

Radha Mohan Singh vs Chief Secretary Government Of Odisha on 30 August, 2022

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA

.....
ORIGINAL APPLICATION No. 30/2022/EZ

IN THE MATTER OF:

Radhamohan Singh
S/o Bajinath Singh
Pundal,
Chhelia(B), Mayurbhanj,
Odisha

....Applicant(s)

Versus

1. State of Odisha,
Represented by Chief Secretary,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar
2. Principal Secretary,
Revenue and Disaster Management,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar,
Odisha - 751001
3. Principal Secretary,
Water Resource Department,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar,
Odisha - 751001
4. Member Secretary,
Odisha State Pollution Control Board
A/118, Unit-VII, Nilakantha Nagar,
Bhubaneswar, PIN -751012

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5. Member Secretary,
State Environment Impact Assessment Authority (SEIAA),
Odisha,
SRF-2/1, Acharya Vihar, Unit-IX,
Bhubaneswar, Odisha - 751022

6. The Collector and District Magistrate, Mayurbhanj
PO - Baripada,
Dist.-Mayurbhanj,
Odisha, Pin - 770001
7. Tahsildar, Badasahi
PO/PS - Badasahi,
Dist. - Mayurbhanj,
Odisha, Pin - 770040
8. Mining Officer,
Baripada Circle,
Baripada,
Dist. - Mayurbhanj,
Odisha, Pin - 770048
9. Officer of the Executive Engineer,
Mayurbhanj Irrigation Division,
Baripada, Odisha
10. The Executive Engineer,
Rural Works Division,
PO - Baripada,
Dist. - Mayurbhanj,
Odisha, Pin - -757002
11. Regional Transport Officer,
Murgabadi, PO - Bhanjpur,
District - Mayurbhanj, Baripada,
Odisha - 757002

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12. The Superintendent of Police,
Baripada,
Dist. - Mayurbhanj,
Odisha, PIN - 757002,
13. The Member Secretary,
Central Pollution Control Board,
Parivesh Bhawan, East Arjun Nagar,
Delhi - 110032
14. The Secretary,
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan, Jorbag,
New Delhi - 110003
15. Deputy Director General of Forests (C),
Ministry of Environment, Forests and Climate Change,
Regional Office (EZ),
A/3, Chandersekharpur,

Bhubaneswar - 751023

16. Mr. Pradeep Kumar Bindhani,
Dahisahi, PO - Raghupur,
PS - Baisinga,
Dist. - Mayurbhanj,
Odisha

....Respondent(s)

COUNSEL FOR APPLICANT:

Mr. Sankar Prasad Pani, Advocate

COUNSEL FOR RESPONDENTS:

Mr. Tapas Kumar Praharaj, SC for R-1,2,6,7,8,9,10, 11,12 &15,
Mr. Dipanjan Ghosh, Advocate for R-4,
Mr. Gora Chand Roy Choudhury, Advocate for R-5,
Mr. Sibojyoti Chakraborty, Advocate for R-13,
Mr. Debasish Ghosh, Advocate for R-14 & 15,
Ms. Paushali Banerjee, Advocate for R-16

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WITH

ORIGINAL APPLICATION No. 31/2022/EZ

IN THE MATTER OF:

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S/o Bajinath Singh
Pundal,
Chhelia(B), Mayurbhanj,
Odisha

....Applicant(s)

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Lokaseva Bhawan,
Bhubaneswar, Odisha - 751001
3. Principal Secretary,
Water Resource Department,

Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar, Odisha - 751001

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8. Mining Officer,
Baripada Circle,
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Odisha, Pin - 770048
9. Officer of the Executive Engineer,
Mayurbhanj Irrigation Division,
Baripada, Odisha
10. The Executive Engineer,
Rural Works Division,
PO - Baripada,
Dist. - Mayurbhanj,
Odisha, Pin - -757002
11. Regional Transport Officer,
Murgabadi,
PO - Bhanjpur,
District - Mayurbhanj,
Baripada, Odisha - 757002
12. The Superintendent of Police,
Baripada, Dist. - Mayurbhanj,
Odisha, PIN - 757002,

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13. The Member Secretary,

Central Pollution Control Board,
Parivesh Bhawan,
East Arjun Nagar,
Delhi - 110032

14. The Secretary,
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan, Jorbag,
New Delhi - 110003
15. Deputy Director General of Forests (C),
Ministry of Environment, Forests and Climate Change,
Regional Office (EZ),
A/3, Chandersekharapur,
Bhubaneswar - 751023
16. Mr. Pradeep Kumar Bindhani,
Dahisahi,
PO - Raghupur, PS - Baisinga,
Dist. - Mayurbhanj,
Odisha

....Respondent(s)

COUNSEL FOR APPLICANT:

Mr. Sankar Prasad Pani, Advocate

COUNSEL FOR RESPONDENTS:

Mr. Tapas Kumar Praharaj, SC for R-1,2,6,7,8,9,10, 11,12 &15,
Mr. Dipanjan Ghosh, Advocate for R-4,
Mr. Gora Chand Roy Choudhury, Advocate for R-5,
Mr. Sibojyoti Chakraborty, Advocate for R-13,
Mr. Debasish Ghosh, Advocate for R-14 & 15,
Ms. Paushali Banerjee, Advocate for R-16

With
ORIGINAL APPLICATION No. 40/2022/EZ

IN THE MATTER OF:

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Radhamohan Singh
S/o Bajinath Singh
Pundal, Chhelia(B),
Mayurbhanj, Odisha

....Applicant(s)

Versus

1. State of Odisha,
Represented by Chief Secretary,

Government of Odisha,
Lokaseva Bhawan, Bhubaneswar

2. Principal Secretary,
Revenue and Disaster Management,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar, Odisha - 751001
3. Principal Secretary,
Water Resource Department,
Government of Odisha,
Lokaseva Bhawan,
Bhubaneswar, Odisha - 751001
4. Member Secretary,
Odisha State Pollution Control Board
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7. Tahsildar, Badasahi
PO/PS - Badasahi,
Dist. - Mayurbhanj,
Odisha, Pin - 770040
8. Tahsildar, Betnoti
PO/PS - Betnoti,
Mayurbhanj, Pin - 757025
9. Mining Officer,
Baripada Circle,
Baripada, Dist. - Mayurbhanj,
Odisha, Pin - 770048
10. Officer of the Executive Engineer,
Mayurbhanj Irrigation Division,
Baripada, Odisha
11. The Executive Engineer,
Rural Works Division,
PO - Baripada,
Dist. - Mayurbhanj,
Odisha, Pin - -757002

12. Regional Transport Officer,
Murgabadi, PO - Bhanjpur,
District - Mayurbhanj,
Baripada, Odisha - 757002
13. The Superintendent of Police,
Baripada, Dist. - Mayurbhanj,
Odisha, PIN - 757002,
14. The Member Secretary,
Central Pollution Control Board,
Parivesh Bhawan, East Arjun Nagar,
Delhi - 110032

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15. Deputy Director General of Forests (C),
Ministry of Environment, Forests and Climate Change,
Regional Office (EZ),
A/3, Chandersekharapur,
Bhubaneswar - 751023
 16. Mr. Krupasindhu Singh,
PO - Madhuban,
PS - Baripada,
Dist. - Mayurbhanj, Odisha - 757001
-Respondent(s)

COUNSEL FOR APPLICANT:

Mr. Sankar Prasad Pani, Advocate

COUNSEL FOR RESPONDENTS :

Mr. Tapas Kumar Praharaj, ASC for State,
Mr. Gora Chand Roy Choudhury, Advocate for SEIAA (Odisha),
Mr. Dipanjan Ghosh, Advocate for R-4,
Ms. Paushali Banerjee, Advocate for R-16

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER) HON'BLE
MR. SAIBAL DASGUPTA (EXPERT MEMBER)

Reserved On: - 25th August, 2022 Pronounce On: - 30th August, 2022

1. Whether the Judgment is allowed to be published on the net? Yes

2. Whether the Judgment is allowed to be published in the NGT Reporter? Yes
JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER) Heard the learned Counsel for the Applicants as well as the learned Counsel for the Respondents and perused the documents on record.

