

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

.....
ORIGINAL APPLICATION No. 84/2021/EZ

IN THE MATTER OF:

- 1. Akshay Kumar Tripathy,
Aged about 52 years,
S/o Rama Chandra Tripathy,
R/o at Balipokhari, P.O.-Parmanandapur,
P.S.-Bandharipokhari, Via-Akhuapada,
District-Bhadrak,
Pin - 756122,**
- 2. Narayan Behera,
Aged about 50 years,
S/o Bhikari Behera,
R/o at Jagannath Prasad, P.O.-Akhuapada,
P.S.-Bhandaripokhari,
District-Bhadrak,
Pin - 756122,**
- 3. Jayaprakash Ghadei,
Aged about 45 years,
S/o Alekha Prasad Ghadei,
R/o at Ranjit, P.O.-Paramandapur,
P.S.-Bhandaripokhari, District-Bhadrak,
Pin - 756122,**
- 4. Akshya Kumar Dash,
Aged about 56 years,
S/o Maguni Dash,
R/o at Balipokhari,
P.S.-Bhandaripokhari, Via-Akhupada,
District-Bhadrak,
Pin - 756122,**

....Applicant(s)

Versus

- 1. State of Odisha,
Through Principal Secretary,
Department of Water Resources,**

- Govt. of Odisha, Bhubaneswar,
At Rajiv Bhawan, Keshari Nagar,
P.O.-Bhubaneswar, District-Khurda, Odisha,
Pin – 751001,**
- 2. District Magistrate & Collector, Bhadrak District,
At P.O./P.S./Dist.-Bhadrak,
Pin – 756100,**
- 3. Executive Engineer,
Water Resource Department,
Jajpur Irrigation Division,
At Jajpur Town, District-Jajpur,
Pin – 755001,**
- 4. Superintending Engineer, Eastern Circle-II,
At P.O.-Jajpur Odisha,
Pin – 755044,**
- 5. State Environment Impact Assessment Authority (SEIAA),
Odisha,
Through Chairman,
At-SRF-2/1, Acharya Vihar, Unit-IX, OPTC Colony,
Bhubaneswar – 751002,**
- 6. Tahasildar, Bhandaripokhari,
At-P.O./P.S.-Bhandaripokhari,
District-Bhadrak,
Pin – 756122,**
- 7. Subhranshu Sekhar Padhi,
Aged bout 42 years,
S/o Narayan Chandra Padhi,
R/o at Plot No. 3840, At-Barimund, Bhubaneswar,
P.S.-Mancheswar, District-Khurda,
Pin – 754001,**

....Respondent(s)

COUNSEL FOR APPLICANT:

Ms. Aishwarya Swain, Advocate

COUNSEL FOR RESPONDENTS :

Mr. Tarun Patnaik, ASC for R-1, 2, 3, 4 & 6,

Mr. Gora Chand Roy Chowdhury, Advocate for R-5,

Mr. Prafulla Rath Kumar, Adv. a/w Susanket Mohapatra, Adv. for R-7,

JUDGMENT

PRESENT:

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

HON'BLE MR. SAIBAL DASGUPTA (EXPERT MEMBER)

Reserved On:- August 03rd, 2022
Pronounce On:- August 05th, 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 parties and perused the documents on record.

2. This Original Application has been filed by the Applicants on the allegation that the Respondent No.7, Private Respondent, is illegally mining sand in the sand embankment of River Baitarani near Ballipokhari Escape. The Applicants have relied upon the letter of Assistant Executive Engineer, Akhuapada dated 10.03.2021, Annexure-3, (page no. 21) to the Original Application, which is addressed to the Tehasildar, Bhandaripokhari, Bhadrak, Odisha, informing him that the Ballipokhari Escape is used for escape of excess flood water from River Baitarani. Huge quantity of

sand has been deposited in the nearby areas of Ballipokhari Escape since long which diverts the flow of flood water and protects the Ballipokhari Escape and the embankments from flood hazards.

3. The letter also alleges that some miscreants are lifting sand from the Ballipokhari and nearby areas which is creating panic among the local people and is also causing danger to the stability of the Ballipokhari Escape embankment and threatens the life and property of the adjacent villagers of the Bhandaripokhari Block in Bhadrak District, Odisha.

4. At the time of admission, the Tribunal also perused the letter of the Assistant Executive Engineer, Akhupada Irrigation Sub-Division, Akhupada, dated 10.03.2021 and thereafter directed the District Magistrate and Collector, Bhadrak, Respondent No.2, to inspect the site in question and submit his report before the Tribunal within three weeks. The letter of Assistant Executive Engineer, Akhupada Irrigation Sub-Division, Akhupada, dated 10.03.2021 is extracted herein below:-

**“OFFICE OF THE ASSISTANT EXECUTIVE ENGINEER
AKHUAPADA IRRIGATION SUB-DIVISION, AKHUAPADA
Letter No. 46 // Dated 10/03/2021**

To

*The Tahasildar,
Bhandaripokhari, Bhadrak*

Sub:- Illegal lifting of sand from Baitarani.

