

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

M.A. No. _____ 2024

IN

Original Application No. 14/2023/EZ

IN THE MATTER OF:

Krushna Chandra Khatua & Ors.

...Applicant/s

Versus

Odisha State Level Environment

Impact Assessment Authority & Ors.

...Respondent/s

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NDOH. 22-7-24

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RESPONDENT NO. 6

Through

COUNSEL

B.P. SINGH

(Advocates)

I-5, LGF, Jangpura Extn.,

New Delhi-110014

9873835833

Email:officebpsingh.dl@gmail.com

Place: Delhi

Dated: 28.06.2024

|

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**APPLICATION ON BEHALF OF BIKASH SWAIN/RESPONDENT NO. 6
FOR PLACING ON RECORD THE ORDER DATED 21.05.2024 PASSED
BY HON'BLE SUPREME COURT OF INDIA, IN SLP(C) BEARING NO.
11790/2024 ALONGWITH OTHER DOCUMENTS AND SEEKING
DIRECTIONS FROM THIS HON'BLE TRIBUNAL TO KEEP IN
ABEYANCE THE PROCESS OF PRESENT MATTER TILL THE
OUTCOME OF SLP(C) NO. 11790/2024 TITLED AS "BIKASH SWAIN VS
KRUSHNA CHANDRA KHATUA & ORS." IN THE LARGER INTEREST
OF JUSTICE**

MOST RESPECTFULLY SHOWETH:

1. That the Respondent no. 6 came to know that an application for direction has been preferred by the Applicant mentioning *inter alia* the outcome of the WP(C) No. 25072/2023 and about the disposal of Writ Appeal No.

2051/2023. However it seems that the factum related to the filing of SLP(C) bearing no. 11790/2024 has been concealed by the Applicant as they were very much aware about the same being represented by the respective counsel on 21.05.2024 i.e. date of admission and issuance of notice in the SLP(C) No. 11790/2024 in the Hon'ble Supreme Court of India and a representation regarding the factum of the order and issuance of notice is also informed to the Applicant. Copy of the Representation dated 23.05.2024 & 30.05.2024 are annexed herewith as **ANNEXURE A-1(COLLY)**.

2. That the present O.A has been filed alleging that the Respondent No. 6 has violated the terms & conditions of the Environment clearance and is lifting the sand with heavy trucks by using JCB machines without engaging the local workers.
3. That prior to filing the present O.A., the Applicants and other villagers of Dhanatri approached the Hon'ble High Court of Orissa, challenging the Dhanatri Sand Quarry and other adjacent sand quarries. This was disposed of vide order dated 14.09.2020, with a direction to the Collector, Jajpur to address the representation of the villagers after giving them an opportunity for a hearing.
4. That it is alleged in the present O.A., that the Respondent no. 6 without constructing any separate passage for transportation of sand used the road

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meant for Grama Jungle, Playground and Smasan. Therefore, the villagers filed an writ petition bearing WP(C) No. 12335/2022 in Hon'ble High Court of Orissa with direction to Collector, Jajpur to decide the matter. The Collector, Jajpur registered one Misc. Case no. 54/2022 and passed final order, thereby, directing the Respondent no. 6 not to carry sand over plot no. 1886, 1887, 1891 which belongs to Grama Jungle, Playground and Smasan.

5. That the Hon'ble Tribunal has constituted a committee to inspect the area in result of the same, ADM, Kalinga and Tehsildar, Vyassnagar filed their report after inspection. The Counter affidavit has been filed and reply to the same has also been filed. The Hon'ble Tribunal passed the order dated 17.07.2023 without giving the opportunity to the Respondent no. 6 of being heard to present his defense. The wife of Respondent no. 6 namely Rasmibala Swain suddenly detected breast cancer for which she was admitted in AIIMS Hospital at New Delhi for operation, due to which the Respondent no. 6 was not able to appear and contest the case. The said fact was submitted before the Hon'ble High Court in WP(C) No. 25072/2023, but the said petition of Respondent no. 6 has been dismissed by giving the reason that alternative remedy in the form of appeal is available to him. The passing of the order dated 17.07.2023 has suppressed and violated the

fundamental right of the Respondent No. 6 to present his case, get a fair trial & legal representation.

6. That it is worth mentioning that Respondent No. 6 has approached the Hon'ble Supreme Court by way of SLP(C) No. 11790/2024, raising questions of law relating to the maintainability of the Writ Petition against the order passed by this Hon'ble Tribunal. This was the main legal contention resulting in the dismissal of Writ Petition (Civil) No. 25072/2023 and Writ Appeal No. 2051/2023 in the Hon'ble High Court of Orissa. Copy of the order dated 21.05.2024 passed by Hon'ble Supreme Court of India alongwith complete copy of SLP including the documents are annexed herewith and marked as **ANNEXURE A-2(COLLY)**.
7. That although the Applicants have already been represented through their respective counsel at the time of hearing of the SLP and SLP was opposed citing reasons and legal precedents but notice was issued by Hon'ble Supreme Court which is likely to be listed on 12.07.2024. Since, the Hon'ble Supreme Court has issued notice in the presence of the counsel of Applicant and Applicant or their counsel ought to have inform about the issuance of notice in the SLP to this Hon'ble tribunal which perhaps they concealed intentionally, therefore filing of present application or placing on record the facts and document is inevitable for securing the ends of justice.

Furthermore, during the hearing of SLP the Hon'ble Court has made oral query if the Respondent no. 6 is being prevented from doing something subsequent to the order of this Hon'ble Tribunal and the answer was given in negative which strengthen the mind of the Hon'ble court that disposal of interim application without hearing all the parties was not needed at the said point of time.

8. That even otherwise, since the question of law related to maintainability and admissibility of the case is concerned, nothing remains but to decide this legal question in light of precedents and established law. If the Hon'ble Supreme Court decides the question of law regarding the maintainability of the case or writ challenging this Hon'ble Tribunal's order in the Hon'ble High Court, all objections of the Applicants herein will automatically be resolved. Therefore, until the finality or outcome of the said SLP, the application of the Applicant should be kept in abeyance to avoid complications and multiplicity of litigation.
9. That, even otherwise no irreparable loss is going to be caused in awaiting the outcome of the SLP, as even after passing of more than one year nothing has been found to be of such urgent nature that the Applicant had to approach this Hon'ble Tribunal.

10. That no harm would be caused if this Hon'ble Court would be pleased to allow the present application, keeping in abeyance the process of the Applicant's application in view of the pendency of SLP which is likely to be listed on 12.07.2024. However, passing any order as prayed by the Applicant may create multiplicity of litigation and complications due to the involvement of various forums, departments, and triable questions of law.

PRAYER

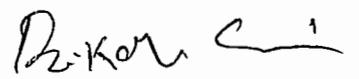
In the view of glaring facts and prevailing circumstances as mentioned above, it is therefore most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- a. Place on record the order dated 21.05.2024 passed by Hon'ble Supreme Court in SLP(C) bearing no. 11790/2024 titled *as "Bikash Swain Vs. Krushna Chandra Khatua & Ors"*. alongwith copy of SLP in the larger interest of justice.
- b. Pass an appropriate order by keeping in abeyance the proceedings and the order passed by this Hon'ble Tribunal, either on the applicant's application or otherwise related to the case, until the outcome of SLP(C) No. 11790/2024, expected to be listed on 12.07.2024, in the interest of justice."

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AND

Pass any or further order, which this Hon'ble Court may deem fit and proper
in the larger interest of Justice.



APPLICANT

THROUGH



COUNSEL
B.P. SINGH
(Advocates)

Place Delhi
Dated 28-6-24

I-5, LGF, Jangpura Extn.,
New Delhi-110014.
9873835833

Email:officebpsingh.dl@gmail.com

**BEFORE THE NATIONAL GREEN TRIBUNAL
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IN THE MATTER OF:

Krushna Chandra Khatua & Ors.

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AFFIDAVIT

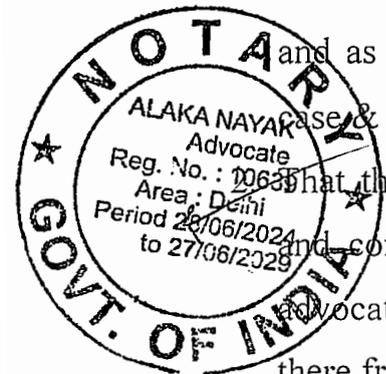
I, Bikash Swain aged about 48 years S/o Ld. Basudeb Swain residing at R/o C/26, HIG Duplex, Sailashree Vihar, PS:- Chandrasekharapur, Bhubaneswar, Distt-Khurda, Presently at Delhi, do hereby solemnly affirm and state as under:-

1. That I am the Respondent no. 6 in the abovementioned Original Application

and as such I am fully conversant with the facts and circumstances of the case & competent to swear this affidavit.

2. That the contents of the facts stated in accompanying application are true and correct to my knowledge, based on record, and legal advice by my Advocate which I believe to be correct. Nothing material has been concealed there from.

3. That the present affidavit has been drafted by my counsel under my instructions and I have read and understood the same and state the contents of the same are true and correct to the best of my knowledge.



B. P. Singh

DEPONENT

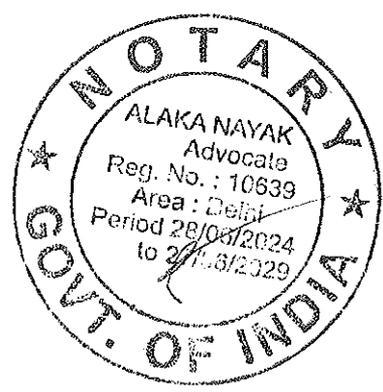
B.P. Singh
(Adv.)
Verified at *Delhi* on this *20*..Day of.....*JUNE*..... 2024, that the contents of my affidavit are true and correct to best of my knowledge. No part of it is false and nothing material has been concealed therefrom.

VERIFICATION:-

my affidavit are true and correct to best of my knowledge. No part of it is false and nothing material has been concealed therefrom.

B. P. Singh

DEPONENT



VERIFIED THAT THE DEPONENT
Sri / Smt. / Km : *B. P. Singh*
S/O. *Mr. P. A. Singh*
Residing by *Sri / Smt. P. A. Singh*
has voluntarily affirmed before me at
Delhi on *20/06/2024* AS W. No. *10639*
that the contents of the affidavit which
have been read & explained to
him are true & correct to his knowledge
[Signature]

Annexure A-1 (copy)

DEVENDRA KUMAR SHUKLA
Advocate-On-Record
SUPREME COURT OF INDIA

To,
The Member Secretary,
State Environment Impact Assessment Authority,
Odisha.

Subject: In relation to the order dt. 21.05.2024 passed by Hon'ble Supreme Court of India in SLP (Civil) No. 11790/2024 titled Bikas Swain Vs Krushna Chandra Khatua & Ors".

Sir,
Kindly take notice that in the captioned matter Hon'ble Supreme Court of India on dt. 21.05.2024 issued the notice to the respondents considering the fact and circumstances and the question of law involved in the present matter wherein the order passed by the Hon'ble High Court, as well as Hon'ble NGT, is in gross violation of the principle of natural justice, taking note of this fact and other question of law Hon'ble Supreme Court has issued the notice to all the respondents. It is pertinent to mention here that respondents were present as the caveator and has requested for time to file a counter-affidavit.

In the above-mentioned facts and circumstance that Hon'ble Supreme Court has issued notice to examine Impugned final Order and Judgment dated 19.04.2024 passed by the Hon'ble High Court of Orissa at Cuttack in Writ Appeal No. 2051 of 2023 as well as the order of NGT kindly take notice of the order of Hon'ble Supreme Court of India which is attached with this order for your reference and do the needful.

Date: 23/05/2024
Place: New Delhi

Devendra Kumar Shukla (DEVENDRA KUMAR SHUKLA)
Advocate-On-Record
Supreme Court of India
Office: MIMANSA LEGAL
202, Gagandeep Building,
12, Rajendra Place, New Delhi-110008
Ph./Fax-011-49124797. (M):- 9873104009
Advocate-On-Record

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DEVENDRA KUMAR SHUKLA
Advocate-On-Record
SUPREME COURT OF INDIA

Date: 30/05/2024

To,
The Member Secretary,
State Environment Impact Assessment Authority,
Odisha.

Subject: In relation to the order dt. 21.05.2024 passed by Hon'ble Supreme Court of India in SLP (Civil) No. 11790/2024 titled Bikas Swain Vs Krushna Chandra Khatua & Ors".

Sir,

Kindly take notice that in the captioned matter Hon'ble Supreme Court of India on dt. 21.05.2024 issued the notice to the respondents considering the fact and circumstances and the question of law involved in the present matter wherein the order passed by the Hon'ble High Court, as well as Hon'ble NGT, is in gross violation of the principle of natural justice, taking note of this fact and other question of law Hon'ble Supreme Court has issued the notice to all the respondents. It is pertinent to mention here that respondents were present as the caveator and has requested for time to file a counter-affidavit.