2. The allegation in the Original Application is that the Respondent No.16 is carrying on illegal mining of sand in Dingiria, Budhabalang River, Dingira Mouza, Badasahi Tahasil of Mayurbhanj, Khata No.188, Plot No.844 and 862 area of 16.12 acres for mineable reserve of sand of 7095 CM. The allegation is that the Environmental Clearance (EC) was granted on 04.02.2017 and Consent to Operate (CTO) was granted on 31.05.2017 which was valid only up to 31.03.2021 and which has not been extended thereafter and therefore, the sand mining beyond that date is illegal. It is also stated that the daily mining permissible limit is only 9 CM and annual sand mining capacity is only 2000 CM whereas the Respondent No.16 is extracting 2295 CM per day and 4.819 lakh CM per year which is 240 times of the permissible limit causing huge revenue loss to the State exchequer of around Rs. 43.68 crores considering the value of one cubic metre of sand to be Rs.1365/- in addition to environmental degradation. Further, allegations have been pointed out by the Applicant which are as under: -

i) 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.

ii) When the mining permissible limit is only 9 CM per day as per mining plan and annual sand Mining capacity is only 2000 CM, the lessee is extracting around 2295 CM per day and 4.819 Lakh Cubic Meters per year which is around 240 Times of the permissible limit.

iii) Considering the daily approved production of only 9 cubic meters as per Mining Plan, No Hyva can be engaged in the mining as because one Hyva is having capacity of 18 to 27 cubic meters based on the number of wheels of Hyva.

iv) As per the Mining Plan the depth of mining will be 0.3 Meters but on ground its exceeding beyond 10 meters by using excavators.

v) The surface area of mining is to be 23651 Sq. Mtre (5.84 Acres) and However mining has been carried out over 24 Acres.

vi) Mining carried out in Safety Zone and on River Bank which is prohibited as per the mining plan.

vii) Sand Mining within 50 Meters of the Bridge while EC condition prohibits mining within 500 meters of the bridge.

viii) Issue of Mining Permits/Y forms on 2/02/2022 even after exhaust of the annual permissible limit of 2000 and finding of the Tahasildar and District Squad in a raid dated 13/12/2021 that there are violations in regard to excess mining, mining beyond lease area and mechanical mining by the lessee.

ix) Daily Mining Register not maintained and transit permits (Form Y) not given to every vehicle.

x) No Pillar Posting and Demarcation of Lease Area in the mining site.

xi) The transportation from sand source takes place in 4 different approach roads illegally and in violation of mining plan. While the one road as approved in mining plan has never been used but illegally 4 other routes were operated.

xii) Sand Mining by cutting the River Bank and the sand extracted from the river bank and flood plain area to an extent of 440 meter length and 40 meter width at the mining site which was sold by the lessee to NH-16 Contractor and used for the filling work of National Highway.

xiii) Annual replenishment study and Pre monsoon and Post monsoon assessment has not been conducted while allowing the mine to operate.

xiv) Stockpile outside the river bed to an extent of 4000 Cm in the back side of Betonati College.

xv) 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. xvi) 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.

xvii) Operating the Sand Mine even after completion of the lease period that was up to 2019-20 financial year ended on 31st March 2020. Also the present ongoing mining is without consent to operate and valid environment clearance which is no more in force after 31st March 2021.

xviii) 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. xix) Vehicular Transportation through densely populated villages and Rural Roads constructed buy 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.

xx) Sand mining operation during Monsoon seasons while the same is prohibited as per sustainable sand mining guideline 2016.

xxi) 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."

3. At the time of admission, notices were issued to the Respondents to enable them to file their response.

4. The Tribunal also constituted a Committee comprising of the following members: -

(i) Senior Scientist, State Environment Impact Assessment Authority, Odisha;

(ii) Senior Scientist, Odisha State Pollution Control Board;

(iii) District Magistrate, Mayurbhanj, or his representative not below the rank of Sub-Divisional Magistrate of that area;

(iv) District Mining Officer, Baripada, Dist.-Mayurbhanj

5. The Committee was directed to inspect the site in question with regard to the allegations mentioned in the original application and submit its report within a period of one month.

6. In response the Respondent No.4, Odisha State Pollution Control Board has filed an affidavit dated 19.04.2022 bringing on record an Inspection Report of an inspection carried out on 06.04.2022. The Observation and Recommendations of the Inspection Report read as under: -

"Following observations were made during joint enquiry with respect to the grievance of the applicant in the matter of O.A. No.30/2022/EZ- Radha Mohan Singh Vs. State of Odisha and others.

Sl. Non-Compliances as per Observation of the No. the Original Application Committee 1 Use of heavy machines During the joint visit (Excavators) and Hyva the Committee when Mechanical Mining observed that no one use of Machine in sand mining activity was Mining is prohibited. Earlier carried out and no five machines used and machines/excavators now two machines are used were found in the for sand mining and lease area. However, loading. it revealed from the peripheral conditions that, the extraction of sand was done earlier through mechanically.

2 When the mining During field visit, the permissible limit is only committee found that 9CM per day as per mining the quantum of sand plan and annual sand extracted

from Dingira Mining capacity is only Sand Bed for the 2000CM, the lessee is period 2021-2022 is extracting around 2295CM 85,000 Cum. per year which is around (approximately).

- | | |
|---|--|
| 240 times of the permissible limit. | Whereas permission was obtained for extraction of sand per annum-2000Cum (Maximum) as per the mining plan and EC. Hence, excess extraction of sand within the lease area is 28000 Cum + 55000 Cum (beyond the lease area with depth 1.0m) = 83000 Cum. |
| 3 Considering the daily approved production of only 9 cubic meters as per Mining Plan, No Hyva can be engaged in the mining as because one Hyva is having capacity of 18 to 27 cubic meters based on the numbers of wheels of Hyva. | As mentioned in point no. 2. |
| 4 As per the Mining Plan the depth of mining will be 0.3 Meters but on ground its exceeding beyond 10 meters by using excavators. | Average depth of sand extracted by the lessee within and beyond the lease area is 1.0 meter whereas permission for mining |
| 5 The surface area of mining is to be 23651 Sq Mtrs (5.84 acres) and However mining has been carried out over 24 Acres. | upto 0.3 as per the mining plan and EC. The lessee has extracted excess 83000 Cum sand from within lease and beyond lease area and the details of the lease area as per google map photographs is attached. |
| 6 Mining Carried out in Safety Zone and on River Bank which is prohibited as per the mining plan. | During the mining activities, the lessee has not maintained the safety zone from the river embankment at some places and sand extracted about |

- | | |
|---|---|
| | 60 meter away from the nearest bridge which is not permissible. In some places the natural river flow changes due to mining activity by the lessee. |
| 7 Sand Mining within 50 Meters of the Bridge which EC condition prohibits mining within 500 meters of the bridge. | As mentioned in point no. 06 |
| 8 Issue of Mining Permits/Y forms on 2/02/2022 even after exhaust of the annual permissible limit of 2000 and finding of the Tahasildar and District Squad in a raid dated 13/12/2021 that there are violations in regard to excess mining, mining beyond lease area and mechanical mining by the lessee. | As intimated by the concerned Tahasildar transit permit issued to the lessee for extraction 2000 Cum sand per annum but the lessee extracted excess quantity i.e. 83000 Cum for the year 2021-2022. |
| 9 Daily Mining Register not maintained and transit permit (Form Y) not given to every vehicle. | The daily record was not maintained by the lessee as it was observed by the Committee during the visit. |

10 No Pillar Posting and There was temporary Demarcation of Lease Area pillar posting made to in the mining site. demarcate the lease area but as per the mining plan, the lease area is showing at different location as it revealed from the google map.

11 The transportation from During joint visit the sand source takes place in committee has found 4 different approach roads that different roads illegally and in violation of are used for mining plan. While the one transportation of sand road as approved in mining from the said sand plan has never been used bed which is not but illegally 4 other routes permissible as per were operated. mining plan.

12 Sand mining by cutting the During the joint visit River Bank and the sand the committee has extracted from the river observed that about bank and flood plain area to 30,000 Cum. sand and extent of 440 meter mixed with soil was length and 40

meter width extracted from outside at the mining site which the lease area was sold by the lessee to including the river NH-16 Contractor and used bank and flood plain for the filling work of area. The 30,000 cum National Highway. sand mixing soil and sand included in total quantum of illegal mined out material i.e. 83,000 Cum and the detail calculation is attached separately.

13 Annual replenishment Annual rate of study and Pre monsoon and replenishment of sand Post monsoon assessment both pre and post- has not been conducted monsoon assessment while allowing the mine to has not been operate. conducted in this case.

14 Stockpile outside the river The Committee has bed to an extent of 4000 Cm visited the stockpiling in the bank side of Betonati site and found that College. there was stocking of around 4000 Cum sand by M/s. BMT Profile Pvt. Ltd. A construction company was engaged for construction of Subarenkha irrigation Project. As per the document submitted by the said company it revealed that the stockpiled sand was collected from Morada and Kaptipada Tahasil with due permission/deposition of royalty amount and is not collected from Dingira sand bed.

15 Half yearly report were not The lessee has not submitted and not in public submitted EC domain. No green belt compliance report on developed along the half yearly basis. roadside or near mining site by the proponent.

16 Tahasildar and the local The lessee has administration are hand in violated the Mining glove with the lessee and plan, EC conditions willfully violating the order and operate the of Hon'ble NGT as well as quarry without valid flouting the conditions of CTO for which Mining Lease, Mining Plan, environmental EC and CTO. compensation for ecological damaged and environmental compensation for damage to environment has been calculated and the details are mentioned below.