Sir,

In inviting a reference to the subject cited above, it is to intimate you that the Ballipokhari escape is located on the left

embankment of river Baitarani. Ballipokhari escape is used to escape excess of flood water during flood from river Baitarani. Huge quantity of sand has been deposited at the nearby areas of Ballipokhari escape since long which diverts the flow of flood and protects the Ballipokhari escape and the embankments from flood hazards.

Some miscreants lifting sand from the Ballipokhari and nearby areas which is creating panic in the local people and also creates endanger to the stability of the Ballipokhari escape embankments and threatens the life and property of the adjacent villagers of the Bhandaripokhari Block in Bhadrak District.

So, necessary steps may be taken to stop the illegal sand lifting from the Ballipokhari and nearby areas for the safeguard of the Ballipokhari escape, flood protective embankments and the life and property of the nearby villagers from the flood hazards during rainy season.

This is for favour of your information and necessary action.

Yours faithfully,

*Asst. Executive Engineer
Akhuapada Irrigation Sub-Division,
Akhuapada”*

5. In response, a counter-affidavit dated 23.11.2021 has been filed on behalf of the Respondent No.2, District Magistrate and Collector, Bhadrak District, stating therein that the allegations levelled by the Applicants about illegal lifting of sand is without any documentary evidence and due to want to sufficient evidence the aforesaid claim of the Applicants ought to be rejected by the Tribunal. It is also stated that on 23.05.2020, a General Notice was published in the Bhandaripokhari Tahasil, inviting objections for declaring the Jagannath Prasad as a Sand Sairat and time of 15 days was given to the people of the locality for submitting the

written objection, if any, before declaring Jagannath Prasad as a Sand Sairat but not a single objection was received by the Tehsildar. Thereafter, the Tehsildar Bhandaripokhari Respondent No.6 and Revenue Inspector, Jagannath Prasad, verified the schedule of Government land on 16.06.2020 along with Record of Right and map of the village Jagannath Prasad. Thereafter, a field visit and verification of the Sand Sairat was conducted and it was found that there was sufficient quantity of sand deposit at the proposed site of the sand source. The field report also noted that the said sand source stands at a safe zone with sufficient distance from the bridge, religious structure, school, college and railway track and, therefore, the Competent Authority came to a conclusion that the said Sand Sairat Source is feasible and suitable for auction. It is also stated that on 19.06.2020 another Joint Enquiry was conducted by the Revenue Inspector, Jagannath Prasad, Geologist, Bhadrak, Assistant Executive Engineer, Irrigation, Jajpur and Tahasildar, Bhandaripokhari. The extract of the Joint Enquiry Report as quoted in para 8 (iii) of the affidavit which reads as under:-

“8(iii)

“

The sand quarry is situated over Plot No. 1653/2734 measuring an area of Ac. 12.20 kissam Nadi under Khata No. 799 of mouza-Jagannathprasad. During the joint enquiry it is found that huge quantity of sand has been deposited in the River bed of Jagannathprasad which can be lifted on quarry lease basis. That the approach road connected to river bed is good. There is no danger to the embankment as well as bridge. There is no educational

institution, religious temple, and railway track nearby the sand source. This source is feasible for long term lease for five years.”

6. It is stated that thereafter on 14.07.2020 the Revenue Inspector issued a certificate certifying that the proposed area be granted for quarry lease in respect of the Village-Jagannath Prasad. In the meantime, Mining Plan was also approved by the Joint Director, Geology, Keonjhar, on 30.07.2020 and thereafter the Tahasildar issued advertisement on 03.03.2021 inviting tenders for leasing Jagannath Prasad Sairat for a period of five years. It is stated that on 25.11.2020 the State Environment Impact Assessment Authority (SEIAA) also granted Environmental Clearance with respect to the Sand Sairat in question. After completing the due procedure of advertisement, the Lease Deed was executed on 03.06.2021 between the Tahasildar, Bhandaripokhari, Respondent No.6 and Sri Subhranshu Sekhar Padhi, Respondent No.7. The Respondent No.7 being the successful bidder has also deposited a sum of Rs. 1,37,77,838/- (Rupees One Crore Thirty Seven Lakhs Seventy Seven Thousand Eight Hundred Thirty Eight only) towards security money and Rs. 2,76,35,571/- (Rupees Two Crore Seventy Six Lakhs Thirty Five Thousand Five Hundred Seventy One only) i.e., 50% of the total payable amount of Rs. 5,52,71,142/- (Rupees Five Crore Fifty Two Lakhs Seventy One Thousand One Hundred Forty Two only) towards royalty, additional charges, contribution to DMF, contribution payable to EMF pertaining to financial year 2021-22. It is also stated that Consent to Establish was granted by the Pollution Control Board on

01.06.2021 and Consent to Operate was also granted on 01.06.2021 along with Revised Consent to Establish and Revised Consent to Operate both granted on 24.06.2021.

