i) *Whenever any person is found extracting or transporting any minor mineral or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal extraction or removal of such minor minerals and every such person shall be punishable with simple imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees or with both and in case of a continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.*

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Annexure- A/P

- (ii) The Collector or Sub-Collector or Tahasildar or Director or Joint Director or Deputy Director or Mining Officer or Senior Inspector of Mines or Divisional Forest Officer or Assistant Conservator of Forest or Range Officer or Police Officer not below the rank of Sub-Inspector of Police may seize the minor minerals and its products together with all tools, equipments and vehicles used in committing such offence within their respective jurisdiction.
- (iii) No court shall take cognizance of any offence punishable under these rules except upon complaint in writing made by such officer or authority mentioned under clause (ii) of this sub-rule having jurisdiction.
- (iv) Where the offender agrees in writing to compound the offence punishable under these rules, the Tahasildar or Deputy Director or Mining Officer or Divisional Forest Officer, within their respective jurisdiction, shall, either before or after filing the complaint, compound the offence on payment of such sum, as determined by the officers mentioned under clause (ii), not exceeding the maximum amount of fine prescribed under these rules and value of the mineral and other properties seized and on payment of such fine and value, the seized mineral and properties shall be released forthwith: Provided that the accused shall be liable to furnish an undertaking or bond to the effect that he shall not commit such offence in future: Provided further that, in case the offender fails to pay the value of mineral and any other property, such properties shall be confiscated to Government and disposed of through public auction.
- (v) Where an offence under these rules is compounded, no proceeding or further proceeding, as the case may be, shall be initiated against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith.
- (vi) If no person claims the mineral and other property, if any, so seized within a period of thirty days, the authority competent to compound the offence may confiscate the same to the State and dispose of the same through public auction."

(2) Whenever any person trespasses into any land in contravention of the provisions of these rules, such trespasser

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82

45

Annexure- A/2

may be served with an order of eviction by the Tahasildar or Sub-Collector or Collector or Deputy Director or Mining Officer or Assistant Mining Officer or Divisional Forest Officer or Assistant Conservator of Forest or Range Officer within their respective jurisdiction and such Government Officer, if necessary, may obtain the help of the police to evict the trespassers from the land.

(3) Any mineral, tool, equipment, vehicle or any other things seized under these rules in respect of which complaint has been filed under clause (iii) of sub-rule (1), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence and shall be disposed of in accordance with the directions of such court.

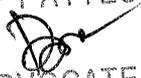
(4) Whenever the person wins, without any lawful authority, any mineral from any land, the Tahasildar or Mining Officer or Deputy Director or Divisional Forest Officer, as the case may be, may recover from such person the mineral so won, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(5) If the person committing an offence under these rules is a company, every person, who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished as per the provisions of the Act and these rules:

Provided that nothing contained in this sub-rule shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(6) Notwithstanding anything contained in sub-rule (5), where an offence under these rules has been committed with the consent or connivance of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and

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shall be liable to be proceeded against and punished accordingly.

Explanation:- for the purposes of this rule -

- (a) "Company" means anybody, corporate and includes a firm or other association of individuals;
- (b) "Director" in relation to a firm means a partner in the firm.

(7) In case of breach of any condition of the lease deed, the Competent Authority may give notice of sixty days to the lessee to rectify the defects within the time specified and if the lessee fails to rectify the defects within the specified time, the Competent Authority may cancel the lease and/or levy a penalty not exceeding rupees fifty thousand.

(8) In case of breach of any condition mentioned in rule 37 of these rules and other conditions which the Competent Authority might have specified while granting a quarry permit, the Competent Authority may impose a penalty which may extend to rupees five thousand per day and in the event of continuing contravention, the Competent Authority may cancel the permit and in such case the minerals lying on the land from which the same are extracted shall thereafter become the property of the Government and be disposed of by public auction."

47. Learned Counsel for the Applicants, referring to Clause (i) of Sub-rule 51(1) submitted that the said Rule empowers the revenue assessing authority to punish any person found extracting or transporting any minor mineral or on whose behalf such extraction or transportation is being made otherwise than in accordance with the Rules, but shall be presumed to be a party to the illegal extraction or removal of such minor mineral, shall be punishable with simple imprisonment for a term which may extend to two years or with fine which may extend to five lakhs rupees or with both and in case of a 'continuous' contravention, with an additional fine which may extend to five thousand rupees for every day during

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Annexure- A/P

which such contravention continuous after conviction for the first such contravention.

48. We may also note that if the Respondents have applied for lease for extraction of ordinary soil/earth and under the garb thereof have illegally extracted morrum or laterite stone, as the case may be, they would have to obtain Environmental Clearance for the same.
49. We accordingly dispose of this Original Application with a direction to the State Respondents to initiate criminal proceedings against the Respondent No.17 & 18, Sri Susant Kumar Barad, Lessee of Mayurjhalia Laterite Quarry, and Sri Shashank Agarwal, Director of M/s Agarwal Infrabuild Private Limited, for illegal extraction of ordinary earth/soil/morrum beyond the lease area as per Section 51 of the OMMC Rules, 2016, by lodging FIRs within a period of two months.
50. The State Respondents shall also initiate criminal proceedings against the then Tahasildars Sri Jugal Kishore Mishra, OAS (retd.), Sri Sanjaya Kumar Samantaray, OAS, and the then Additional Tahasildar, in-Charge Tahasildar, Sri Ashok Kumar Pattnaik, ORS, concerned Revenue Inspector, Revenue Supervisor and Dealing Assistant/Section Officer (as disclosed in the affidavit of the Collector & District Magistrate, Nayagarh), for unilaterally taken the decision for auction of the quarry ignoring the Sabik Record of Rights and fudging the records and concealing the correct records from the authorities and causing financial benefit to the Respondent Nos. 17 & 18 and also causing loss of valuable State resources and thereby causing huge loss to the Public Exchequer, as per Section 51 of the OMMC Rules, 2016, by lodging FIRs within a period of two weeks.

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BY ADVOCATE

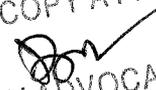
51. A further direction is issued to the SEIAA, Odisha, Respondent No.13, to compute Environmental Compensation against the Respondent Nos. 17 & 18 for excess mining of laterite stone/morrum/ordinary earth, bearing in mind the observation made hereinabove, after giving the said Respondents due notice with regard to the methodology of computation and thereafter proceed to recover the same from the Respondent Nos. 17 & 18 in accordance with law without being influenced by Environmental Compensation computed in Original Application No.10/2023 within a period of two months.
52. I.As. if any, stand disposed of accordingly.
53. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

.....
Dr. Afroz Ahmad, EM

April 18, 2023,
Original Application No.83/2022/EZ
(I.A. No.189/2022/EZ)
AK

NGT

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BY ADVOCATE

49
High Court of Orissa

Annexure-A/1

High Court of Orissa
Case Details

Case Type	: WP(C)	
Filing Number	: 24652/2023	Filing Date: 02-08-2023
Registration Number	: 24652/2023	Registration Date: 03-08-2023
CNR Number	: ODHC01-059934-2023	

Case Status

First Hearing Date	:	
Next Hearing Date	:	
Stage of Case	:	---
Bench	:	Single Bench
State	:	ORISSA
District	:	Nayagarh
Judicial	:	Civil Section
Last Page Number	:	386
Next Page Number	:	387

Petitioner and Advocate

1) SUSANTA KUMAR BARAD Advocate- SANGRAMJEET SENAPATI,B.N.MAHAPATRA
--

Respondent and Advocate

1) STATE OF ODISHA
2) PRINCIPAL SECY., REVENUE AND DISASTER MGMT.DEPT., KHURDA
3) ADDL. CHIEF SECY., FOREST AND ENVIRONMENT DEPT., BBSR
4) MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE, NEW DELHI
5) DEPUTY DIRECTOR GENERAL OF FORESTS(C), BBSR

Acts

Under Act(s)	Under Section(s)
CONSTITUTION OF INDIA, 1950	226,227

IA Details

IA Number	Party	Date of Filing	Next Date	IA Status
IA/11819/2023	SUSANTA KUMAR BARAD STATE OF ODISHA	02-08-2023	--	Pending

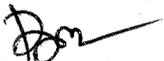
Orders

Order Number	Order on	Judge	Order Date	Order Details

OBJECTION

Sr.No.	Scrutiny Date	OBJECTION	Compliance Date	Receipt Date
1	03-08-2023	All Objections are Complied	03-08-2023	--

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50

Annexure-A/1

1

IN THE HIGH COURT OF ORISSA, CUTTACK.