17 Operating the Sand Mine As mentioned above in even after completion of the point no. 16 lease period that was up to 2019-20 financial year ended on 31st March 2020.

Also the present ongoing mining is without consent to operate and valid environmental clearance which is no more in force after 31st March 2021.

18 There has been no As per our information monitoring of quantity of till date the use of GPS sand excavated and GPS Tracking of vehicle, Tracking of vehicle Electronic Transit Electronic Transit Pass, Pass, CCTV camera CCTV camera in mining site are not as prescribed in EIA used/implemented by Notification dated 15th State Govt. for the January 2016 and Sand sand mining and it is Mining Enforcement and under process.

2020.

- | | | |
|----|--|--|
| 19 | <p>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 has fixed signage as "Heavy Vehicles Prohibited". Further the carrying capacity of the road has not been assessed and as such the existing road cannot withstand the pressure of hundreds of sand loaded heavy vehicles.</p> | <p>During the joint visit the committee has found that the PMGSY rural road damaged at some points, it may be the due to heavy vehicles used for transportation.</p> |
| 20 | <p>Sand mining operation during Monsoon seasons</p> | <p>It may be, but the same had not came to</p> |

while the same is prohibited notice of the committee as per sustainable sand during the visit. mining guidelines 2016.

21 Vehicle engaged in mining During the visit the are overloaded and not mines was not in covered with tarpaulin and operation hence, the the spillover of wet sands issue of overloading on road makes the road vehicles as well as muddy and accident prone spillage if any with during rainy days and tarpaulin cover is not cause air pollution during envisaged. non-monsoon days.

Over all observation

1. The minor mineral mine was not in operation during the visit of the committee. However, the mine was under

operation for the year 2021-22 without obtaining valid consent to operate of the State Pollution Control Board.

2. Tahasildar, Badasahi had also issued Y Form to the lessee for transit pass for transportation of the mined- out sand.

3. The mine was carried out about 83000 Cum excess sand mining violating the Mining Plan as well as the MMDR Act, 1957, EC and Water (PCP) Act, 1974 and Air (PCP) Act, 1981.

4. The mine was not complying the conditions of previous consent conditions as well as the conditions imposed in the Environmental Clearance granted by SEIAA vide

letter no. SEIA/2523 dtd.04.02.2017.

5. The lessee has changed the natural river flow of river water through random and mechanical sand mining.
6. There is no proper pillar posting around the lease area but the pillar posting made outside the actual lease area as per the mining plan.
7. Mining occurs beyond lease area, without maintaining the safety zone and distance from the river bridge.
8. The lessee has not submitted half yearly EC compliance report to SEIAA, Odisha, Bhubaneswar.

Conclusion & Recommendation:

In view of the above observations, the committee recommended the followings:

1. The minor mineral mine shall stop operation till obtain of Consent to Operate from the State Pollution Control Board and EC from SEIAA, Odisha.
2. The Tahasildar, Badasahi shall take immediately step and be vigilant so that no illegal mining can be carried out in the demarcated mining lease area.
3. As the lessee was operating the mine for the year 2021- 22 without valid consent to operate from the State Pollution Control Board and valid Environmental Clearance from the State Environmental Impact Assessment Authority (SEIAA), Odisha, Bhubaneswar the lessee shall pay the Environmental compensation for ecological damaged due to illegal mining as CPCB guideline an amount of Rs.11,89,77,404/- and environmental compensation of Rs.21,00,000/- for damage of the environment and operation of the quarry without valid CTO.
4. As the lessee has carried out excess mining, he has to pay the compensation as per the provision of MMDR Act, 1957.
5. The Tahasildar, Badasahi may ensure that there will be no mechanical mining and the lessee should not change the natural river flow for the further period of mining operation after obtaining all statutory clearance from the concerned authority.
6. As per the information given by the Tahasildar, Badasahi, the sand bed was operating 210 days in the year 2021-22 without EC and Consent to Operate of the State Pollution Control Board. The compensation shall be calculated based on the operational details submitted by the Tahasildar, Badasahi for the year 2021-22.

7. The Committee recommended to remove the obstruction for natural flow of river water.

8. The committee has recommended that the R & D dept.

Mayurbhanj shall repair the damaged road caused by the lessee due to transportation of sand.

9. It is required to massive plantation of native species near the river embankment to protect the river bed from further damage.

10. The committee directed to the Tahasildar, Badasahi to take necessary action with immediate effect to stop operation of the Balanga sand bed quarry, Dingira till obtaining of valid EC and CTO."

7. Pursuant to the findings recorded by the Committee in its Inspection Report, orders were issued for ceasing the mining operations of the Respondent No.16, Pradeep Kumar Bindhani, Private Respondent, vide order dated 17.03.2022 issued by the Tahasildar-Badasahi, District-Mayurbhanj, Odisha and it is stated that the mining operation has since been stopped.

8. The Report of the Committee also shows that the mine operator Respondent No.16 did not have a valid Consent to Operate. Question also is how was Transit Pass issued by the Tahasildar to the Respondent No.16 in the face of such gross violations of Environmental laws.

9. The Tribunal therefore, directed the District Magistrate, Mayurbhanj, to file his personal affidavit stating what criminal action has been taken against the Respondent No.16 as well as action against the Tahasildar concerned under relevant provisions of the IPC and Cr.P.C.

10. The Respondent No.6, Collector & District Magistrate, Mayurbhanj has filed affidavit dated 13.05.2022, stating therein that the Respondent No.16 has been directed to stop complete operation of minor mineral till he obtains Consent to Operate (CTO) from the Odisha State Pollution Control Board and Environmental Clearance (EC) from the State Environment Impact Assessment Authority (SEIAA for short), Odisha. It is stated that direction was also issued to the Respondent No.7, Tahasildar, Badasahi, not to allow any sort of lifting of sand from the sand bed in question namely Dingira vide order dated 17.03.2022. Section 144 Cr.P.C., orders were also passed with respect to the Budhabalnga sand bed at Dingira on 30.04.2022. It is also stated that to prevent illegal lifting of minor minerals from Badasahi Tahasil, a sub-Divisional level enforcement squad was constituted vide order dated 26.03.2022 and two teams including Tahasildar, Baripada & his staff and Tahasildar, Bangriposi & his staff were constituted to strengthen the enforcement activity in Badasahi Tahasil to prevent illegal lifting of minor mineral. It is further stated that a sum of Rs.11,89,77,404/- (Rupees Eleven crores eighty-nine lakhs seventy-seven thousand four hundred four only) has been imposed towards illegal mining by the Respondent No.16 for which the demand notice has also been issued along with demand for Rs.21,00,000/- (Rupees Twenty-one lakhs only) towards damage to the environment with respect to Budhabalanga sand bed at Dingira vide order dated 28.04.2022. The affidavit further shows that obstructions in the nature of temporary bridge and road was constructed by the Respondent No.16 restricting the free flow of river water and

therefore, orders were issued on 30.04.2022 to the Executive Engineer, Mayurbhanj, Irrigation Division, Baripada and Tahasildar, Badasahi to take immediate steps to remove the obstructions in the nature of temporary bridge and road to allow free flow of water and it is informed by the letter of the Tahasildar (in- Charge), Badasahi dated 12.05.2022 that the said construction has also now been removed.

11. With regard to the recommendations of the Committee to the R&D Department, Mayurbhanj to repair the damage caused to the road by the Respondent No.16, the affidavit discloses that instructions in this regard have been issued on 30.04.2022 to the Executive Engineer, RWD, Baripada Division. The Superintending Engineer, RW Division, Baripada has also communicated vide his letter dated 04.05.2022 that a proposal for repair of the damaged road at an estimated cost of Rs.30.00 lakhs has been submitted to the Engineer-in-Chief, Rural Works, Odisha, Bhubaneswar. The Annexure-K/6 dated 04.05.2022 shows that a proposal for repair of the damage caused to the road from Budhabalanga sand bed at Arpata for an amount of Rs.25.00 lakhs in addition has been submitted to the Engineer-in-Chief, Rural Works, Odisha, Bhubaneswar vide letter dated 10.03.2022. The affidavit further discloses that orders have been issued to the Divisional Forest Officer, Baripada Forest Division, vide letter dated 30.04.2022 to initiate steps forthwith for massive plantation of native species of plants near the river embankment with respect to Budhabalanga sand bed at Dingira to protect the river bed from further damage in consultation with the Tahasildar, Badasahi, Respondent No.7. In compliance, the Divisional Forest Officer, Baripada, has informed vide his letter dated 05.05.2022 that directions have been issued to the Range Officer, Udala/Baripada/Betnoti Forest Range to submit proposal for plantations in the aforementioned sand bed area at an early date. It is also stated that sand mining operation in the sand bed at Dingira has been stopped by the Respondent No.16 as informed by Tahasildar, Badasahi letter dated 17.03.2022 and Section 144 Cr.P.C. has also been promulgated in the area.