7. The District Magistrate and Collector, Bhadrak, in his affidavit has further denied the allegations in the Original Application made by the Applicants against the Respondent No.7 and it is stated that the distance of the said sand source from River Baitarani embankment is about 120 meters, 103 meters and 200 meters at different points. It is also stated that as regards the complaint of illegal lifting of sand from the river bed thereby causing loss to the Government revenue is concerned, an FIR No. 111 of 2020 has been lodged against such persons who were lifting the sand from the river bed.

8. It is also stated that a joint field visit was conducted on 07.07.2021 under the Chairmanship of Sub-Collector, Bhadrak by the Sub-Collector, Bhadrak, Tahasildar, Bhandaripokhari, representative of the Regional Officer, Odisha State Pollution Control Board, Balasore, representative of Executive Engineer, Jajpur Irrigation Division, Jajpur and Geologist Bhadrak. The observations made during the visit by the Inspection Committee are extracted herein below:-

**“FIELD VISIT REPORT ON JAGANNATHPRASAD
BAITARANI RIVER SAND QUARRY UNDER
BHANDARIPOKHARI TAHASIL OF DIST. BHADRAK ON
THE ALLEGATION PETITION OF SRI SUDHIRA CHANDRA
JENA & OTHERS OF BALIPOKHARI, RANJIT, NAPANGA,**

**SOLAMPUR, MALADA, RAHANIA, RAMACHANDRAPUR,
BAYABANPUR, DAKHINBAD, KURIGAON AND SARSADA
GPS.**

.....**xxx**.....**xxx**.....**xxx**.....**xxx**.....

The following observations were made during the visit:

The details of the location of the Jagannathprasad Baitarani river sand quarry is stated as here under:

- i) The Jagannathprasad Baitarani river sand quarry is identified at a distance of about 1.5 k.m. in the downstream of Akhuapada anicut over Khata No.799, Plot No. 1653/2734, Area- Ac.12.23 or 4.95 Hect., Kisam-Nadi pertaining to mouza-Jagannathprasad under BhandaripokhariTahasil.*
- ii) The left embankment (Bhadrak side) of Baitarani river is 120 mtrs away from the said sand quarry*
- iii) Distance of the BalipokhariEscape in left embankment from the said sand quarry is about 600 mtrs*
- iv) The habitation of Jagannathprasad village is about 500 mtr away from the said sand quarry.*
- v) Aforesaid sand source is close proximity to the gramya jungle (Plot No.1653, Khata No.801)*
- vi) Approach road to said sand source is good and running through the gramya jungle kisam (Plot No.1653, Khata No.801)*
- vii) The said source is about 3 Km away from NH-16.*
- viii) There is no tank, canal, public buildings situated within 50 mtrs radius of the said sairat source.*

As such, the said sand quarry satisfies the conditions of quarry lease as laid down under Rule-33(8) of OMMC Rules, 2016.

- Tahasildar, Bhandaripokhari being the competent authority has granted quarry lease for 5 years after obtaining (i) Mining Plan prepared by the recognized person and duly approved by the Joint Director Geology, Keonjhar on Dt.30.07.020 and (ii) Environment*

Clearance from SEIAA, Bhubaneswar issued vide ref. No.9732/SEIAA/Dt.25.11.2020 in File No.SEIAA-652/09-2020 with the provisions laid down under Rule-28 & Rule-29 of OMMC Rules, 2016 respectively.

- The lessee Sri Subhranshu Sekhar Padhi S/O- Narayan Chandra Padhi, Plot No. 3840, Barimund, Mancheswar, Bhubaneswar, Dist- Khurda has executed quarry lease agreement with the Tahasildar, Bhanripokhari and registered on Dt.03.06.2021 after depositing the required govt. dues with the provisions laid down under Rule-27(3) of OMMC Rules, 2016.*
- The lessee has obtained “Consent to Establish” & “Consent to Operate” for operation of said sand quarry u/s 25/26 of Water (PCP) Act, 1974& u/s 21 of Air (PCP) Act, 1981 from Regional Officer, OSPCB, Balasore vide their Letter No. 1090/dtd. 01.06.2021 and revised consent order No. 1186/Con-3332/2021/Dt.24.06.2021 respectively.*
- Demarcation of boundary, Pillar posting to delineate the leased area and erection of display board by the lessee was under progress. No quarry operation was carried out during out visit.*
- The Baitarani left embankment near village Jagannathprasad and Raghunathpur has been strengthened and executed during 2016-17 with raising and widening from Baridi Railway line to Raghunathpur village for a length of 21.00 k.m. under NABARD Assistance for an amount of Rs.3764.52 Lakhs.*
- The canal road of HLC Range-III from a”khuapada to Bhandaripokhari and from Bhandaripokhari to Bhadrak has been developed with black topping under NABARD Assistance with an amount of Rs.1143.13 Lakhs. The top width of left embankment of river Baitarani from*

Akhuapada Anicut to Balipokhari Escape is 5.50 m having 3.50 m. carriage width.