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Devendra Kumar Shukla
Advocate-On-Record
Supreme Court of India
Office: MIMANSA LEGAL
2, Gagandeep Building,
Rajendra Place, New Delhi-110008
(DEVENDRA KUMAR SHUKLA)
Ph. & Fax: 011-49124797, 1104009
Advocate-On-Record

Copy to:-

1. The Tehsildar, Vyasagar Jajpur, Odisha
2. The District Magistrate and Collector, Jajpur, Odisha
3. The Deputy Director, Mines Jajpur, Odisha

Office: M/s Mimansa Legal, 202, Gagandeep Building, 12, Rajendra Place, New Delhi -110 008
Telefax: +91-1149124797 Mobile: +91-9873104009 Email: devshukla30@gmail.com

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 11790/2024

(Arising out of impugned final judgment and order dated 19-04-2024 in WA No. 2051/2023 passed by the High Court Of Orissa At Cuttack)

BIKASH SWAIN

Petitioner(s)

VERSUS

KRUSHNA CHANDRA KHATUA & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.120656/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 120656/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 21-05-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE SANJAY KAROL

(VACATION BENCH)

For Petitioner(s) Mr. Bhupendra Pratap Singh, Adv.
Mr. Devendra Kumar Shukla, AOR
Mr. Nakul Nirwan, Adv.
Mr. Rishabha Singh, Adv.
Mr. Anuj Kumar, Adv.

For Respondent(s) Mr. Bharat Swaroop Sharma, Adv.
Mr. Girijesh Pandey, Adv.
Mr. Deepinder Kaur, Adv.
Mr. Parag Sirohi, Adv.
Mr. R. Sathish, AOR

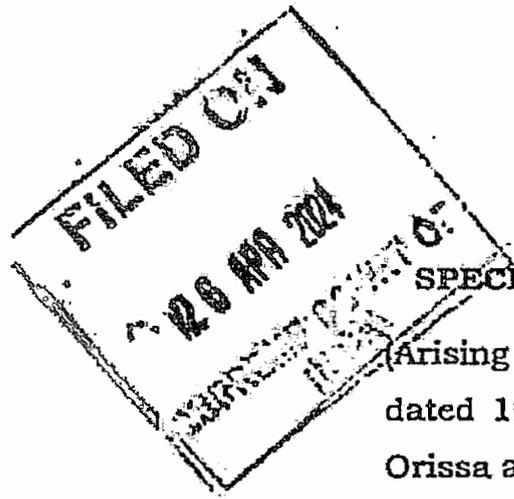
UPON hearing the counsel the Court made the following
O R D E R

1. Issue notice.
2. Mr. R. Sathish, learned counsel, who appears on caveat on behalf of respondent Nos. 1 to 3, accepts and waives service of formal notice upon the said respondents.
3. Let counter affidavit be filed in the meanwhile.
List after summer vacation.

Signature Not Verified
Digitally signed by
Indu M. Wason
Date: 2024.05.21
17:17:41 IST
Reason: []

(KAPIL TANDON)
COURT MASTER (SH)

(NIDHI WASON)
COURT MASTER (NSH)



Dy n 19445/24

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IN THE SUPREME COURT OF INDIA
[SCR XXI RULE 3(1)(a)]
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) NO. 11790 OF 2024

(Arising out of Impugned final Order and Judgment dated 19.04.2024 passed by the Hon'ble High Court of Orissa at Cuttack in W.A. No. 2051 of 2023)

IN THE MATTER OF:

Bikash Swain

...PETITIONER/S

VERSUS

Krushna Chandra Khatua & Ors

....RESPONDENT/S

WITH

120656

L.A.....of 2024

Application for Exemption from Filing Certified Copy of Impugned Order

PAPER BOOK

(For Index Kindly See Inside)

ADV FOR PETITIONER: DEVENDRA Kr SHUKLA

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IN THE SUPREME COURT OF INDIA

[Order XXI Rule 3(1)(a)]

CIVIL APPELLATE JURISDICTION

SLP (Civil) NO. _____ OF 2024

IN THE MATTER OF:

Bikash Swain

PETITIONER/S

VERSUS

Krushna Chandra Khatua & Ors

RESPONDENT/S

OFFICE REPORT ON LIMITATION

1 The petition is within time

2 The petition is barred by time and there is delay of _____ Days in filing the same against Common Final Impugned Order and Judgment 19 04 2024 passed by the Hon'ble High Court of Orissa at Cuttack in W A No 2051 of 2023

3 Petition for condonation of _____ Days delay has been filed

4 There is delay of _____ days in refilling the petition and petition for condonation of _____ days in refilling has been filed

BRANCH OFFICER

Place NEW DELHI

Date 14/05/2024

LISTING PERFORMA

IN THE SUPREME COURT OF INDIA

Section-XI

The Case pertains to (Please tick/check the correct box)

Central Act: (Title) N/A

Section: Art 136 of Constitution

Central Rule: (Title) N/A

Rule No (s) N/A

State Act: (Title):

Section:

Impugned Interim Order:

Impugned Final Order/Decree 19 04 2024

High Court Hon'ble High Court of Orissa at Cuttack

Name of judges: Hon'ble Mr Chakradhari Sharan Singh CJ,

Hon'ble Mr Justice Murahari Sri Raman J

Tribunal/ Authority: (Name): N/A

1. **Nature of Matter:** Special Leave Petition (C)
2. **(a) Petitioner/ Appellant No.1:** Bikas Swam
 (b) Email Id N/A
 (c) Mobile Phone No N/A
3. **(a) Respondent No. 1:** Krushna Chandra Khatua
 (b) Email Id N/A
 (c) Mobile Phone No Not Available
- 4 **(a) Main Category Classification:** ordinary Civil Matters
 (b) Sub-classification
5. Not to be listed before N/A
- 6.a) Similar disposed of Matter with Citation, if any & Case detail- Not Any
- b) Similar Pending matter with case detail Not Any

7. Criminal Matters: N/A

- (a) Whether accused has surrendered Not applicable
- (b) FIR No N/A Date N/A
- (c) Police Station N/A
- (d) Sentence Awarded Not awarded
- (e) Sentence undergone No Applicable

8 Land Acquisition matter: N/A

- (a) Date of Section 4 Notification N/A
- (b) Date of Section 6 Notification N/A
- (c) Date of Section 17 Notification N/A

9. Tax Matters: State the tax effect N/A**10. Special Category (First petitioner/ Appellant only)**

Senior Citizen > 65 years, SC/ST, Women/Child, Disabled,
Legal Aid case, Custody

11. Vehicle No (In case of Motor Accident Claim Matter) N/A

Date /04/2024



(DEVENDRA KUMAR SHUKLA)
AOR for the Petitioner/ Appellant
Registration No 2774
Email devendra_aor@gmail.com

SYNOPSIS

That the present Special Leave Petition under Article 136 of the Constitution of India has been filed by the Petitioner assailing the impugned judgment dated 19 04.2024 passed in the order of W.A. No. 2051 of 2023 by the Hon'ble High Court of Orissa at Cuttack in the case titled as "*Bikash Swain Vs Krushna Chandra Khatua & Others.*" thereby, erroneously dismissing the petition filed by the Petitioner without taking into consideration that Ld NGT passed the order dated 17 07 2017 ex parte against the Petitioner without giving any opportunity to be heard, which is violation of principle of natural justice as well as the fundamental right of Petitioner provided under Article 21 of Constitution of India

The Writ Petition challenging the Ld NGT's 17 07 2023 order asserts the High Court's jurisdiction due to the absence of an equally effective remedy and a violation of natural justice through an ex-parte decision. Despite the High Court dismissing the Petitioner's Writ Petition citing an available alternative of appeal, precedents like *L. Chandra Kumar Vs. Union of India*

AIR 1997 SC 1125 and Madhya Pradesh High Court Bar Association Vs. Union of India, AIR 2022 SC 2713 recognize the High Court's authority to review NGT orders under Article 226/227 of the Constitution, a fundamental aspect. Additionally, given the NGT's subordinate status to the High Court in territorial jurisdiction, the High Court can exercise supervisory powers in cases of gross illegality in NGT rulings.

In view of decision by this Hon'ble Court in *Whirlpool Corporation Vs. Registrar of Trade Mark, Mumbai & Ors. AIR 1999 SC 22, Harbanslal Sahni & Ors. Vs. Indian Oil Corpn. Ltd. & Ors. (2003) 2 SCC 107* which have also been relied upon in *Radha Krishnan Industries Vs. State of Himachal Pradesh & Ors. AIR 2021 SC 2114*, under Article 226 of the Constitution, the High Court, having regard to the facts of a case, has a discretion to entertain or not to entertain a writ petition. But the High Court had imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to

operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged

Furthermore, several pleading in the shape of affidavits were filed before the Ld NGT by both the parties to the present appeal, more particularly by the collector, Jajpur and also filed enquiry report of the committee, but Ld NGT did not analyze all the pleading, documents and evidences, rather passed the order dated 17 07 2023 merely on the basis of FIR and statements of drivers passed by completely ignoring the enquiry report and affidavit of the Collector, Jajpur

It is submitted that the Respondent no 1 to 3 filed an O A No 24/2023, where it is alleged that the Petitioner has violated the terms & conditions of the Environment clearance and is lifting the sand with heavy trucks by using JCB machines without engaging the local workers. It is stated in the O A that prior to filing the same, the Respondent no 1 to 3 and other villagers of

Dhanatri approached the Hon'ble High Court challenging in respect of Dhanatri Sand Quarry and other adjacent sand quarries which by disposed of vide order dated 14 09.2020 with a direction to Collector, Jajpur to dispose of the representation of the villagers after giving opportunity of hearing to them. It is alleged that the Petitioner without constructing any separate passage for transportation of sand used the road meant for Grama Jungle, Playground and Smasan, therefore, the villagers filed an writ petition bearing WP(C) No 12335/2022 in Hon'ble High Court with direction to Collector, Jajpur to decide the matter. The Collector, Jajpur registered one Misc Case no 54/2022 and passed final order, thereby, directing the Petitioner not to carry sand over plot no 1886, 1887, 1891 which are belongs to Grama Jungle, Playground and Smasan. The Ld Tribunal has constituted a committee to inspect the area and the ADM, Kalinga and Tehsildar, Vyassnagar filed their report after inspection. Counter affidavit has been filed and reply to the same has been filed and the Ld Tribunal passed the order dated 17 07 2023 without giving the Petitioner any opportunity to be heard. The wife of

Petitioner namely Rasmibala Swam suddenly detected breast cancer for which she was admitted in AIIMS Hospital at New Delhi for operation, due to which the Petitioner was not able to appear and contest the case and the said fact was submitted before the Hon'ble High Court in WP(C) No. 25072/2023 but the said petition of Petitioner has been dismissed by giving the reason that alternative remedy in the form of appeal has been available which is curtailment of the fundamental right of the Petitioner to be heard, fair trial as well as right to legal representation and the right to present evidence in defence

The Hon'ble High Court while passing the impugned order, ignored in examining the factum relating to order dated 17 07 2023 passed by Ld NGT That apart from deciding the ex-parte O A , they did not consider the documents and other evidence in support of the O A except two documents which are not covering the entire case

It is most respectfully submitted that the impugned order and final judgment passed by the Hon'ble High Court is erroneous and contrary to the law in view of

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fundamental right of the Petitioner to be given proper opportunity to present the case and evidences in support of his defence, therefore, the Petitioner seeks kind indulgence of this Hon'ble Court by way of this present Special Leave Petition.

LIST OF DATES AND EVENTS

DATE	EVENT
24.08.2020	The Tehsildar Vyasaganar flouted tender for leasing of sand sarrat in river Batarani near Dhanatri village and other 4 villages The Last for submission of the tender application was fixed for 15 09 2020
07 09.2020	The villagers of Dhanatri filed the Writ Petition(C) 22727/2020 before the Hon'ble High Court, thereby, challenging the tender notice
14 09 2020	The Hon'ble High Court disposed the Writ Petition with direction to the Collector, Jajpur to dispose of the representation of the villagers after giving them opportunity of hearing The said representation was

	<p>disposed of and the tender was finalized</p> <p>Copy of the order dated 14 09.2020 is annexed herein as Annexure P-1 (pg.36.to...39).</p>
<p>04 09 2021 & 18 12 2021</p>	<p>The Tehsildar issued intimation letter in favor of Petitioner vide letter no 1447 dated 26 02 2021 The State level Environment Impact Assessment Authority vide letter dated 04 09 2021 & 18 12 2021 transferred the Environment Clearance in favor or Petitioner Copy of the order dated 04 09 2021 & 18 12 2021 is annexed herewith as Annexure P-2 (pg.40...to...47.....).</p> <p>The Tehsildar executed lease deed with the Petitioner i.e Project Proponent on 28 03 2022</p>
<p>Nil date 2022</p>	<p>It is alleged that the Petitioner without constructing any separate passage for transportation of sand used the road meant for Grama Jungle, Playground and Smasan, therefore, the villagers filed an</p>

	writ petition bearing WP(C) No 12335/2022 in Hon'ble High Court with direction to Collector, Jajpur to decide the matter
10 08 2022	The Collector, Jajpur registered one Misc Case no 54/2022 and passed final order, thereby, directing the Petitioner not to carry sand over plot no 1886, 1887, 1891 which are belongs to Grama Jungle, Playground and Smasan Copy of the proceedings in
24 01 2023	It is alleged that despite the order of collector the Petitioner was carrying the sand over the said plots, therefore, the villagers approached Ld. NGT, Eastern Zone Bench, Kolkata by filing O A No 24/2023 It is alleged in the O A that Petitioner has violated the clause 9 2, 9 3, 9 6, 9 11, 9 13, 9 14 & 9 25 of Environment Clearance Copy of the O A No 14/2023, dt 24 01 2023 is annexed herewith as Annexure P-3 (pg. ⁴⁸to..... ⁷³).