W.P.(C) NO. 24652 OF 2023.

CODE NO.

In the matter of:

An application under Articles 226 and 227
of the Constitution of India.

A N D

In the matter of:

An application challenging the order
dtd.18.04.2023 passed by the learned
National Green Tribunal/EZ in O. A. No.83
of 2022/EZ, since it is passed simply relying
on a manufactured and forged document/
report of Dy. Director of Mines & Geology
prepared and filed by the Collector,
Nayagarh on the face of it by forging the
signature of the Dy. Director of Mines &
Geology on the report of the Dy. Director of
Mines & Geology and also challenging the
order dtd.19.05.2023 passed in Review
Petition No.01 of 2023/EZ.

A N D

In the matter of:

Susanta Kumar Barad,
Aged about 35 years,
S/o. Sarbeswar Barad,
At-SriKrushnapur, Po.- Champagarh,
P.S.- Chandapur, Dist. Nayagarh. ... Petitioner
(Respondent No.17 before the NGT)

- Versus -

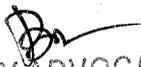
1. State of Odisha,

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BY ADVOCATE

- Represented by Chief Secretary,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar – 751001,
2. Principal Secretary,
Revenue and Disaster
Management Department,
Government of Odisha,
Kharavela Bhawan,
State Secretariat,
Bhubaneswar – 751001.
 3. Additional Chief Secretary,
Forest and Environment
Department, Govt. of Odisha,
Kharavela Bhawan,
State Secretariat,
Bhubaneswar – 751 001.
 4. Secretary,
Ministry of Environment,
Forests and Climate Change,
Indira Paryavaran Bhawan,
Jorbag Road, New Delhi, 110003.
 5. Deputy Director General
of Forests (C), Regional Office,
Eastern Zone (EZ),
Ministry of Environment,
Forest and Climate Change,
A/3, Chandrasekharapur,
Bhubaneswar – 751023.
 6. Collector-cum- Dist. Magistrate,
Nayagarh Collectorate,
At/PO/Dist - Nayagarh,
Odisha, Pin – 752069.

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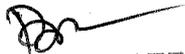
5/12

Annexure-A/1

3

7. Tahasildar,
Ranapur Tahasil Office,
At/PO/PS - Ranapur,
District-Nayagarh, Pin – 752026.
8. Superintendent of Police,
Nayagarh District Police Headquarter,
At/Po./PS - Nayagarh,
Odisha, Pin – 752069.
9. Inspector In- Charge,
Chandpur Police Station,
Chandpur, Dist – Nayagarh,
Odisha, Pin – 752024.
10. Divisional Forest Officer,
Khordha Forest Division,
At/PO/Dist:- Khordha,
Odisha, Pin – 752055.
11. Member Secretary,
Odisha State Pollution Control Board,
Paribesh Bhawan, A/118,
Unit – VII, Nilakantha Nagar,
Unit-8, Bhubaneswar, Pin – 751012.
12. Regional Officer,
State Pollution Control Board,
Berhampur, 2nd Floor,
New Division Office,
IDCO Berhampur Division,
Industrial Estate, Berhampur,
Ganjam, Pin – 760008.
13. Member Secretary,
State Environment Impact
Assessment Authority,
Qr.5 RFm 2/1, Unit – 9,
Bhubaneswar, Pin – 751022.

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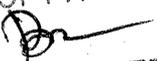
Annexure-A/1

4

14. The Member Secretary,
Central Pollution Control Board,
Parivesh Bhawan,
East Arjun Nagar,
Delhi – 110032.
15. Director of Geology,
Bhubigyan Bhawan,
Bhubaneswar,
Khordha, Pin – 751001.
16. Managing Director,
Odisha State Cashew
Development Corporation Ltd.,
At/PO – Ghatikia,
Bhubaneswar, Dist – Khordha,
Pin – 751029.
17. Agrawal Infrabuild Pvt. Ltd.
Registered Office at 1st Floor,
VR Plaza, Link Road,
Bilaspur, Chhatishgarh - 495011,
Site Office at Malipada,
Khordha, Odisha, Pin – 752020. ... Opp.Parties.

(Opp. Parties No.1 to 17 were
Respondents No.1 to 16 and 18
before the NGT)

18. Dilip Kumar Samantaray,
S/o Lingaraj Samantara,
Aged about 35 years,
At – Bajtakot, PO – Baunsagarh,
PS – Ranpur, Dist – Nayagarh,
Odisha – 752026.
19. Deepak Kumar Routray,
S/o Rabi Narayan Routray,
Aged about 27 years,

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BY ADVOCATE

54

Annexure - All

5

At - Ostapada, PO - Kamaguru,
Dist - Nayagarh, Odisha,
Pin - 752026.

... Opp. Parties

(Opp. Parties No.18 and 19 were
Applicants before the NGT)

The matter out of which this writ application arises was never before this Hon'ble Court by the petitioner in the present form but W.P.(C) No. 20909 of 2023 has been filed on different context as per instruction.

To,

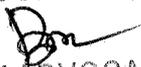
The Hon'ble Chief Justice of Orissa High Court
and His Lordship's Companion Justices of the said
Hon'ble Court.

The humble petition of the
above named petitioner;

MOST RESPECTFULLY SHEWETH:-

1. That the petitioner finding no other alternative equally speedy and efficacious remedy invokes the extraordinary jurisdiction of this Hon'ble Court challenging the order dtd.18.04.2023 passed by the learned National Green Tribunal/EZ in O. A. No.83 of 2022/EZ, since it is passed simply relying on a manufactured and forged document/report of Dy. Director of Mines & Geology, prepared and filed

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BY ADVOCATE

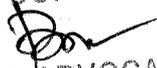
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Annexure-A/1

6

by the Collector, Nayagarh on the face of it by forging the signature of the Dy. Director of Mines & Geology on the report of the Dy. Director of Mines & Geology and also challenging the order dtd.19.05.2023 passed in Review Petition No.1 of 2023/EZ filed by the petitioner, since the orders are illegal, unjust, improper, based on manufactured and forged documents, without any basis, perverse, contrary to the material on record and hence, the same are liable to be set aside.

2. That the petitioner is a citizen of India and resides within the territorial jurisdiction of this Hon'ble Court. Parties are amenable to the writ jurisdiction of this Hon'ble Court. The Cause of action also arises within the territorial jurisdiction of this Hon'ble Court.
3. That it is humbly submitted that after District Survey Report(DSR) prepared by the competent authorities i.e. the Collector/Opp. Party No.6, D.F.O., Sub-Collector and Asst. Conservator of Forest, Nayagarh on dtd.07.12.2019, Mining Plan was approved by the Deputy Director Geology on dtd.13.07.2020. Thereafter, the Environmental

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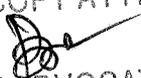
Annexure-1/1

7

Clearance (EC) was granted by the State Environment Impact Assessment Authority (SEIAA)/Opp. Party No.13 vide order dtd.02.02.2021. After completion of all formalities, Lease Agreement was executed between the Governor of Odisha, represented by the Tahasildar/ Opp. Party No.7 and the petitioner after deposit of all dues, as the petitioner was selected as the highest bidder for Mayurajhalia Laterite Quarry over an Area-4.00 Acres/1.62 Hc. for five years from February, 2021 to February, 2026 vide registered Lease Agreement dtd.22.02.2021. Copies of the District Survey Report(DSR) dtd.07.12.2019, Approved Mining Plan dtd.13.07.2020, Environmental Clearance(EC) dtd.02.02.2021 and Lease Agreement dtd.22.02.2021 are annexed hereto as **ANNEXURE-1, 2, 3 and 4 respectively.**

4. That it is humbly submitted that the State Pollution Control Board also granted the Consent to Operate in favour of the petitioner to operate Mayurajhalia Laterite Quarry over an Area-4.00 Acres/1.62 Hc. vide order dtd.29.07.2021. Copy of the said Consent to Operate (CTO) order dtd.29.07.2021 is annexed hereto as **ANNEXURE-5.**