- *The Balipokhari escape of 400 m. length is meant for discharge of excess flood water beyond 19.10 RL at Akhuapada Anicut which is located at 2.50 Km. below the Akhuapada Anicut. This ensures safety of embankment at downstream area of Bhandaripokhari and Dhamnagar Block. The Escape has been proposed for stabilization with RRC cut-off and stone pitching with all weather communication facility. The tender has been called for Rs.705.66 Lakhs under NABARD Assistance and it is in process of finalization.*
- *It is not a fact that more water will pass through the Balipokhari escape than earlier due to construction of ring road on the right embankment of Baitarani river and operation of the said sand quarry.*

In view of the above facts and circumstances the apprehension of the petitioners about the adverse impact of the above sairat source on the aquatic ecosystem and sever flood condition of Bhadrak district appears to be not justified. However, we are to opine that if pleases, further enquiry may be conducted by a high level technical committee to ascertain the technical feasibility of the sand sairat source and its impact on the nearby locality in the larger interest of public.”

9. It is also stated that a field inspection was also carried out on 18.10.2021 by the District Magistrate & Collector, Bhadrak, in which the Sub-Collector, Bhadrak, Tahasildar, Bhandaripokhari, Executive Engineer & Assistant Engineer, Irrigation Division, Akhuapada, were present. The Report of the said inspection has been filed as Annexure-B/2(page no. 86 of the paper book) along with the affidavit which is extracted herein below:-

**“INSPECTION REPORT BY RESPONDENT NO.2
(DISTRICT MAGISTRATE & COLLECTOR, BHADRAK
AS PER ORDER PASSED BY THE HON’BLE COURT
NO.1, ITEM NO.2 IN ORIGINAL APPLICATION
NO.84/2021/EZ ON DT.05.10.2021 IN THE MATTER
OF BALIPOKHARI SAND QUARRY,
JAGANNATHPRASAD IN BAITARANI RIVER UNDER
BHANDARIPOKHARI TAHASIL.**

1.xxx.....xxx.....xxx.....xxx.....xxx.....

2. On the spot, it was seen that Balipokhari Escape is located on the left embankment of River Baitarani at about 2.5 KM distance along the downstream of Akhuapada Anicut. The length of the escape is 400mtr and has been designed to discharge excess flood water of river Baitarani beyond 19.10 RL at Akhuapada Anicut.

The sand source namely Balipokhari Sand Quarry, jagannathprasad is situated at about 600mtr.distance from Balipokhari escape along the upstream and about 1.5km. away along the downstream from Akhuapada Anicut. The said sand sairat source is being operated by one Subharanshu Sekhar Padhi (Opposite party No.70 the auction holder, since dt.03.06.2021. the source is situated over plot no.1653/2734 area Ac 12.23 dec.(4.95 Hect). Kisam-Nadi and Khata No.799 of village jagannath Prasad. The minimum distance of the source from the adjacent left embankment of river Baitarani is about 100 mtrs. The habitation of Jagannathprasad is about 500 meters away from the said sand quarry. As learnt from the irrigation authority present, the left embankment of Baitarani river near village Jagannathprasad has been raised and widened during 2016-2017 under NABARD Assistance. The top width of the said embankment from Akhuapada Anicut to Balipokhari Escape is 5.50 meters with 3.50 meters carriage width. There is huge quantity sand found to be deposited at the said source.

3. During the inspection, Assistant Executive Engineer, Akhuapada Irrigation Division was asked to show the location of illegal mining with reference to his L. No. Engineer indicated that the location, where illegal mining was carried on at the time of submission of report is situated at a close proximity to the Balipokhari escape⁹within 100 meter distance⁰, for which he requested the Tahasildar, Bhandaripokhari to take appropriate action vide his letter as referred above.

On Verification of relevant records in the Tahasil Office, it is revealed that in response to the letter no.46 dtd.10.03.3021 of the Assistant Executive engineer, Akhuapada Irrigation Division, the Tahasildar, Bhandaripokhari had requested the Assistant Executive Engineer vide his letter no. 768 dtd 24.03.2021 to extend co-operation for creation of a new Sairat Source at Jagannath Prasad to prevent illegal sand mining and leakage of Government revenue. The copy of the said letter of the Tahasildar is enclosed as Annexure-I