09 02 2023	<p>During the pendency of O A., the Ld. NGT directed to constitute a committee to inspect the area. Pursuant the said direction on 03 04.2023 the ADM, Kalinga and Tehsildar, Vyassnagar purportedly inspected the site and submitted their report. Copy of the report date dated 03.04 2023 is annexed herewith as Annexure P-4 (pg.74.....to.75.).</p>
13 04.2023 To 13 07 2023	<p>The Collector, Jajpur filed counter affidavit on 13 04 2023 Copy of the counter affidavit to the O A no 14/2023 is annexed herewith as Annexure P-5 (pg.76.....to.84.).</p> <p>After receipt of the counter affidavit the Respondent no. 1 to 3 filed a further affidavit on 15 05 2023 Copy of the further affidavit to the O A no 14/2023 is annexed herewith as Annexure P-6 (pg.85.....to.96.).</p> <p>The Collector, Jajpur in reply to counter affidavit filed reply affidavit on</p>

	<p>13.07 2023. Copy of the reply affidavit in the O.A. no 14/2023 is annexed herewith as Annexure P-7 (pg. 97... to 102).</p>
	<p>The wife of Petitioner namely Rasmibala Swam suddenly detected breast cancer for which she was admitted in AIIMS Hospital at New Delhi for operation, due to which the Petitioner was not able to appear and the contest the case Copy of the entire medical records of wife of Petitioner is annexed herewith as Annexure P-8 (pg 103 to 133)</p>
17 07 2023	<p>The matter was heard and Ld NGT passed the final order without taking into consideration that neither the Petitioner was represented by counsel nor any counter has been filed, therefore, the submissions of Petitioner were not considered. Furthermore The Ld NGT has passed the order only on the basis of FIR and so called statement of drivers and has failed to consider the enquiry report and</p>

	affidavit of collector, Jajpur Copy of the order dated 17 07 2023 passed by Ld NGT is annexed herewith as Annexure P-9 (pg ¹³⁴to ¹⁴⁴).
Nil Date August, 2023	The Petitioner approached the Hon'ble High Court by filing WP(C) No 25072/2023 against the order dated 17 07 2023
11 08 2023	The Hon'ble High Court dismissed the WP(C) No 25072/2023 without considering that submissions of Petitioner were not heard and by that way the fundamental right of the Petitioner provided under Article 21 of Constitution of India has been curtailed The Hon'ble High Court dismissed the Writ Petition solely on the ground of availability of alternative remedy Copy of the order dated 11 08 2023 passed by Hon'ble High Court is annexed herewith as Annexure P-10 (pg ¹⁴⁵to ¹⁴⁶).
18 08 2023	The Petitioner filed the Writ Appeal 2051

	of 2023 challenging the order dated 11 08 2023 Copy of the WA No 2051/2023 is annexed herewith as Annexure P-11 (pg. 147.....to 185.)
21 03 2021	The Petitioner filed the his Written Note of submissions True copy of the Written Submissions is annexed herewith as Annexure P-12 (pg. 186.....to 196..).
19 04 2024	The Hon'ble High Court dismissed the WA No 2051/2023 by way of impugned order by not considering that the Ld NGT has passed the order dated 17 07 2023 without giving an opportunity of hearing to the Petitioner and completely ignored the curtailment of the fundamental right of the Petitioner by observing that "violation of principle justice is not tenable in the eye of law"
_ 04 2024	Hence, the present Special Leave to Appeal



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AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 2051 of 2023

Bikash Swain

Appellant

-versus-

Krushna Chandra Khatua and others

Respondents

Advocates appeared in the case

For Appellant

Mr Prabhu Prasanna Behera, Advocate

For Respondents

*Mr Gopal Prasad Jena, Advocate
(for Respondents No 1 to 3)*

*Mr B P Das, Advocate
(for Respondent No 4)*

*Mr Debakanta Mohanty,
Addl Government Advocate for State*

*Mr Sushanta Kumar Mishra, Advocate
(for Respondent No 9)*

CORAM.

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

JUDGMENT

19 04.2024

Chakradhari Sharan Singh, CJ

An order dated 11 08 2023 passed by a learned Single Judge of this Court in W P (C) No 25072 of 2023 is under challenge in the present intra-Court appeal, whereby the writ petition filed by the appellant has not been entertained, there being provision of appeal



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to the Supreme Court under Section 22 of the National Green Tribunal Act, 2010 (hereinafter referred to as 'the NGT Act') against an order dated 17 07 2023 passed by the National Green Tribunal (NGT), Eastern Zone Bench, Kolkata in Original Application No 14/2023/EZ, which was put to challenge in the said writ petition

2 We have heard Mr Prabhu Prasanna Behera, learned counsel appearing on behalf of the appellant at length. The written notes of arguments have also been filed by learned counsel on behalf of the appellant.

3 Assailing the impugned order passed by the learned Single Judge, Mr Behera, learned counsel for the appellant has submitted that the statutory provision of appeal under Section 22 of the NGT Act does not oust the High Court's jurisdiction under Articles 226 and 227 of the Constitution of India. He has argued that the order dated 17 07 2023 passed by the NGT being in breach of the principles of natural justice, the learned Single Judge ought to have dealt with the merits of the case. It has been argued further that though the State Government's report is in favour of the appellant, the finding recorded by the NGT in its impugned order dated 17 07 2023 does not refer to the same and, therefore, the said order of the NGT suffers from the vice of non-application of mind.

4 In support of his submissions, mainly on the point that this Court's jurisdiction under Article 226/227 of the Constitution of India is not ousted despite the existence of alternative remedy of



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appeal, Mr Behera, learned counsel has relied on the following decisions of the Supreme Court of India -

(i) *L Chandra Kumar v Union of India* (AIR 1997 SC 1125);

(ii) *Madhya Pradesh High Court Advocates Bar Association v Union of India* (AIR 2022 SC 2713), and

(iii) *Ibrat Faizan v Omaxe Buildhome Private Limited* (2022 SCC OnLine SC 620)

Reliance has also been placed on a decision of this Court in case of *Kaha Sethi v State of Odisha*, reported in 2018 (1) OLR 386 and a decision of the Allahabad High Court in the case of *M/s Hotel The Grand Tulsi v State of UP* (Neutral Citation No 2023.AHC.160024-DB)

5 He has argued that the learned Single Judge ought to have taken into account the fact that though the appellant was impleaded as party to the said Original Application No 14/2023/EZ before the NGT, he was not heard and in such circumstance, the learned Single Judge ought not to have declined to entertain the writ petition filed by the present appellant against the said order of the NGT on the ground of existence of alternative statutory remedy of appeal

6 In our considered opinion, there cannot be any controversy over the settled legal position that the NGT is within the purview of Articles 226 and 227 jurisdictions of the High Courts. The power of judicial review under Articles 226, 227 and 32 of the Constitution



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of India has been recognised as part of the basic structure of our Constitution which is inviolable as laid down in case of *L. Chandra Kumar v Union of India (supra)*. The Supreme Court in case of *Madhya Pradesh High Court Advocates Bar Association v Union of India (supra)*, after having noticed the law laid down in the case of *L. Chandra Kumar v Union of India (supra)*, has noted that while exercising such jurisdiction under Articles 226 and 227 of the Constitution against the orders of the NGT, the Court necessarily exercises due discretion whether to entertain or to reject the petition, as per the test broadly laid down in case of *Whirlpool Corporation v Registrar of Trade Marks, Mumbai* reported in (1998) 8 SCC 1

7 It is also noteworthy that in case of *Madhya Pradesh High Court Advocates Bar Association v Union of India (supra)* the *vires* of Section 14 read with Section 22 of the NGT Act was challenged as unconstitutional on the ground that it purported to exclude the writ jurisdiction of the High Court under Article 226/227 of the Constitution of India. There were altogether four issues framed by the Supreme Court to be answered including the following two

A Whether the NGT ousts the High Court's jurisdiction under Sections 14 and 22 of the NGT Act?

B xxx xxx xxx xxx xxx

C Whether the remedy of direct appeal to the Supreme Court from the decisions of the NGT under



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Section 22 of the NGT Act is ultra vires to the Constitution? Whether an appeal mechanism be provided to the High Courts from the decisions of the NGT?

D xxx xxx xxx xxx xxx

8 In the wake of the challenge to the vires of Section 22 of the NGT Act, the Supreme Court, after having noted the statutory provisions under the NGT Act, answered Issue No A in paragraph-15, which reads as under

"15 It is also noteworthy that nothing contained in the NGT Act either impliedly or explicitly ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular case. Since the High Court's jurisdiction remain unaffected, the first question is answered in the negative, against the Petitioners."

9 Dealing with the Issue No C, the Supreme Court held in paragraph-24, as follows

"24 xxx xxx xxx On this aspect it needs to be observed that even when a direct appeal to the Supreme Court is provided by a statute against the decision of a tribunal, the remedy under Article 226 or 227 before the High Court remains unextinguished. Moreover, the Appeal under Section 22 of the NGT Act, is limited to the grounds under Section 100 of the Code of Civil Procedure and



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the Supreme Court does not function as a regular first appellate Court. However, under Article 226 or 227, remedies on issues of jurisdiction and also under the principles set out in Associated Provincial Picture Houses Ltd v Wednesbury Corporation MANU/UKWA/0002/1947 [1948] 1 KB 223, are available for an aggrieved party. Subject to discretion being exercised, the affected litigants can move High Court under Article 226 or 227 and in such cases, a SLP under Article 136 of the Constitution could also be maintained to the Supreme Court from the High Court's verdict."

10 The Supreme Court further held in case of *Madhya Pradesh High Court Advocates Bar Association v Union of India (supra)* that the options available to a litigant to question an order passed by the NGT is either to move to the Supreme Court in a case where substantial question of law arises or proceed under Article 226 or 227 of the Constitution of India. Seeing no reason to strike down Section 22 of the NGT Act as *ultra vires* the provisions of the Constitution, the Supreme Court held in paragraphs-26 and 27 as under

"26 The options available to a litigant to either move to the Supreme Court in a case where a substantial question of law arises or proceed under Article 226 or 227 must not also be overlooked. If necessary, a party can also approach this Court by way of an Article 136 petition. With such choices being available for a party no rational justification is found for striking down Section 22 of the Act which provides for a direct appeal to the Supreme Court.

27 A litigating party must also realise that in any event, if the opposite side approaches the Supreme



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Court, the litigant on the other side would have to defend his case before this Court and at that stage they cannot be complaining about the distance to Delhi. Thus, the remedy of direct appeal to the Supreme Court under the NGT Act from the NGT's decision cannot be seen as denial of access to justice to the litigants in the field of environmental law."

11 In case of *Ibrat Faizan v Omaxe Buildhome Private Limited (supra)*, the Supreme Court had the occasion to consider the maintainability of a proceeding under Article 226 of the Constitution of India against an order passed by the National Consumer Disputes Redressal Commission New Delhi (for short 'National Commission') in an appeal under Section 58(1)(a)(iii) of the Consumer Protection Act, 2019. The maintainability of the proceeding before the Delhi High Court was questioned on the ground of availability of alternative remedy of appeal before the Supreme Court under Section 67 of the Consumer Protection Act 2019. In the said case, an order passed by the National Commission under Section 58(1)(a)(iii) was under challenge.

12 Upon close scrutiny of the provisions under Sections 58 and 67 of the Consumer Protection Act, 2019 the Supreme Court held in paragraph-20 as under

"20 It is not in dispute that in the present case, the appeal before the National Commission was against the order passed by the State Commission under Section 47(1)(a) of the 2019 Act. Therefore, against the order passed by the State Commission passed in a complaint in exercise of its powers conferred under Section 47(1)(a) of the 2019 Act, an appeal to the National Commission was maintainable, as provided



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under Section 58(1)(a)(iii) of the 2019 Act As per Section 67 of the 2019 Act, any person, aggrieved by an order made by the National Commission of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of Section 58, may prefer an appeal against such order to the Supreme Court Therefore, an appeal against the order passed by the National Commission to this Court would be maintainable only in case the order is passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(i) or under Section 58(1)(a)(ii) of the 2019 Act No further appeal to this Court is provided against the order passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(iii) or under Section 58(1)(a)(iv) of the 2019 Act In that view of the matter, the remedy which may be available to the aggrieved party against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) or Section 58(1)(a)(iv) would be to approach the concerned High Court having jurisdiction under Article 227 of the Constitution of India”

(Emphasis added)

13 Apparently, thus, the Supreme Court in the said case, after having noticed the legal position that there was no appeal maintainable against an order passed under Section 58(1)(a)(iii) of the Consumer Protection Act, 2019, held that the remedy which might be available to the aggrieved party against an order passed by the National Commission in an appeal under Section 58(1)(a)(iii) or Section 58(1)(a)(iv) would be to approach the concerned High Court having jurisdiction under Article 227 of the Constitution of India



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14 It would be beneficial to notice a subsequent decision of the Supreme Court in case of *Universal Sompo General Insurance Co Ltd V Suresh Chand Jain*, 2023 SCC OnLine SC 877, in which case also an order passed by the National Consumer Disputes Redressal Commission (NCDRC) dismissing an appeal filed by the petitioner of that case against an order passed by the State Consumer Disputes Redressal Commission (SCDRC) was sought to be challenged in a proceeding under Article 136 of the Constitution of India. In that case, the Supreme Court considered the question as to whether the said petition seeking special leave to appeal under Article 136 of the Constitution directly to the Supreme Court should be entertained against an order passed by the NCDRC in exercise of its appellate jurisdiction or should be relegated to the petitioner the remedy of filing a writ petition under Article 226 of the Constitution or a petition invoking supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution of India.

