

# 1. Kandra Battachhatri vs State Of Odisha Through Chief Secretary ... on 29 April, 2022

Item No. 04

Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
(Through Video Conferencing)  
Original Application No.112/2021/EZ

Kandra Battachhatri & Ors.

Applicant(s)

Versus

State of Odisha & Ors.

Respondent(s)

Date of hearing: 29.04.2022

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

For Applicant(s) : Mr. Sankar Prasad Pani, Advocate (in virtual)

For Respondent(s) : Mr. Ashok Parija, Sr. Advocate (in virtual) a/w  
Ms. Samapika Mishra, ASC for R-1 to 8,  
Mr. Dipanjan Ghosh, Advocate for R-9,  
Mr. Gora Chand Roy Choudhury, Advocate for R-10  
(in virtual),  
Mr. Ashok Prasad, Advocate for R-12 (in virtual)

## ORDER

1. Mr. Sankar Prasad Pani, learned Counsel for the Applicant, is appearing in virtual court proceedings.
2. One counter-affidavit dated 27.04.2022 has been filed by Respondent Nos.2 & 4; the same is taken on record.
3. One affidavit dated 27.04.2022 has been filed by Respondent No.9, Odisha State Pollution Control Board; the same is taken on record.
4. One reply affidavit dated 28.04.2022 has been filed by Respondent No.11, Ministry of Environment, Forests and Climate Change; the same is taken on record.
5. One affidavit dated 28.04.2022 has been filed by Respondent No.10, State Environment Impact Assessment Authority bringing on record Joint Verification Report; the same is taken on record.
6. The Joint Verification Report of that Committee comprised of the following members: -

Sl. No.	Name	Designation	Organization
i.	Sri Nikhil	Pawan Collector & District Govt. of Odisha	

	Kalyan		Magistrate, Sundergarh	
ii.	Sri Seth	Kriti	Ranjan Mining Officer	Deputy Dir of Mines, koi Circle, Sundergarh
iii.	Smt. Babita Singh		Regional Officer	State Pol Control Board
iv.	Dr. Pradeept Kumar Nayak	Environmental Scientist		SEIAA, Bhubaneswar

7. The findings of the Committee read as under: -

"1.0 Present Status of the allegation against sand quarry:

The joint inspecting team made assessment of the present status of allegations of sand mining beyond the permissible limit/permissible lease area and un-authorized mining in Kenapali Sand Bed over an lease area 12.35 acres/4.997 Ha located at village-Brahamaninadi 'Kha' adjoining to Kenapali Village, Tahasil-Lahunipada, Dist-Sundergarh. The environmental clearance (EC) has obtained from SEIAA vide letter no. 9757/SEIAA dt.25.11.2020 in favour of Tahasildar, Lahunipada and latter in favour of Smt. Rajashree Behera. The point wise allegation and its details compliance as follows:

Sl. No.	Issues	Present Status
5.	Mechanical	Mining: There are two sand bed locate

mechanical mining is done by the Kenapali village area i.e. engaging Earth Ladaam Sand Bed and Kenapali Mover/machines of different Sand Bed. Both sand beds are capacity which is strictly located 570m away from each prohibited and not approved other. The Ladaam sand was by any of the regulating operated for the period 03 years authorities. The machine (i.e. 02.07.2018 to 31.03.2021) used for sand mining is with in favour of M/s/KMC-RKD, Model No. VOLVO EC 210 D construction Company, with 5.7m Boom length and Bhubaneswar, Odisha with valid 2.9m Arm length. Bucket EC obtained from DEIAA, capacity is around 1.22 Cum. Sundargarh vide letter Copy of photographs dated no.523/Mining dt. 12.10.2018.

11th April 2021 and 14th The Kenapali sand bed has October 2021, 4th November obtained EC from SEIAA vide 2021, depicting Mechanical letter no. 9758/SEIAA dt.

Mining is annexed as 25.11.2020 in favour of Annexure-4 Tahasildar, Lahunipada and latter the lease transfer in favour of Smt. Rajashree Behera and the lease was operated on 10.03.2021 and mining activity stopped on 11.12.2021 due to NGT case.

During inspection the committee has not found any machines are engaged for sand mining for Kenapali sand bed. However, as per Google Earth map photographs submitted by the petitioner and informed by local villagers, it revealed that excavators were used earlier for the sand mining both Kenapali and Ladam Sand Bed. The lease period of Ladam Sand Bed is completed on 31.03.2021.

6. Mining beyond 1mtre As per the mining plan of Ladaam depth: The private Sand Bed, the permissible depth respondent is mining up to 20 for sand excavation is 2.0 meter feet (around 6 meters) and and 1.0 meter for Kenapali sand photographs dated 14th Oct Bed as per mining plan and EC.

2021 suggests the mining But the during inspection it was leading to pond like found that the sand extracted structures touching the water from Ladaam sand bed level approximately 1.5 meter to 2.5 meter depth and also sand extracted beyond the lease.