Earlier the Tahasildar, Bhandaripokhari along with the Geologist, Bhadrak, Asst. Executive Engineer, irrigation, jajpur and the Jagannathprasad conducted joint field visit for creation of new sairat source at jaganathprasad on 19.06.2020 and found that sufficient quantity of sand deposited at the source bearing Khata No.799. Plot No.1653/2734, Area-Ac.12.23, Kisam-Nadi under village Jagannathprasad. The approach road connecting to river bed is good and there is no danger to the embankment as well as bridge and there is no educational institution, religious temple and railway track nearby the sand source for which the source was found feasible for long term lease. Accordingly, the Mining Plant was prepared and duly approved by the Joint Director, Geology, Keonjhar on 30.07.2020 and Environment Clearance was obtained vide Letter No.9732/SEIAA, Dt.25.11.2020 from the SEIAA in respect of said sand

source. Thereafter, the Tahasildar, Bhandaripokhari published Tender Notice bearing No.517, Dt.03.03.2021 following due procedure under OMMC Rules,2016. Accordingly, tender was opened on 16.03.2021 at 4.30 P.M. in presence of the bidders and the tender committee. Sri Subhranshu Sekhar Padhi was declared as successful bidder to take the said sairat source on long term lease for five years. Copy of approved mining plan. Environmental Clearance and copy of the letter to Sri Subhranshu Sekhar Padhi declaring him as the successful bidder are enclosed herewith as Annexure-II series.

4. The Respondent No.7 is the lessee of Balipokhari Sand Quarry at Jagannathprasad being duly selected through auction process being the highest bidder and after obtaining all the required permission/clearance from the appropriate authorities in respect of Balipokhari Sand Quarry, Jagannathprasad, the lease agreement has been executed with the Respondent No.7 i.e., Sri Subhranshu Sekhar Padhi on dt. 03.06.2021. Prior to execution of agreement, the lessee Sri Padhi has obtained consent to Establish and Consent to Operate from the Regional Officer, OSPCB, Balasore vide their letter No.1090/CTE-3073/3021, Dt.01.06.2021 and Letter No.1092/con-332/2021, dt.01.06.2021 respectively Subsequently, he has obtained revised Consent to Operate order No.1186/con-3332/2021, Dt.24.06.2021 from the Regional Officer, OSPCB, Balasore. After completion of all mandatory requirements/clearances from the authorities. The operation of sand quarry was allowed by the Tahasildar, Bhandaripokhari and YY Forms were issued for mining operation and transportation purposes in favour of the lessee. The copy of consent to Establish dt.01.06.2021 and Consent to Operate dt.01.06.2021 & 24.06.2021 are annexed herewith as Anexure-III series.

The transit pass vide annesxure-2 of the original application has been issued by the Tahasildar,

Bhandaripokhari in favour of Sri Subhranshu Sekhar Padhi, the lessee on dt.03.06.2021. thus it is transpired that the transit pass issued by the Tahasildar as stated above is not illegal. Further the allegation of the applicant that no environmental clearance has been granted to the Respondent No. is also not based on fact.

*District Magistrate & Collector, Bhadrak
(Respondent No.2)”*

10. The submission of Mr. Tarun Pattnaik, learned Additional Standing Counsel appearing for State Respondents, Govt. of Odisha, referring to the above two reports submitted that a perusal of the reports of the Inspecting Teams would clearly show that the habitation of Jagannath Prasad village is about 500 meters away from the sand quarry in question and the left embankment of River Baitarani near Village-Jagannath Prasad has also been raised and widened during 2016-17 under NABARD assistance. It is also stated that the top width of the said embankment from Akhuapada Anicut to Balipokhari Escape is 5.50 meters with 3.50 meters carriage width. The sand source is being operated by the Respondent No.7 and is situated over Plot No. 1653/2734 area Ac. 12.23 dec. (4.95 hectare), Kisam-Nadi and Khata No. 799 of Village-Jagannath Prasad. The Sand Source, namely, Balipokhari Sand Quarry, Jagannath Prasad Village, is situated at about 600 meters distance from Balipokhari Escape along the upstream and about 1.5 kilometers away along the downstream from Akhuapada Anicut. The Balipokhari Escape itself is located on the left embankment of River Baitarani at about 2.5 kilometers distance along the downstream of Akhuapada Anicut. The length of the escape is 400

meters and has been designed to discharge excess flood water of river Baitarani beyond 19.10 RL at Akhupada Anicut.

11. Reference has also been made to the letter of the Assistant Executive Engineer, Irrigation Division, Akhuapada, dated 10.03.2021 (Annexure-3 to the Original Application) which has already been extracted herein above, and it is stated that because there was a complaint of illegal mining in close proximity to the Balipokhari Escape within 100 meters distance, therefore, the Assistant Executive Engineer requested the Tahasildar-Bhandaripokhari to take appropriate action. In response, the Tahasildar-Bhandaripokhari vide his letter dated 24.03.2021 requested the Assistant Executive Engineer to extend cooperation for creation of a new Sairat Source at Jagannath Prasad to prevent illegal sand mining and loss of Government revenue.

