

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

Original Application No.47/2024/EZ

Youth United for Sustainable Environmental Trust

Applicant(s)

Versus

State of Odisha & Ors.

Respondent(s)

Date of hearing: 12.03.2024

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : Mr. Sankar Prasad Pani, Advocate (in Virtual Mode) a/w
Mr. Ashutosh Padhy, Advocate (in Virtual Mode)

ORDER

1. Heard Mr. Sankar Prasad Pani assisted by Mr. Ashutosh Padhy, learned Counsel appearing (in Virtual Mode) for the Applicant.
2. Additional affidavit dated 12.03.2024 has been filed on behalf of the Applicant; the same is taken on record.
3. The Applicant in the present Original Application has sought the following reliefs:-

- I. *“Direct the Mining Department to conduct Drone Survey to assess the mining beyond lease areas and excess mining.*
- II. *Direct the SEIAA Odisha to withdraw the EC letter for violation of EC condition.*
- III. *Direct the Independent Committee to inquire into the illegalities of mining such as mechanical mining and in-stream mining, Excess sand mining in violation of the permitted quantity.*
- IV. *Direct the State Respondents to seize the Excavators used for Sand Mining in Brahmani River at Gopinathpur.*
- V. *Direct the State Respondents to immediately remove the illegal approach road constructed by the lease holders/sand mafias in ensure the free flow of river by removing the artificial approach roads for transportation of sand loading vehicles inside the river.*

VI. Direct the State Respondents for GPS TRACKING OF VEHICLES AND MAKE E-TRANSIT PASS MANDATORY FOR MINING OPERATION.”

4. The allegation of the Applicant is that the Respondent No.14, Pitambar Bhutia, is the Lessee of Nizgarhzami Sand Quarry (locally known as Gopinathpur Sand Quarry) over an area of 24.86 acres or 10.06 hectares in Village-Nizgarhzami, Tahasil-Talcher, District-Angul, in Khata No.446, Plot No.3695, and is carrying on sand mining operation in violation of Environmental Clearance conditions, Consent to Operate conditions, Sustainable Sand Mining Guidelines, 2016, and Enforcement and Monitoring of Sand Mining Guidelines, 2020, Odisha Sand Policy, 2021, EIA Notification 2006 and Amendment 2016, and Odisha Minor Minerals Concession Rules, 2016. The violations enumerated are as under:-

- i) “Use of 4 heavy machines (Excavators) and hundreds of Heavy vehicles when Mechanical Mining is prohibited as per Sustainable Sand Mining Guideline 2016 and EC conditions.*
- ii) Mining beyond lease area in Gopinathpur Mouza.*
- iii) Sand mining operation during Monsoon seasons while the same is prohibited as per Sustainable Sand Mining Management Guidelines, 2016.*
- iv) Excess mining to the tune of more than 50 Hyva Truck load/day (one Hyva is having load capacity of around 20 cubic metres of sand) which is around 1,000 CM/Day when the permission is only for 18000 CM for the first year and 4,500 for the entire second year. Roughly around 85.71 Cubic Meter per day in the first year and 21.42 Cubic Metre per day in the second year of mining, considering 210 days of sand mining in a year. The rate at which mining is ongoing, the annual target has already been exhausted within 5 days of mining operation.*
- v) Daily Mining Register has not been maintained and transit permits (Form Y) not given to every vehicle and this is being done in collusion with Tahasildar and Revenue Inspector.*

- vi) No Pillar Posting and Demarcation of Lease Area prior to commencement of mining and presently quarry area beyond the lease area. Vehicles engaged in mining are overloaded and the spill over of wet sands on road makes the road muddy and accident prone during rainy days and cause air pollution during non-monsoon days.*
- vii) Annual replenishment study and Pre-monsoon assessment has not been conducted while allowing the mine to operate.*
- viii) There has been no monitoring of quantity of sand excavated and GPS Tracking of vehicles, Electronic Transit Pass, CCTV camera in mining site as prescribed in Enforcement & Monitoring Guidelines for Sand Mining, 2020.*
- ix) Vehicular Transportation through densely populated villages and in front of Sub-Divisional Hospital Talcher. Further the carrying capacity of the roads has not been assessed and as such the existing road cannot withstand the pressure of hundreds of sand loaded heavy vehicles.”*

