

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)

OA No. 33/2020(EZ)
(I.A. No. 01/2021/EZ, I.A. No. 02/2021/EZ. I.A. No.
45/2021/EZ and I.A. No. 46/2021/EZ & I.A. No.
76/2021/EZ)

IN THE MATTER OF: -

Laxmidhar Palai -----Applicant(s)

Vrs

District Collector, Balasore & Ors. ----- Respondent(s)

Affidavit on Behalf of the State Environment Impact Assessment
Authority (SEIAA), Odisha (Respondent No-4) Before The Hon'ble
National Green Eastern Zone Bench, Kolkata

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Place: Bhubaneswar
Date: 25/01/2022

Counsel for Respondent
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I Sri Pradeept Kumar Nayak, S/o-Bhimasen Nayak aged 39 years at present working as an Environmental Scientist, State Environment Impact Assessment Authority, Odisha, do hereby solemnly affirm and state as follows.

1. That, I have gone through the order of Hon'ble NGT on dated 08.10.2021, earlier counter affidavit submitted to Hon'ble NGT on dt.26.07.2021 and 07.10.2021 and understood the contents thereof. I am well acquainted with the facts of the case and the relevant official records. Any contention, allegation or averment not dealt with in the present affidavit shall be construed as denied.
2. That, as regards to the averments made in the Para-1 to para-4 of O.A on dt. 08.10.2021, it is humbly submitted that the Respondent have nothing to comments.
3. That, as regards to the averments made in the Para-5 to para-6 of O.A order on 08.10.2021, it is humbly submitted that the project proponent has submitted an application for revision of Environmental Clearance from 5,000Cum to 20,000Cum per annum. As the application submitted by the project proponent (PP) was not in proper procedure (i.e. not submitted on online through

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PARIVESH Portal) the SEIAA, Odisha had request the PP to apply their proposal through online. Accordingly, the PP Sri Sujay Kumar Karan and Sri Rajesh Kumar Khatua had applied their application through online on 20.07.2021 vide online proposal no. SIA/OR/MIN/220819/2021 & SIA/OR/MIN/221007/2021 respectively. Then the proposal were placed in the 58th meeting of SEIAA was held on 25.08.2021 and the Authority has decided that after submission rate of replenishment study report for present sand deposition, the proposal will be consider further for grant of Environmental Clearance. In this regards a letter has been communicated to the Tahasildar, Jalesore, Dist-Balasore for submission of replenishment study report **but till there is no communication received from Tahasildar, Jaleswar, Dist-Balasore.**

4. That, as regards to the averments made in the Para-07 of O.A order on 08.10.2021, it is humbly submitted that the Project proponent had obtained the Environmental Clearance (EC) issued by SEIAA, Odisha vide letter no.3871/SEIAA dt. **06.12.2017** with conditions that the annual extraction of sand shall not exceed to 5000 cum allowing for replenishment of 25% of mineable reserve over the lease period. The EC was issued for excavation of 5000 cum of River Block "Ka" & "Kha" sand bed instead of 20,000 cum per annum(i.e. mentioned in the mining plan) because of the following reason are as follows:

- i. In the page no. 2 of the mining plan of River Block Ka and Kha it is clearly mentioned that the proposed rate of sand production has been worked out at 20,000 m³/annum depending upon the present market demand of sand. However, the rate of production may be increased or decreased in future depending on the market demand. The total **geological**



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reserves have been estimated around **23,763 m³**, the **mineable reserve** of sand has been **estimated 20,000 m³**. The quantity of sand excavated in a year in ideal condition, the same quantity may be replenished during the subsequent flood.