12. The Respondent No.7, Private Respondent, has also filed its counter-affidavit dated 25.11.2021, reiterating the contents of the two Reports referred to herein above, and it is stated that the said Respondent being the most successful bidder was granted the Sand Sairat Lease of Jagannath Prasad and is carrying on his mining operations with valid Environmental Clearance granted by the SEIAA, Odisha, and valid Consent to Establish and Consent to Operate granted by the Odisha State Pollution Control Board and there is no violation of any environmental laws by him.

13. The Respondent No.5, SEIAA, Odisha, has also filed its affidavit dated 04.05.2022 confirming that Environmental

Clearance for the project in question was issued in favour of Mr. Subhranshu Sekhar Padhi, Respondent No.7 over a lease area of 4.95 ha/12.23 acres in Village-Jagannath Prasad under Bhandaripokhari Tahasil, District-Bhadrak vide letter No. 9732/SEIAA dated 25.11.2020.

14. From the pleadings and documentary evidence on record, we find that so far as Respondent No.7 is concerned, there is absolutely no illegality in his mining operations since the Inspection Reports confirm that the minimum distance of the Sand Sairat Source in question from the adjacent left embankment of river Baitarani is about 100 meters; habitation of Jagannath Prasad village is about 500 away from the sand quarry in question; the left bank of Baitarani River near Village-Jagannath Prasad has been raised and widened during 2016-17 under NABARD assistance and the top width of the said embankment from Akhuapada Anicut to Ballipokhari Escape is 5.50 meters with 3.50 meters carriage width. The Ballipokhari Escape is located on the left embankment of River Baitarani at about 2.5 kilometers distance along the downstream of Akhuapada Anicut. The length of the escape is 400 meters and has been designed to discharge excess flood water of River Baitarani beyond 19.10 RL at Akhuapada Anicut. The Sand Source in question, namely, Balipokhari Sand Quarry Jagannath Prasad, is situated at about 600 meters distance from Balipokhari Escape along the upstream and about 1.5 kilometers away along the downstream from Akhuapada Anicut. The Sand Source is situated

over Plot No. 1653/2734 area Ac. 12.23 dec. (4.95 hectare), Kisam-Nadi and Khata No. 799 of Village-Jagannath Prasad.

15. However, we may refer to the letter of the Assistant Executive Engineer, Akhuapada, dated 10.03.2021 (Annexure-3 to the Original Application) which mentions that some miscreants are lifting sand from the Ballipokhari and nearby areas creating panic among the local people and also endangering the stability of the Ballipokhari Escape embankments and threatening the life and property of the adjacent villagers of the Bhandaripokhari Block in Bhadrak District. This letter is addressed to the Tahasildar-Bhandaripokhari, Bhadrak, stating that necessary steps may be taken to stop the illegal sand lifting from the Ballipokhari and nearby areas for the safeguard of the Ballipokhari Escape, flood protective embankments and the life and property of the nearby villagers from the flood hazards during the rainy season.

16. Admittedly, the auction of the Sand Sairat Source in question was initiated through tender notice dated 04.03.2021 and the Respondent No.7 being the highest bidder, was directed to deposit the bid amount. The Respondent No.7 deposited a sum of Rs. 1,37,77,838/- (Rupees One Crore Thirty Seven Lakhs Seventy Seven Thousand Eight Hundred Thirty Eight only) towards security money and Rs. 2,76,35,571/- (Rupees Two Crore Seventy Six Lakhs Thirty Five Thousand Five Hundred Seventy One only) i.e., 50% of the total payable amount of Rs. 5,52,71,142/- (Rupees Five Crore Fifty Two Lakhs Seventy One Thousand One Hundred Forty Two only)

towards royalty, additional charges, contribution to DMF, contribution payable to EMF pertaining to financial year 2021-22 and thereafter the lease deed was executed between the Tahasildar-Bhandaripokhari and the Respondent No.7 on 31.05.2021 and he started his mining operations w.e.f. 03.06.2021. Thus, on these facts it cannot be said that the Respondent No.7 was carrying on illegal sand quarrying on the said Sand Sairat Source in question prior to 03.06.2021 and in any case after 03.06.2021 he had all the requisite documents in his favour including approved Mining Plan, Environmental Clearance, Consent to Establish and Consent to Operate.

17. We also find that the letter of the Assistant Executive Engineer, Akhuapada, dated 10.03.2021 does not state that it was the Respondent No.7 who was involved in the illegal sand quarrying. This shows that illegal sand quarrying was being carried on for a long time till it was first noticed by the Assistant Executive Engineer. Question, therefore, that arises is that what was the Tahasildar of the Tahasil concerned doing to check illegal mining operations until it was pointed out to him by the Assistant Executive Engineer on 10.03.2021?

18. We find that the Tahasildar Bandharipokhari, Respondent No.6, has been grossly negligent in the discharge of his duties and is *prima-facie* guilty of gross dereliction of duty in checking the illegal sand quarrying operations within his Tahasil and it had to be brought to his notice by the Assistant Executive Engineer on

10.03.2021 when such illegal sand quarrying operations were causing panic among the local villagers and also threatening the Ballipokhari Escape, the flood protective embankments as well as the life and property of the nearby villagers from the flood hazards during the rainy season.