15 In case of *Universal Sompo General Insurance Co Ltd V Suresh Chand Jain (supra)*, the Supreme Court, after having considered the scope of grant of special leave under Article 136 of the Constitution of India and taking into account the decision in case of *Ibrat Faizan v Omaxe Buildhome Private Limited (supra)* held in paragraph-38 as under

"38 In the aforesaid view of the matter we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the



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petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution

16 It is significant to notice that in both the cases, i.e. *Ibrat Faizan v Omaxe Buildhome Private Limited (supra)* and *Universal Sompo General Insurance Co Ltd v Suresh Chand Jain (supra)*, there was no statutory remedy of appeal available against the orders passed by the NCDRC under the provisions of the Consumer Protection Act, 2019. It was in that background that the Supreme Court in the case of *Ibrat Faizan v Omaxe Buildhome Private Limited (supra)*, held that the petition filed in the Delhi High Court under Article 227 of the Constitution was maintainable and could be entertained, and in case of *Universal Sompo General Insurance Co. Ltd v Suresh Chand Jain (supra)*, it held that instead of challenging the order of the NCDRC directly before the Supreme Court invoking Article 136 of the Constitution of India the litigant ought to have approached the concerned High Court having jurisdiction under Articles 226 or 227 of the Constitution.

17 We reiterate our view, based on settled legal principles that the alternative statutory remedy is not a bar for a High Court to entertain an application under Article 226/227 of the Constitution of



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India When an alternative remedy is available, a writ petition under Article 226 of the Constitution can be entertained only in exceptional circumstances, namely, breach of fundamental rights, violation of principles of natural justice, excess of jurisdiction or a challenge to the *vires* of the statute or delegated legislation is made

18 It would, however, be prudent for us to notice the provisions under Section 22 of the NGT Act, which reads as under

"22 Appeal to Supreme Court —

Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908)

Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal "

19 This Court cannot be oblivious of the opinion of the law enunciated by the Supreme Court in *Municipal Corporation of Greater Mumbai v Ankita Sinha, (2022) 13 SCC 401* wherein uniqueness of functioning and jurisdiction of the National Green Tribunal has been considered, which is to the following effect

"221 While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads, Administrative Tribunals under Article



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323A, Tribunals under Article 323B, Specialized sector Tribunals and most prominently, Tribunals to safeguard rights under Article 21 "

20 In the said reported case the said Court has also remarked that "the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court" After so observing, with respect to *in general* body the Supreme Court proceeded to hold that

"26 3 As earlier seen, S 20 of the NGT Act which includes the term "decision", in addition to "order" and "award", also require the Tribunal to apply the 'Precautionary Principle' and the statutory mandate being relevant is extracted

"20 Tribunal to apply certain principles —

The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle "

26 4 *The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other 'decisions' or 'orders' to governmental authorities or polluters, when they fail to "to anticipate, prevent and attack the causes of environmental degradation" [Vellore Citizens (supra), S Jagannathan v Union of India (1997) 2 SCC 87, Karnataka Industrial Areas Development Board v C Keshappa and Ors (2006) 6 SCC 371] Two aspects must therefore be emphasized i.e that the Tribunal is itself required to carry out*



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preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

265 It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial.

It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, 'The Nature of the Judicial Process', stated thus,

"It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

The above could be a pointer towards the preemptive functions of the NCT as a sui generis body."

21 It may be matter of significance to notice the conception of the National Green Tribunal as observed by the Supreme Court in *Ankita Sinha* (supra) with reference to 186th Report of the Law Commission of India dated 23.9.2003



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"133 The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialized forum to deal with all environmental multidisciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

134 Thus, the power of judicial review was omitted to ensure avoidance of High Courts interference with the Tribunal's orders by way of a midway scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT."

22 Regard being had to the special statute conferring powers on the National Green Tribunal, the Supreme Court in *Ankita Sinha* (supra) further observed as follows:

"171 As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters.



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with the understanding that environment and environmental principles are part of Article 21 of the Constitution "

23 With the aforesaid backdrop, this Court feels it apposite to investigate into the scope of interference with the nature of "order" challenged in the present writ petition. Bare reading of Section 22 of the NGT Act makes it clear that "any person aggrieved" may challenge any order/decision before the Supreme Court. Therefore, when efficacious alternative remedy is available under the statute, the remedy sought for by the petitioner by way of writ petition seems to be uncalled for.

24 As has been noted above, Mr. Behera, learned counsel appearing on behalf of the appellant has argued that without giving the appellant an opportunity of hearing, the NGT passed the impugned order on 17/07/2023. The said order is there on record by way of Annexure-1 to the writ petition (WP (C) No 25072 of 2023). In the said order, the NGT has noted in paragraph-15 that none appeared on behalf of the respondent no 6 (the appellant herein) nor was any counter affidavit filed, though the appellant was duly served the notice of the case as was clear from the affidavit of service filed by the applicant of the said case. The appellant has not disputed in his pleadings in the writ petition about the service of notice. It is rather its plea that on account of genuine reasons he could not appear and contest the case since his wife was diagnosed with breast cancer for which, she was admitted in the All India Institute of Medical Sciences (AIIMS) Hospital at New Delhi.



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25 In our considered view, the appellant's challenge to the order of the NGT on the ground of violation of principles of natural justice is not tenable in the eye of law. In the present case, the appellant has the statutory remedy of appeal against the impugned order passed by the NGT. There was no exceptional circumstance before the learned Single Judge to have entertained the writ petition, there being statutory remedy of appeal. In an intra-Court appeal, we decline to interfere with the impugned decision of the learned Single Judge, which does not suffer from any legal infirmity.

26 Resultantly, we do not find any merit in this intra-Court appeal, which accordingly stands dismissed, but in the circumstances with no order as to costs.

(Chakradhari Sharan Singh)
Chief Justice

Mr M S Raman, J *I agree*

(M S Raman)
Judge

S Behera/Sr Steno

Signature Not Verified

Digitally Signed
Signed by: SUMANTA BEHERA
Designation: Sr or Sterographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 22 Apr 2024 16:26:39

SD

IN THE SUPREME COURT OF INDIA

[SCR XXI RULE 3(1)(a)]
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. _____ OF
2024

(Arising out of Impugned final order and judgement dated 19 04 2024 passed in the order of W A No 2051 of 2023 by the Hon'ble High Court of Orissa at Cuttack in the case titled as "*Bikash Swain Vs Krushna Chandra Khatua & Others*)

BETWEEN

	Before Hon'ble Court	the High Court	Before the of High Court	DB Hon'ble	Before Supreme Court of India
1. Bikash Swain S/o Ld Basudeb Swain R/o C/26, HIG Duplex, Sailashree Vihar, PS - Chandrasekharapur, Bhubaneswar, Distt- Khurda	Petitioner no 1	Petitioner no 1	Petitioner no 1	Petitioner no 1	Petitioner no 1

Versus

- | | | | |
|--|--|---|---|
| <p>1. Krushna Chandra Khatua S/o Lt Narana Khatua R/o Gobindapur, PO Rudhia, PS Panikoili, Distt Jajpur-755043</p> | <p>Respondent
no 1</p> | <p>Respondent
no 1</p> | <p>Respondent
no 1</p> |
| <p>2. Kishore Chandra Pal S/o Lt Laxmidhar Pal R/o Ranapal, PO Rudhia, PS Panikoili, Distt Jajpur-755043</p> | <p>Respondent
no 2</p> | <p>Respondent
no 2</p> | <p>Respondent
no 2</p> |
| <p>3. Sarat Chandra Jena S/o Mahanta Jena R/o, Dhanatri(Khiro), PO Rudhia, PS Panikoili, Distt Jajpur-755043</p> | <p>Respondent
no 3</p> | <p>Respondent
no 3</p> | <p>Respondent
no 3</p> |
| <p>4. The State Level Environment Impact Assessment Authority (SEIAA), Odisha, Through its Charman, At 5RF-2/1, Unit-IX, Bhubaneswar-751022</p> | <p>Proforma
Respondent
No. 4</p> | <p>Proforma
Respondent
No 4</p> | <p>Proforma
Respondent
No 4</p> |

<p>5. State Of Odisha Through Principal Secretary To Govt Panchayat Raj Dept At Lokeseva Bhawan, Bhubaneswar, Dist Khurda</p>	<p>Proforma Respondent No 5</p>	<p>Proforma Respondent No 5</p>	<p>Proforma Respondent No 5</p>
<p>6. State Of Odisha Through Principal Secretary To Govt Revenue & Disaster Management Dept At Lokeseva Bhawan, Bhubaneswar, Dist Khurda</p>	<p>Proforma Respondent No 6</p>	<p>Proforma Respondent No 6</p>	<p>Proforma Respondent No 6</p>
<p>7. Collector & Dist. Magistrate Jajpur, At/Po/Dist - Jajpur</p>	<p>Proforma Respondent No 7</p>	<p>Proforma Respondent No 7</p>	<p>Proforma Respondent No. 7</p>
<p>8. Tahsildar, Vyasaganagar, Jajpur At/Po/Dist - Jajpur</p>	<p>Proforma Respondent No 8</p>	<p>Proforma Respondent No 8</p>	<p>Proforma Respondent No 8</p>
<p>9. State Pollution Control Board(SPCB), Odisha, Parivesh Bhawan, A/118,</p>	<p>Proforma Respondent No 9</p>	<p>Proforma Respondent No 9</p>	<p>Proforma Respondent No 9</p>

Nilakantha Nagar,
Unit-VIII,
Bhubaneswar 751012,
Dist Khurda

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To,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF
THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
ABOVENAMED PETITIONER

MOST RESPECTFULLY SHOWETH:

1. That the present Special Leave Petition under Article 136 of the Constitution of India has been filed by the Petitioner assailing the impugned judgment dated 19 04 2024 passed in the order of W A No 2051 of 2023 by the Hon'ble High Court of Orissa at Cuttack in the case titled as "*Bikash Swain Vs Krushna Chandra Khatua & Others*" thereby, erroneously the petition filed by the Petitioner without taking into consideration that Ld NGT by passing the order dated 17 07 2017

against the Petitioner without giving any opportunity to be heard which is violation of principle of natural justice as well as the fundamental right of Petitioner provided under Article 21 of Constitution of India

2. QUESTION OF LAW:

The following questions of law arise for consideration by this Hon'ble Court -

- 1 Whether or not, the Writ Petition challenging the order dated 17 07 2023 passed by Ld NGT is well within jurisdiction of Hon'ble High Court given that there was no equally efficacious remedy available to the Petitioner except approaching the Hon'ble High Court in view of violation of principle of natural justice in the form of deciding the OA ex-parte?
- 2 Whether or not a Writ Petition filed u/s 226/227 of Constitution of India challenging

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the order of Ld NGT is maintainable in Hon'ble High Court or not?

3 Whether or not, the High Court made a mistake in recognizing the NGT's inclusion under Article 226/227 of the Indian Constitution and its status as part of the inviolable basic structure, in view of Hon'ble Apex Court judgment in *L. Chandra Kumar Vs. Union of India AIR 1997 SC 1125 and Madhya Pradesh High Court Bar Association Vs. Union of India, AIR 2022 SC 2713?*

4 Whether or not, the impugned order is in inconsistency with the Hon'ble Apex Court judgement in *Whirlpool Corporation Vs. Registrar of Trade Mark, Mumbai & Ors. AIR 1999 SC 22, Harbanslal Sahnia & Ors. Vs. Indian Oil Corpn. Ltd. & Ors. (2003) 2 SCC 107* which have also been relied upon in *Radha Krishnan Industries Vs. State of Himachal Pradesh & Ors. AIR 2021 SC 2114?*

5 Whether or not, the Hon'ble High Court while passing the impugned order, disregarded in examining the factum relating to order dated 17 07 2023 passed by Ld NGT without appreciating the documents placed on record on behalf of the Petitioner/s?

6 Whether or not, the Hon'ble High Court while passing the impugned order failed to consider the glaring facts that no notice got effective as mentioned in the order dated 17 07 2023 in the premise of fact and circumstances attached to the Petitioner who was not there at his place, rather was in AIIMS, Delhi for the treatment of his wife, suffering from cancer?