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BY ADVOCATE

57

Annexure-A/1

8

5. That while the matter stood thus, one Deepak Kumar Routray, who was doing illegal mining in the entire Mayurajhalia Mouza along with his henchmen, against whom several Criminal Cases have been filed and pending under Orissa Mines and Mineral (Prevention of Theft Smuggling Activities) Act, 1989, OMMC Rules, under Sections-379/411/294/506/353/34 IPC bearing numbers, (1) Chandpur P.S. Case No.140 of 2021 corresponding to G.R. Case No.330 of 2021 pending in the Court of learned J.M.F.C., Ranpur, (2) Chandpur P.S. Case No.127 of 2020 corresponding to G.R. Case No.421 of 2020 pending in the Court of learned J.M.F.C., Ranpur, (3) Chandpur P.S. Case No.152 of 2022 corresponding to G.R. Case No.387 of 2022 pending in the Court of learned J.M.F.C., Ranpur, (4) Chandpur P.S. Case No.87 of 2020 corresponding to G.R. Case No.348 of 2020 pending in the Court of learned J.M.F.C., Ranpur, (5) Chandpur P.S. Case No.14 of 2020 corresponding to G.R. Case No.43 of 2020 pending in the Court of learned J.M.F.C., Ranpur, filed the O. A. No. 83 of 2022/EZ before the learned National Green Tribunal/EZ, Kolkata alleging illegal grant of Mining Lease and illegalities in

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BY ADVOCATE

58

Annexure-A/1

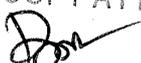
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operation of Laterite Stone Quarries and morrum mining. Copy of the O. A. No. 83 of 2022/EZ filed before NGT/EZ, Kolkata is annexed hereto as **ANNEXURE-6**.

6. That the IIC/Opp. Party No.9 filed the affidavit before the NGT stating that several criminal cases have been filed/registered against several accused persons including the applicants in the O.A. for theft of mineral but the petitioner is never involved in any such cases. Copy of the affidavit filed by the IIC/Opp. Party No. 9 is annexed hereto as **ANNEXURE-7**.

7. That the D.F.O./Opp. Party No. 10 filed the affidavit before the NGT stating that the land is not forest land and there is no illegality as alleged in the O.A. Copy of the affidavit filed by the D.F.O./Opp. Party No. 10 is annexed hereto as **ANNEXURE-8**. The State Pollution Control Board/Opp. Party No. 11 filed the affidavit before the NGT stating that there is no illegality as alleged in the O.A. Copy of the affidavit filed by the State Pollution Control Board/Opp. Party No. 11 is annexed hereto as **ANNEXURE-9**.

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BY ADVOCATE

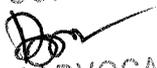
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Annexure A/1

10

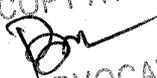
8. That pursuant to the specific order dtd.26.08.2022 passed by the learned NGT, the Director of Mines & Geology/Opp. Party No. 15 conducted an enquiry by the Deputy Director, Sri D. K. Sahoo. The Director/Opp. Party No. 15 filed an Enquiry Report along with affidavit on dtd.05.12.2022 before the NGT. It is humbly submitted that the petitioner has been granted lease from Quarry 1 and Opp. Party No. 17 has been granted lease from Quarry 2. It is stated in the Enquiry Report that the actual material lifted by the lessee in Quarry 1 and Quarry 2 is not available in office. The report has also not been signed by other officers of the committee. It is further stated that Quarry 1 was submerged with water during the time of survey and survey was done with the help of bamboo. Thus, it is clear that proper measurement has not been done and basing on the said measurement, it is stated that total illegal excavation of Quarry 1 is Laterite-1724.330 cu.m., Morrum-77488.6020cu.m. Copy of the counter affidavit filed by the Director/Opp. Party No. 15 is annexed hereto as **ANNEXURE-10.**

9. That the petitioner filed the counter affidavit before the NGT denying all the allegations made against

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BY ADVOCATE

him and had also filed the documents about the criminal activities and criminal cases pending against the Applicants for theft of Mineral in the particular Mayurjhalia mining area/mouza. Copy of the counter affidavit filed by the petitioner is annexed hereto as ANNEXURE-11.

10. That the Collector/Opp. Party No.6 filed an affidavit manipulating and forging the enquiry report of Dy. Director of Mines & Geology, by even forging the signature of the Dy. Director of Mines & Geology and submitted a manufactured enquiry report of Dy. Director of Mines & Geology before NGT. The Collector has filed the affidavit without any basis since the petitioner had filed a criminal case against the applicants of the O.A. Copy of the counter affidavit filed by the Collector/Opp. Party No. 6 is annexed hereto as ANNEXURE-12. The petitioner filed the Reply affidavit to the affidavit of the Collector on dtd.21.01.2023. Copy of the Reply affidavit dtd.21.01.2023 filed by the petitioner is annexed hereto as ANNEXURE-13.
11. That the learned Tribunal(NGT) without considering the matter from its proper perspective

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BY ADVOCATE

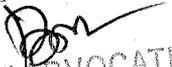
61

ANNEXURE-A/1

12

and simply relying on the affidavit and the manufactured document filed by the Collector/Opp. Party No.8 vide order dtd.18.04.2023 disposed of the Original Application directing to initiate criminal proceeding against the petitioner by lodging FIR and further directing SEIAA/Opp. Party No.13 to compute Environmental Compensation against the petitioner for excess mining, which is illegal, improper, unjust in respect of the petitioner and hence, is liable to be quashed/set aside. Copy of the order dtd.18.04.2023 passed by the learned Tribunal (NGT) is annexed hereto as **ANNEXURE-14**.

12. That the petitioner filed Review Application No.1 of 2023/EZ praying for review of the order dtd.18.04.2023. The learned Tribunal(NGT) without considering the matter from its proper perspective, vide order dtd.19.05.2023 dismissed the Review Application, which is illegal, improper, unjust in respect of the petitioner and hence, is liable to be quashed/set aside. Copies of the Review Application No.1 of 2023/EZ and the order dtd.19.05.2023 passed in Review Application are

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BY ADVOCATE

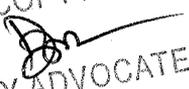
62

Annexure-A

annexed hereto as ANNEXURE-15 & 16 respectively.

13. That it reveals from the impugned order that the learned Tribunal(NGT) simply relied on the report of the Deputy Director of Mines & Geology filed in Collector's affidavit and and simply relying on the affidavit of the Collector, which is without any basis, held that the petitioner has illegally extracted ordinary earth/soil/morrum beyond the lease area and directed for lodging of FIR and computation of environmental compensation, which is illegal, perverse, contrary to materials on record, contrary to actual facts, improper, unjust and hence, the impugned orders dtd.18.04.2023 underAnnexure-14 and the order dtd.19.05.2023 under Annexure-16 are liable to be quashed/set aside.

14. That it is apparent on the face of record from the report filed by the Deputy Director of Mines & Geology that the measurement has not been done properly. The measurement has been done when the area was filled with water. It is stated in the report that the actual material lifted by the lessee in Quarry 1 and Quarry 2 is not available in office. It

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BY ADVOCATE

63

Annexure-14/1

14

is further stated that Quarry 1 was submerged with water during the time of survey and survey was done with the help of bamboo and total illegal excavation of Quarry 1 is Laterite-1724.330 cu.m., Morrum-77488.6020cu.m. The methodology adopted by the authorities is not permissible in the eye of law and the petitioner cannot be punished in that manner. Furthermore, the measurement has been done behind the petitioner. It is also apparent on the face of record from the report that contradictory statements have been made in the report. The learned Tribunal (NGT) without directing for proper measurement, simply relying on the report, passed the impugned order against the petitioner, which is illegal, perverse, contrary to materials on record, clear non application of mind, contrary to actual facts, improper, unjust and hence, the impugned orders dtd.18.04.2023 under Annexure-14 and the order dtd.19.05.2023 under Annexure-16 are liable to be quashed/set aside.