19. Mr. Tarun Pattnaik, learned Counsel for the State Respondents submitted that as soon as it was brought to the notice of the Tahasildar-Bhandaripokhari by the Assistant Executive Engineer, Akhuapada, that illegal mining is going on, the process of auctioning the sand quarry was undertaken by the Tahasildar-Bhandaripokhari. This, in our opinion, does not absolve the Tahasildar-Bhandaripokhari from his primary duties as Tahasildar to protect State revenue from loss or theft. The Tahasildar allowed illegal sand mining operations to continue under his very nose till it was pointed out to him on 10.03.2021 by the Assistant Executive Engineer. Illegal sand mining/quarrying is a theft of State revenue causing loss to the public exchequer. The *prima-facie* complicity of the Tahasildar in allowing illegal sand quarrying by illegal miners cannot be overlooked.

20. Section 3 of the Prevention of Money Laundering Act, 2002, reads as under:-

“3. Offence of money-laundering- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it is

untainted property shall be guilty of offence of money-laundering.”

21. Section 4 of the Act, 2002 which prescribes the punishment for money laundering, reads as under:-

“4. Punishment for money-laundering- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.”

22. Section 43 of the Prevention of Money Laundering Act, 2002, reads as under:-

“43. Special Courts.— (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts or such area or areas or for such case or class or group of cases as may be specified in the notification.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

23. Section 44 of the Prevention of Money-Laundering Act, 2002, reads as under:-

44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— 1 [(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed: Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or]; (b) a Special Court may, 2 *** upon a complaint made by an authority authorised in this behalf under this Act take 3 [cognizance of offence under section 3, without the accused being committed to it for trial]; 4 [Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or] 5 [(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed. (d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.]”

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to

“Magistrate” in that section includes also a reference to a “Special Court” designated under section 43.

24. Paragraphs 25, 26 & 27 of the Schedule of the Prevention of Money Laundering Act, 2002, read as under:-

PARAGRAPH 25

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986

(29 OF 1986)

<i>Section</i>	<i>Description of offence</i>
<i>15 read with section 7</i>	<i>Penalty for discharging environmental pollutants, etc., in excess of prescribed standards.</i>
<i>15 read with section 8</i>	<i>Penalty for handling hazardous substances without complying with procedural safeguards.</i>

PARAGRAPH 26

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 (6 OF 1974)

<i>Section</i>	<i>Description of offence</i>
<i>41 (2)</i>	<i>Penalty for pollution of stream or well.</i>
<i>43</i>	<i>Penalty for contravention of provisions of section 24.</i>

PARAGRAPH 27

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 (14 OF 1981)

<i>Section</i>	<i>Description of offence</i>
<i>37</i>	<i>Failure to comply with the provisions for operating industrial plant.</i>

25. A conjoint reading of Sections 3, 4 and Sections 43 and 44 of the Prevention of Money-Laundering Act, 2002 and paragraphs 25, 26 and 27 of the Schedule thereto would show that if air, water, ground and environment pollution is caused in an area, not only the person causing environmental pollution but any person indirectly or knowingly aiding or assisting such act would also be liable for causing illegal financial gain to such violator.

26. We, therefore, direct the District Magistrate and Collector, Bhadrak District, to initiate departmental proceedings against the then Tahasildar-Bhandaripokhari for allowing theft of mineral/sand

from the State and thereby causing loss of revenue to the State and also loss to the public exchequer.

27. Needless to say the District Magistrate and Collector, Bhadrakh District, shall carry the departmental proceedings against the then Tahasildar-Bhandaripokhari to its logical conclusion.

28. We also find that although there is a mention in the counter-affidavit of the State Respondents that FIR No. 111 of 2021 has been lodged against persons operating illegal mining but the copy of the FIR has not been brought on record and it is not known whether it is a named FIR or an FIR against unknown persons.

29. During the course of arguments, Mr. Tarun Pattnaik, learned Counsel for the State Respondents submitted that the FIR was against unknown persons. *Prima-facie*, we are quite aware that such kind of FIRs were deliberately lodged against unknown persons with the intended view to protect the actual offenders and it can hardly be accepted that when there was a protest by the local villagers yet the names of the offenders and illegal miners were not known by the State Authorities while lodging the FIR. The FIR has been lodged by the Tahasildar-Bhandaripokhari which makes his conduct more dubious as to why it was filed against unknown persons when there was so much panic created due to illegal mining among the local villagers.

30. We also direct that a copy of our judgment and order be placed before the Chief Secretary, State of Odisha, who shall direct the cases to be initiated against the illegal sand miners and shall also pass appropriate orders for taking action under the Prevention of Money Laundering Act, 2002 against the offenders/illegal miners.