- ii. Both stone and sand are different minor mineral resources and the geological and mineable reserve stone is always fixed; but in case of sand mining, the river/stream changes their path regularly and accordingly the rate of replenishment of sand changes. One can't predict the actual Geological reserve and mineral reserve unless do the replenishment study of sand in every year. In this case during preparation of mining plan the replenishment study report was not taken into consideration rather assuming 100% replenishment of sand for the subsequent five years period.
- iii. The Sustainable Sand Mining Management Guidelines came in the year 2016 (i.e. **15.03.2016**) and mining plan approved by the mining Officer, Baripada on **07.10.2016**.
- iv. In the Sustainable Sand Mining Management Guidelines-2016, it is mentioned that the mining depth should be restrict to 3 meter and distance from the bank should be 3 meter or 10% of the river width whichever less but in this case the rive depth is neither mentioned in the DSR nor in mining plan.
- v. The Sustainable Sand Mining Management Guidelines-2016 basically prepared to ensure the environmentally sustainable and socially responsive manner and to ensure conservation of the river equilibrium and its natural

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environment by protection and restoration of the ecological system.

- vi. It is mentioned in the page no. 23 of the Sustainable Sand Mining Management Guidelines-2016 that while selecting the river for sand mining, it has to provide for environmentally safe depth of mining and safeguards of banks by prescribing safe distance from banks. It is required that there should be Sub-Divisional Committee which should visit each site and make recommendation. The Committee should comprise of Sub-Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof. But in this case the guideline of Sustainable Sand Mining Management Guidelines-2016 has not been followed.
- vii. There is no detail in the DSR about the said river sand bed, its geological reserve, mineable reserve which is now challenged before the Hon'ble NGT O.A. 63/2020 and the same is pending.
- viii. **The mining plan has worked out based on the quantum of annual extraction (i.e. 20,000 cum/annum) of sand also, based on the mineable reserve (i.e. 20,000 cum) and a presumption that after extraction of the entire mineable reserve in a year, the whole quantity shall be replenished during ensuring rainy season. On the**

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questionable assumption the mining plan has prescribed for extraction of entire sand deposit of the site in the 1st year itself (i.e. 20,000 cum), and again having the same quantity of sand enable on the site by replenishment for extraction on subsequent year. The approach of extracting the entire deposition (i.e. 20,000 cum with 0.5 meter depth) a year is not sustainably possible and likely to ruin the sand bed ecology. The SEIAA, Odisha therefore reject this approach of the mining plan for fixing the annual extraction of sand. In absence of the study on rate of replenishment, the same has been conservatively assumed by SEIAA, Odisha to be 25% of the original deposit over a period of 5 years. Therefore, the total quantum of sand that will be available for exploitation over a period of 5 years is taken to be 25% higher than the total initial amount of sand deposit. Since the total deposit is estimated to be 20,000 cum in mining plan. If starting year deposit is 100 units will become 125 units over a period of 5 years. So, the yearly quantum of possible extraction should be $125/5 = 25$ units. This is a purely conservative approach to safeguard the sand bed ecology and to ensure sustainable sand mining.

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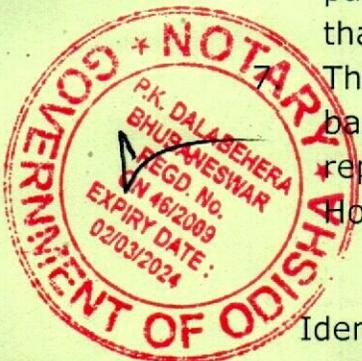
5. That, as regards to the averments made in the Para-08 of O.A, it is humbly submitted that generally environmental clearance is issues first and then Consent to Operate (CTO) and in this regards now the MoEF & CC, Govt. of India has issued a order on dated **20.09.2021** with mentioned that the "**directions under Section 5 of the Environment (Protection) Act, 1986** to not

grant or renew CTO unless Environment Clearance (EC), as applicable, has been obtained" (copy attached). In this case the EC was issued by SEIAA, Odisha on 06.12.2017 and Consent to Operate was issued by, Pollution Control Board, Balasore on 06.02.2018. It is obligatory provision that the project proponent and concerned Authority should follow the EC conditions before allowing the sand bed to operate.