Similarly the sand extracted from Kenapali sand bed approximately 1.0 meter to 1.5 meter depth and from beyond the lease area. The quantum of sand extracted from Kenapali Sand Bed lease area is very lease as compare to permissible limit in EC but the lessee has extracted more sand from outside the lease area upto 1.5m depth. In case of Ladam sand Bed the quantum of sand mined out from outside and within the lease is more as compare to permissible limit in EC.

7. Mining in safety Zone and During inspection it was found close to River Bank that the Ladaam sand bed was operated earlier (i.e. on 02.0.2018 to 31.03.2021) very close to river embankment and to obstructed the natural flow of river water by constructing temporary road in river and use that road for transportation of sand from Ladam sand Bed. But in case of Kenapali sand bed, the lease area located 300m away from river embankment. The lessee of Kenapali sand bed uses the existing road already constructed for Ladam Sand Bed and latter that bed was extended to Kenapali sand bed by the lessee.

8. Excess Mining and As per the information and Transportation through hyva documents submitted by Tahasildar, Lahunipada, the permission issued for extraction of sand from Ladaam sand bed is 8000cum (as per Y-form) but the lease has extracted 35400 cum of excess sand for the period 02.07.2018 to 03.10.2019 and as per google map record it appear that the excess 45000 cum of sand extracted for the period January 2021 and total excess and illegal sand extracted for the entire lease period is 80400cum. Similarly, the Lessee of Kenapali sand bed extracted 10148 cum of sand from her lease area which is very less as per approved EC and mining plan (i.e. 16375 cum / annum with depth 1.0m) but the lessee extracted sand beyond the lease area is 1393 cum which is illegal.

9 & Sand Mining during Monsoon Whatever quantity of sand

10. Period: The Y forms indicating extracted during monsoon period the sand mined and the same has been included in transported during monsoon the calculation sheet for season such as 12th August extraction of sand as per Y-forms. 2021, 12th Sept, 2021, 13 Oct At the time of Y-form issued there 2021 and 14th Oct 2021 were no rains as informed by the concerned Tahasildar.

11. No pillar posting in the lease Pillar posting was there for area Kenapali sand bed not Ladaam sand as the lease period of Ladam Sand Bed is already expired on 31.03.2021.

12. No display board (information The committee has observed there details) of statutory clearance was a display board for Kenapali sand bed only.

15. Sand Mining beyond lease Both of the lessees (Ladaam and area Kenapali sand bed) have extracted sand beyond the lease area. As per the Tahasil record and google earth map photographs it reveals that excess production was made by the lessee in different times. The details are mentioned in point no.

17. Carrying capacity of the road 1. A 500 meter kutchra road is and impact of playing of sand connected from river bed to loaded heavy vehicles on nearest pucca/pichu road and local population has not been the road conditions is not good studied: as it observed by the committee during visit.

2. The carry capacity of pucca road is not viable, if overloaded water mixing-sand transported through Hyawa and passed through nearest village area. During the inspection the nearest village people express their views that they are facing problem of dust and noise pollution, their houses are cracking due to heavy vehicles passing near the village area as 4 to 6 houses are located closed to road.

19. Impact on the flow of the river During inspection it was found water that the main river water flows opposite site of the sand bed.

However, it is also found that due to construction of road in river near quarry area, the flow of water is obstructing some extent and that may be increased in rainy season.

20. Transporting sand loaded The govt. has already sanctioned heavy vehicles through the the required amount to repair or village roads (PMGSY) to construct of the damaged resulted in complete damage village road as informed by and local peoples are District Administration. suffering

27. Replenishment study and pre The Lessee has submitted rate of and post monsoon replenishment study report of assessment not conducted. Kenapali Sand bed it reveals that the mineable reserve as per mining plan was 43519 cum and after post monsoon the mineable reserve is 63045 cum.

The Replenishment study was done by arqp Sri Zinu Sh. Sathua by Drone Survey 2021 method (copy attached).

2.0 Over all observation The committee members observed the following at the time of inspection:

i. The Brahamani River is flowing in the opposite site of the sand Bed.

No mining activity was going on, lease period of Ladaam Sand Bed has expired on 31.03.2021 and Kenapali sand bed was stopped for operation on 11.12.2021 as mentioned in the above table, and there was no machine found in the mine lease area. However, as per the information of local people and google map the both the quarries were operated mechanically earlier.

ii. Earlier the mining activities were done beyond the lease area and beyond the permissible depth both in case of Ladaam sand bed and Kenapali sand bed.

iii. Free flow of the river water is obstructed slightly for present and it will be fully during monsoon due to construction of road within the river bank has been observed.

iv. There is a temporary (not concrete) pillar marking on the river embankment to demarcate in the lease area of Kenapali sand Bed and also there is a display board.

v. Earlier the Ladaam Sand bed was operated for the period 2018 to 2021 after obtained environmental clearance from DEIAA, Sundergarh. During inspection it appear that the Ladam Sand bed was operated without maintaining the safety zone but the Kenapali Sand bed has maintained 300m safety zone from river embankment.

vi. Total excess sand extracted from Ladaam sand bed for the entire lease period is 80400cum as it found from field visit and google earth map. Similarly, the Lessee of Kenapali sand bed extracted excess 1393 Cum sand beyond the lease area. For the excess/illegal mining from Ladam Sand Bed (i.e. 35400 cum sand) the concerned Tahasildar has collected of Rs.14,68,500/. Notice has been served to Smt. Rajashree Behera vide letter no. 229 25.01.2022 for collection of penalty and royalty of Rs.7,58,646/- for excess 736.74 cum sand extraction from Kenapali sand Bed.

vii. The lessee of Kenapali sand bed has submitted replenishment study report.

viii. The state govt. has already taken step for construction damaged village road for which already money approved by Govt.

