

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

REVIEW APPLICATION No: 01 of 2023/EZ

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

Susanta Kumar Barad APPLICANT

-VERSUS -

Dilip Kumar Samantray & OrsRESPONDENTS

I N D E X

SR. NO.	PARTICULARS	PAGE NO.	FE E
	Supplementary Affidavit dated: 06.05.2023	01 to 12	

CERTIFIED THAT THE COPIES ARE CORRECT

BY THE APPLICANT

Dom
06.05.2023

THROUGH ADVOCATE

Date: 06.05.2023

BIRANCHI NARAYAN MAHAPATRA

ADVOCATE, ORISSA HIGH COURT

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**IN THE NATIONAL GREEN TRIBUNAL
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REVIEW APPLICATION No: 01 of 2023/EZ

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Susanta Kumar Barad ... APPLICANT

-VERSUS -

Dilip Kumar Samantray & Ors ...RESPONDENTS

**SUPPLEMENTARY AFFIDAVIT FILED
BY THE ABOVE NAMED APPLICANT
MOST RESPECTFULLY SHOWETH AS
FOLLOWS:-**

I **Susanta Kumar Barad**, S/O: Sarbeswar Barad, aged about 35 years, at: Sri Krushnapur, Po: Champagarh-752024, P/S: Chandapur, Dist: Nayagarh, State: Odisha do hereby state on solemn affirmation as under:-

- Susanta Kumar Barad

*06.05.2023
Adv. for the Review Applicant*

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1. That I am the applicant in the R.A and as such I am fully conversant with the facts and proceedings of the Case.
2. That the Applicant filed this Review application for review of the order dated: 18.04.2023 passed in O.A No: 83 of 2022/EZ. The averments of the Review application and Supplementary affidavit dated: 02.05.2023 of the present Applicant may kindly read as part and parcel of this affidavit.
3. That the Collector, Nayagarh has made allegation against the lessee without seizure of the Minor Minerals and it's Products together with all tools, equipments and vehicles used in committing such offences. The Collector has no authority to made allegation against the lessee without following the due process of law which has been envisaged under Rule 51 (1) (ii), 51(2), 54, 48, 37(3) of the OMMC Rule, 2016 and read with Section 100 of Criminal Procedure Code, 1973. Even though the State officials have not fulfilled the criteria which is envisaged under 51 (1) (ii), 51(2), 54, 48, 37 (3) of the OMMC Rule, 2016 and read with Section 100 of Criminal Procedure Code, 1973 to enforce the law against the lessee (Review Applicant). It is



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(Adv. for the Review Applicant)

- Susanta Kumar Borah

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a settled Principle without found any materiel/ objectionable article/ machinery/ Vehicles from the custody of the lessee the State officials have no authority to made allegation against the lessee before this Hon'ble Tribunal by way of directly by filing affidavit. For which the Penal provision under Rule 51 of OMMC Rule, 2016 and any other provisions of the Indian Penal Code, 1860 could not be attract against the lessee without following the due process of law which is envisaged under the OMMC Rule, 2016. Search/ seizure/ confiscation proceeding is mandatory under the OMMC Rule, 2016 to make out a Criminal offence against the lessee. It is apt to mention here that the Collector made an allegation against the lessee by way of filing affidavit on 06.12.2022 and 16.04.2023 (2 Nos) without complying the mandatory provisions of the OMMC Rule, 2016. The Collector has been misused his official capacity while filing of the affidavits by way of imaginary pleading/allegation against the lessee. But, the Collector without following the basic parameter of law of the OMMC Rule, 2016 how he has made imaginary allegation against the lessee, it needs judicial



Done
 06.05.2023
 (Adv. for the Appellee of the Review)

- Susanta Kumar Baroo

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scrutiny. In the other hand it is clearly mentioned in the last Page of the inspection/ verification report dated: 11.11.2022 (available with the affidavit dated: 05.12.2022 of the Director, Geology and Mining) that *“the actual material lifted by the lessee in Quarry 1 and Quarry 2 is not available in this office”*. It presumes that the lessee has not involved any illegal acts as per the finding / observations of the verification report. During the Course of illegal operation the lessee was not present in the place of occurrence and no machinery was also found at that Place and from the custody of the lessee. So, how the lessee will be held responsible for the offence regarding theft. It is crystal clear from the settled principle of law that Under Rule 51 (1) (ii), 51(2), 54, 48, 37 (3) of the OMMC Rule, 2016 and read with Section 100 of Criminal Procedure Code, 1973 to make out a offence against the lessee search / seizure/confiscation proceeding is mandatory and seizure of the objectionable article / machinery should be made from the custody of the lessee, Otherwise allegation regarding illegal mining/theft could not be made out. But, in this Case without fulfilment of the basic parameter of law how the



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(Adv. for the Review Applicant)