12. As regards criminal action against Smt. Mamtaj Maharana, Tahasildar, Badasahi and the Respondent No.16, it is stated that directions in this regard have been issued on 30.04.2022 and FIR has been lodged against the Respondent No.16, Pradeep Kumar Bindhani (lessee), FIR No.114 dated 30.04.2022 at Badasahi Police Station and investigation has been initiated against Pradeep Kumar Bihdani as well as Smt. Mamtaj Maharana as informed by the IIC, Badasahi Police Station vide D.R. No.915/PS dated 30.04.2022. Recommendations has also been made to the Additional Chief Secretary to Govt. Revenue & Disaster Management Department, Odisha, for initiation of Departmental disciplinary proceedings and immediate suspension of Smt. Mamtaj Maharana, Tahasildar, Badasahi on the basis of the draft charges framed in the letter dated 28.04.2022 and Smt. Mamtaj Maharana has been suspended vide office order dated 06.05.2022. It is also stated that Departmental proceedings have also been initiated from the office of the Additional Chief Secretary, Revenue & Disaster Management Department, Odisha, against Smt. Mamtaj Maharana, OAS-A(JB) and enquiry has also been proposed against Smt. Mamtaj Maharana, OAS-A(JB) vide letter dated 10.05.2022.

13. It is also stated that the Respondent No.16, Pradeep Kumar Bindhani (lessee) has been arrested in connection with the offence registered on 30.04.2022 and is in judicial custody till date. As regards Smt. Mamtaj Maharana, Tahasildar, it is stated that she is absconding since then and steps

are being taken to apprehend her as soon as possible by the concerned police.

14. Along with the affidavit, order dated 04.05.2022 has been filed as Annexure-I/6, showing that the notice has been issued to the Respondent No.16 for depositing a penalty amounting to Rs.13,47,28,009/- (Rupees Thirteen crores forty-seven lakhs twenty- eight thousand and nine only) towards illegal extraction of sand from Dingira and Arapata sand beds for illegal extraction of 83,000 Cum and 21,000 Cum of sand at Dingira and Arpata sand respectively.

15. The Respondent No.16 has filed his affidavit-in-reply dated 13.07.2022, stating therein that he was granted lease of 6.526 Ha. in Plot No.844 & 862, Khata No.188, Village-Dingira, for a period of five years from 12.06.2017. Environmental Clearance (EC) was granted on 04.02.2017 for the period of lease. Consent to Operate (CTO) was granted on 31.05.2017 valid upto 31.03.2021 and on expiry of the same the Tahasildar requested the State Board to issue consent order to Arapata Sand Block as the Environmental Clearance was still subsisting. It is also stated that there was theft of sand from his sand block and sand was illegally lifted during the night and transported illegally by trucks and information in this regard was also given by him to the Tahasildar, Badasahi but no action has been taken till date and he had informed the Tahasildar, Badasahi, through his letters dated 17.05.2021, 26.11.2021 and 12.01.2022. Copies of the letters have been filed as Annexure-D. All these letters are in absolutely identical language and they show the receiving of the Tahasildar, Badasahi, Mayurbhanj but it does not explain as to why the Respondent No.16 did not in the first instance lodge an FIR when the alleged first theft was noticed by him on 17.05.2021 and why he continued writing letters to the Tahasildar, Mayurbhanj till 12.01.2022 though in paragraph-9 of this affidavit the date is mentioned as 12.01.2021 and Annexure-D to the affidavit also shows the receiving of the Tahasildar as "12.01.22" with an overwriting on "21." It also does not explain why the Respondent No.16, Pradeep Kumar Bindhani, did not lodge FIR even though he alleges theft of sand from his sand block on the night on 17.05.2021, 26.11.2021 and 12.01.2022. If it is to be believed that these letters were duly received by the Tahasildar, Badasahi, it does not save the skin of the Respondent No.16 or his involvement in illegal extraction of sand to the extent of 83,000 Cum and 21,000 Cum nor does it explain the inaction of the Tahasildar, Badasahi, Mayurbhanj, Respondent No.7 in respect of this theft. This clearly shows the connivance of the Respondent No.16 and Respondent No.7 in illegal extraction of sand and pilfering of the same thereby causing theft of State Revenue running into several crores.

16. Be that as it may, the documents on record clearly establish that the Respondent No.16 has been carrying on illegal extraction of sand from the sand bed Dingira of 83,000 Cum and 21,000 Cum for which a sum of Rs.11,89,77,404/- (Rupees Eleven crores eighty-nine lakhs seventy-seven thousand four hundred four only) and Rs.21,00,000/- (Rupees Twenty-one lakhs only) for damage caused to the environment has been imposed against him. Original Application No.31/2022/EZ: -

1. In connected Original Application No.31/2022/EZ the allegation is that the Respondent No.16 is carrying on illegal mining of sand in Balanga sand bed, Arapata, Budhabalang River, Arapata Mouza, Badasahi Tahasil of Mayurbhanj District, Khata No.261, Plot No.554/1 and area of 13 acres for mineable reserve of sand of 29,792 CM. The allegation is that the Environmental Clearance (EC) was granted on

13.02.2017 and Consent to Operate (CTO) was granted on 20.04.2017 which was valid only up to 31.03.2021 and which has not been extended thereafter and therefore, sand mining beyond that date is illegal. It is also stated that the daily mining permissible limit is only 10 CM and annual sand mining capacity is only 2200 CM whereas the Respondent No.16 is extracting 2970 CM per day and 6.23 lakh CM per year which is 240 times of the permissible limit causing huge revenue loss to the State exchequer of around Rs. 53.26 crores considering the value of one cubic metre of sand to be Rs.855/- in addition to environmental degradation. Further, allegations have been pointed out by the Applicant which are as under: -

- i) 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.
- ii) When the mining permissible limit is only 10 CM per day as per mining plan and annual sand Mining capacity is only 2200 CM PER ANNUM, the lessee is extracting around 2970 CM per day and 6.23 Lakh Cubic Meters per year.
- iii) Considering the daily approved production of only 10 cubic meters as per Mining Plan, No Hyva can be engaged in the mining as because one Hyva is having capacity of 18 to 27 cubic meters based on the number of wheels of Hyva.
- iv) As per the Mining Plan the depth of mining will be 1 Meter but on ground it is exceeding beyond 10 meters by using excavators.
- v) The surface area of mining is to be 29792 SqMtre (7.36 Acres) and However mining has been carried out over 27 Acres as evident from Google earth images.
- vi) Mining carried out in Safety Zone and on River Bank which is prohibited as per the mining plan.
- vii) Daily Mining Register not maintained and transit permit (Form Y) not given to every vehicle.
- viii) No Pillar Posting and Demarcation of Lease Area in the mining site.
- ix) Obstruction of river flow by Unauthorised Road and Homepipe Bridge in the river by the lessee.
- x) Sand Mining by cutting the River Bank and the sand extracted from the river bank and flood plain area.
- xi) Annual replenishment study and Pre monsoon and Post monsoon assessment has not been conducted while allowing the mine to operate.
- xii) Stockpile outside the river bed near River Bank of the source.

xiii) 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.

xiv) 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.

xv) Operating the Sand Mine even after completion of the lease period that was up to 2019-20 financial year ended on 31st March 2020. Also the present ongoing mining is without consent to operate and valid environment clearance which is no more in force after 31st March 2021.

xvi) 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.

xvii) Vehicular Transportation through densely populated villages and Rural Roads not meant for over loaded heavy vehicles. 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.

xviii) Sand mining operation during Monsoon seasons while the same is prohibited as per sustainable sand mining guideline 2016.

xix) Vehicles engaged in mining are overloaded and not covered with tarpaulin and cause air pollution during non-monsoon days.

xx) Lessee is subletting the lease to other sand mafias by virtue of notarized agreements and power of attorney and raising fund from such unscrupulous elements."

2. At the time of admission, notices were issued to the Respondents to enable them to file their response.

3. The Tribunal also constituted a Committee comprising of the following members: -

(i) Senior Scientist, State Environment Impact Assessment Authority, Odisha;

(ii) Senior Scientist, Odisha State Pollution Control Board;

(iii) District Magistrate, Mayurbhanj, or his representative not below the rank of Sub-Divisional Magistrate of that area;

(iv) District Mining Officer, Baripada, Dist.-Mayurbhanj

4. The Committee was directed to inspect the site in question with regard to the allegations mentioned in the original application and submit its report within a period of one month.