3. DECLARATION IN TERMS OF RULE 3 (2):

The Petitioner/s states that no other petition seeking leave to appeal has been filed against the impugned judgment dated 19 04 2024 passed in the order of W A No 2051 of 2023 by the Hon'ble High Court of Orissa at Cuttack in the case titled as

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"Bikash Swain Vs Krishna Chandra Khatua & Others "

4. DECLARATION IN TERMS OF RULE 5:

The Annexures P-1 to P-12 produced along with the Special Leave Petition are true copies of the pleadings/ documents which formed part of the records of the case in the Hon'ble High Court against whose order the leave to appeal is sought for in this petition

5. GROUND:

Leave to appeal is sought for on the following amongst other grounds -

A **BECAUSE** the impugned order dated 19 04 2024 passed by Hon'ble High Court is erroneous and contrary to the settled principle of law

B **BECAUSE** the Hon'ble High Court failed to consider that fundamental right of the Petitioner provided under Article 21 of the

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Constitution of India has been curtailed by Ld NGT by passing the order dated 17 07 2017 which is in violation of the principle of *audi alteram partem*, right to present defence as well as right to legal representation

C **BECAUSE** the Writ Petition challenging the order dated 17 07 2023 passed by Ld NGT is well within jurisdiction of Hon'ble High Court as no equally efficacious remedy was available to the Petitioner except approaching the Hon'ble High Court in view of violation of principle of natural justice in the form of deciding the OA ex-parte

D **BECAUSE** Hon'ble High Court failed to consider that the filing of statutory appeal in Hon'ble High Court is only remedy against the ex-parte order of Ld NGT, even if the same has been passed in violation of principle of Natural Justice and fundamental right of Petitioner

E **BECAUSE** the Hon'ble High Court dismissed the petition because it found that the petitioner had an alternative remedy available in the form

of an appeal. In cases where a writ petition is filed for the enforcement of Fundamental Rights or where there has been a violation of the principle of natural justice, the availability of the remedy to file an appeal before this Hon'ble Court cannot bar the writ jurisdiction of the Hon'ble High Court under Article 226/227 of the Constitution of India

F **BECAUSE** Section 22 of NGT Act did not bar the writ jurisdiction of Hon'ble High Court and the power of superintendence can be exercised by the Hon'ble High Court where there is gross illegality in the order of Tribunal subordinate to it

G **BECAUSE** Hon'ble High Court lost sight of the voluminous pleadings and documents filed by Petitioner in support of his case, more particularly, the affidavits filed by the Collector, Jajpur. The case before the Ld NGT, clearly proves that the Petitioner has never violated the terms and conditions of EC permission. Similarly, investigation report and pleadings

from the side of District Administration also supports the case of Petitioner which ought to have been considered by Hon'ble High Court

H **BECAUSE** the Hon'ble High Court has committed gross illegality and irregularity by not entertaining the writ petition of the Petitioner on the ground of maintainability, whereas various other writ petitions have been filed in the Hon'ble High Court against the order/s of Ld NGT

I **BECAUSE** the Hon'ble High Court while passing the impugned order miserably erred in considering that the Ld NGT is within the purview of Article 226/227 of Constitution of India and has been recognized as part of the basic structure of constitution which is inviolable in view of the *L. Chandra Kumar Vs. Union of India AIR 1997 SC 1125* and *Madhya Pradesh High Court Bar Association Vs. Union of India, AIR 2022 SC 2713*

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J **BECAUSE** the Hon'ble High Court did not deal with the settled position of law in relation to challenging the order of Ld NGT before the Hon'ble Court. It is the settled position of law, supported by various judgment of this Hon'ble Court, that the provision of appeal under the NGT Act cannot take away the power of the Hon'ble High Court to adjudicate the matter under Article 226 and 227 of Constitution of India.

K **BECAUSE** the Hon'ble High Court has committed gross error in not considering the merit of the case put forth by the Petitioner in the writ petition which apparently establish that the final order of Ld NGT is unsustainable in fact and law.

L **BECAUSE** the Hon'ble High Court should have considered the fact that the Petitioner has been deprived of contesting the case before the Ld NGT, due to the chronic illness of his wife who is a cancer patient and was under treatment in AIIMS during the relevant period which is

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supported by the medical records Therefore, in the interest of justice and equity, the Petitioner should at least have been given an opportunity to contest the case in Ld NGT following the principles of natural justice and for that purpose the Hon'ble High Court should have set aside the final order of Ld NGT

M BECAUSE the impugned order is in inconsistency with the Hon'ble Apex Court judgement in *Whirlpool Corporation Vs. Registrar of Trade Mark, Mumbai & Ors.* AIR 1999 SC 22, *Harbanslal Sahnia & Ors. Vs. Indian Oil Corpn. Ltd. & Ors.* (2003) 2 SCC 107 which have also been relied upon in *Radha Krishnan Industries Vs. State of Himachal Pradesh & Ors.* AIR 2021 SC 2114?

N BECAUSE the Hon'ble High Court while passing the impugned order ignored in examining the factum relating to order dated 17 07 2023 passed by Ld NGT That apart from deciding the ex-parte O A, they did not

consider the documents and other evidence in support of the O A except two documents which are not covering the entire case

O **BECAUSE** It is firmly established that even if an appellate forum exists under the NGT Act to scrutinize the final order, the principles of natural justice and equity necessitate affording the Petitioner, who has been deprived of the opportunity to contest the case before the Ld NGT due to genuine reasons, a fair hearing Therefore, it was incumbent upon the Hon'ble High Court to set aside the final order of the Ld NGT and remand the matter for fresh disposal, thereby ensuring due process and fairness in adjudication

P **BECAUSE** this Hon'ble Court has decided that despite the alternative remedy available under the Act, the final order of the Tribunal could be challenged in the Hon'ble High Court In the instant case the Petitioner is deprived of contesting his case It is a case fit for

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interference by Hon'ble High Court under
Article 226 and 227 of the Constitution of India

Q **BECAUSE** the Hon'ble High Court while
passing the impugned order failed to consider
the glaring facts that no notice got effective as
mentioned in the order dated 17 07 2023 in the
premise of fact and circumstances attached to
the Petitioner who was not there at his place,
rather was in AIIMS, Delhi for the treatment of
his wife, suffering from cancer

6. INTERIM PRAYER

Not Applicable

7. MAIN PRAYER

It is, therefore, most respectfully prayed that
your Lordships may graciously be pleased to

a) grant Special Leave to Appeal against the
impugned final Order and Judgment
dated 19 04 2024 passed in the order of
W A No 2051 of 2023 by the Hon'ble
High Court of Orissa at Cuttack in the

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case titled as "*Bikash Swain Vs Krushna
Chandra Khatua & Others* " and/or

b) pass such other order or orders which this
Hon'ble Court may deem fit and proper in
the interest of justice

8. INTERIM RELIEF

Not Applicable

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS,
IN DUTY BOUND SHALL EVER PRAY

Filed By



Devendra Kumar Sautkla
Advocate for Petitioner
AOR Code 2774

DRAWN ON: 24.04.2024

FILED ON. 26.04.2024

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IN THE SUPREME COURT OF INDIA
[SCR XXI RULE 3(1)(a)]
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) NO. _____ OF 2024

IN THE MATTER OF:

Bikash Swam

PETITIONER

VERSUS

Krusina Chandra Khatua & Ors

RESPONDENT

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Hon'ble High Court of Delhi at New Delhi, whose interim order is challenged herein and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the annexure attached to the Special Leave Petition are necessary to answer the question of law raised in the Petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose affidavit is filed in support of the Special Leave Petition.



(DEVENDRA KUMAR SHUKLA)

Filed on 26/04/2023

Advocates for the Petitioner

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IN THE SUPREME COURT OF INDIA
[SCR XXI RULE 3(1)(a)]
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) NO. _____ OF
2024

IN THE MATTER OF:

Bikash Swain

..PETITIONER

VERSUS

Krushna Chandra Khatua & Ors RESPONDENT/S

AFFIDAVIT

I, Bikash Swain aged about 48 yearss S/o Ld Basudeb Swain residing at R/o C/26, HIG Duplex, Sailashree Vihar, PS - Chandrasekharpur, Bhubaneswar, Distt- Khurda, Presently at Delhi, do hereby solemnly affirm and state as under -

1 That I am Petitioner in the abovementioned petition and as such I am fully conversant with the facts and circumstances of the case & competent to swear this affidavit

2 That the contents of the facts stated in accompanying petition from pages 17 to 35 & paras 1 to 8 together are true and correct to my



- 3 That the Annexures are the true copies of their originals
- 4 That no other Petition against the order impugned has been filed by the petitioner before this Hon ble Court

Birender Singh
DEPONENT

VERIFICATION

Verified at _____ on this 08 11 2024 the day of 08 11 2024 that contents of the above affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing materials have been concealed there from



I identify the deponent who has Signed/Put [] in my presence

[Signature]
ATTESTED
Notary Public
Govt. of India, New Delhi

Birender Singh
DEPONENT

ANNEXURE-P/1

W P (C) No 22727 OF 2020

14 09 2020 The matter is taken up through video conferencing

Heard Mr G P Jena, learned counsel for the petitioners and Mr S Palit, learned Additional Government Advocate appearing for the State opposite parties

The petitioners, who are the residents of village Rudhia Dhantri, have filed this writ petition seeking to quash/cancel the notification No 5220 dated 24 08 2020 in Annexure-1 issued by the Tahasildar, Vyasaganar, Jajpur Road for grant of long term lease for the lifting of sands from different places, such as, Sanala-2, Mukundapur-2, Salaba, Rudhia Dhantri, Dhanatri of river Baltarani

The factual matrix of the case, in hand, is that the village Rudhia Dhantri is situated near river Baltarani and villagers use the water of the river for the purpose of cultivation and for their daily needs, including 'Sradhakriya' and 'Sudhikriya'. The river Baltarani is the lifeline of the village Rudhia Dhantri. The said village has been developed to small township having much historical importance. Baba Akhandalmani Lord Siva temple and Brahmeswar Lord Siva temple, Dhabaleswar temple and Maa Subarnamukhi

temple are within a radius of 10 to 20 km away from the village Rudhia Dhantri, But river Baitarani sometimes takes very dangerous shape and create devastation at the time of flood due to the same water inflow in the river. The water of the river crosses all limits at the time of flood. Due to heavy inflow of water, the poor and weak points of the road having not been maintained properly, it could not be able to withstand the situation. Consequently, the road is being washed away causing heavy damage to village Rudhia Dhantri. The embankment road is passing over the river Baitarani. From Baitarani Road connecting to Jajpur town passing over different villages such as Salaba, Bagiria, Solapata, Hatpur, Jalanda, Gouripur, Icchapur, Rangaranga, Sarsada, Khiro, Dhanati, Mahatakar, Govindpur and Rudhia Dhantri. In the recent flood, the road passing over the river Baitarani near village Rudhia Dhantri was over flooded and at some places attempts were made to fill up the poor and weak points with sand packets and at some nearby places the roads have been washed away flooding the nearby villages and paddy fields. In the event, a long-term lease is granted for lifting of sand, it will cause more damage to river embankment and cause grave prejudice to the villagers. Therefore, the villagers have objected to such notification issued for putting different sand quarries into auction on the river Baitarani vide Annexure-1. Since no action was taken, the petitioners have approached this Court by filing this writ petition.

Mr G P Jena, learned counsel for the petitioners contended that the river embankment of river Batarani near village Ranpal is very vulnerable and as such during rainy season there is every likelihood of causing damage to such embankment. In the event the sand quarry as has been notified in Annexure-1 will be given on lease for a period of long term, it would cause more damage to the embankment, which will otherwise prejudice to the villagers of village Rampal. Therefore, they have made representation to the Collector, Jajpur for cancellation of notification vide Annexure-4, which is still pending for consideration.

Mr S Palit, learned Additional Government Advocate appearing for the State opposite parties contended that if the petitioners have already moved the Collector, Jajpur for consideration of their grievance vide Annexure-4 and the same is still pending, let there be a direction by this Court to consider the same and pass appropriate order in accordance with law.

Considering the contentions raised by learned counsel for the parties and after going through the records, since the petitioners have admittedly agitated their grievances before the Collector, Jajpur by filing a representation in Annexure-4, which is still pending, the interest of justice shall be best served if the same is directed to be disposed of by affording opportunity of hearing to the parties. Needless to say while disposing of Annexure-4, the representative of village Ramapal preferably local Sarapanch, shall remain present and put forth

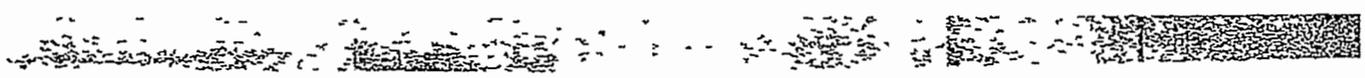
the grievance of the villagers before the Collector, Jajpur so that in compliance of the principle of natural justice, the Collector can dispose of the same in accordance with law, as expeditiously as possible, preferably by 29 09 2020 Till then, action taken pursuant to Annexure-1 shall not be given effect to Needless to mention that the representative of village will appear before the collector, Jajpur on 21 09 2020 so that the collector can fix a date of hearing and dispose of the grievance petition within the time granted by this court It is made clear that this court has not expressed any opinion on the merits of the case

With the above observation and direction, the writ petition stands disposed of

As Lock-down period is continuing for COVID-19, learned counsel for the petitioner may utilize the soft copy of this judgment available in the High Court's official website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No 4587 dated 25 03 2020

(Mohammad Rafiq)
Chief justice

(DR B R sarangi)
JUDGE



ANNEXURE-P/2STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
ODISHA, BHUBANESWAR

(Constituted under the EIA Act, 1986 and EIA Notification, 2000 by the MoEF & CC, Govt of India)

SRF-21, Unit-IX, Bhubaneswar-751022 Tol 0074-2541020, E-mail-
solanorasu@gmail.com

Letter No_2607/SE1AA

D 04 09 2021

File No SELAA-1525/03-2021

To

The Tahasildar, Vyasaganar,

Tahasil-Vyasaganar

District- Jaipur

Subject Proposal of Tahasildar, Vyasaganar for mining of sand from Dhanatri Baltarani River Sand Quarry over an area of 1200 acres or 4 86ha at village-Dhanatri, Tahasil-Vyasaganar, District-Jaipur-Environmental Clearance reg

Ref SEIAA File No SEIAA-1525/03-2021 dated 08 03 2021

Sir

Sir, This is with reference to the application dated 08 03 2021 for grant of environmental clearance (submitted in the offline mode) for the proposed activities mentioned above