### 3.0 Recommendations :

1. The Concerned Authority must ensure that the Sustainable Sand Mining Management Guidelines 2016 and Enforcement & Monitoring Guide lines for Sand Mining 2020 by Ministry of Environment, Forest and Climate change and the guidelines are strictly followed while granting the lease to a lease holder as well as before, during and after the execution of the sand mining.

2. The rate of study of Replenishment of sand should be included in the DSR report.

3. The fine amount imposed for excess sand mining for Ladaam sand Bed is Rs.3,84,99,137/- and for Kenapali sand Bed of Rs.13,07,192/- shall be collected from previous lessee and present lessee. The details of calculation for environmental compensation are attached below:
4. The lessee shall remove the road constructed in river for using sand transportation.
5. Sprinkling of water for dust suppression during sand transportation near to the village road and limiting speed of vehicles shall be ensured by the lessee.
6. The sand loading vehicles should be covered properly and transportation time to be restricted only on day time.
7. Massive plantation about 3000 nos. of evergreen, native and fruit bearing tree species to be planted near the river embankment area to protect the soil erosion and damage of river embankment.
8. There shall be construct a concrete wall at damage site of the river embankment through using the collected penalty amount from lessee.
9. A health camp shall organise near the village area to check health problem if any due to dust and noise pollution created during sand transportation.
10. Nearly 2,000 trees of suitable fruit bearing species shall be raised in nursery to 1m height and such saplings shall be given free to beneficiaries of this area for planting. Maintenance and Nursing of the plants shall also be paid for, and managed by utilizing from environmental compensation amount till the plants get established.

This is part of the remediation plan."

8. The Committee has noticed that Tehsildar, Lahunipada had granted permission for extraction of sand from Laddam Sand Bed of 8000 Cum as per Form-Y but the lessee has extracted 35400 Cum in excess sand for the period 02.07.2018 to 03.10.2019 and as per Google map record the excess sand was 45000 Cum for the period from January, 2021; hence and the total amount extracted is 80400 Cum.

Similarly, the lessee of Kenapali sand bed extracted 10148 Cum of sand from the lease area which is less than what has been permitted in the Environmental Clearance but the lessee extracted sand beyond the lease area of 1393 Cum which is illegal. These findings of the Committee are confirmed in the affidavit of the Tehasildar, Lahunipada in paragraph No.10.

9. The Verification Report further shows that for illegal extraction of 80400 Cum from Laddam Sand Bed and 1393 Cum from Kenapali Sand Bed, the Tehasildar has collected Rs.14,68,500/- (Rupees Fourteen lakhs Sixty-eight thousand five hundred only) by way of penalty and royalty

amounting to Rs.7,58,646/- (Rupees Seven lakhs fifty-eight thousand six hundred forty-six only) for excess 736.74 Cum of sand extracted from Kenapali Sand Bed. Question is that if the excess sand extracted is 1393 Cum from Kenapali Sand Bed beyond the lease area how has royalty been collected only for 736.74 Cum. This is not explained in the Joint Verification Report nor in paragraph no. 27 of the affidavit of the Tehasildar, Lahunipada.

10. The amount of Rs.3,84,99,137/- (Rupees Three crores eighty-four lakhs ninety-nine thousand one hundred thirty-seven only) is stated to be Environmental Compensation and the amount of Rs.13,07,192/- (Rupees Thirteen lakhs seven thousand one hundred ninety two only) is stated to be the value of the excess/unauthorized extracted sand of 1393 Cum.

11. The affidavit of SEIAA, Odisha (page no.156 of the paper book), further mentions that in addition to the Environmental Compensation the lessee shall submit Rs.2,05,20,000/- (Rupees Two crores five lakhs twenty thousand only) and Rs.12,44,826.59/-

(Rupees Twelve lakhs forty-four thousand eight hundred twenty-six and fifty-nine paisa only) for loss of Revenue from Laddam and Kenapali sand respectively. This figure has not been explained and the document filed at page no.167 of the affidavit of SEIAA, Odisha should be explained further.

12. The SEIAA, Odisha and State Respondents are granted two weeks time for filing affidavit with regard to above queries of the court.

13. List on 24.05.2022.

..... B. Amit Sthalekar, JM ..... Saibal Dasgupta, EM April 29, 2022, Original Application No.112/2021/EZ MN