

BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

O.A No. 67/2021/EZ

Alok Malik & Ors.

.....APPLICANT

-VERSUS-

State of Odisha & Ors.

..... RESPONDENTS

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By the Respondent No-11 through

Cuttack

Dated:



Subir Palit, Advocate

Enrl. No.D-68/1993

M-9937068659.



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

O.A No. 67/2021/EZ

In the matter of:

Alok Malik & Ors.APPLICANT

- V E R S U S -

State of Odisha & Ors. RESPONDENTS

**REPLY TO THE AFFIDAVIT DATED 21.12.2021 FILED
BY THE APPLICANT**

I, Sarat Chandra Nayak, @ Sarat Kumar Nayak, aged about 52 years, S/o Late Shyam Sundar Nayak, residing At- Bhuban, PO./P.S Dharmasala, Dist. Jajpur, Odisha – 755008, do hereby solemnly affirm and state as follows:

1. That, I am the Respondent No. 11 in the present case and competent to swear the present Affidavit.
2. That, this Hon'ble Tribunal, vide its order dated 22.12.2021 directed the present Respondent No. 11 to file his reply to the affidavit dated 21.12.2021 filed by the Applicant wherein 4

Sarat Chandra Nayak
Sarat Chandra Nayak
Notary, Cuttack Town
Regd. No-19 of-2012

Sarat Chandra Nayak

photographs, alleging mechanical sand mining at Uttarpratap Sand Quarry dated 19.12.2021 and use of heavy vehicles in huge number at the sand mining source, in violation of the daily limit of only 68 cubic metres per day.

3. That, it is humbly submitted here that the photographs attached in the aforementioned affidavit dated 21.12.2021 have been wilfully misinterpreted misrepresented without providing the true context of the matter. The Petitioner has assumed that mere presence of JCBs in the quarry area means that mechanized mining is being carried out. Such allegation is completely untrue and a complete misrepresentation of the facts. It is humbly submitted that the JCBs in the photographs are regularly deployed, but only for construction of road and pathways to facilitate the movement of trucks and tractors for transport of the mined sand. No mining activities have ever been carried out by the use of JCBs and the present Respondent No. 11 has always carried out mining operations as per the terms and conditions of the Environmental Clearance.

4. That, additionally, the JCBs further assist in the frequent occurrences when our transport vehicles are stuck in the sand and river water in various parts of the quarry. In such events, the JCBs assist with freeing up the vehicles for further movement. It is humbly and respectfully submitted here that because of the frequency of such occurrences, JCBs are deployed and kept on

hand as standby, for undertaking quick remedial action. This is a crucial requirement in order to protect wastage and loss of already mined sand.

5. Therefore, the JCBs shown in the aforementioned photographs filed by the Applicant, are engaged only for the limited purpose of construction of road and pathways and also in order to facilitate smooth transport of the mined sand and in every possibility shall continue to be deployed for such purpose. It is humbly reiterated here that the mere presence of JCBs in the said photographs filed by the Applicant cannot lead to presumption of mechanized mining. As such, the Odisha Sand Policy, 2021 formulated by the Revenue and Disaster Management Department, Government of Odisha, vide its resolution NO. 26372/R&DM, dated 02.09.2021, provides that "*no quarrying of sand shall be allowed through mechanized suction method and with blasting in any form.*" (Emphasis supplied)

Therefore, the Sand Policy as formulated by the Government of Odisha equated mechanized sand mining, to mechanized suction method, which is common for dredging machines. No such machines are being used by the present Respondent No. 11 and hence, the allegations of the Applicant is completely untrue and baseless, without any merits, and the Applicant is deliberately and wilfully attempting to mislead this

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A.V.
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Sarath Ch-Stepple

21/10/22
Jyoti Ranjan Pattanark
Notary, Cuttack Town
Regd. No-19 of-2012

Hon'ble Tribunal by presenting facts out of context and with incomplete information.

(Copy of the Odisha Sand Policy, 2021 is annexed herewith as **Annexure -1**)

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

7. That, the Respondent No. 11 hereby reserves its rights to file such other/further affidavit as and when necessary.

8. That, the averment made in this Reply Affidavit are true to the best of my knowledge and belief.

Identified By

Solemnly Sworn Before me
by.....*C. K. Sengupta*.....
Being identified by.....*A. Mishra*.....
At Cuttack on *15.01.2022*

Jyoti Ranjan Pattanaik
Notary, Cuttack Town

Saral Chandra Sengupta
DEPONENT

A. Mishra
A. Advocate

CERTIFICATE

Certified that due to want of cartridge papers thick and durable plain papers have been used.