15. That it reveals from the record that the findings given by the learned Tribunal (NGT) in Para-20 of the impugned order is contrary to record. The

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BY ADVOCATE

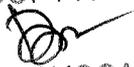
64 Annexure-A/1

15

learned Tribunal (NGT) has also not taken into consideration the affidavit dtd.21.01.2023 filed by the petitioner which is clear from Para-26 of the order. Even though, specific averment was taken that the applicants and their henchmen have done illegal mining, for which several criminal cases are pending against them and there is no evidence that the petitioner has done any illegal mining but the learned Tribunal(NGT) without considering these aspects properly, has passed the impugned orders, which is illegal, perverse, contrary to materials on record, clear non application of mind, contrary to actual facts, improper, unjust and hence, the impugned orders dtd.18.04.2023 under Annexure-14 and the order dtd.19.05.2023 under Annexure-16 are liable to be quashed/set aside.

16. That in view of the above facts and submissions and in the interest of justice, the impugned orders dtd.18.04.2023 under Annexure-14 and the order dtd.19.05.2023 under Annexure-16 be quashed/set aside and the Original Application No. No.83 of 2022/EZ be dismissed, failing which the petitioner will be highly prejudiced and will suffer irreparably and substantially.

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BY ADVOCATE

65

Annexure A/1

16

P R A Y E R.

It is, therefore, humbly prayed that this Hon'ble Court may graciously be pleased to issue Rule Nisi calling upon the Opp. Parties to show cause as to why the writ/writs shall not be issued quashing/setting aside the impugned orders dtd.18.04.2023 under Annexure-14 and the order dtd.19.05.2023 under Annexure-16 and consequently dismissing the Original Application No.83 of 2022/EZ and on perusal of causes shown if any or upon insufficient causes shown make the said rule absolute and may pass such other order/orders as deemed just and proper.

And for this act of kindness the petitioner shall, as in duty bound ever pray.

C U T T A C K:
DATE:

By the petitioner through,

Advocate.

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BY ADVOCATE

66

Annexure-A/1

17

AFFIDAVIT

I, Sarbeswar Barad, aged about 64 years, S/o. Late Bramhachari Barad, At- Sri Krushnapur, Po.- Champagarh, P.S.- Chandapur, Dist. Nayagarh, do hereby solemnly affirm and state as follows:-

- (1) That I am the father of the petitioner and am acquainted with the facts of the case. I am competent to swear this affidavit on behalf of the petitioner being so authorized by him.
- (2) That the contents of the writ application were read over and explained to me in Odia and I understood the same.
- (3) That the facts stated here and above in this writ applications are true to the best of my knowledge and belief, which I believe to be true.

Identified by:

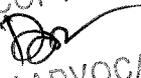
A.C.

DEPONENT.

CERTIFICATE.

Certified that A4 Size papers have been used.

Advocate.

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BY ADVOCATE

High Court of Orissa

Annexure-A/2

High Court of Orissa
Case Details

Case Type	: WA		
Filing Number	: 2282/2023	Filing Date:	08-09-2023
Registration Number	: 2282/2023	Registration Date:	11-09-2023
CNR Number	: ODHC01-071890-2023		

Case Status

First Hearing Date	:
Next Hearing Date	: Next Date is not given
Stage of Case	: FOR ADMISSION
Coram	: 3144DR. JUSTICE B.R.SARANGI (ACJ) , MR. JUSTICE MURAHARI SRI RAMAN
Bench	: Division Bench
State	: ORISSA
District	: Nayagarh
Judicial	: Civil Section
Causelist Name	: Supplementary(Daily)
Short Order	: ADJOURNED
Last Page Number	: 85
Next Page Number	: 86

Petitioner and Advocate

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1) JUGAL KISHORE MISHRA

Advocate- PRATIK DASH,MR.SUBIR PALIT MR.SUBIR PALIT

BY ADVOCATE

Respondent and Advocate

1) STATE OF ODISHA

Advocate - M/S.SUSHANTA KU.MISHRA, S.K.LENKA M/S.BIRANCHI NARAYAN MAHAPATRA, K.C.BEHERA, M.JADAB, U.C.SATAPATHY, S.RATH

2) PRINCIPAL SECY.,REVENUE AND DISASTER MGMT.DEPT.

3) ADDL. CHIEF SECY.,FOREST AND ENVIRONMENT DEPT.

4) SECY., MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

5) DY.DIRECTOR GENERAL OF FORESTS (C), MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

Acts

Under Act(s)	Under Section(s)
Letter Patents of Patna H.C. Act	10

IA Details

IA Number	Party	Date of Filing	Next Date	IA Status
IA/6187/2023	JUGAL KISHORE MISHRA STATE OF ODISHA	08-09-2023	--	Pending

Main Matters

Case Number :	WP(C)/13692/2023
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History of Case Hearing

Cause List Type	Judge	Business On Date	Hearing Date	Purpose of hearing
Supplementary(Daily)	DR. JUSTICE B.R.SARANGI (ACJ) , MR. JUSTICE MURAHARI SRI RAMAN		12-10-2023	FRESH ADMISSION
Supplementary(Daily)	DR. JUSTICE B.R.SARANGI (ACJ) , MR. JUSTICE MURAHARI SRI RAMAN		09-11-2023	FRESH ADMISSION
Supplementary(Daily)	DR. JUSTICE B.R.SARANGI (ACJ) , MR. JUSTICE MURAHARI SRI RAMAN			FOR ADMISSION

Supplementary(Daily)	DR. JUSTICE B.R.SARANGI (ACJ) , MR. JUSTICE MURAHARI SRI RAMAN			FOR ADMISSION
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Orders

Order Number	Order on	Judge	Order Date	Order Details
1	WA/2282/2023	DR. JUSTICE B.R.SARANGI (ACJ),MR. JUSTICE MURAHARI SRI RAMAN	12-10-2023	
2	WA/2282/2023	DR. JUSTICE B.R.SARANGI (ACJ),MR. JUSTICE MURAHARI SRI RAMAN	09-11-2023	
3	WA/2282/2023	DR. JUSTICE B.R.SARANGI (ACJ),MR. JUSTICE MURAHARI SRI RAMAN	05-12-2023	

Category Details

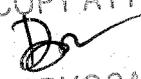
Category	ORDINARY CIVIL MATTER (28)
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OBJECTION

Sr.No.	Scrutiny Date	OBJECTION	Compliance Date	Receipt Date
1	11-09-2023	All Objections are Complied	11-09-2023	--

Document Details

Sr. No.	Document No.	Date of Receiving	Filed by	Name of Advocate	Document Filed
1	1	28-11-2023	Susant Kumar Barad	Biranchi Narayan Mahapatra	

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698

Annexure - A/2

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 2282 of 2023

Jugal Kishore Mishra *Appellant*
Mr. Subir Palit, Sr. Advocate along with
Mr. Pratik Dash, Advocate
Vs.
State of Odisha and others *Respondents*
Mr. A.R. Dash, AGA

CORAM:

**ACTING CHIEF JUSTICE DR. B.R. SARANGI
MR. JUSTICE MURAHARI SRI RAMAN**

ORDER

12.10.2023

Order No.

01.

W.A. No. 2282 of 2023 & I.A. No. 6187 of 2023

This matter is taken up through hybrid mode.

2. Heard Mr. Subir Palit, learned Senior Advocate appearing along with Mr. Pratik Dash, learned counsel for the appellant and Mr. A.R. Dash, learned Additional Government Advocate appearing for the State.

3. The appellant has filed this writ appeal assailing the order dated 16.08.2023 passed in W.P.(C) No. 13692 of 2023, by which learned Single Judge, while disposing of the writ petition, permitted the appellant to approach the Appellate Court to pursue the appropriate remedy to challenge the order dated 18.04.2023 passed by the National Green Tribunal, Eastern Zone Bench, Kolkata in Original Application No. 83/2022/EZ (I.A. No. 189/2022/EZ).

4. Mr. S. Palit, learned Senior Advocate appearing for the appellant vehemently contended that the order so passed by the

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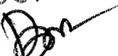
70

Amendment-A/2

learned Single Judge is an outcome of non-application of mind. He has referred to the order dated 11.05.2023 passed by the very same learned Single Judge, whereby he being *prima facie* convinced with regard to non-compliance of the principle of natural justice, entertained the writ petition and granted interim order. But the same has not been taken note of in the final order of disposal on 16.08.2023. According to him, though on 16.08.2023 learned counsel appearing for the State asked time to file counter affidavit, without granting time, the matter was closed and the order was passed, which is contrary to the earlier order passed on 11.05.2023.