2 The application has been submitted in the offline mode because there is no provision at present for filing EC application for such cases (minor mineral extraction Involving area less than or equal to 5ha B2 category projects) in the online mode before SEIAA in the PARIVESH portal The relevant application Form-IM does not appear on the screen of the said portal when EC application is to be filed to SEIAA) The applicant has submitted the application in Form-1.e the Form in which applications for minor mineral projects were being submitted up to the year 2016 before SEIAA The Form-1 does not contain some of the situational information relating to environmental sensitivity, but much of the required information has been submitted by the applicant in the Checklist and also in the PFR

3 The application in Form-I is supported by another necessary document namely the PFR, DSR, EMP Approval Mining plan, and checklist

4 The proposed activities in a nutshell are as follows -

a This is a proposal for mining of sand from the Dhanatri Baltaram River Sand Quarry lying in the Baltaram River bed located at village- Dhanatri, Tahasil-Vyasanagar, District- Jajpur, over land area of 12,00 acres or 4 86ha

b The mines area is a part of the Survey of India Toposheet No F45U5 bounded by Latitude 20°57'3D63 N to 20°57'45 56" N and Longitude 88°17'10 05 E to 86°17 14 79 E

c The mining lease is an identified sariat source in the DSR. The Dhanatri Baltaram River Sand Quarry sariat sources will be leased out under the OMMC Rules, 2018 by Tahasildar, Vyasanagar to the successful bidder(lessee) on the basis of a public auction for a lease period of 5 years

d The mining plan of the mining project prepared has been approved by the Deputy Director of Geology, Directorate of Geology, Bhubaneshwar on 25 06 2020

e As per the approved mining plan submitted, it is observed that the mineable reserve in the lease area is 16200 cum of sand, when extracted upto a depth of 1 0 m. No study of the annual rate of replenishment of sand has been done for the sariat source which is a prerequisite as per the guidelines of sustainable sand mining management Issued by the MoEF & CC, Govt of India, and as per orders dated 13 09 2018 of the Hon'ble NGT

f The project proponent has also not furnished the width of the river, nor the alignment of the extraction path for sand transportation. As reported by the tahsildar, a railway bridge is at a distance of 0 5km away from the mining lease area

g The cluster certificate has been furnished by the Tahasildar certifying that there is no other mine located within 500 meters from the periphery of the proposed mine lease area. As reported by the Tahasildar, this sariat source is not a part of any cluster

h As per the approved mining plan, it is observed that sand from the quarry will be extracted up to a depth of 1 0 meters with annual extraction of sand not exceeding 9880 cum (maximum production capacity) during the valid lease period

5 This proposal conforms to Item no 1(a) in the schedule of EIA Notification, 2006 as amended from time to time, and the minor mineral extraction project falls under category B2 as the mining lease area is less than 5ha

6 The proposal is duly appraised by the SEAC In Its meeting held on 06 08 2021. The SEAC has submitted the appraisal report and recommended for grant of EC, vide their letter no 526/SEAC-Misc-02 dated 07 08 2021

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7 The Environmental Clearance (EC) is accordingly granted to the proposed activity of sand mining subject to the following conditions and stipulations. The EC shall take effect from the date of registration of duly executed lease deed in this regard by the Tahasildar and shall be coterminous with the expiry of lease period.

8 The Tahasildar, Vyasanagar who is the lease granting authority in this case is responsible for monitoring strict compliance of the following conditions of grant of environment clearance, by the project proponent(lessee).

9 Stipulated Conditions

9.1 This Environmental Clearance is given with a condition that "Maximum extraction of sand allowed is 5000 cum in the 1 year & maximum depth allowed is 0.5 meters. Rate of replenishment study report shall be submitted within a year."

9.2 The project proponent has to carry out by engaging the appropriate consultant, a study of the annual replenishment rate of sand by collecting pre-monsoon & post monsoon data from the field to know the quantum of volume of sand deposited/replenished & extracted in the mining lease area. The detailed comparison of both pre-monsoon and post-monsoon elevation data shall be included in the study report. The replenishment rate of sand may be calculated by using the volumetric survey method or any other methods as laid down in Enforcement & Monitoring Guidelines for Sand Mining, 2020 issued by the MoEF & CC, Govt of India. The findings of the study shall be submitted to SEIAA to assess the rate of replenishment of mined-out sand in the lease area. Pending carrying out of the study & submission of the report, this clearance is being granted in an ad-hoc manner and is liable to be revoked after one year i.e. after 15 October 2022 satisfactory replenishment study report is not submitted. The submission of a study report on rate of annual replenishment of sand within one year is obligatory for the project proponent.

9.3 The project proponent should carry out River bed sand mining manually by engaging local laborers in force to check over the exploitation of sand at the source.

9.4 Any change in the plan or quantity to be produced shall require prior approval of SEIAA, This EC shall not be transferred without the permission of SEIAA. In case, the lease is settled in favor of any lessee, the permission of SEIAA will be taken along with the deposit of scrutiny fee.

9 5 There shall be a 'no working zone' to protect the embankment on both sides, road or rail bridge in the vicinity, if any, dam, weir, water Intake structure of irrigation or drinking water project, or any cross-drainage structure 10% of the width of the river, shall be left intact along the embankments on both sides as 'no mining zone' Further, no mining shall be allowed within 200 m of any existing structures dam, weir, water intake structure of irrigation or drinking water project, or any cross-drainage structure In the case of River Bridge, , this no-mining zone shall extend up to a minimum stretch of 200 meters from the bridge end it may extend upto 500 meters to sensitive locations, The lease area shall be accordingly curtailed to carve out the actual sand mining area within the leasehold An exact map of the lease area, and the 'no mining zone' shall be drawn to scale, showing the DGPS coordinates of all come points, and the location of the bridge, embankment, extraction route & other structures, and such map has to be submitted to SEIAA by the project proponent Through the Tahasildar within three months of the date of issue of the EC. The quantum of, sand allowed to be extracted will be worked out on the basis of the actual working area

9 6 The lease area and the actual working area shall be demarcated on the ground by erecting durable masonry/concrete pillars by the project proponent

9 7 The project proponent shall take prior statutory and regulatory clearance as required from the concerned authorities in respect of the project, before carrying out any operation

9 8 Mining is not permissible within the water channel or stream flow area No stream shall be diverted for the purpose of mining and no natural water course shall be obstructed The mining or any ancillary activity shall not in any way disturb the flow pattern of the river water during the non-monsoon period There shall be no sand mining in the river during the rainy season or when there is a flow of water in the river

9 9 Sand mining operations shall not affect the existing sources for irrigation/drinking water/industrial purposes

9 10 The natural sand dunes, If any, near or surrounding the lease area shall not be disturbed

9 11 No transportation of the minerals shall ordinarily be allowed on any road passing through village/habitation /forest land without prior explicit permission

Transportation of minerals through existing rural roads can be allowed only by the concerned Govt Department/Gram Panchayat and only after required strengthening, such that the carrying capacity of road is increased to handle the sand truck traffic The project proponent shall bear the cost towards the widening and strengthening of existing public roads in case the same is proposed to be used for the project No movement on any road is allowed on existing village road

network without appropriately increasing the carrying capacity of such roads. Project proponent shall ensure that the road may not be damaged due to transportation of the mineral and transport of minerals will be as per IRC Guidelines with respect to complying with traffic congestion and traffic density. Plying of sand extraction trucks may be allowed on roads/pathways passing close to schools, temples, hospitals, and such other public places only with the prior written permission of competent authority.

9.12 Vehicles hired for transportation of sand from the site should be in good condition, should have pollution check certificates and should conform to applicable air and noise emission standards and should be operated only during non-peak hours.

9.13 The vehicles shall not be overloaded and shall be covered with tarpaulin. The Tahasildar may collect an appropriate road maintenance levy from the lessee as part of the lease condition on the basis of quantum of sand transported, and utilize the proceeds of the levy for proper maintenance of the extraction paths and to prevent their degradation on account of plying of sand truck.

9.14 The project proponent shall take all precautionary measures against causing damage to flora and fauna of the locality. The PP shall plant and nurse to full establishment a minimum of 100 number of saplings of native free species along the approach roads, rivers banks and in community areas in consultation with the gram panchayat.

9.15 Water spray should be made on the road/extraction paths to control dust emission during the transportation of sand.

9.16 The Project Proponent shall undertake phased restoration, reclamation and rehabilitation of land affected by mining and complete this work before abandonment of mine.

9.17 Environmental Management Plan (EMP) shall be implemented by PP to ensure compliance with the environmental conditions specified above. The year-wise funds earmarked for environmental protection measures shall be kept in separate accounts and shall be spent according to the plan proposed. Year-wise progress of implementation of EMP shall be reported to the SEIAA, Odisha, and OSPCB along with the compliance report.

9.18 The proponent shall take necessary measures to ensure that there is no adverse impact of the mining operations on the human habitation. If any, existing nearby.

9.19 It shall be mandatory for the project management to submit quarterly compliance reports on the status of implementation of the above stipulated environmental safeguards to the SEIAA, Odisha/SPCB, Odisha/Regional Office of the MoEF & CC, Bhubaneswar, in hard and soft copies on 1st day of January,

April, July, October of each calendar year, falling which EC is liable to be revoked

9 20 At the end of the mine closure, the proponent shall immediately remove all the sheds put up in the quarry and all the equipment in the area before the closure of the quarry

9 21 The conditions stipulated in the environmental clearance will be closely monitored on the ground by the lease granting authority, ie the Tahasildar, who shall ensure that the project proponent submits quarterly compliance reports

9 22 The concerned Regional Office of the MoEF&CC/ SPCB, Odisha shall periodically monitor compliance of the stipulated conditions as applicable for this project. The project authorities should extend full cooperation to the MoEF&CC officer(s)/SPCB officer(s) by furnishing the requisite data/information/monitoring reports

9 23 A copy of the clearance letter shall be sent by the proponent to concerned Gram Panchayat /Panchayat Samiti /Zila Parishad/Municipal Corporation / Urban Local Body as the case may be

9 24 The project proponent shall obtain Consent to Operate from the OSPCB and effectively implement all the conditions stipulated therein. The mining activity shall not commence prior to obtaining Consent to Establish / Consent to Operate from the State Pollution Control Board

9 25 The SEIAA, Odisha may revoke or suspend this EC, if the Implementation of any of the above conditions is not satisfactory. The SEIAA, Odisha reserves the right to alter/modify the above condition or stipulate any further in the interest of the environmental protection

9 26 The Project Proponent (lease holder) shall inform the SEIAA of any change in ownership of the mining lease, in case, there is any change in ownership or mining lease is transferred, then the mining operation can be carried out only after the transfer of EC as per provisions of para 11 of EIA Notification, 2006, as amended from time to time

9 27 Concealing any factual Information or submission of false/fabricated data and failure to comply with any of the conditions mentioned above may result in withdrawal of this environment clearance besides attracting penal provisions in the Environment (Protection) Act, 1988

9 28 The above conditions will be enforced inter-alia, under the provisions of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981, the Environment (Protection) Act, 1988 and the Public Liability Insurance Act, 1991 along with their amendments and rules made there under and also any other orders passed by the Hon'ble Supreme Court of India/ High Court and any other Court of Law relating to the subject matter

9 29 This Environmental Clearance (EC) Is subject to orders/judgment of Hon'ble Supreme Court of India, Hon'ble High Court, Hon'ble NGT and any other Court of Law, Common Cause Conditions as may be applicable

9 30 Any appeal against this environmental clearance shall lie with the National Green Tribunal, if preferred, within a period of 30 days as prescribed under section 18 of the National Green Tribunal Act, 2010

Member Secretary

Memo NO 2608/SEIAA dt 04 09 2024

1 Additional Chief Secretary, Forests & Environment Dept, Government of Odisha for information

2 Member Secretary, State Pollution Control Board, Odisha, Paribesh Bhawan, A/115, Nilakantha Nagar, Unit-8, Bhubaneswar for information

3 Member Secretary, SEAC, Paribesh Bhawan, A/118, Nilakantha Nagar, Unit-VIII, Bhubaneswar for information

4 Deputy D G Forest, Regional Office (EZ), Ministry of Environment & Forests, A-31, Chandrasekharpur Bhubaneswar for information

5 Principal Secretary, Revenue and DM Department, Govt of Odisha Bhubaneswar for information

6 Collector & DM, Jajpur Sub Collector, Jajpur/ Tahasildar, Vyasaganar for Information and necessary action

7 Guard life for record

STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
ODISHA BHUBANESWAR

(Constituted under the EIA Act, 1000 and EIA Notification, 2000 by the MoEF
& CC, Govt of India)

SRF-21, Umt-IX, Bhubaneswar-751022 Tol 0074-2541020, E-mail-
solanorasu@gmail.com

Letter no 3635/SEIAA

Dt 18 12 2021

File No SIA/OR/MIN/23834412021

To

Sri Bikash Swain

S/O- late Basudev Swain,

Plot No HIG Duplex-26, Sail Shree Vihar

Bhubaneswar, PS-Chandrasekharpur,

Dist- khairda, Pin - 751022

Sub - Proposal for Transfer of Environmental clearance of Dhanatri Baitarani
River Sand Quarry over an area of 12 00 Acres or 4 88 Ha in village Dhanatri
under Vyasaganar Tahasil of Jajpur district from Tahasildar, Vyasaganar to Sri
Bikash Swain-reg

Ref (1) Online Application No SIA/OR/MIN/238344/2021 dtd 12 11 2021 for
transfer of EC

