

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

Original Application No.62/2024/EZ

Bhagabat Sahoo & Ors.

Applicant(s)

Versus

State of Odisha & Ors.

Respondent(s)

Date of hearing: 20.03.2024

**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, (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 Applicants.
2. The present Original Application has been filed by the Applicants who are 5 in number, alleging that the Respondent No.16, Private Respondent, who is lessee of Uteipur Sand Quarry 2 under Dhamnagar Tahasil of Bhadrak District, Odisha, is carrying on sand mining in violation of Environmental Clearance conditions, Consent of Operate conditions, Sustainable Sand Mining Guidelines, 2016, and Enforcement and Monitoring Guidelines for Sand Mining, 2020, Odisha Sand Policy, 2021, and EIA Notification, 2006.
3. The violations in the sand mining by the Respondent No.16 have been outlined in para 15 of the Original Application which read as under:-

- i) *“Sand Lifting outside the lease area in Uteipur-2 Sand quarry in Uteipur Mouza (Anandapur GP) of Sodhar RI circle of Dhamnagar Tahasil.*
- ii) *Use of machines (excavators) when permission is only for manual mining (only through labour and no machine to be used for mining the sand*
- iii) *Excess mining beyond the permissible limit and mining throughout day and night and beyond the designated lease area. As per approved mining plan for the sand quarry the lease area is having Latitude: N20° 51' 33.22" to N20° 51' 39.12" Longitude: E86° 24' 15.73" to E86° 24' 24.35". But Mr. Sarat Chandra Majhi lifting and extracting sand from 300 mtr east of said location. He has theft all the sands deposited in this area, which is beyond lease area.*
- iv) *Mining during Monsoon season while the same is banned.*
- v) *No monitoring by the revenue officials to ensure the lease conditions are complied in letter and spirit.*
- vi) *No pillar posting in lease area.*
- vii) *The CTO of the said Uteipur-2 sand quarry is expired on 31st*
- viii) *March of 2022. As per guidelines, the lease holder should apply for CTO 90 days before expire of previous CTO. OSPCB had issued the CTO on 2019 March 19 vide letter no.490/CTO-3194/2019 and CTO no. 165/2018-2019.”*

4. Further violations in the sand mining alleged to have carried out by the Respondent No.16 as stated in the Original Application are as under:-

- i) *“Illegally extracting sand without valid EC, CTO, Mining plan.*
- ii) *Use of heavy machines (Excavators) and Hyva when Mechanical Mining and use of Machine in sand Mining is prohibited. Earlier five machines used and now two machines are used for sand mining and loading.*
- iii) *As per the Mining Plan the depth of mining will be 1 Metres but on ground its exceeding beyond 10 metres by using excavators.*
- iv) *Mining carried out in Safety Zone and on River Bank which is prohibited as per the mining plan.*
- v) *Daily Mining Register not maintained.*

- vi) *No Pillar Posting and Demarcation of Lease Area in the mining site.*
- vii) *Annual replenishment study and Pre monsoon and Post Monsoon assessment has not been conducted while allowing the mine to operate.*
- viii) *Half yearly compliance reports were not submitted and not in public domain, No greenbelt developed along the roadside or near mining site by the proponent.*
- ix) *Tahasildar and local administration are hand in glove with the lessee and willfully violating the order of Hon'ble NGT as well as flouting the conditions of Mining Lease, Mining Plan, EC and CTO.*
- x) *Operating the Sand Mine even after completion of the lease period that was up to 2021-22 financial year ended on 31st March 2022. Also the present ongoing mining is without consent to operate and valid environment clearance which is no more in force after 31st March 2022.*
- xi) *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 EIA Notification dated 15th January 2016 and Sand Mining Enforcement and Monitoring Guideline 2020.*
- xii) *Vehicular Transportation through densely populated villages and Rural Roads constructed by the Pradhan Mantri Gram Sadak Yojana (PMGSY) and on basis of the pavement strength and carrying capacity, Rural Development Department has fixed signage as –Heavy Vehicles Prohibited. 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.*
- xiii) *Sand mining operation during Monsoon seasons while the same is prohibited as per sustainable sand mining guideline 2016.*
- xiv) *Vehicles engaged in mining are overloaded and not covered with tarpaulin 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.”*

5. Matter requires consideration.

6. Issue notice to the Respondents, returnable within four weeks.

7. Mr. Dipanjan Ghosh, learned Counsel who is present (in Virtual Mode), accepts notice on behalf of the Respondent No.4, Odisha State Pollution Control Board.
8. Mr. Apurba Ghosh, learned Counsel who is present (in Virtual Mode), accepts notice on behalf of the Respondent No.5, SEIAA, Odisha.
9. Mr. Surendra Kumar, learned Counsel who is present (in Virtual Mode), accepts notice on behalf of the Respondent No.12, Central Pollution Control Board.
10. Mr. Sankar Prasad Pani, learned Counsel for the Applicant states that the Respondent Nos.13 & 14, Ministry of Environment, Forests and Climate Change, have wrongly been impleaded in the present proceedings, therefore, the same may be deleted from the array of Respondents.
11. We accordingly direct the Applicant to delete the Respondent Nos.13 & 14, Ministry of Environment, Forests and Climate Changed, from the array of Respondents within 48 hours.
12. Issue notice to the Respondent Nos.1, 2, 3, 6, 7, 8, 9, 10, 11, 15 & 16, returnable within four weeks.
13. Considering the allegations made, we deem it appropriate to constitute a fact finding Committee to elicit the veracity of the allegations comprising of the following Members:-
 - (i) Senior Scientist, Odisha State Pollution Control Board,
 - (ii) Senior Scientist, Central Pollution Control Board,
 - (iii) Senior Scientist, SEIAA, Odisha, and
 - (iv) Collector & District Magistrate, Bhadrak, or his representative not below the rank of Additional District Magistrate,

14. The Committee shall inspect the site in question and submit its Report within four weeks on affidavit with regard to the allegations made.
15. The Collector & District Magistrate, Bhadrak, shall be the Nodal Office for all logistic purposes.
16. The Committee Report on affidavit shall be filed by the Odisha State Pollution Control Board within four weeks.
17. The Counsel for the Applicant shall serve e-copy/soft copy of the Original Application along with all its annexures upon Mr. Dipanjan Ghosh, Apurba Ghosh and Mr. Surendra Kumar, Counsel for the Respondents, within 48 hours.
18. **List on 06.05.2024.**

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

March 20, 2024,
Original Application No.62/2024/EZ
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