- Susanta Kumar Baroi

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Collector has made an allegation against the lessee in connection of the illegal Mining activity in the judicial proceeding, which is after thought and coloured version. Thus, the law is enacted to punish the real culprits and not to harass the innocent Peoples. The averments made by the Collector in his affidavit dated: 06.12.2022 and 16.04.2023(2 Nos) against the lessee is imaginary and the Collector is a responsible officer of the State he has made a mockery to this Hon'ble Tribunal by way of false allegation against the lessee in shape of affidavit. The definition of the illegal Mining/ theft could not be proved beyond all reasonable doubts by way of imaginary pleading. It must be proved by way of the process of search/ seizure/ confiscation proceeding regarding theft. The State officials along with Police have failed to seize the minor minerals / Materials / objectionable articles/ machinery from the custody of lessee since the Period 2001 to 18.04.2023 (till disposal of the O.A). It is evident from the proceeding of the O.A that the State Officials have failed to follow the due process of law till disposal of the O.A (18.04.2023), which is envisaged Under Rule 51 (1) (ii), 51(2), 54, 48, 37



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(Adv. for the Review Appellant)

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(3) of the OMMC Rule, 2016 and read with Section 100 of Criminal Procedure Code, 1973 to establish their allegation against the lessee (Review Applicant). So, while dispose of the O.A this Hon'ble Tribunal was not consider the basic parameter of law and which is mandatory to fulfil the definition of theft and accordingly this Hon'ble Tribunal Passed order on 18.04.2023 in O.A No: 83 of 2022/EZ (order portion of Para-46, 49 and 51) against the lessee (Review Applicant) basing on the imaginary pleading/false affidavits dated: 06.12.2022 and 16.04.2023 (2 Nos) of the Collector, Nayagarh. Surprisingly, the Collector without full proof and not sized any material/ objectionable article/vehicle from the custody of the lessee (Review Applicant) has made allegation of illegal Mining/theft against the lessee. How the Collector was known that the lessee has been done illegal acts after filing of the O.A. It is respectfully submitted here that since filing of the O.A before this Hon'ble Tribunal (24.05.2022) to till disposal of the Case (18.04.2023) no singe notice/ show Cause has been served by the Collector/ Tahasildar/ Mining Department officials/ Sub-Collector/ Additional District Magistrate/ SEIAA/



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- Susanta Kumar Borah

SPCB officials to the lessee. Surprisingly, the Collector has made allegation directly before this Hon'ble Tribunal by way of filing affidavits and without supporting any material evidence with the said affidavits in connection of the allegations against the lessee. But, it is a matter of question why the Collector was not preferred to put any question by way of written notice / letter / Show Cause to the lessee prior filing of his affidavits before this Hon'ble Tribunal. The State authorities were not given opportunity of hearing to the lessee in respect of the allegations raised by the Collector against him. The authorities are duty bound to seek clarification from the lessee before making any serious allegation against him, why they were not preferred to give opportunity to state the real truth and defend the allegations raised by the Collector against him. During filing of the O.A the then Tahasildar, Ranpur (Sri Prabhakar Panda, O.A.S) was also not communicated anything to the lessee in respect of the allegations of the Collector. The Tahasildar is declared as a competent authority under the OMMC Rule, 2016, but he was not raised any objection to the lessee. The Present Tahasildar of Ranpur Sri Ipsit Sahu (OAS) has



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not sought any clarification from the lessee. The Collector was joined in the Nayagarh District on 19.10.2022 and he was filed his affidavit on 06.12.2022 before this Hon'ble Tribunal. The then Collector, Smt. Poma Tudu (IAS) was granted lease to the lessee and she was approved all the matter/ issues of the Sairat Source without any hindrances. Suddenly, the Collector (Sri Rabindra Nath Sahu, IAS) was filed his affidavit on 06.12.2022 before this Hon'ble Tribunal in O.A No: 83 of 2022/EZ and raised allegations in connection of the Sairat source and particularly against the lessee. The Collector without following the due process of law has no authority to made allegation against the lessee by way of imaginary pleading/ false affidavits. It is a settled principle if the administrative authority will take any decision against person concern they will give detail/ specific show Cause notice to the affected person. But, in this Case the Collector by passing all the statutory provision of law as well as by violating the principle of natural justice has made allegation first time before this Hon'ble Tribunal in shape of affidavits. Therefore, Rule 51 of OMMC Rule, 2016 could not be made out/ enforce against the



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(Adv. for the Review Appeal)

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- SUSANTA KUMAR BORO

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Review Applicant without found any material/article/machinery from the custody of the lessee. The SPCB was also conducted inspection as an independent authority under the statutory provision of law and given clean chit to the Review Applicant, it is evident from their affidavit dated: 17.09.2022 along with inspection report available with the said affidavit. So, the order dated: 18.04.2023 may kindly review by this Hon'ble Tribunal according to law.