4.1 He further contended that there is no dispute that against the order passed by the National Green Tribunal, the person aggrieved can move the apex Court, but that itself is not conclusive one, in view of the judgment passed by the apex Court in the case of *Madhya Pradesh High Court Bar Association v. Union of India*, AIR 2022 SC 2713. In the said decision, among other various decisions, the decision rendered by the apex Court in the case of *L. Chandra Kumar vs. Union of India*, 1997 (3) SCC 261 and *Whirlpool Corpn. Vs. Registrar of Trade Marks, Mumbai*, (1998) 8 SCC 1 were also referred. It has also been observed in *Madhya Pradesh High Court Bar Association* (supra) that apart from the clear enunciation on legal position to the effect that the NGT is within the purview of Articles 226 and 227 jurisdiction of the High Courts, the learned Attorney General on behalf of the Union of India has also made submissions consistent with *L. Chandra Kumar* (supra) and conceded the legal position. Similarly, it has also been held that under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or

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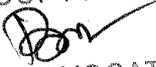
Annexure-A/2

not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

4.2. Learned Senior Counsel appearing for appellant contended that the appellant's case comes within the 2nd category, i.e. there is violation of the principles of natural justice. Therefore, the writ court has the jurisdiction to entertain such writ petition. Even though National Green Tribunal Act, 2010 specifies that appeal lies before the Supreme Court, but it is a fact that the appellant had not been made a party before the NGT and the order has been passed behind his back. Thereby, there is non-compliance of principle of natural justice. Thus, this Court has jurisdiction to entertain the writ petition and rightly the learned Single Judge, while entertaining the writ petition passed the interim order. But, subsequently disposed of on a 3rd ground, which was not urged by learned counsel for the appellant nor the same was the case of the appellant before the learned Single Judge. Therefore, the finding of the learned Single Judge in Paragraph-19 of the impugned judgment cannot be sustained and the same is liable to be quashed.

5. Mr. A.R. Dash, learned Additional Government Advocate contended that since the appellant alleges non-compliance of

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72

Annexure A/2

principles of natural justice and the learned Single Judge has passed the impugned order otherwise, therefore, the matter may be examined by this Court.

6. In view of the above, issue notice to the opposite parties.
7. Since Mr. A.R. Dash, learned Additional Government Advocate accepts notice on behalf of respondents 1 to 10 and 15, adequate number of extra copies of the brief be served on him within three days.
8. Requisites for issuance of notice to respondents 11 to 14 and 16 to 20 by speed post be filed within three days. The notice be issued fixing short returnable date.
9. As an interim measure, there shall be stay operation of the order dated 18.04.2023 passed by the National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. No. 83/2022/EZ (I.A. No.189/2022/EZ) under Annexure-1 as well as the order dated 16.08.2023 passed by the learned Single Judge in W.P.(C) No. 13692 of 2023 under Annexure-6 till 09.11.2023.
10. It is made clear that if extra copies are not served and the requisites are not filed, as directed above, the interim order shall stand vacated automatically.

(DR. B.R. SARANGI)
ACTING CHIEF JUSTICE

(M.S. RAMAN)
JUDGE

Signature Not Verified

Digitally Signed
Signed by: ARUN KUMAR MISHRA
Designation: ADR-cum-Addl. Principal Secretary
Reason: Authentication
Location: High Court of Orissa
Date: 13-Oct-2023 16:35:25

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BY ADVOCATE

73

Amefuse-A/2

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 2282 of 2023

Jugal Kishore Mishra

....

Appellant

Mr. P. Dash, Advocate

-versus-

State of Odisha and others

....

Respondents

Mr. A.R. Dash, Additional Government Advocate

Ms. P. Mohanty, Advocate for OP No.4

Mr. Susanta Kumar Mishra, Advocate for OP Nos.11 & 12

CORAM:

ACTING CHIEF JUSTICE DR. B.R. SARANGI

MR. JUSTICE MURAHARI SRI RAMAN

Order No.

ORDER
09.11.2023

02. 1. This matter is taken up through Hybrid mode.
2. Mr. Susanta Kumar Mishra, learned counsel enters appearance and files his Vakalatnama on behalf of Respondent Nos.11 and 12 in Court today and seeks time to file the counter affidavit. The said Vakalatnama is taken on record.
3. At his request, call this matter after three weeks. The interim order passed earlier shall continue till the next listing.

(DR. B.R. SARANGI)
ACTING CHIEF JUSTICE

(M.S. RAMAN)
JUDGE

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BY ADVOCATE

S. Behera

Signature Not Verified

Digitally Signed
Signed by: SUMANTA BEHERA
Designation: Senior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 13-Nov-2023 11:40:18



74
Annexure-A/2

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.2282 of 2023

Jugal Kishore Mishra *Appellant*

Mr. Subir Palit, Senior Advocate

-versus-

State of Odisha and others *Respondents*

Mr. Debakanta Mohanty, A.G.A.

Mr. S.K. Mishra, Advocate

Mr. B.N. Mohapatra, Advocate

CORAM:

ACTING CHIEF JUSTICE DR. B.R. SARANGI

MR. JUSTICE MURAHARI SRI RAMAN

ORDER

05.12.2023

Order No.

03.

1. This matter is taken up through hybrid mode.
2. It appears from the office note that neither A.D. nor undelivered notices have returned from Respondent Nos.13, 14, 19 and 20.
3. Awaiting the same, list this matter after one week. The interim order passed earlier shall continue till the next listing.

(DR. B.R. SARANGI)
ACTING CHIEF JUSTICE

(M.S. RAMAN)
JUDGE

S.K. Guin

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BY ADVOCATE

Signature Not Verified

Digitally Signed
Signed by: SUBASH KUMAR GUIN
Designation: Personal Assistant
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 07-Dec-2023 17:55:29

~~148~~

75

Annexure A/3

COLLECTORATE, NAYAGARH
(Revenue Section)

No. 2426 / Dt. 06.10.23

To
The Tahasildar, Ranpur.

Sub:- Service of notice in Misc. Case No. 81 of 2023 in the Court of Collector, Nayagarh.

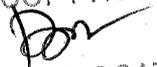
Sir,

In enclosing herewith the notice in duplicate, you are requested to serve the notice on the parties and return the served copy before the date fixed.

Encl:- As above.

Yours faithfully,


Asst. Collector, Revenue,
Collectorate, Nayagarh

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BY ADVOCATE

76

Annexure-A/3

~~10~~

COURT OF THE COLLECTOR & DISTRICT MAGISTRATE, NAYAGARH
Misc. Case No.81/2023

NOTICE

Sushanta Kumar Barad, S/o- Sarbeswar Barad
At- Sri Krushnapur, P.O.- Champagarh.
P.S.- Chandapur, Dist- Nayagarh

.....Petitioner

-Vrs-

Tahasildar, Ranpur

.....Opposite Party

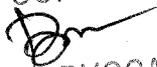
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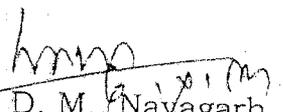
The member of both the parties.

Take notice that the Misc Case which has been filed by the petitioner is fixed for hearing on ^{10.11.2023} (20.10.2023) at 11.00 A. M. You are hereby noticed to appear in my Court alongwith show cause on the schedule date in person or through your advocates positively. If no appearance is made on your behalf by yourself or your pleader or by someone by law authorized to act for you, it will be heard and decided in your absence.

Given under my hand and the seal of the Court, 6th day of October-2023.

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BY ADVOCATE


Collector & D. M., Nayagarh

77
Annexure A/3

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.20909 of 2023

Susanta Kumar Barad *Petitioner*
Mr. S. Senapati, Advocate
Vs.
State of Odisha & Others *Opposite Parties*
Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE MURAHARI SRI RAMAN

ORDER

09.08.2023

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Senapati, learned counsel appearing for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the demand notice dated 10.01.2023 under Annexure-7, by which the Tahasildar, Ranpur has imposed a demand of Rs.2,81,59,945/- for illegal extraction of minerals.

4. Mr. S. Senapati, learned counsel for appearing for the petitioner contended that the petitioner has not illegally extracted minerals. But the Tahasildar, Ranpur vide Annexure-7 dated 10.01.2023 issued a demand notice on the basis of the report of the Director of Mining & Geology, Odisha by forging his signature.

5. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties contended that since the petitioner has extracted minerals illegally, the Tahasildar,

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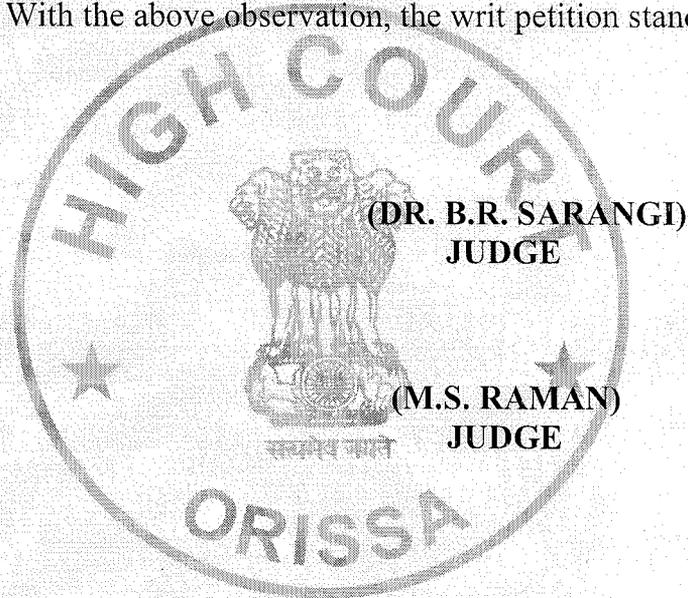
48

Annexure-A/3

Ranpur has issued a demand notice under Annexure-7 dated 10.01.2023 on the basis of the report received from the Director of Mining & Geology, Odisha. Therefore, the said demand notice issued by the Tahasildar, Ranpur is well justified.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, since the petitioner has made illegal extraction of minerals, which is excess to the quantity permissible, this Court is not inclined to entertain this writ petition, as disputed question of fact is involved. However, liberty is granted to the petitioner to pursue his remedy before the appropriate forum.

7. With the above observation, the writ petition stands disposed of.



Alok

Signature Not Verified

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Signed by: ALOK RANJAN SETHY
Designation: Secretary
Reason: Authentication
Location: Orissa High court
Date: 09-Aug-2023 17:27:37



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49

Annexure-A/3

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.20909 of 2023

Susanta Kumar Barad

.....

Petitioner

Mr. S. Senapati, Advocate

Vs.

State of Odisha & Others

.....

Opposite Parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE MURAHARI SRI RAMAN

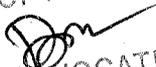
ORDER
09.08.2023

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Senapati, learned counsel appearing for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties.
3. The petitioner has filed this writ petition seeking to quash the demand notice dated 10.01.2023 under Annexure-7, by which the Tahasildar, Ranpur has imposed a demand of Rs.2,81,59,945/- for illegal extraction of minerals.
4. Mr. S. Senapati, learned counsel for appearing for the petitioner contended that the petitioner has not illegally extracted minerals. But the Tahasildar, Ranpur vide Annexure-7 dated 10.01.2023 issued a demand notice on the basis of the report of the Director of Mining & Geology, Odisha by forging his signature.
5. Mr. P.P. Mohanty, learned Additional Government Advocate appearing for the State-opposite parties contended that since the petitioner has extracted minerals illegally, the Tahasildar,

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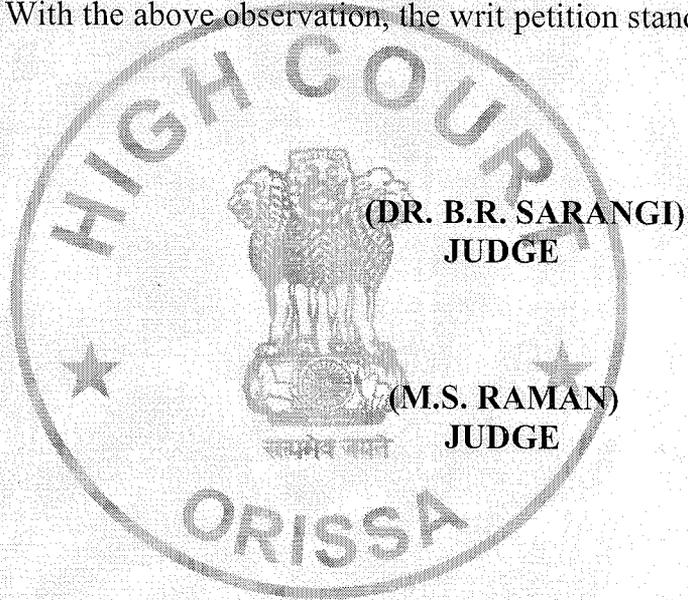
80

Adm. Juso 2A/3

Ranpur has issued a demand notice under Annexure-7 dated 10.01.2023 on the basis of the report received from the Director of Mining & Geology, Odisha. Therefore, the said demand notice issued by the Tahasildar, Ranpur is well justified.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, since the petitioner has made illegal extraction of minerals, which is excess to the quantity permissible, this Court is not inclined to entertain this writ petition, as disputed question of fact is involved. However, liberty is granted to the petitioner to pursue his remedy before the appropriate forum.

7. With the above observation, the writ petition stands disposed of.



Alok

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Signed by: ALOK RANJAN SETHY
Designation: Secretary
Reason: Authentication
Location: Orissa High court
Date: 09-Aug-2023 17:27:37



81

Annexure A/B

1

IN THE HIGH COURT OF ORISSA, CUTTACK.

W.P.(C) NO. 20909 2023.

Code No _____

In the matter of:

An application under Articles 226 and 227 of the Constitution of India.

A N D

In the matter of:

An application challenging the illegal Demand Notice dtd.10.01.2023 issued by the Tahasildar, Ranpur under OMMC Rules to the petitioner as it is without any basis and it has been issued without giving any notice/opportunity to the petitioner to give his reply and it is issued in completely violation of principles of natural justice.

A N D

In the matter of:

Susanta Kumar Barad,
Aged about 35 years,
S/o. Sarbeswar Barad,
At- Sri Krushnapur,
Po.- Champagarh,
P.S.- Chandapur,
Dist. Nayagarh.

... Petitioner

- Versus -

(1) State of Odisha,

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Represented through its
Secretary department of
Steel And Mines,
Secretariat building,
Bhubaneswar, Dist. Khurda.

- (2) Tahasildar, Ranpur,
At/Po.- Ranpur,
Dist. Nayagarh.
- (3) Director of Mining & Geology
Odisha, Bhubaneswar,
Dist. Khurda.
- (4) Collector, Nayagarh,
At/Po./Dist. Nayagarh. ... Opp. Parties.

The matter out of which this writ
application arises was never
before this Hon'ble Court in the
present form as per instruction.

To,

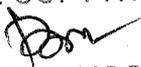
The Hon'ble Chief Justice of Orissa High Court and
His Lordship's Companion Justices of the said
Hon'ble Court.

The humble petition of the
above named petitioner;

MOST RESPECTFULLY SHEWETH:

1. That the petitioner finding no other alternative
equally speedy and efficacious remedy invokes the

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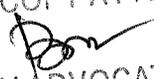

BY ADVOCATE

83 Annetvse-1/3
3

extraordinary jurisdiction of this Hon'ble Court challenging the Demand Notice dtd.10.01.2023 issued by the Tahasildar/Opp. Party No.2 in affixing it on the door of the petitioner on dtd.20.06.2023, i.e. after twenty-one days of his arrest (on dtd.31.05.2023 in Chandpur P.S. Case No.79 of 2023) on the same allegation without giving any notice/opportunity to the petitioner to give his reply and without giving him any opportunity of hearing, which is illegal, without any basis, arbitrary and excessive exercise of power, violation of principles of natural justice and is in violation of provisions of OMMC Rules, 2016.