In the point no. 31 of EC conditions issued by SEIAA vide letter no. 3878/SEIAA dt. 06.12.2017 it is clearly mentioned that any appeal against this environmental clearance shall lie with the National Green Tribunal, if preferred, within a period of 30 days as prescribed under section 16 of the national Green Tribunal Act, 2010. If there is any objection regarding EC conditions basically about the production quantity, the SPCB, Balasore and Project proponent should point out the objection what they raised now, but neither the SPCB, Balasore nor the project proponent has raised their objections regarding quantum of sand extraction before Authority of SEIAA, Odisha that means they accepted the EC conditions issued by SEIAA.

6. That, as regards to the averments made in the Para-9 to para-10 of O.A on dt. 08.10.2021, it is humbly submitted that the Respondent have nothing to comments.

That, the facts stated above are true to my knowledge, based on available official records and joint verification report and the rest are humble submissions before the Hon'ble NGT Easter Zone Bench, Kolkata.



Identified by

[Signature]
25/11/2022

Advocate

Pradheep Kumar Nayak

Deponent

VERIFICATION

Verified at Bhubaneswar on this day of ----- 25 JAN 2022

that the contents of the above affidavits are true and correct on the basis of the records maintained by the respondent in the daily course of its business, no part of it is false and nothing has been concealed therefore.

Place: Bhubaneswar

Date: 25/01/2022

The above named deponent has been identified by *Pradheep Kumar Nayak* who has appeared before me and stated that the contents of this affidavit are true to the best of his/her knowledge.

[Signature]
Deponent
P.K. DALABEHERA
NOTARY PUBLIC Bhubaneswar
REGD. No.- 46/09

P.K. DALABEHERA
Notary, Bhubaneswar
Regd. No.- 46/09

25 JAN 2022

F. No. IA3-22/19/2021-IA.III [E 164361]
Government of India
Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan
Aliganj, Jorbagh Road
New Delhi-110 003

Dated: 20th September, 2021

ORDER

Sub: Directions under Section 5 of the Environment (Protection) Act, 1986 to not grant or renew CTO unless Environment Clearance, as applicable, has been obtained – regarding.

Whereas, prior Environmental Clearance is a statutory requirement for project/activities covered in the schedule of the EIA Notification 2006, issued under section 3 of the Environment (Protection) Act, 1986.

2. And whereas, obtaining the consents under Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 is mandatory for all industrial units in Red, Orange and Green categories.
3. And whereas, the grant of EC and Consents are requirements under different statutes and are not inter-dependent and can be carried out as a parallel process.
4. And whereas, many a times it has been observed that while industrial units are in possession of valid 'Consent to Establish' (CTE)/ 'Consent to Operate' (CTO) issued by State Pollution Control Boards (SPCBs)/ UT Pollution Control Committees (UTPCC), however, they have not obtained the Environmental Clearance (EC), even though it was required as per provisions of EIA Notification 2006.
5. And whereas, it has been observed that this situation is arising because majority of the SPCBs/ UTPCCs are issuing CTE/CTO to projects without ascertaining the applicability of prior EC to projects/ activities, resulting in an avoidable situation of closure for even those industries also who seek to carry out their activities following due procedure.

6. Now therefore, in exercise of powers conferred by section 5 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government, hereby directs that all SPCB/UTPCC shall:

- i. Ascertain the applicability of EIA Notification at the time of grant/renewal of CTE and stipulate appropriate condition for obtaining Environmental Clearance (EC), if applicable, before construction/commencement of project/activity.
- ii. Ensure that the project proponent possesses a valid Prior EC in terms of the extant EIA Notification, if applicable, at the time of grant/renewal of CTO and no CTO shall be granted or renewed unless EC, if applicable, has been obtained.

7. This is issued with the approval of the Competent Authority.


(A K Agrawal)
Director

To

Chairmen of all State/UT Pollution Control Boards and Pollution Control Committees

Copy for information to:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS (EF&CC)
3. PPS to Secretary (EF&CC)
4. PPS to AS(RA)/JS(SKB)
5. Chairman of all the Expert Appraisal Committees
6. Chairperson/Member Secretaries of all the SEIAAs/SEACs
7. All the Officers of IA Division, MOEFCC
8. Website MoEF&CC/ Guard file.