4. That the Collector/ Tahasildar or any other authority of the State have failed to lodge Complaint against the lessee in respect of illegal acts which is envisaged Under Section 2 (d) and no investigation has been conducted U/S: 2(h) of Criminal Procedure Code, 1973 in accordance with law since the Period 2021 to till disposal of the O.A (18.04.2023). The local Police has also not taken any Preventative action to curb any offence which has been envisaged Under Chapter XI with reference to U/S: 149, 150, 151 and 152 of Criminal Procedure Code, 1973. Even though the Hon'ble Apex Court encouraged to the State officials to take prompt action against the offenders as per the observations Para-24 and 26 of the Judgement dated: 04.09.2014 Passed in Criminal Appeal No: 499 of 2011 in the matter of

Done
06.05.2023
(Adv. for the Review Applicant)

- Susanta Kumar Baroi

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State of NCT of Delhi- Versus- Sanjay. But, in this Case the State officials are without taking any measures for the protection of the valuable State Resources and unnecessary made allegations against the lessee before this Hon'ble Tribunal. The State is a trusty of the Sairat Sources and the Tahasildar/ Collector are the custodian of the Sources. But, what is reason behind this why they were remained silent to lodge Complaint against the lessee; it creates more doubts their honesty and integrity for the protection of the Sairat Sources in accordance with law. It shows from the facts and proceeding of the Case this is a failure from the side of the District Administration and the Collector is himself is also responsible as a Controlling authority under the OMMC Rule, 2016 and the Collector Could not sift his burden to the lessee without any valid reason. The Collector is himself not found any illegality against the lessee prior filing of the affidavit on 06.12.2022 in O.A. After filing of the O.A the Collector was made allegation against the lessee without any communication (prior filing of the O.A) to the lessee in respect of his allegation before this Hon'ble Tribunal. As a controlling authority under the OMMC Rule, 2016 that the collector could not say without his knowledge the Sairat Source was put auction and declared as highest bidder to the lessee. All the issues of the Sairat Source has been



Done
 06.05.2023
 (ADV. for the Review Applicant)

- Susanta Kumar Bora

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duly approved by the Collector and as a controlling authority under the OMMC Rule, 2016 the Collector Could not take a stand that he has blindly approved to the lease issues without verifying the contents/ file noting of the lower officials. Thus, the Collector by taking different plea has filed the affidavits in O.A only to mislead this Hon'ble Tribunal and he is cleverly fixed responsibility in the head of the lessee. It is a settled Principle while making any serious allegation against any Persons before the Court of law such officials is duty bound to follow the process of law and carry out the law in its true spirit. But, in this Case none of the provisions of the OMMC Rule, 2016 and Criminal Procedure Code has been followed by the Collector before filing of his affidavit dated: 06.12.2022 and 16.04.2023 (2 Nos) in the O.A. The Collector without following the due process of law has no authority to made allegation against the lessee, for which he is liable to prove his allegations raised in his affidavits Under Section 101 and 106 of Indian Evidence Act, 1872 and this Hon'ble Tribunal is also empower to find out the real truth which is envisaged U/S: 165 of Indian Evidence Act, 1872.

5. That this Hon'ble Tribunal may kindly pass order/order for not to miss utilize the Criminal law by the State of Odisha by virtue of the order dated:



Done
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 (Adv. for the Review Applicant)

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— Susanta Kumar Baroo

18.04.2023 (Para-46, 49 and 51) passed in O.A No: 83 of 2022/EZ. The Criminal law could not set its motion without fulfilment of the mandatory criteria of the statutory provision of law, which is explained above.

- 6. That this Hon'ble Tribunal may kindly allow for opportunity of hearing to the Review applicant for the ends of justice.
- 7. That the Review applicant is craves leave of this Hon'ble Tribunal to file further affidavit if necessary for proper adjudication of the matter.

VERIFICATION

I **Susanta Kumar Barad**, S/O: Sarbeswar Barad, aged about 35 years, At: Sri Krushnapur, Po: Champagarh-752024, P/S: Chandapur, Dist: Nayagarh, State: Odisha do her by verify that the contents of Para 1 to 07 believed to be true and that I have not suppressed any material fact.

Verified at Berhampur on 06.05.2023.

IDENTIFIED BY

Boony
06.05.2023

ADVOCATE
(*B.N. Mahapatra*)

Dr. K.M. Panigrahy
NOTARY

Berhampur (Ganjam)

No. *1171*

12/11

Susanta Kumar Barad

DEPONENT

DECLARATION

The deponent having been identified by Advocate
Sri *B.N. Mahapatra* solemnly affirm before me
this the *06* *2023* before the Notary
12 *11* A.M./P.M. read over and explained the
deponent who seems perfectly to have understood
the contents and teh affidavit.

[Signature]
Dr. K.M. Panigrahy
Notary Berhampur (Gm.)
Regd. No.31/2009