5. In response the Respondent No.4, Odisha State Pollution Control Board has filed an affidavit dated 19.04.2022 bringing on record an Inspection Report of an inspection carried out on 06.04.2022. The Observation and Recommendations of the Inspection Report read as under: -

"Following observations were made during joint enquiry with respect to the grievance of the applicant in the matter of O.A. No.31/2022/EZ- Radha Mohan Singh Vs. State of Odisha and others.

Sl. Non-Compliances as per the Observation of the No. Original Application Committee 1 Use of heavy machines During the joint visit (Excavators) and Hyva when the Committee Mechanical Mining and use of observed that no Machine in sand Mining is mining activity was prohibited. Earlier five carried out and no machines used and now two machines/excavators machines are used for sand were found in the mining and loading. lease area. However, it revealed from the peripheral conditions that, the extraction of sand was done earlier through mechanically.

2 When the mining permissible During field visit, the limit is only 10 CM per day as committee found that per mining plan and annual the quantum of sand sand Mining capacity is only extracted from 2200 CM per Annum, the Arapata Sand Bed for lessee is extracting around the period 2021-22 is 2970 CM per day and 6.23 25,000 Cum.

Lakh Cubic Meters per year.

Whereas permission for extraction of sand per annum-2400Cum as per the mining plan (Maximum). Hence, excess extraction of sand within lease and beyond the lease area with depth 1.0m)= 21000 Cum.

3 Considering the daily As mentioned in point approved production of only no. 2 10 cubic meters as per Mining Plan, No Hyva can be engaged in the mining as because one Hyva is having capacity of 18 to 27 cubic meters based on the numbers of wheels of Hyva.

4 As per Mining Plan the depth Average depth of

of Mining will be 1.0 Meter but sand extracted by the on ground it is exceeding lessee within and beyond 1.0 meters by using beyond the lease excavators. area is 1.0meter to 1.5meter however, permission for mining upto 1.0m has been approved as per the mining plan and EC.

5 The surface area of mining is The lessee has to be 29792 Sq Mtrs (7.36 extracted excess Acres) and however mining 21000 Cum sand has been carried out over 27 from within lease and Acres as evident from Google beyond lease area earth images. and the details of the google map photographs about lease area is attached.

6 Mining carried out in Safety During the mining Zone and on River Bank which activities, the lessee is prohibited as per the mining has not maintained plan the safety zone from the river embankment at some places and sand extracted from water stream area. The lessee also violated the conditions of EC, earlier CTO and mining plan and constructing wooden bridge for transportation of sand from said sand bed and also changing natural flow of water which is not permissible and no permission has been obtained from district administration for the same.

- | | | |
|----|---|---|
| 7 | Daily Mining Register not maintained and transit permit (Form Y) not given to every vehicle. | The daily record was not maintained by the lessee as it observed by the Committee during the visit. |
| 8 | No Pillar Posting and Demarcation of Lease Area in the mining site. | There was temporary pillar posting was made to demarcate the lease area but sand has been extracted beyond the lease area with average depth of 1.0 meter. |
| 9 | Obstruction of river flow by Unauthorised Road and Hume pipes Bridge in the river by the lessee. | The lessee has constructed the temporary bridge using Hume pipes obstructing the natural flow of the river water. The lessee has not used the transportation route as mentioned in the mining plan. |
| 10 | Sand mining by cutting the River Bank and the sand extracted from the river bank and flood plain area | The lessee has not maintained the safety zone during mining activity. However, no cutting of the river bed was observed by the committee during visit. |
| 11 | Annual replenishment study and Pre monsoon and Post monsoon assessment has not been conducted while | Annual rate of replenishment of sand both pre and post-monsoon |

- | | | | |
|----|--|---|----|
| | allowing the mine to operate. | assessment has not been conducted in this case. | |
| 12 | Stockpile outside the river bed near River Bank of the source. | There was a stockpile of sand found outside the river bed and the quantum of sand is about 50 Cum. | |
| 13 | Half yearly compliance report were not submitted and not in public domain. No green belt | The lessee has not submitted | EC |
| | developed along the roadside or near mining site by the proponent. | compliance report on half yearly basis. | |
| 14 | Tahasildar and the 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 | The lessee has violated the Mining plan, EC conditions and operate the quarry without valid CTO for which | |

Mining Lease, Mining Plan, EC environmental and CTO. compensation for ecological damaged and environmental compensation for damage of environment has been calculated and the details are mentioned below.

15 Operating the Sand Mine even As mentioned above after completion of the lease in point no. 14 period that was up to 2019-20 financial year ended on 31st March 2020. Also the present ongoing mining is without consent to operate and valid environmental clearance which is no more in force after 31st March 2021.

16 There has been no monitoring As per our of quantity of sand excavated information till date and GPS Tracking of vehicle the use of GPS Electronic Transit Pass. CCTV Tracking of vehicle. camera in mining site as Electronic Transit prescribed in EIA Notification Pass, CCTV camera dated 15th January 2016 and are not Sand Mining Enforcement and used/implemented Monitoring Guidelines 2020. by State Govt. for the sand mining and it is under process.

17 Vehicular Transportation During the joint visit through densely populated the committee has villages and Rural Roads not found that the meant for overloaded heavy PMGSY rural road vehicles. Further the carrying damaged at some capacity of the road has not points, it may be the been assessed and as such heavy vehicles used the existing road cannot for transportation as withstand the pressure of this is a single hundreds of sand loaded transporting route heavy vehicles. used for vehicles movement from said sand bed to main road.

18 Sand mining operation during It may be, but the Monsoon seasons while the same was not came same is prohibited as per to notice of the sustainable sand mining committee during the guidelines 2016. visit.

19 Vehicle engaged in mining are During the visit the overloaded and not covered mines was not in with tarpaulin and the spill operation hence, the over of wet sands on road issue of overloading makes the road muddy and of vehicles as well as accident prone during rainy spillage if any with days and cause air pollution tarpaulin cover not during non-monsoon days. envisaged.

20 Lessee is subletting the lease There is no to other sand mafias by virtue documental evidence of notarized agreements and available regarding power of attorney and raising subletting the lease to fund from such unscrupulous other person. elements.

1. The minor mineral mine was not in operation during the visit of the committee. However, the mine was under

operation for the year 2021-22 without obtaining valid consent to operate of the State Pollution Control Board.

2. Tahasildar, Badasahi had also issued Y Form to the lessee for transit pass and transportation of the mined out sand.

3. The mine was carried out about 21000 Cum excess sand mining violating the Mining Plan as well as the MMDR Act, 1957, EC and Water(PCP) Act, 1974 and Air (PCP) Act, 1981.

4. The lessee was not complying the conditions of previous consent conditions as well as the conditions imposed in the Environmental Clearance granted by SEIAA vide letter no. SEIA/2543 dtd. 13.02.2017.

5. The lessee has changed the natural river flow by constructing temporary bridge.

6. Mining occurs beyond lease area, without maintaining the safety zone and beyond the permissible depth.

7. The lessee has not submitted half yearly EC compliance report to SEIAA, Odisha, Bhubaneswar.

8. It is observed that the village road of Arapata was found damaged. It may be due to transportation of sand loaded heavy vehicles.

Conclusion & Recommendation:

In view of the above observations, the committee recommended the followings:

1. The minor mineral mine shall stop operation till obtain of Consent to Operate from the State Pollution Control Board and EC from SEIAA, Odisha.

2. The Tahasildar, Badasahi shall take immediately step and be vigilant so that no illegal mining can be carry out in the demarcated mining area as well as beyond the

lease area.

3. As the lessee was operating the mine for the year 2021-22 without valid consent to operate from the State Pollution Board and valid Environmental Clearance from the State Environmental Impact Assessment Authority (SEIAA), Odisha, Bhubaneswar the lessee shall pay the Environmental compensation for ecological damaged due to illegal mining as CPCB guideline an amount of Rs.4,71,38,868/- and environmental compensation of Rs.21,00,000/- for damage of the environment and operation of the quarry without valid CTO.

4. As the lessee has carried out excess mining, he has to pay the compensation as per the provision of MMDR Act, 1957.

5. The Tahasildar, Badasahi may ensure that there will be no mechanical mining and the lessee should not change the natural river flow for the further period of mining operation after obtaining all statutory clearance from the concerned authority.

6. As per the information given by the Tahasildar, Badasahi, the sand bed was operating 210 days in the year 2021-22 without EC and Consent to Operate of the State Pollution Control Board. The compensation shall be calculated based on the operational details submitted by the Tahasildar, Badasahi for the year 2021-22.

7. The Committee has recommended to remove the temporary bridge that obstructing for natural flow of river water immediately.

8. The committee has recommended that the R & D Dept. Mayurbhanj shall repair the damaged road caused by the lessee due transportation of sand.

9. It is required to massive plantation of native species near the river embankment to protect the river bed from further damaged.

10. The committee directed to the Tahasildar, Badasahi to take necessary action with immediate effect to stop operation of the Balanga sand bed, Arapata till obtaining of valid CTO and EC."