2. That the petitioner is a citizen of India and resides within the territorial jurisdiction of this Hon'ble Court. The parties are amenable to the writ jurisdiction of this Hon'ble Court. Cause of action also arises within the territorial jurisdiction of this Hon'ble Court.
3. That it is humbly submitted that after District Survey Report (DSR) prepared by the competent

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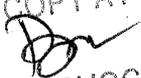

BY ADVOCATE

84

ADDITIONAL A/3

4

authorities i.e. the Collector/Opp. Party No.4, D.F.O., Sub-Collector and Asst. Conservator of Forest, Nayagarh on dtd.07.12.2019, Mining Plan was approved by the Deputy Director Geology on dtd.13.07.2020. Thereafter, the Environmental Clearance (EC) was granted by the State Environment Impact Assessment Authority (SEIAA) vide order dtd.02.02.2021. After completion of all formalities, Lease Agreement was executed between the Governor of Odisha, represented by the Tahasildar/ Opp. Party No.2 and the petitioner after deposit of all dues, as the petitioner was selected as the highest bidder for Mayurajhalia Laterite Quarry over an Area-4.00 Acres/1.62 Hc. for five years from February, 2021 to February, 2026 vide registered Lease Agreement dtd.22.02.2021. The State Pollution Control Board granted the Consent to Operate in favour of the petitioner to operate Mayurajhalia Laterite Quarry over an Area-4.00 Acres/1.62 Hc. vide order dtd.29.07.2021. Copies of the District Survey Report(DSR) dtd.07.12.2019, Approved Mining Plan dtd.13.07.2020, Environmental Clearance(EC) dtd.02.02.2021 and Lease Agreement

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85

Annexure-A/3

5

dtd.22.02.2021 are annexed hereto as
ANNEXURE-1, 2, 3 and 4 respectively.

4. That while the matter stood thus, one Deepak Kumar Routray, who was doing illegal mining in the entire Mayurajhalia Mouza along with his henchmen, against whom several Criminal Cases have been filed and pending under Orissa Mines and Mineral (Prevention of Theft Smuggling Activities) Act, 1989, OMMC Rules, under Sections-379/411/294/506/353/34 IPC bearing numbers, (1) Chandpur P.S. Case No.140 of 2021 corresponding to G.R. Case No.330 of 2021 pending in the Court of learned J.M.F.C., Ranpur, (2) Chandpur P.S. Case No.127 of 2020 corresponding to G.R. Case No.421 of 2020 pending in the Court of learned J.M.F.C., Ranpur, (3) Chandpur P.S. Case No.152 of 2022 corresponding to G.R. Case No.387 of 2022 pending in the Court of learned J.M.F.C., Ranpur, (4) Chandpur P.S. Case No.87 of 2020 corresponding to G.R. Case No.348 of 2020 pending in the Court of learned J.M.F.C., Ranpur, (5) Chandpur P.S. Case No.14 of 2020 corresponding to G.R. Case No.43 of 2020 pending

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86

Annexure-A/3

6

in the Court of learned J.M.F.C., Ranpur, filed the O. A. No. 83 of 2022/EZ before the learned National Green Tribunal/EZ, Kolkata alleging illegal grant of Mining Lease and illegalities in operation of Laterite Stone Quarries and morrum mining.

5. That it is humbly submitted that this Demand Notice has been issued pursuant to the NGT proceeding. In the NGT, the Director of Mines & Geology filed a Enquiry Report along with his affidavit, wherein it is stated that the actual material lifted by the lessee in Quarry 1 and Quarry 2 is not available in office. It is further stated that Quarry 1 was submerged with water during the time of survey and survey was done with the help of bamboo and total illegal excavation of Quarry 1 is Laterite-1724.330 cu.m., Morrum-77488.6020cu.m. Copy of the counter affidavit filed by the Director of Mines & Geology in NGT is annexed hereto as **ANNEXURE-5.**
6. That the Collector/Opp. Party No.4 filed the affidavit manipulating and forging the enquiry

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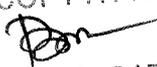
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Annexure A/3
7

report of Deputy Director of Mines & Geology, by forging the signature of the Dy. Director of Mines & Geology and submitted a wrong report before NGT and has directed the Tahasildar/Opp. Party No.2 to issue Demand Notice on the said report. Copy of the counter affidavit filed by the Collector/Opp. Party No.4 in NGT is annexed hereto as ANNEXURE-6.

7. That it is pertinent to mention here that the Collector has filed the affidavit without any basis and without calling for any document from the Tahasil office since the petitioner had filed a criminal case against the applicants in NGT. The Tahasildar/Opp. Party No.2 has issued the Demand Notice dtd.10.01.2023 on the direction of the Collector by affixing it on the door of the petitioner on dtd.20.06.2023, i.e. after twenty-one days of his arrest (on dtd.31.05.2023 in Chandpur P.S. Case No.79 of 2023) on the same allegation without giving any notice/opportunity to the petitioner to give his reply and without giving him any opportunity of hearing. Therefore, the impugned Demand Notice is illegal, without any basis, arbitrary and excessive exercise of power, malafide,

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BY ADVOCATE

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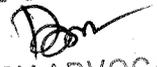
Annexure A/3

8

violation of principles of natural justice and is in violation of provisions of OMMC Rules, 2016 and hence, is liable to be quashed. Copy of the Demand Notice dtd.10.01.2023 affixed on the door of the petitioner is annexed hereto as ANNEXURE-7.

8. That it is apparent on the face of record that the Collector/Opp. Party No.4 has manipulated and forged the enquiry report of Deputy Director of Mines & Geology by forging the signature of the Deputy Director of Mines & Geology and has directed the Tahasildar/Opp. Party No.2 to issue Demand Notice on the said manipulated and forged report. The Tahasildar/Opp. Party No.2 has issued the Demand Notice dtd.10.01.2023 by affixing it on the door of the petitioner on dtd.20.06.2023, without giving any notice/opportunity to the petitioner to give his reply and without giving him any opportunity of hearing. Therefore, the impugned Demand Notice dtd.10.01.2023 under Annexure-7 is illegal, arbitrary and excessive exercise of power, malafide, violation of principles of natural justice and is in violation of provisions of OMMC Rules, 2016 and hence, is liable to be quashed.

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Annexure-A/3
9

9. That it reveals from the report of Deputy Director of Mines & Geology that it is a defective one as one part contradicts the other part. Furthermore, OMMC Rules, 2016 specifically provides for issuance of notice to the lessee before imposing any penalty. It is also settled principles of law that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. Principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. In the instant case, it is clear that Tahasildar/Opp. Party No.2 has issued the Demand Notice dtd.10.01.2023 on the direction of the Collector basing on the manipulated and forged report without giving any notice/opportunity to the petitioner to give his reply and without giving him any opportunity of hearing. Therefore, the impugned Demand Notice dtd.10.01.2023 under Annexure-7 is illegal, arbitrary and excessive exercise of power, malafide, violation of principles of natural justice and is in violation of provisions of OMMC Rules, 2016 and hence, is liable to be quashed.

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Annexure-A/3

10

10. That in view of the above facts and submissions and in the interest of justice, the impugned Demand Notice dtd.10.01.2023 under Annexure-7 be quashed, failing which the petitioner will be highly prejudiced and will suffer irreparable loss and substantial injury.

PRAYER.

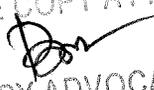
It is, therefore, humbly prayed that this Hon'ble Court may graciously be pleased to issue Rule Nisi calling upon the Opp. Parties to show cause as to why the writ/writs shall not be issued quashing the impugned Demand Notice dtd.10.01.2023 under Annexure-7 and on perusal of causes shown if any or upon insufficient causes shown make the said rule absolute and may pass such other order/orders as deemed just and proper.

And for this act of kindness the petitioner shall as in duty bound, ever pray.

CUTTACK:
DATE:

By the Petitioner through

Advocate.

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BY ADVOCATE

91

ADVERTISE-A/3

11

AFFIDAVIT.

I, Sarbeswar Barad, aged about 64 years, S/o. Late Bramhachari Barad, At- Sri Krushnapur, Po.- Champagarh, P.S.- Chandapur, Dist. Nayagarh, do hereby solemnly affirm and state as follows:-

- (1) That I am the father of the petitioner and am acquainted with the facts of the case. I am competent to swear this affidavit on behalf of the petitioner being so authorized by him.
- (2) That the contents of the writ application were read over and explained to me in Odia and I understood the same.
- (3) That the facts stated here and above in this writ application are true to the best of my knowledge and belief, which I believe to be true.

Identified by:

A.C.

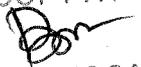
DEPONENT.

CERTIFICATE.

Certified that A4 Size papers have been used.

Advocate.