5. It is stated that Mining Lease was granted in favour of Respondent No.14 over an area of 10.06 hectares and the volume of 18,000 CUM in the first year and 4,500 CUM in the second year was determined.
6. It is stated that on record there are two sand sources, namely, Gopinathpur Sand Sairat and Nizigarhzami Sand Sairat. Gopinathpur Sand Sairat has not been auctioned but Nizigarhzami Sand Sairat was leased out before 2017 and now the Respondent No.14 is the present lessee. It is stated that the sand quarry is locally named after Gopinathpur.
7. It is also alleged that the present lessee is operating on Plot Nos.2833 and 2883, Khata No.326 in Mouza-Khalapal in Parajang Tahasil as the Brahmani river divides both the Tahasils. Hence, the lessee, Respondent No.14, is carrying on illegal sand mining from several acres of land/plots spread in three different mouzas inspite

of lease having been granted only for Plot no.3695, Khata No.446 in Village-Nizigarhzami, Tahasil-Talcher, District-Angul.

8. The allegation further is that excess mining is carrying on to the tune of more than 50 Hyva (12 wheeler and 16 wheeler) trucks each having loading capacity of 22 CUM of sand. It is stated that the plying of vehicles occurs throughout day and night and 1,000 CUM/day of sand is being illegally mined although permission is only for 4,500 CUM in the year 2023-24 which comes to about 21.42 CUM/day multiplied by 210 days of sand mining in a year which can be lifted by just one Hyva load of sand.
9. It is also alleged that in the extraction of sand four machines are being used for sand mining, namely, Hyundai 210 machines with 5.7m Boom length and 2.9m Arm length with Bucket capacity of 1.22 CUM.
10. Photographs have also been along with the Original Application by way of evidence.
11. Matter requires consideration.
12. Issue notice to the Respondents, returnable within four weeks.
13. Mr. Shakti Prasad Panda, learned Additional Government Advocate who is present in (Virtual Mode), accepts notice on behalf of the Respondent No.1, 2, 3, 4, 5, 6, 7, 8 & 9, State Respondents, Government of Odisha.
14. Ms. Papiya Banerjee Bihani, learned Counsel who is present in Court, accepts notice on behalf of the Respondent No.10, Odisha State Pollution Control Board.
15. Ms. Rashmi Singhee, learned Counsel who is present in (Virtual Mode), accepts notice on behalf of the Respondent No.11, SEIAA, Odisha.

16. We are of the view that Respondent No.12, Ministry of Environment, Forest and Climate Change, is not a necessary party to the present proceedings as SEIAA, Odisha, is already a party Respondent. We, therefore, direct the Applicant to delete the Respondent No.12 from the array of Respondents within 48 hours.
17. We also find that entire allegations of illegal mining are directed against the Respondent No.14, Pitambar Bhutia, who is stated to be a supplier of sand to Respondent No.13, Talcher Thermal Power Station (TTPS), and there is no allegation against the Respondent No.13 of being involved in any criminal activity or illegal sand mining. We are, therefore, of the view that Respondent No.13 is also not a necessary party to the present proceedings. The Applicant is directed to delete the Respondent No.13 from the array of Respondents within 48 hours.
18. Issue notice to the Respondent No.14, Pitambar Bhutia, returnable within four weeks.
19. All the Respondents shall file their counter-affidavits within four weeks.
20. Considering the allegations made, we deem it appropriate to constitute a Committee to elicit the veracity of the allegations comprising of the following Members:-
 - (i) Senior Scientist, Odisha State Pollution Control Board,
 - (ii) Senior Scientist, SEIAA, Odisha, and
 - (iii) District Collector, Angul, or his representative not below the rank of Additional District Magistrate,
21. The Committee shall inspect the site in question and submit its Report within four weeks on affidavit with regard to the allegations made.

22. The District Collector, Angul, shall be the Nodal Agency for all logistic purposes.
23. The Committee Report on affidavit shall be filed by the Odisha State Pollution Control Board.
24. The Counsel for the Applicant shall serve e-copy/soft copy of the Original Application along with all its annexures as well as additional affidavit dated 12.03.2024 upon Mr. Shakti Prasad Panda, Ms. Papiya Banerjee Bihani and Ms. Rashhmi Singhee, Counsel for the Respondents within 48 hours.
25. **List on 02.05.2024.**

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

March 12, 2024,
Original Application No.47/2024/EZ
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