Cuttack

Date:

[Signature]
Advocate

**GOVERNMENT OF ODISHA
REVENUE AND DISASTER MANAGEMENT DEPARTMENT**

RESOLUTION

No. 26372 / R & DM, Bhubaneswar, dated the 02 SEP 2021
(RDM-LRGEC-POLICY-0004-2018)

Sub: Odisha Sand Policy, 2021.

Odisha has a number of river systems flowing into the Bay of Bengal. Majority of rivers as well as their tributaries and distributaries create and deposit sufficient sand in river beds making it a sand sufficient State. Heavy demand of sand in different parts of the State for developmental and welfare projects and demand of quality sand in neighbouring states may create a scope for unsustainable mining of sand. Illegal and unscientific mining of sand may adversely affect the river morphology. There is need for stricter monitoring of sand mining in a sustainable and scientific manner without causing damage to embankments, bridges and hydraulic structures or adversely affecting the river morphology.

In order to streamline the process, it is felt necessary to ensure a holistic process-chain with sustainable and scientific mining and management of sand with IT-enabled monitoring of its movement from the source to the end-user. The Odisha Sand Policy, 2021 proposes to systematize the process chain of river sand mining so as to ensure scientific and sustainable sand mining and to meet the requirement of the river sand.

1. Objectives:

- a. Identification and Quantification of all potential sand sources and its optimal utilization, ensuring availability of sand commensurate with reducing demand supply gap, bringing professionalism in sand mining.
- b. Regulate the sand mining in the State from its identification to its final end-use.

- c. Ensure greater transparency through e-auction.
- d. Develop scientific sand mining giving due weightage to safety, conservation, cost-effectiveness, environmental and social sustainability.
- e. To bring in greater efficiency, responsibility, responsiveness and effective management of sand mining with technology based management system like i4MS.
- f. To bring in place a robust system of enforcement to curb illegal mining of sand by use of IT enabled services and latest technologies for surveillance of the sand mining at each step.
- g. Development of procedure for replenishment study of sand mining.
- h. Post Environmental Clearance Monitoring and Environmental Audit.
- i. To protect the environment and the right of the population to live in clean and safe surroundings, with the need to use natural resources in a way that will make a positive and sustainable contribution to the economy.

2. Demand-Supply Estimation

District Survey Report (DSR) for demand-supply estimation and gap assessment of every district shall be prepared by the competent authority for sustainable sand mining, as per the guidelines issued by MoEF & CC which inter alia includes the following:

- a. Inventory of river bed material and other sand sources in the district;
- b. Periodical auditing of rivers;
- c. Identification of Mining and no mining zones considering various environmental and social factors;

- d. Future demand for successive five years needs to be incorporated in the District Survey Report (DSR);
- e. Mining lease area should be so selected as to cover the entire deposition area excluding the safety zones; and
- f. Transportation route with its carrying capacity to be selected in such a way that the movement of vehicles through the villages/ habitation can be avoided to the extent possible.

3. Identification of sources:

- i. Revenue and Disaster Management Department through the field functionaries and in consultation with Water Resources Department and Odisha Space Application Centre (ORSAC) shall identify the potential sand sources suitable for mining operation and such identified sources be made part of the DSR.
- ii. To ensure better management of sand mining public consultation with comments of the various stakeholders shall be sought on the list of mining lease to be auctioned.
- iii. To ensure scientific exploration, large stretches of river sand beds vis-à-vis- river morphology in relation to the local geomorphology situation in all the river systems, sand beds shall be identified by using remote sensing technology through ORSAC or any other qualified agency with assistance from Water Resources Department who in turn may conduct a study by taking technical support from reputed specialists/ institutions like IITs, while deciding locations of sand mining, the existing geomorphology, its impact on river morphology and hydrology, embankment and river flow etc.

4. DGPS Survey of sand sairat sources

On completion of pillar posting and on requisition by Revenue and Disaster Management Department, Odisha Space Application Centre (ORSAC) will take up Differential Global Positioning System (DGPS) survey of the source boundaries. It would provide improved location accuracy.

5. Auction of Sand Mining Rights

Auction of Sand mining shall be done as per Odisha Minor Mineral Concession Rules, 2016 and where sources exist in clusters as defined under Odisha Minor Mineral Concession Rules, 2016, cluster mining shall be given priority over individual mines.

6. Eligibility

Eligibility of the bidder or applicant shall be decided as per the criteria specified under Mines and Minerals (Development and Regulation) Act, 1957 & Odisha Minor Mineral Concession Rules, 2016.

