

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
(Through Video Conferencing)**

Original Application No. 33/2020/EZ  
(I.A. No. 01/2021/EZ & I.A. No. 02/2021/EZ)

Laxmidhar Palai

Applicant(s)

Versus

District Collector, Balasore & Ors.

Respondent(s)

Date of hearing: 17.06.2021

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER  
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s) : Sankar Prasad Pani, Advocate

For Respondent(s) : Mr. S.K. Nayak, Addl. Govt. Advocate  
For Respondent No.1,2&10,  
Ms. Papiya Banerjee Bihani, Advocate  
For Respondent No.3,  
Mr. Gora Chand Roy Choudhury, Adv.  
For Respondent No.4,  
Mr. Somnath Roy Chowdhury, Adv. a/w  
Ms. Arpita Chowdhury, Advocate for  
Respondent No.7 & 8

**ORDER**

1. Mr. Sankar Prasad Pani, learned Counsel for the Applicant is present.

2. Mr. S.K. Nayak, Addl. Govt. Advocate, Govt. of Odisha is present for Respondent Nos. 1, 2 & 10, State Respondents, Ms. Papiya Banerjee Bihani, learned Counsel is present for Respondent No.3, Odisha State Pollution Control Board, Mr. Gora Chand Roy Choudhury, learned Counsel is present for Respondent No.4, State Environment Impact Assessment Authority (SEIAA), Odisha and Mr. Somnath Roy Chowdhury, learned Counsel is present for Respondent Nos. 7 & 8, Private Respondents.
3. An additional affidavit has been filed on behalf of Respondent No.3, Odisha State Pollution Control Board and in paragraph "VI" at page no. 433 of the paper book, it has been stated that the Committee which was constituted by the Tribunal vide its order dated 09.06.2020 also included representatives of SEIAA, Odisha, during their inspection observed that Respondent No.7 had extracted 19,995 Cm<sup>3</sup> of sand which is in excess of the permissible quantity of 30,000 Cm<sup>3</sup> (extracted in one and half year period between 2018-

19 and 2019-20 till 11.06.2019). It is also stated that penalty for the excess mining of sand for this period was realized by the Tehsildar, Jaleswar from the Respondent No.7. It is also stated in para "VII" at page 433 of the paper book that the Consent to Operate was granted for 20,000 Cm<sup>3</sup> considering the principle of Sustainable Sand Mining. However, what we find is that as per the Environmental Clearance granted by the SEIAA, Odisha on 06.12.2017, it was only observed that the mineable reserves are 20,000 Cm<sup>3</sup> of sand whereas the Environmental Clearance was granted for only 5,000 Cm<sup>3</sup> annually with the specific condition that the annual extraction of sand shall not exceed 5,000 Cm<sup>3</sup> allowing for replenishment of 25 percent of the mineable reserve over the lease period.

4. The question is that on these facts how was the Consent to Operate granted by the Odisha State Pollution Control Board for 20,000 Cm<sup>3</sup> when the Environmental Clearance was only for 5,000 Cm<sup>3</sup> per annum.

5. Another question before this Tribunal is that when the Environmental Clearance granted by the SEIAA, Odisha is only for extraction of 5,000 Cm<sup>3</sup> sand annually, how it has been calculated by the State Pollution Control Board that only 19,995 Cm<sup>3</sup> of sand has illegally been mined and that recovery has been made by the Tehsildar only for this excess amount of 19,995 Cm<sup>3</sup> of sand.
6. It appears from the affidavit filed by the Odisha Pollution Control Board that the actual amount of sand mined in the past one and a half year is 49,995 Cm<sup>3</sup>. Then the excess amount of sand mined would be 42,495 Cm<sup>3</sup> (i.e. 49,995 Cm<sup>3</sup> - 7,500 Cm<sup>3</sup>) as per the condition granted in the Environmental Clearance and not 19,995 Cm<sup>3</sup> which has been calculated on the basis of Consent to Operate (49,995 Cm<sup>3</sup> - 30,000 Cm<sup>3</sup>) for one and a half year.
7. We are, therefore, of the view that an affidavit be filed by Respondent No.4, SEIAA, Odisha specifically answering these queries of the Tribunal and meeting the averments made in the additional affidavit of the Odisha Pollution Control Board.

8. Mr. Gora Chand Roy Choudhury, learned Counsel for Respondent No.4, SEIAA, Odisha, prays for and is granted four weeks time to file the affidavit.
9. Mr. Sankar Prasad Pani, learned Counsel for the Applicant has referred to the joint verification report as Annexure-R3/1 at page no. 322 of the paper book and submitted that in item no.2 of this report with regard to the obstruction to the free flow of river water, it has been observed that “the existing portion of wooden bridge needs to be removed to ensure complete free flow of the river water”. He further submits that this portion of the wooden bridge has not been removed till date.
10. Mr. Somnath Roy Chowdhury, learned Counsel for Respondent No.7, on the other hand, submitted that there is no finding that the embankment of the river has been cut and he referred to item no.6 of the joint verification report at page 323 of the paper book which mentions that no evidence was found regarding sand mining close to the embankment. However, we find in the Observation that some portion of the embankment at one

side and some portion on the other side were found cut along the river flow for construction of the roads on both sides of the river.

11. We, therefore, direct the Respondent No.9, Executive Engineer, Balasore Irrigation Division, Odisha to file his personal affidavit before the next date of listing, stating as to what action has been taken for restoration of the embankment and removal of the wooden bridge to ensure free flow of river water.

12. **List on 17.07.2021.**

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B. Amit Sthalekar, JM

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Saibal Dasgupta, EM

June 17, 2021  
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(I.A. No. 01/2021/EZ & I.A. No. 02/2021/EZ)  
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