6. The Respondent No.16 has filed his affidavit-in-reply dated 13.07.2022, wherein it is stated that lease for 5.27 Ha. in Plot No.554/1, Khata No.261, Village Arapata, was granted for a period of five years from 24.04.2017. Environmental Clearance (EC) was granted on 13.02.2017 valid for five years till 23.04.2022. Consent to Operate (CTO) was granted on 20.04.2017 valid upto 31.03.2021 and upon expiry of the same, the Tahasildar requested the State Board to issue consent order to Arapata Sand Block as the Environmental Clearance was still subsisting.

7. In this case also, it is alleged by the said respondent that several times during the night of 28.04.2021, 13.06.2021 and 02.12.2021 there has been theft of sand from his sand block, notice of which was communicated by him to the Tahasildar, Badasahi. Copies of the letters have been filed as Annexure-D. All these letters are in absolutely identical language. However, it does not explain as to why the Respondent N.16, Pradeep Kumar Bindhani did not lodge FIR when the alleged thefts were noticed by him on the nights on 28.04.2021, 13.06.2021 and 02.12.2021, and though the letters are said to have been received by the Tahasildar, Badsahi, her inaction on the same remains unexplained which prima facie shows connivance between Tahasildar, Badsahi, Respondent No.7 and Respondent No.16.

8. The affidavit of the Respondent No.6, Collector & District Magistrate, Mayurbhanj dated 13.05.2022, mentions that Section 144 Cr.P.C. has been promulgated at Budhabalanga sand bed at Arapata and that sand mining operations have been closed. It is also stated that FIRs have been lodged against the Respondent No.16 and investigation has been initiated against Smt. Mamtaj Maharana, Tahasildar, Badasahi and Departmental disciplinary proceedings have also been initiated and she has been placed under suspension.

It is also stated that an amount of Rs.4,71,38,868/- (Rupees Four crore seventy-one lakhs thirty-eight thousand eight hundred sixty-eight only) has been computed against the Respondent No.16 for illegal mining and Rs.21,00,000/- (Rupees Twenty-one lakhs only) for damage caused to the environment at Budhabalanga sand bed at Arapata. It is further stated that for illegal extraction of 21,000 Cum of sand at Arapata, a demand notice amounting to Rs.1,91,90,000/- (Rupees One crore ninety-one lakhs ninety thousand only) has been issued against the Respondent No.16. The documents on record however do not state that the penalty and amount of Environmental Compensation have been recovered from the Respondent No.16. Original Application No.40/2022/EZ: -

1. In Original Application No.40/2022/EZ, the allegation is that the sand mining is going on in violation of the environmental norms in Balanda Sand Bed, Mahupura in Budhabalanga River at Village-

Mahupura, Khata No. 175, Plot No. 253 over an area about 13.72 acres and that sand is being mined in violation of the conditions stipulated in the Environmental Clearance and Consent to Operate conditions and also the Sustainable Sand Mining Guidelines 2016 and Enforcement & Monitoring Guidelines for Sand Mining 2020 and EIA Notification 2006. It is also stated that the mining quantity of 2000 cum shown in the records is very meagre based on eye estimate whereas there is availability of mineable reserves of sand of 36,927 cum at the site and this is being done by the Tahasildar and Mining Officer in connivance with the lessee by reducing the lease area for a quantity of only 2200 cum.

2. It is claimed by the Applicant that although as per Mining Plan the sand mining capacity is only 2200 cum per annum the lessee is extracting around 2040 cum per day and 4.28 lakhs cum per

annum.

3. The allegations made in the Original Application are extracted herein below: -

- i) "Use of heavy machines (excavators) and Hyva when Mechanical Mining and use of Machine in Sand Mining is prohibited. Four machines of different capacities are used for sand mining and loading.
- ii) When the mining permissible limit is only 10 CM per day as per mining plan and annual sand mining capacity is only 2200 CM PER ANNUM, the lessee is extracting around 2040 CM per day and 4.28 lakh Cubic Meters per year much more than the permissible limit.
- iii) Considering the daily approved production of only 10 cubic meters as per Mining Plan, No Hyva can be engaged in the mining as because one Hyva is having capacity of 18 to 27 cubic meters based on the number of wheels of Hyva.
- iv) As per the Mining Plan the depth of mining will be 1 meters but on ground it is exceeding beyond 10 meters by using four excavators.
- v) The surface area of excavation is to be 2000 squMtre (0.49 acres) per annum as per mining plan however mining has been carried out over 50 acres as evident from Google earth images (entire width of river (150 meters) and 1.8 km length)
- vi) Mining carried out in Safety Zone and on River Bank which is prohibited as per the mining plan
- vii) Daily Mining Register not maintained and transit permits (Form Y) are manipulated and forged.
- viii) No Pillar Posting and Demarcation of Lease Area in the mining site.
- ix) Sand Mining by cutting the River Bank and the sand extracted from the river bank and flood plain area
- x) Obstruction of river stream by making unauthorized roads, sand bunds and pond structures in violation of mining plan
- xi) Deep mining has been the reason for death trap leading to drowning of children's in such mining pits
- xii) Annual replenishment study and pre monsoon and post monsoon assessment has not been conducted while allowing the mine to operate

xiii) 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

xiv) 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

xv) Operating the Sand Mine without consent to operate which is no more in force after 31st March, 2021 xvi) 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. xvii) Vehicular Transportation through densely populated villagers and Rural Roads not meant for over loaded heavy vehicles. 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.

xviii) Sand mining operation during Monsoon seasons while the same is prohibited as per sustainable sand mining guideline 2016 xix) Vehicles engaged in mining are overloaded and not covered with tarpaulin and cause air pollution during non-monsoon days.

xx) Lessee is subletting the Sand Sairat to other sand mafias by virtue of notarized agreements and power of attorney and raising fund from such unscrupulous elements."

4. At the time of admission, notices were issued to the Respondents to enable them to file their response.

5. The Tribunal also constituted a Committee comprising of the following members: -

i) Senior Scientist from the Integrated Regional Office, Ministry of Environment, Forests and Climate Change, Bhubaneswar;

ii) Senior Scientist from the Odisha State Pollution Control Board;

iii) Senior Scientist/Scientist from the State Environment Impact Assessment Authority (SEIAA), Odisha;

iv) District Mining Officer, District-Mayurbhanj; and

v) Collector & District Magistrate, Mayurbhanj District, Odisha or his representative not below the rank of Sub-

Divisional Magistrate of that area.

6. An affidavit dated 20.05.2022 has been filed by Respondent No.4, Odisha State Pollution Control Board, bringing on record an Inspection Report of an inspection carried out on 09.05.2022. The 'Observations' and "Conclusion and Recommendation" of the Committee read as under: -

"Following observations were made during joint enquiry with respect to the grievance of the applicant in the matter of O.A. No.40/2022/EZ- Radha Mohan Singh Vs. State of Odisha & Others.

Sl. Non-Compliances as per Observation of the
No. the Original Committee
Application.

- | | |
|--|--|
| <p>1 Use of heavy machines (Excavators) and Hyva when Mechanical Mining and use of Machine in sand Mining is prohibited. Four machines of different capacities are used and now two machines are used for sand mining and loading.</p> | <p>During the joint visit of the Committee, it was observed that no mining activity was carried out and no machines/excavators were found in the lease area. However, it revealed from the peripheral conditions that, the extraction of sand was done earlier through mechanically.</p> |
| <p>2 When the mining</p> | <p>During field visit, the</p> |

permissible limit is only 10 committee found that the CM per day as per mining quantum of sand plan and annual sand extracted from Mahupura Mining capacity is only Sand Bed for the period 2200CM per annum, the 2021-2022 is 48000 lessee is extracting around Cum. (approximately), 2040CM per day and 4.28 whereas permission was Lakh Cubic Meters per obtained for extraction of year much more than the sand per annum-2400 permissible limit. Cum. (Maximum) as per the mining plan and EC.

Hence, excess extraction of sand within the lease and outside the lease area is 48000 Cum - 2400 Cum = 45600 Cum (excess mining with depth 1.0m) 3 Considering the daily As mentioned in point no.

<p>approved production of only 10 cubic meters as per Mining Plan, No Hyva can be engaged in the mining as because one Hyva is having capacity of</p>	<p>2</p>
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18 to 27 cubic meters
based on the numbers of
wheels of Hyva.

- 4 As per the Mining Plan the depth of mining will be 1.0 Meters but on ground it is exceeding beyond 10 meters by using four permission accorded for excavators. mining up to 1.0 m as per the mining plan and EC.

Average depth of sand extracted by the lessee within and beyond the lease area is 1.0 to 1.5 Meters (Approx.) whereas

- 5 The surface area of The lessee has extracted

excavation is to be 2000 excess 45600 Cum sand Sq. Mtrs. (0.49acres) per from within and beyond annum as per mining plan, lease area and the details however mining has been of the lease area as per carried out over 50 acres Google map photographs as evident from Google is attached. earth images (entire width of river 150m and 1.8 KM length).