(i) Letter no 6630 ctd 09 11 2021 of Tahasildar

(ii) EC letter no 2607/SEIAA dated 04 09 2021

Sir,

Kindly refer your online application on dated 12 11 2021, wherein you have
requested for transfer of environmental clearance granted by SEIAA, Odisha
vide letter no 2607/SEIAA dated 04 09 2021 issued earlier in favor of
Tahasildar, Vyasaganar

As submitted by the Tahasildar, it is noted that EC was obtained for
Dhanatri Baitarani River Sand Quarry for a period of 5 years in favour of
Tahasildar, Vyasaganar vide the above-mentioned EC letter under reference
Now, the said sarat source will be leased out under the OMMC Rules, 2016 by
Tahasildar to the successful bidder (lessee) for a lease period of 5 years Hence,
the Tahasildar has requested for transfer of EC in favor of Sr Bikash Swain,

Successful Bidder under the provision of OMMC Rules, 2016 for operationalization of the sairat source

The proposal was considered by the SELAA in its meeting held on 09 12 2021 and the Authority decided that EC may be transferred in favour of Sri Bikash Swain as recommended by Tahasildar and the new Project Proponent has to submit a detailed compliance report on all EC conditions on a quarterly basis

The SELAA has no objection for transfer of environmental clearance accorded by SELAA's letter no 2607 /SELAA dated 04 09 2021 in the name of Sri. Bikash Swain with the same terms and conditions under which prior environmental clearance was Initially granted and for the same validity period subject to satisfactory compliance to all the stipulated terms and conditions of EC

In case any change is proposed in the scope and limit of the project, the project proponent shall obtain fresh prior environmental clearance

Yours faithfully

Member Secretary

Memo No 3636/SEIAA DT 18 12 2024

Copy to

1 Joint Secretary (Environment), Ministry of Environment, Forests and Climate Change Govt of India, Indira Paryavaran Bhavan, Jor Bath Road, Aliganj, New Delhi-110003 for Information

2 Principal Secretary, Forests & Environment Dept , Government of Odisha for Information

3 Member Secretary, State Pollution Control Board, Odisha, Pardesh Bhawan A/118, Nilakantha Nagar, Unit-8 Bhubaneswar for information

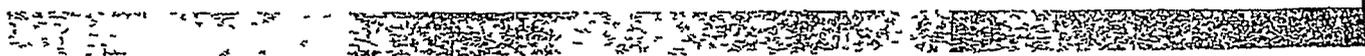
4 Additional Principal Conservator of Forests, Regional Office (EZ), Ministry of Environment & Forests, A-31, Chandrasekharpur, Bhubaneswar for information

5 Chairman, Central Pollution Control Board CBD-cum-office Complex East Arjun Nagar, New Delhi-110032 for information

6 Member Secretary, CGWA, 18/11 Janinagar House, Mansingh Road, New Delhi 110011 for information

7 Copy to the Collector, Jajpur Sub Collector, Jajpur, and Tahasildar Vyasanagar for information and necessary action

8 Chairman/Member/Member Secretary, SELAA for information



9 Chairman, SEAC/Member Secretary, SEAC, Paribesh Bhawan 4/118
Nilakanth Nagar, Unit-VII, Bhubaneswar for information
10 Guard file for record

Member Secretary

BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN
ZONE BENCH AT KOLKATA
(UNDER SECTION 18 (1) READ WITH SECTION 14 OF
THE NATIONAL GREEN TRIBUNAL ACT 2010)

ORIGINAL APPLICATION NO. 14 OF 2023

In the matter of ;

Krushna Chandra Khatua & others

APPLICANTS

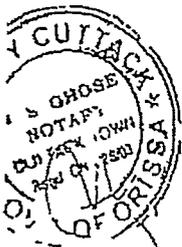
VRS.

State Level Environment Impact
Assessment & others

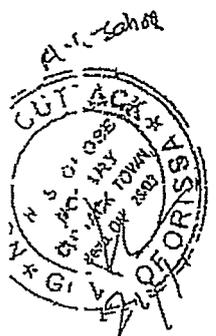
RESPONDENTS

SYNOPSIS OF THE CASE

That the Applicants are residents of the villages such as Dhanatri, Ranapal and Govindpur which are adjacent villages of Mulapal Panchayat. The villagers of the adjacent villages are being seriously affected due to illegal and arbitrary action of the Respondent No. 6 i.e. Project Proponent who illegally, arbitrarily and in utter disregard to the guidelines stipulated/specified in the Environment Clearance dated 04.09.2021 and transfer of Environment Clearance dated 18.12.2021 issued by State level Environment Impact Assessment Authority, Bhubaneswar (Opposite Party No 1). Initially the Environment Clearance was given till 15.10.2022 subject to fulfillment of term and conditions and subsequently before the expiry of the validity period i.e. 15.10.2022 the Environment clearance was transferred for a period of 5 years vide transfer of Environment Clearance dated 18.12.2021 issued by State level Environment Impact Assessment Authority, Bhubaneswar (Opposite Party No 1). The Project Proponent on the basis of such transfer of Environment clearance is lifting the sand from Baitarani River Dhanatri Sand Sairat by engaging Heavy Trucks and transporting over village Road. Besides sands from the river Baitarani near



Dhanatri village are forcibly being carried through heavy trucks by the project proponent over the passage which are reserved area for Grama Jungle and Smashan and the Collector Jajpur (Respondent No 4) has also clearly directed the Tahasildar Vyasaganar not to allow any transportation of the sand over the reserved areas. The learned Collector Respondent No 4, even though has specifically passed order in Misc case no 54/2022 directing the Respondent No 5, Tahasildar Jajpur and Respondent No 6 Bikash Swain (Lease Holder) to transport the sand over the Plot No 2398 (Kisam Nadi) under khata No 477 and plot no 2379 (Kisam Patita) under Khata No 476 and Plot No 2378 (Kisam Nayanjori) and Plot No 2377 (Kisam Bandha) under khata no 480 Irrigation Department of Mouza Dhanatri and not to transport the sand over Plot No 1886,1887,1891 which are reserve lands of Govindpur Village specifically meant for Gramya Jungle, Smashan and Pani Nala Violating the above order of Learned Collector, the Respondent No 4, is using the said road for transportation of sand from River Baitarani from Dhanatri Sand Sairat by using Muscle Power and local revenue Authorities Besides during transportation of Sand over the above road, the Respondent No 6 has uprooted more than 120 local varieties of Trees planted by the villagers and nearby School Students destroying the atmosphere of the area Even though villagers have complained before the Collector and Local Police and other revenue authorities and those officials have visited the spot and assured the villagers to take action against the miscreants but due to involvement of local politician no action has been taken by the local police officers for which due to no reason, Applicants are suffering a lot. By virtue of the approval order and subsequent transfer of Environment Clearance Order the village



road is being fully congested and drop of sand on the way some times causing slip of two wheelers and small and heavy serious accidents Due to carriage of sand without coverage with tarpaulin villagers are unable to move in that road in the day and especially in the night hour due to dropping of the sands from the trucks The school going children's' who are going to their schools which is situated very near to the public Road are facing difficulties in moving in By cycle or school children's who are gathering in the play ground are suffering a lot due to such transportation over the play ground The Project proponent violating the term and conditions of the Environment Clearance is lifting the sand with Heave Trucks by using JCB Machines without engaging the local workers Besides the total allotted area has not been demarcated till date even after expiry of one and Half Years The grievances raised by the villagers before the collectors and other authorities have not been given any importance The project proponent instead of planting 100 native varieties of saplings has uprooted 120 trees planted by the villagers and nearby schools There are clear violations to all the guidelines issued by the Respondent No 1 Applicants on the above facts and circumstances have prayed for withdrawal/revocation of Environment Clearance granted in favour of the project Proponent i e Respondent No 6 and imposition of Heavy fine for such illegal mining and violation to the guidelines of SEIAA or as the Hon'ble Court thinks fit and proper in the facts and circumstances of the case

KOLKATA

Date 24 01 2023



By the Applicants through
A K - Sahra
Advocate

19 09 2020 Without giving any opportunity of hearing to the villagers the Tahasildar Vyasaganar finalized the bid

21 09 2020 The Collector issued one notice to the villagers on 21.09.20 fixing 01.10.2020 for personnel hearing of the case

08.10 2020 The Collector Jajpur approved the allotment given by Tahasildar only with direction that the sand lifting shall not be done during moon soon season and the entire allotment area will be demarcated and by lease holder with pillar posting.

Copy of the order passed by the Collector Jajpur is filed herewith as Annexure- 3

26 02 2021 The Tahasildar issued intimation letter in favour of Bikash Swan vide letter no 1447 dated 26 02 2021 A copy of the intimation letter no 1447 dated 26 02 2021 issued in favour of Sri Bikash Swan is filed herewith as Annexure -4

A-H Shyam

28 03 2022 The Tahasildar executed agreement with the project proponent on 28 03 2022

Copy of the lease deed dated 28.03 2022 executed by Tahasildar Vyasaganar with Respondent No 6 is filed herewith as Annexure- 5 series



04 09 2021 The State level Environment Impact Assessment Authority vide order dated 04 09 2021 granted Environment Clearance in favour of the Project Proponent Sri Bikash Swan



18.12.2021

The State level Environment Impact Assessment Authority before expiry of 15.10.2022 has transferred the Environment Clearance permanently in favour of the project proponent

Copy of the environment clearance letter issued in favour of the Respondent no 6 and transfer of environment Clearance issued in favour of the Respondent no 6 are filed herewith as Annexure-1 Series

28.03.2022

The lease deed was executed with the project proponent.

10.08.2022

The Learned Collector vide order dated 10.08.2022 passed Misc Case No 54/22 clearly directed that there should not be any transportation of sand over the Reserve land

Copy of the order passed by the Learned Collector (Respondent No. 4) passed in Misc case No. 54/22 is filed herewith as Annexure-6 Series

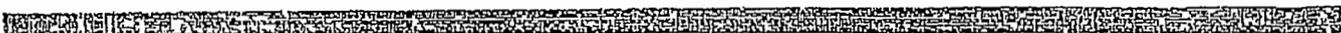
08.12.2022

The plants which were planted by the villagers were uprooted by the miscreants. The villagers staged Dharana and intimated to all concerned but it yielded no result.

The copy of the application submitted before the Superintendent of Police Jajpur and photographs of the area where plants have been uprooted and the English translated copy of the Oriya news papers are filed herewith as Annexure-8 Series.

KOLKATA
Date 24.01.2023

By the Applicants through
A K-Sahoo
Advocate



BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN
ZONE BENCH AT KOLKATA
(UNDER SECTION 18 (1) READ WITH SECTION 14 OF
THE NATIONAL GREEN TRIBUNAL ACT 2010)
ORIGINAL APPLICATION NO. 14 OF 2023

IN THE MATTER OF

An Application under Section 18(1) read with Section 14 of THE
NATIONAL GREEN TRIBUNAL ACT 2010

AND

IN THE MATTER OF

1. Sri Krushna Chandra Khatua aged about 40 years Son of late Naran Khatua At-Govindapur Po-Rudhia Ps- Panikoili Dist-Jajpur Pin No 755043, Mobile No 7008524831 Mail ID. advajitsahoo@gmail.com
2. Sri Kishore Chandra Pal aged about 78 years son of Late laxmidhar Pal At-Ranapal Po-Rudhia Ps-Panikoili Dist-Jajpur, Pin No 755043. Mobile No 7008524831 Mail ID. advajitsahoo@gmail.com
- 3 Sri Sarat Chandra Jena aged about 44 years son of Mahanta Jena at Dhanatri (Khiro)Po-Rudhia Ps-Panikoili Dist-Jajpur, Pin No 755043, MobileNo 7008524831,MailID,advajitsahoo@gmail.com

APPLICANTS

VRS

K. Saha

- 1 The State Level Environment Impact Assessment Authority, Odisha Bhubaneswar Represented by its Chairman, SRF-2/1, Unit-ix, Bhubaneswar Pin-751022, E-Mail-seiaaorissa@gmail.com Telephone- 0674-2541029
- 2 State of Odisha represented by Principal Secretary to Govt Panchayat Raj Department At- Secretariat Building, Po- Secretariat Building, Munsif-BBSR Dist-Khordha, Pin-751001 E-Mail- psec or@nic in Phone Telephone-0674-2536680

- 3 State of Odisha represented by Principal Secretary to Govt Revenue and Disaster management At- Secretariat Building, Po- Secretariat Building Munsif-BBSR Dist-Khordha Pin-751001, Email- REVSEC OD@NIC IN Phone 0674-2322658
- 4 Collector and District Magistrate Jajpur At/Po Jajpur Dist-Jajpur, Pin-755001, Phone · 06728222001, Email -dm-jajpur@nic in
- 5 Tahasildar Vyasaganar, Jajpur Road, At/Po Jajpur Road, Dist-Jajpur, Pin-755019, Phone No 06726220205 Mail Id. tcrvyasaganar@gmail com
- 6 Bikash Swain son of Late Basudev Swain Plot No HIG Duplex-26⁵ Saileshreevihar, Bhubaneswar Ps-Chandrasekharpur Dist-Khordha, Pin No 751021, Mobile No 9937495555, Mail-Id bikashswain@email.com (Dhanatri Baitarani River Sand Quarry)
- 7 State Pollution Control Board, Odisha, Paribesh Bhawan, A/118, Nilakanta Nagar, Unit-8, Bhubaneswar, 751012, Email paribesh1@ospcboard org Website www ospcboard org Fax-0674-2562827, 2560955, Phone-2561909, 2562847