7. Mining Plan, Environment Clearance (EC) and other statutory clearance:

All the statutory clearance shall be obtained by concerned Tahasildar beforehand, prior to putting any source into auction to facilitate seamless operation and the expenditure incurred for obtaining such approvals or clearances shall be raised against the prospective lessees.

- i. Calculation of annual rate of replenishment and allowing time for replenishment after mining in the area.
- ii. A reclamation plan including baseline survey, the proposed mining cross-section data, a planting plan and a monitoring plan can be a part of the mining plan.

8. Quarrying Operation

- i. Quarry -operation shall be carried out as per the approved mining plan duly adhering to the provisions of Odisha Minor Mineral Concession Rules, 2016 and terms or conditions of the respective statutory clearances & approvals.
- ii. No quarrying of sand shall be allowed through mechanized suction method and with blasting in any form.
- iii. No mining operation shall be carried out in the safety zone and any other prohibitory areas as prescribed under Odisha Minor Mineral Concession Rules, 2016.

- iv. A bench mark (BM) with respect to mean sea level (MSL) should be made essential to in mining channel reaches (MCR). Below which no mining shall be allowed.

9. Inter -State transportation of sand

Inter-state transportation of sand may be allowed as per the provisions of Odisha Minor Mineral Concession Rules, 2016 considering the demand for consumption of sand in the State.

10. Monitoring & Enforcement

- i. Robust mechanism shall be put up in place by use of modern technology including IT enabled technology for the purpose of monitoring quarrying activities of the sources and making enforcement activities effective.
- ii. Mining Surveillance System (MSS) for Minor Minerals shall be implemented with technical assistance from Odisha Space Application Centre to curb illegal mining.
- iii. Customer Grievance Redressal Centre shall be established to inquire into and address the grievances faced by the sand consumers.

11. Implementation:

- i. The Policy shall come into force with immediate effect.
- ii. Government in Revenue and Disaster Management Department shall formulate the detailed guidelines for implementation of this policy.
- iii. Government may from time to time review this policy and make amendments as it may deem fit.

This will come into force with immediate effect from date of issue of this Resolution in Odisha Gazette.

This has got the approval of the Cabinet in their 33rd meeting held on 27th August, 2021.

By order of the Governor
Nishu Isth
Principal Secretary to Government

22/08/21

ORDER: Ordered that the Resolution be published in the extraordinary issue of the Odisha Gazette for general information and copies thereof be sent to all Departments of Government/ all Heads of Department/ Board of Revenue, Odisha, Cuttack/ Inspector General of Registration, Odisha, Cuttack/Director of Land Records & Surveys, Odisha, Cuttack/all Revenue Divisional Commissioners/all Collectors for information.

Mishra
Principal Secretary to Government

Memo No. 26373 /RDM Dated 02 SEP 2021

Copy along with soft copy forwarded to Odisha Secretariat Gazette Cell, C/o Commerce Department for information and necessary action. They are requested to publish the resolution in an extraordinary issue of the Odisha Gazette and supply 50 (fifty) copies to this Department for use.

SB
Under Secretary to Government

Memo No. 26374 /RDM Dated 02 SEP 2021

Copy forwarded to Accountant General (A&E), Odisha, Bhubaneswar for information and necessary action.

SB
Under Secretary to Government

Memo No. 26375 /RDM Dated 02 SEP 2021

Copy forwarded to Additional Secretary to Chief Minister, Odisha/ P.S to Minister, Revenue and DM for kind information of Hon'ble Chief Minister and Hon'ble Minister, Revenue and DM respectively.

SB
Under Secretary to Government

Memo No. 26376 /RDM Dated 02 SEP 2021

Copy forwarded to OSD-cum-Special Secretary to Chief Secretary for kind information Chief Secretary, Odisha.

Sm

Under Secretary to Government

Memo No. 26377 /RDM Dated 02 SEP 2021

Copy forwarded to all Departments of Government/ all Heads of Department/ Secretary, Board of Revenue, Odisha, Cuttack/ all RDCs/ Inspector General of Registration, Odisha, Cuttack/Director of Land Records & Surveys, Odisha, Cuttack/ Director of Mines, Odisha/ Director of Geology, Odisha/ Director of Minor Minerals, Odisha/ Chief Executive, ORSAC/ Chairman, SEIAA/ Member Secretary, State Pollution Control Board, Odisha / all Collectors for information and necessary action.

Sm

Under Secretary to Government

Memo No. 26378 /RDM Dated 02 SEP 2021

Copy forwarded to Additional Secretary to Government (in charge of e- Governance Cell) / all Officers/ all Sections of Revenue and DM Department for information and necessary action.

Sm

Under Secretary to Government