6 Mining Carried out in During the mining Safely Zone and on River activities, the lessee has Bank which is prohibited not maintained the safety as per the mining plan zone from the river embankment at some places and sand extracted close to the river embankment which is not permissible. The natural river flow changes due to creating obstacle through sand bandh by the lessee.

7 Daily Mining Register not The daily record was not maintained and transit maintained by the lessee permit (Form Y) are as it was observed by the manipulated and forged. Committee during the visit.

8 No Pillar Posting and There was a temporary Demarcation of Lease Area pillar posting made to in the mining site. demarcate the lease area which has been observed on dated 06.04.2022 and during the second visit on dated 09.05.2022 there was no pillar posting to demarcate the lease area.

9 Sand mining by cutting the As already mentioned in River Bank and the sand the point no. 06. extracted from the river bank and flood plain area.

10 Obstruction of river stream During visit it was by making unauthorized observed that the lessee roads, sand bunds and has made unauthorized pond structures in sand bunds and artificial violation of mining plan. ponds within the lease hold area which is not permissible neither in mining plan nor in EC and CTO.

- 11 Deep mining has been the reason for death trap leading to drowning of children's in such mining No such evidence was came to the notice of the Committee during visit but it has been observed that

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| | pits. | due to excess mining some parts of the river bed created a pond like structure. |
| 12 | Annual replenishment study and pre monsoon and post monsoon assessment has not been conducted while allowing the mine to operate. | Annual rate of replenishment of sand both pre and post-monsoon assessment has not been conducted in this case. |
| 13 | Half yearly compliance reports were not submitted and not in public domain, no green belt developed along the roadside or near mining site by the proponent. | The lessee has not submitted EC compliance report on half yearly basis. No greenbelts developed along the road side or near mining site, by the lessee. |
| 14 | Tahasildar and the local administration are hand in glove with the lessee and | The lessee has violated the Mining plan, EC conditions and operated |

willfully violating the order the quarry without valid of Hon'ble NGT as well as CTO for which flouting the conditions of environmental Mining Lease, Mining Plan, compensation for EC and CTO. ecological damaged and environmental compensation for damage to environment has been calculated and the details are mentioned below.

15 Operating the Sand Mine The sand quarry was without consent to operate operated without valid which is no more in force consent to operate of the after 31st March 2021. Board, for the period 2021-22.

16 There has been no As per out information, till monitoring of quantity of date the use of GPS sand excavated and GPS Tracking of vehicle, Tracking of vehicle, Electronic Transit Pass, Electronic Transit Pass, CCTV camera are not CCTV camera in mining used/implemented by site as prescribed in EIA State Govt. for the sand Notification dated 15th mining.

January 2016 and Sand

- | | | |
|----|--|--|
| | Mining Enforcement and Monitoring Guidelines 2020. | |
| 17 | Vehicular Transportation through densely populated villages and Rural Roads not meant for overloaded heavy vehicles. Further the carrying capacity of the road has not been assessed and as such the | During the joint visit the committee has found that an approach road around 3 to 4 km from quarry to the PMGSY rural road damaged and conditions is not good, it may be due to the transportation of |

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|---|--|
| existing road cannot withstand the pressure of hundreds of sand loaded heavy vehicles. | heavy vehicles used for sand transportation from quarry to target place. |
| 18 Sand mining operation during Monsoon seasons while the same is prohibited as per sustainable sand mining | It is reveals from the Y-form that the quarry may be operated in the monsoon season as Y-form issued this period |

guidelines 2016. but we have no record to verify whether the quarry operated during monsoon period.

19 Vehicles engaged in During the visit the mines mining are overloaded and was not in operation not covered with tarpaulin hence, the issue of and cause air pollution overloading vehicles as during non-monsoon days. well as spillage if any with tarpaulin cover is not envisaged.

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| 20 Lessee is subletting the Sand Sairat to other sand mafias by virtue of notarized agreement and power of attorney and raising fund from such unscrupulous elements. | No such evident came to the notice of the Committee. |
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Over all observation

1. The minor mineral mine was not in operation during the visit of the committee. However, the mine was under operation for the year 2021-22 without obtaining valid consent to operate of the State Pollution Control Board.

2. Tahasildar, Badasahi had also issued Y Form to the lessee for transit pass, for transportation of the mined out sand.

3. The mine was carried out about 45600 Cum. Excess sand mining violating the Mining Plan as well as the MMDR Act, 1957, EC and Water (PCB) Act, 1974 and Air (PCP) Act, 1981.

4. The mine was not complying the conditions of previous consent conditions as well as the conditions imposed in the Environmental Clearance granted by SEIAA vide letter no. SEIA/2511 dtd.04.02.2017.

5. The lessee has changed the natural river flow of river water through random and mechanical sand mining and with created sand bandh.

6. There was temporary pillar posting around the lease area on dated 06.04.2022 and it was removed by someone on dated 09.05.2022.

7. Mining occurs beyond lease area, without maintaining the safety zone and obstructing natural flow of the river water.

8. The lessee has not submitted half yearly EC compliance report to SEIAA, Odisha, Bhubaneswar.

9. During visit the committee observed that, the quarry was operated mechanically, without valid consent to operate of the Board and EC from SEIAA, Odisha for the period 2021-22, violating the provision of Water (PCP) Act, 1974, Air (PCP) Act, 1981, EIA Notification, MMDR Act, 1957, and approved mining plan.

Conclusion & Recommendation:

In view of the above observations, the committee recommended the followings:

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. 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.

4. The sand loading vehicles should be covered properly and transportation time to be restricted only on day time.

5. There is enough space near the quarry area so, 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 further.

6. There shall be construct a concrete wall at damage site of the river embankment.

7. The minor mineral mine shall stop operation till obtain of Consent to Operate from the State Pollution Control Board and EC from SEIAA, Odisha.

8. The Tahasildar/Additional Tahasildar, Badasahi shall take immediately step and be vigilant so that no illegal mining can be carried out in the demarcated mining lease

area.

9. As the lessee was operating the mine for the year 2021-22 without valid consent to operate from the State Pollution Control Board and valid Environmental Clearance from the State Environmental Impact Assessment Authority (SEIAA), Odisha, Bhubaneswar the lessee shall pay the Environmental Compensation for ecological damaged due to illegal mining as CPCB guideline an amount of Rs.12,35,84,844/- and environmental compensation of Rs.21,00,000/- for damage of the environment and operation of the quarry without valid CTO.

10. As the lessee has carried out excess mining, he has to pay the compensation as per the provision of MMDR Act, 1957.

11. The Tahasildar Additional, Badasahi may ensure that there will be no mechanical mining and the lessee should not change the natural river flow for the further period of mining operation after obtaining all statutory clearance from the concerned authority.

12. As per the information given by the Tahasildar, Badasahi, the sand bed was operating 210 days in the year 2021-22 without EC and Consent to Operate of the State Pollution Control Board. The compensation shall be calculated based on the operational details submitted by the Tahasildar, Badasahi for the year 2021-22.

13. The Committee recommended removing the obstruction for natural flow of river water.

14. The committee has recommended that the R&D dept.

Mayurbhanj shall repair the damaged road caused by the lessee due to transportation of sand. Compensation Charge (Scenario II-explicit accounting of NPV) Quarry Name Present value Market Value Discount rate Total amount market value Compensation Cum/annum of Sand per Risk Factor quantity in extraction extraction Permitted 2nd Year 3rd Year n of NPV 4th Year 5th Year 1st Year Excess as per Total Cum A B B-A E D=(CxE) RF 5% PV= $\sum_{t=1}^n \frac{D*RF}{(1+r)^t}$ D*RF/(1+0.05)¹ D*RF/(1+0.05)² D*RF/(1+0.05)³ D*RF/(1+0.05)⁴ D*RF/(1+0.05)⁵ NPV=PV-D Mahupura River Sand 160703244 123584844 Bed 37118400 35350857 33667482 32064269 30537399 29083237 48000 45600 0.05 1.0 Net Present Value (after netting out market value of illegally mined material)- i.e., Total Compensation to be levied=NPV-PV-D=Rs.12,35,84,844/-

15. It is required to massive plantation of native species near the river embankment to protect the river bed from further damage.

16. The committee directed to the Tahssildar/Additional Tahasildar, Badasahi to take necessary action with immediate effect to stop operation of the Balanga sand bed quarry, Mahupura till obtaining of valid EC and CTO."

7. Illegal mining to the extent of 45,600 Cum of excess sand having been established, an amount of Rs.12,35,84,844/- (Rupees Twelve crore thirty-five lakhs eighty-four thousand eight hundred forty-four only) has been imposed against the Respondent No.16, Krupasindhu Singh, Private Respondent and Environmental Compensation has been computed at Rs.21,00,000/- (Rupees Twenty-one lakhs only).