31. We also find that Environmental Compensation and penalty including royalty for the loss caused to the environment as well as to the State exchequer has not been computed. We are surprised that Environmental Compensation has not been computed by the Odisha State Pollution Control Board being the Regulatory Authority constituted under the Water (Prevention and Control of Pollution) Act, 1974. Similarly, the penalty including royalty for illegal mined sand has not been computed by the District Authorities.

32. We, therefore, direct the Odisha State Pollution Control Board to determine the Environmental Compensation and the District Authorities to determine the penalty/royalty etc. and proceed to take action against the illegal miners for recovery of the same in accordance with law.

33. The Odisha State Pollution Control Board as well as the District Magistrate and Collector, Bhadrak, shall file affidavit of compliance by **11.10.2022**.

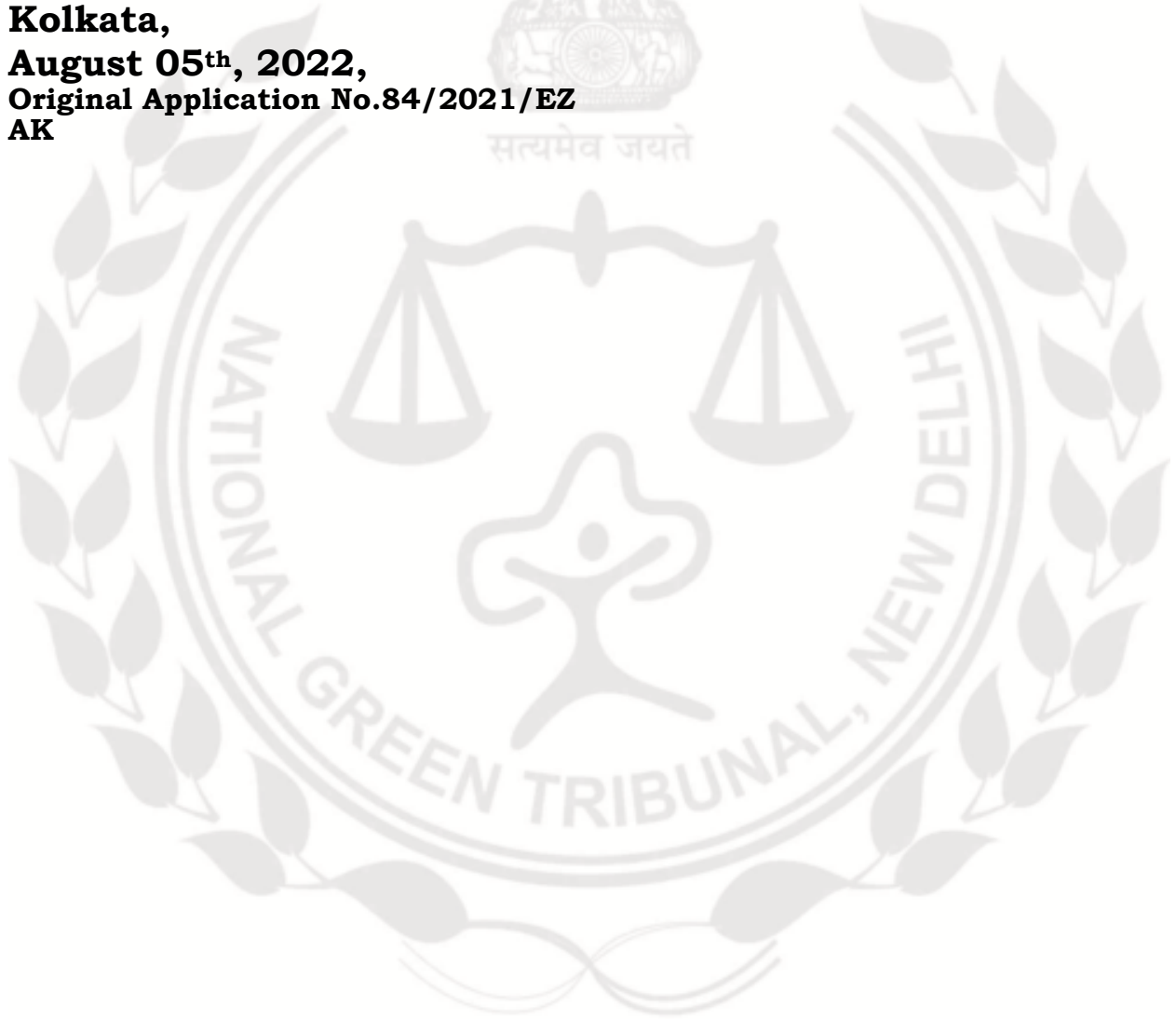
34. With the aforesaid directions, the Original Application No. 84/2021/EZ disposed of.

35. There shall be no order as to costs.

.....
B. AMIT STHALEKAR, JM

.....
SAIBAL DASGUPTA, EM

**Kolkata,
August 05th, 2022,
Original Application No.84/2021/EZ
AK**



NGT