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BY ADVOCATE

92 ✓ Annexure-A/4

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.26730 of 2023

Agarwal Infrabuild Pvt. Ltd., *Petitioner(s)*
Chattisgarh

Mr. Pitambar Acharya, Sr. Adv.
along with associates

-versus-

State of Odisha & Ors. *Opposite Party(s)*
Mr. Dhananjaya Mund, AGA

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

05.

ORDER

08.01.2024

1. This matter is taken up through hybrid arrangement.
2. In filing this Writ Petition, the Petitioner has not only challenged the order dated 18.04.2023/Annexure-2, but has also challenged the inspection report dated 11.11.2022/Annexure-6.
3. Fact of the case and submissions on behalf of the Petitioner in brevity are:-

(i) The Petitioner was the Respondent No.18 in the proceeding vide Original Application No.83/2022/EZ (I.A. No.189/2022/EZ) before the learned National Green Tribunal, Eastern Zone Bench, Kolkata. The Petitioner is engaged in developing the six lane of National Highway No.16 from

Signature Not Verified  Tanti to Bhubaneswar, over a stretch of 60 kilometers.

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Location: High Court of Orissa
Date: 10-Jan-2024 16:13:44

(ii)  is alleged that the Petitioner is mining over the plot No.1689, khata no.495, over an area of 144.49 acres, which is

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Annexure-A/4

shown as 'Kisam Patita' reserved for 'Gramya Jungle' in Mayurjhallia-Mouza, Ranpur-Tahasil, District-Nayagarh. The allegation levelled against the Petitioner is that the Petitioner is mining the plot in question by felling trees and clearing the forest area without obtaining any approval as required under Section 2 of the Forest (Conservation) Act, 1980.

(iii) Learned Senior Advocate appearing on behalf of the Petitioner submits that after obtaining necessary clearance, the Petitioner has conducted the mining activities and extracted the materials/minerals for construction of the road. He further submits that the inspection report reveals that during the visit, M/s. Mayurjhallia Laterite Quarry was found to be non-operational from the surrounding appearance.

(iv) He further stated that as per the report of the Revenue Supervisor, Ranpur and Revenue Circle Inspector, Jharapada the mining activity is carried out within the leasehold area. The Cashew plants in question are observed about 500 meters distance from the leasehold area of M/s. Mayurjhallia Laterite Quarry in North direction.

(v) At this juncture, Ld. Senior Advocate submits that this report has been prepared without the knowledge of the Petitioner. He further contends that the topsoil generated from the mining activity has been found stocked outside the

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leasehold area. In the conclusion, it has been recommended that the mining activity is carried out with valid "Consent to

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Operate" of the Board and the Ambient Air Quality monitoring could not be conducted during inspection as the mine was not operational.

(vi) He further submits that the lessee has obtained statutory clearance like environmental clearance, approved mining plan from the competent authorities and also executed the lease agreement with the Tehsildar, Ranpur, which is valid upto 31.03.2026. In the said report it has only been observed that the topsoil management is required to be done in accordance with the mining plan.

(vii) He has vehemently submitted that despite all these positive observations by the Committee, the Ld. National Green Tribunal disposed of the original application with a direction to the State-respondent to initiate criminal proceedings against the present Petitioner and also the Officers concerned.

(viii) In fact, the National Green Tribunal Act does not contemplate any criminal proceeding against the violators rather it focuses on the spirit of polluters' pay principle. He further draws the attention of this Court to the provision at Sections 14 & 15 of the National Green Tribunal Act, 2010. The relevant provisions of the NGT Act, 2010 are extracted herein below:-

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"14. Tribunal to settle disputes.-(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment

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(including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

15. Relief, compensation and restitution- (1) The Tribunal may, by an order, provide,-

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

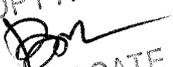
(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period,

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allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other Court or authority."

(ix) Ld. counsel further submits that a Civil action should have been followed rather a criminal action against the violators. Polluters' pay principle is inherent in the environmental jurisprudence, so does in the National Green Tribunal Act. This principle has been followed time and again for dealing with this kind of environmental issues, but in the present case, passing of an order for taking criminal action is against the spirit of the National Green Tribunal Act, 2010.

(x) He further submits that the Petitioner has not been noticed prior to passing of such punitive order against it. He further submits that the principles of natural justice have been violated by the Committee by not summoning the present Petitioner at the time of inquiry.

(xi) Since a lot of technicalities were to be explained by the Committee formed by the National Green Tribunal and the alleged violations shown by the Committee were to be explained by the parties, it was imperative that the parties

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should have been noticed to put-forth their position, but in the present case such action is grossly invisible.

(xii) He further highlighted the recent decision of the Supreme Court in the case of *Singrauli Super Thermal Power Station Vrs. Ashwani Kuamr Dubey and Ors.* decided in Civil Appeal No.3856/2022 and reported in 2023 SCC OnLine SC 824; wherein the Supreme Court vide paragraph nos.23 & 24 has captured the position of law which are narrated below:-

“23. In this context, it would be useful to refer to what is known as the ‘official notice’ doctrine, which is a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. This has been explained by Schwartz in his work on Administrative Law. The aforesaid doctrine applies with greater force to a judicial / adjudicatory body. Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal.

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24. It is needless to observe that the experts' opinion is only by way of assistance in arriving at a final conclusion. But we find that in the instant case the report of the expert Committee as well as the recommendations have been made the basis of the directions and such an approach is improper."

4. Considering the submission made by the learned Senior Advocate appearing on behalf of the Petitioner and looking to the factual and legal aspects of the case, this Court finds that the Committee constituted by the National Green Tribunal has violated the principles of natural justice by not affording the Petitioner an opportunity of hearing. In such view of the matter, while setting aside the impugned order dated 18.04.2023 under Annexure-2, this Court remits the matter back to the National Green Tribunal, Eastern Zone Bench, Kolkata for adjudication of the issue afresh. It is also made clear that the Committee constituted by the National Green Tribunal, Eastern Zone Bench, Kolkata shall afford the Petitioner a reasonable opportunity of hearing first and thereafter, the National Green Tribunal, Eastern Zone Bench, Kolkata shall pass order in accordance with law.
5. This Writ Petition is, accordingly, disposed of.

(Dr. S.K. Panigrahi)
Judge

Ayaskanta

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rectify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 12th day of January 2024.

Box 12.01.2024
ACCEPTED

Susanta Kumar Boro
SIGNATURE OF THE APPLICANT

ACCEPTED

ACCEPTED

BIRANCHI NARAYAN MAHAPATRA
Advocate, Orissa High Court
E Mail: imbiranchi@gmail.com
Mob. No: 8984383812

102

MEMO OF APPEARANCE

To,

The Registrar,
National Green Tribunal,
Kolkata.

Sir,

Please enter my appearance on behalf of the Applicants in this
Case.

Dated this the 12th day of January 2024.

Yours faithfully,


12.01.2024

(Biranchi Narayan Mahapatra)

Advocate for the Applicants

Mob .No: 08984383812



Biranchi Narayan Mahapatra <imbiranchi@gmail.com>

Copy of the MA of Susanta Kumar Barad- Versus- Dilip Kumar Samantara and Others arising out of O.A No. 83 of 2022/EZ which is disposed of on 18.04.2023 by the Hon'ble NGT, Eastern Zone Bench, Kolkata

Biranchi Narayan Mahapatra <imbiranchi@gmail.com>

Fri, Jan 12, 2024 at 11:25 AM

To: ngtagodisha <ngtagodisha@gmail.com>, rospcb.berhampur@ospboard.org, Sankar Pani <sankarprasadpani@gmail.com>, roychoudhurygorachand <roychoudhurygorachand@gmail.com>, directorgeology_odisha@yahoo.com, roez.bsr-mef@nic.in, pbanerjeebihani <pbanerjeebihani@gmail.com>, secy-moef@nic.in, dm-nayagarh@nic.in, bpattajoshi.lo@gmail.com, seiaaodisha@gmail.com, spngr.orpol@nic.in, dfokhordha@gmail.com, paribesh1@ospboard.org, membersecretary@ospboard.org, advgen@nic.in

Please find the attached file of Copyof the MA of Susanta Kumar Barad- Versus- Dilip Kumar Samantara and Others arising out of O.A No. 83 of 2022/EZ which is disposed of on 18.04.2023 by the Hon'ble NGT, Eastern Zone Bench, Kolkata.

Biranchi Narayan Mahapatra
Advocate for the Applicant of M.A
Mob No: 8984383812

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