8. The Respondent No.6, Collector & District Magistrate, Mayurbhanj, has filled his counter-affidavit dated 17.08.2022. The relevant extract of this affidavit is being reproduced herein below for proper appreciation of the case.

"Then the Tahasildar, Badasahi-Respondent No.7 on verification of records found that the Lease Agreement executed on 23.06.2017 for five years was valid up to 22.06.2022.

It was also found that Mining Plan, Environment Clearance & the Consent to Operate issued by the competent authorities were valid up to 31.03.2021. Therefore, on that account she had passed an order in TMC Case No.57/15-16 on 28.12.2020 directing the Lessee, the Respondent No.16 to submit revised Mining Plan, EC & the CTO for the remaining period under Lease Agreement before March, 2021 vide L.No.2375 dt.28.12.2020.

That, in compliance to above the Lessee-Respondent No.16 has submitted modified Mining Plan duly approved by the Authorised Officer on 31.03.2021 against the said "Balanga Sand Bed, Mahupura" for the remaining period i.e. for the period from 01.04.2021 to 22.06.2022.

But within the stipulated time limit the Lessee-Respondent No.16 has failed to submit Revised E.C & CTO.

But the surprising fact is that without submitting the Revised E.C & CTO for the remaining lease period the Lessee (Respondent No.16) had requested the Tahasildar, Badasahi to allow him to deposit Govt. dues of Rs.23,45,941/- towards Royalty and other statutory dues against the said "Balanga Sand Bed, Mahupura for the year, 2021-22, the 5th year of the lease term.

But it appears from the TMC No.57/15-16 that without examining statutory provision mistakenly Tahasildar, Badasahi allowed the Lessee (Respondent No.16) to deposit the above amount with the Nazir of his office. Accordingly the aforesaid amount of Rs.23,45,941/- has been realised in the O/O, the Tahasildar, Badasahi vide MR No.0237357/1 dated 12.04.2021.

It is found from the Touzi Misc. Case record maintained at the O/o. the Tahasildar, Badasahi that without ensuring submission of the Revised E.C. and the CTO for the rest lease period i.e. for the period from 01.04.2021 to 22.06.2022 Tahasildar,

Badasahi, the Competent Authority (Respondent No.7) has erred in her duties to receive the above dues towards Royalty & other dues for the 5th year of the lease agreement i.e. for the period from 01.04.2021 to 31.03.2022.

Other thing is that before ensuring submission of the revised EC and the CTO, Tahasildar, Badasahi (Respondent No.7) has mistakenly issued 350 No. of Transit Permits in favour of the Lessee-Respondent No.16 at different times within 12.04.2021 to 07.03.2022 to use the said Transit Permits in the lifting and transporting minor minerals (Sand) from the source.

From the above lapse made by the Tahasildar, Badasahi (Respondent No.7) and for want of proper checking of the Enforcement team constituted under the administrative control of the Tahasildar, Badasahi what it appears the Lessee (Respondent No.16) might found himself easier to lift and transport minor minerals (sand) from the sairat source namely; "Balanga Sand Bed, Mahupura" violating conditions of Sustainable Sand Mining Guidelines, 2016 and 2020 and violating standard Environment Clearance condition, CTO conditions and other statutory norms in excess of the permission limit."

9. It is stated that FIR has been lodged against the Respondent No.16 (lessee) in the concerned Police Station and a case has been registered as PS Case No.232 dated 17.08.2022 under Section 379/411 IPC/51 Orissa Minor Minerals Concession Rules/41/42/43, Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and Orissa Minerals (Prevention of Theft, Smuggling and other Unlawful Activities) Act, 1988. In the affidavit of the District Magistrate, it is clearly stated in paragraph-12, that the Respondent No.7, Tahasildar, Badasahi had allowed the lessee to operate the quarry and had also issued Transit Permits at different times in favour of the lessee for lifting and transportation of minor minerals (sand) from the Balanga Sand Bed, Mahupura even though when the validity period of the Consent to Operate (CTO) had expired and therefore, disciplinary action has been taken against the Respondent No.7, Tahasildar, Badasahi who has been placed under suspension. Paragraph-12 of the affidavit reads as under: -

"12. That, in reply to the averments made in Paragraph-9 of the Fact of the Original Application, it is humbly submitted that the Respondent No.7, Tahasildar, Badasahi had allowed the lessee to operate in the quarry and had issued Transit Permits at different times in favour of the Lessee for lifting and transportation of minor minerals (Sand) from the Balanga Sand Bed, Mahupura even when validity period of the Consent to Operate was over. For such negligence/incautiousness in duty of Respondent No.07 i.e. Tahasildar, Badasahi disciplinary action has been taken and she is under suspension till date. It is humbly submitted that in the meantime, F.I.R. has been lodged against the Lessee Respondent No.16 for alleged violation in the concerned Police Station which has been registered as PS Case No.232 dtd. 17.08.2022, U/s-379/411 IPC/51 OMMC Rules/41/42/43 water prevention and control of pollution Act 1974/38/39 Air prevention and control of pollution Act/18

OMPTC Act."

10. The Respondent No.16 has filed affidavit dated 11.07.2022 stating that Environmental Clearance was granted to him on 04.02.2017 valid for five years till 22.06.2022. Consent to Operate (CTO) was granted on 15.05.2017 valid till 31.03.2021. It is also stated by the said respondent that he had informed the Tahasildar on 08.04.2021 and 24.11.2021 through applications that he was not undertaking any kind of sand mining in the sand mine lease in question and to cancel the lease agreement granted to him and therefore, if illegal lifting of sand has been carried out at night time from his sand bed (Mahupura) he cannot be held responsible for the same. The applications are dated 08.04.2021, 24.11.2021 and 02.02.2022 filed as Annexure-B & C to the affidavit and in the application, it is stated that during night hour some miscreants, local villagers and unknown persons indulged in illegal lifting of sand from the Mahupura sand bed without his knowledge and that he is 84 years old and has also had a heart surgery. Question is that if the sand lease was not being cancelled after the Respondent No.16, Krupasindhu Singh, had submitted his first letter/application on 08.04.2021 why did the said respondent not take recourse to legal proceedings seeking cancellation of his lease agreement and is now claiming that some other persons have illegally mined sand from his sand bed without his knowledge. It is also not explained why the Respondent No.16 did not lodge FIR when the alleged theft of sand took place from his sand block. This itself prima facie, shows connivance between Respondent No.7 and Respondent No.16 in pilferage of sand thereby causing revenue loss to the State exchequer running in several crores. However, there is nothing on record to show that the Respondent No.16 has deposited the amount of penalty or the amount of Environmental Compensation imposed against him.

11. In view of the overwhelming documentary evidence and the Inspection Report, it is established that the Respondent No.16 and the Tahasildar, Badasahi, Mayurbhanj, were prima facie acting in connivance in theft and pilferage of sand from the sand beds in question, thus, causing theft of several crores of State Revenue. Though it is stated that FIR has been lodged against the Respondent No.16, Pradeep Kumar Bindhani and Krupasindhu Singh, there is nothing on record to show that FIR has been lodged against Smt. Mamtaj Maharana, Tahasildar, Badasahi, Mayurbhanj. We fail to understand as to why the State Respondents are shielding Smt. Mamtaj Maharana and all that has been said is that investigation is pending against her and department proceedings have been initiated against her which are pending and she is under suspension.

12. We, therefore, direct the State Respondents to lodge FIR against Smt. Mamtaj Maharana, Tahasildar, Badasahi, Mayurbhanj also for her role in illegally issuing Transit Permits to the Respondent No.16 and thereby actively conniving in causing theft of State Revenue which is public money.

13. We also direct the Odisha State Pollution Control Board to initiate proceedings against the Respondent No.16, Pradeep Kumar Bindhani and Krupasindhu Singh for recovery of penalty and Environmental Compensation forthwith. Affidavit of compliance shall be filed by the Collector & District Magistrate, Mayurbhanj by 07.12.2022.

14. We also direct the District Magistrate, Mayurbhanj to ensure that no illegal sand mining takes places in the district. Further, wherever legal sand mining is going on, strict monitoring mechanisms like installation of CCTV cameras at strategic location, GPS enabled trucks used for transportation of sand and checking squads be put in place.

15. With the aforesaid directions, the Original Application No.30/2022/EZ, Original Application No.31/2022/EZ and Original Application No.40/2022/EZ are disposed of.

16. There shall be no order as to costs.

..... B. AMIT STHALEKAR, JM SAIBAL DASGUPTA,
EM Kolkata, August 30, 2022, Original Application No.30/2022/EZ Original Application
No.31/2022/EZ Original Application No.40/2022/EZ MN