RESPONDENTS

To

THE HON'BLE CHAIRPERSON AND HIS COMPANION MEMBERS OF THE HON'BLE NATIONAL GREEN TRIBUNAL EASTERN ZONE, BENCH, KOLKATA

The humble Application of the above named Applicants

Most Respectfully Sheweth:-

1 PARTICULAR OF THE APPLICANTS

That the addresses of the Applicants are given above for the purpose of service of notice of this Original Application

2 PARTICULAR OF THE OPPOSITE PARTIES

That the addresses of the Respondents are given above for the purpose of service of notice on the Respondents

ORIGINAL APPLICATION

DELAY IN FILING THE PRESENT APPLICATION, IF ANY AND THE EXPLANATION FOR IT, IF ANY

1 K. Saha

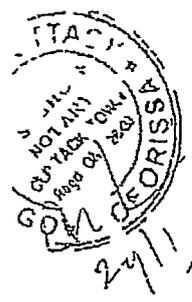
LIMITATION;-

The Applicants declares that applicants have filed the present Original Application challenging the illegality being committed by the Project proponent in transporting the sand from the sand Sarat at Dhanatri in violation of the stipulations and Guidelines Issued by the State Level Environment Impact Assessment Authority, Odisha Bhubaneswar As on date since illegal mining being is carried project proponent violating all guidelines there is continuous cause of action, There is no delay in filing the present Original Application

FACTS OF THE CASE

1. That the Applicants are residents of the villages such as Dhanatri, Ranapal and Govindpur, which are adjacent villages of Mulapal Panchayat and petitioners depends upon the river Baitarani. It is the life line of the Keonjhar, Dhenkanal, Cuttack and Jajpur District Brahmani is the second largest river in Odisha and a major seasonal river in Eastern India It flows through districts such as Sundargarh, Keonjhar, Dhenkanal, Cuttack and Jajpur Its length extends to about 799 kilometers, of which 541 kilometers are in Odisha The villagers of the adjacent villages are being seriously affected due to illegal and arbitrary action of the Respondent 6 i e Project Proponent who illegally, arbitrarily and in-utter disregard to the guidelines stipulated/specified in the Environment Clearance dt 04 09 2021 and transfer of Environment Clearance dt 18 12 2021 issued by State level Environment Impact Assessment Authority, Bhubaneswar (Respondent No 1) is mining and extracting the sand Initially the Environment Clearance was given till 15 10 2022 subject to fulfillment of term and conditions and subsequently before the

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expiry of the validity period i e 15 10 2022 the Environment clearance was transferred for a period of 5 years vide transfer of Environment Clearance dt 18 12 2021 issued by State level Environment Impact Assessment Authority, Bhubaneswar (Respondent No 1) The Project Proponent on the basis of such transfer of Environment clearance is lifting the sand from Baitarani River Dhanatri Sand Sairat by engaging Heavy Trucks and transporting over village Road Besides sands from the river Baitarani near Dhanatri village are forcibly being carried through heavy trucks by the project proponent over the passage which are reserved area for Grama Jungle and Smashan and the Collector Jajpur (Respondent no 4) has also clearly directed the Tahasildar Vyasaganar not to allow any transportation of the sand over the reserved areas The learned collector Respondent no 4 even though has specifically passed order in Misc case no 54/2022 directing the Respondent No 5 Tahasildar Jajpur and Respondent No. 6 Bikash Swain (Lease Holder) to transport the sand over the plot no 2398 (Kisam Nadi) under khata no 477 and plot no 2379 (Kisam Patita) under Khata no 476 and Plot no 2378 (Kisam Nayanjori) and plot no 2377 (Kisam Bandha) under khata no 480 Irrigation Department of Mouza Dhanatri and not to transport the sand over plot No 1886,1887,1891 which are reserve lands of Govindpur Village specifically meant for Gramya Jungle, Smashan and Pam Nala but the Project Proponent violating the above order of Learned Collector, (the Respondent No 4), is using the said road for transportation of sand from River Baitarani from Dhanatri Sand Sairat by using Muscle Power and in connivance with local revenue Authorities Besides during transportation of Sand over the above road, the Respondent No 6 by

K. Choudhary
 17/11

engaging miscreants has uprooted more than 120 local varieties of Trees planted by the villagers and nearby School Students destroying the entire atmosphere of the area Even though villagers have complained before the Collector and Local Police and other revenue authorities and those officials also have visited the spot and assured the villagers to take action against the miscreants but due to involvement of local politician no action has been taken by the local police officers for which due to no reason, petitioners are suffering a lot By virtue of the approval order and subsequent transfer of Environment Clearance Order, the village road is being fully congested and drop of sand on the way some times causing slip of two wheelers and small and heavy serious accidents Due to carriage of sand without coverage with tarpaulin, villagers are unable to move in that road in the day and especially in the night hour due to dropping of the sands from the trucks The school going children's who are going to their schools which is situated very near to the public Road are facing difficulties in moving in By-cycle or school children's who are gathering in the play ground are suffering a lot due to such transportation over the play ground The Project proponent violating the term and conditions of the Environment Clearance is lifting the sand with Heave Trucks by using JCB Machines without engaging the local workers Besides the total allotted area has not been demarcated till date even after expiry of one and Half Years The grievances raised by the villagers before the collectors and other authorities have not been given any importance The project proponent instead of planting 100 native varieties of saplings has uprooted 120 trees planted by the villagers and nearby schools There are clear violations to all the guidelines

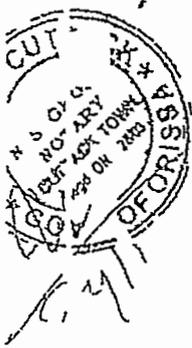


1-2 H 22/11/05

issued by the Respondent No 1 Applicants on the above facts and circumstances have prayed for revocation of Environment Clearance granted in favour of the project Proponent Respondent No 6 and imposition of heavy cost on the Respondent no 6 for such violation to the guidelines

A copy of the Environment Clearance order dt 04 09 2021 and transfer of Environment Clearance dated 18 12 2021 issued by State level Environment Impact Assessment Authority, Bhubaneswar (Respondent No 1) is filed herewith as Annexure -1 Series

2 That it is submitted that the Tahasildar vyanagar of District Jajpur of Odisha State (Respondent No 5) invited tender for leasing of Sand Sairat in respect of three places such as at Dhanatri, Salaba and Ranapal from the Baitarani River Each Sairat is one and half kms away from the other Sairat Villagers of Dhanatri challenging the tender notice dated 24 08 2020 of Tahasildar Jajpur filed the writ petition before the Hon'ble High court in W P© 22727 / 2020 on the ground that grant of lease for the first time over river Baitarani near Dhanatri village is illegal and when the road passing through the village is too narrow and it is difficult for villagers to pass through, and due to flood the road passing through the village were totally flooded and flood water entered into the village, the grant of lease near such a conclave place like Dhanatri village is totally illegal

A. Saha


3 That the said writ petition was disposed of with direction to the Collector Jajpur for disposal of the representation of villagers by affording opportunity of hearing to the parties While disposing the

95
representation the representative of villager preferably local Sarapanch shall be heard

A copy of the Judgment dt 14 09 2020 passed by the Hon'ble High court is filed herewith as Annexure-2.

4. That without hearing the parties and prior to the date fixed by the Hon'ble High court for disposal of representation, the Tahasildar vyanagar finalized the tender and issued the allotment order in favour of one person and subsequently issued allotment order in respect of Bikash Swam
- 5 That the Learned Collector in its disposal order directed the Tahasildar to ensure the suggestion given by Executive Engineer, Irrigation and geologist regarding distance of lifting, and directed that stopping of operation during monsoon be made part of the agreement and pillar posting be done at the cost of lease to mark the area of 12 acres of land with the following conditions
 - (i) The Sairat source should not be operated during monsoon season
 - (ii) The sand from the Sairat source should be lifted at least 300 metres away
 - (iii) Only light vehicles are allowed for plying through the river embankments to transport sand from the Sairat source
 - (iv) The situation of sand quarry should be verified every year after flood period before renewal of the agreement
 - (v) The leasee should construct Gada with smooth gradient preferably 1v 20H at suitable location to cross over the embankment

A H Sahasr
A copy of the order passed by the Respondent no 4 i e collector Jajpur dated 08 10 20 is filed herewith as Annexure-3

6. That after finalization of tender, the Tahasildar Vyanagar issued allotment order in respect of three successful Bidders Sri Bikash

Swain (Respondent No 6) was allotted sand Sairat at village Dhanatri and Sri Raj kishore Mishra was allotted the Sand Sairat at Salaba and Sri Sunil Kumar Mallick was allotted the sand Sairat at Ranapal

A copy of the intimation letter no 1447 dt 26 02 21 issued in favour of Sri Bikash Swain is filed herewith as Annexure-4 and a copy of the lease deed dt 28 03 2022 executed by Tahasildar Vyasaganar with Respondent No-6 is filed herewith as Annexure-5 Series

7. That the Project proponent at Dhanatri namely Sri Bikash Swain without constructing any separate Passage for transportation of sand is transporting the sand over the reserved land meant for Grama Jungle, Play Ground and Smashan etc Due to transportation of sands over the reserve lands and due to immense difficulties being faced by the villagers, the villagers approached the Hon'ble High Court in WP© 12335/2022 and the Hon'ble High Court disposed the Writ petition directing the Collector Jajpur to decide the matter The collector Jajpur in its order dt 10 08 22 passed in Misc case no 54/2022 arising out of WP© 12335/2022 disposed the Misc case directing the Tahasildar Vyasaganar (Repondent no 5) not to allow the Project Proponent to carry sand over the plot no 1886,1887,and 1891 which are meant for Grama Jungle, Smashan and Play ground In spite of the order passed by the collector Jajpur not to carry sand over the plot no 1886, 1887 and 1891 the Tahasildar Vyasaganar has not taken any action on it and the project Proponent (Respondent no 6) is forcibly and with muscle power is carrying the sand over the previous area i e over the plot no 1886, 1887, and 1891 violating the order passed by the Collector in Misc Case No 54/2022



11 Sept 2022

Respondent No 5 i.e the Tahasildar Vyasanager is sitting silent over the issue

Copy of the order passed by the Learned Collector (Respondent No 4) passed in Misc Case No 54/22 is filed herewith as Annexure-6 . . .

- 8. That the Environment clearance vide clause 8 cast responsibility, over the Tahasildar Vyasanager for monitoring the strict compliances to the condition laid down in the Environment clearance letter but all such disturbances are being caused in transporting the sand to which the Tahasildar Vyasanager is silent spectator
- 9 That the Environment clearance issued vide letter No 2607 dt 04 09 2021 vide clause 9 2 clearly stipulates that the clearance was granted for one year which is liable to be revoked after 15 10 2022 if satisfactory compliances is not given within one year But surprisingly just after three months i.e vide letter No 3635 dt 18 12 2021 the Environment Clearance was permanently transferred in favour of the Project Proponent (Respondent no-6) i.e without expiry of the stipulated period
- 10 That the Environment clearance vide clause 9 3 provides that the project proponent shall carry out the river bed sand mining manually by engaging local laborer in force to check over exploitation of sand at the source But the Project Proponent is lifting the sand with heavy trucks and lifting the sand by engaging the JCB which will be clearly evident from the photographs submitted herewith



21/11

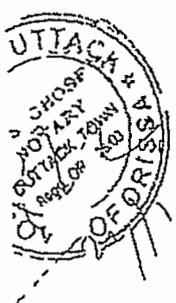
covered with Tarpulin which is throwing the sand on the road and creating air pollution and noise and creating difficulties in the movement of travelling public

14 That the Environment clearance vide clause 9.25 provides that the SEIAA may revoke or suspend the EC if implementation of any of the above conditions is not satisfactory

15 That as per the mining plan the sand from the quarry will be extracted up to depth of 10 meter with annual extraction of sand not exceeding 9680 cum during the lease period But the SEIAA has limited lifting of sand to 5000 cum in a year and maximum depth of 0.5 meter. The Project proponent is lifting the sand as per the mining plan but not as per direction of the SEIAA causing serious loss to Govt exchequer

16. That the Environment clearance vide clause 9.14 provides that the project proponent shall take all precautionary measures against causing of damage to flora and Fauna. The PP shall plant and nurse minimum 100 numbers of saplings of native varieties along the approach road, river bank and in community area in consultation of the Gram Panchayat. But surprisingly the Project Proponent forgetting the guidelines has uprooted 120 trees which were planted by the villagers and school causing serious loss to the atmosphere. The villagers submitted intimation to the superintendent of police Jajpur and staged Dharana for two days and all officials visited the place but no development was made

A. K. Sahas



57-9

The copy of the application submitted before the Superintendent of Police Jajpur and photographs of the area where plants have been uprooted and the English translated copy of the Odiya news papers are filed herewith as Annexure-8 series

17. That due to transportation of sand with heavy trucks, the road has been full of ditches and causing serious problem to the villagers. Similarly the sands are being transported over the plot no 1886, 1887, 1891 which are reserve lands of Govindpur village specifically meant for Gramya Jungle, Play Ground, Nayanjodi and Smashan and Pani Nala and the learned Collector has totally restricted the project Proponent not to transport the sand over those plots. But the Project Proponent is forcibly in connivance with the Tahasildar of the Vyasaganar Tahasil is lifting the sand forcibly. The villagers have staged Dharana and different paper publications have been made over the issue but the project Proponent is still forcibly lifting the sand over the said passage. The request of the villagers and the order of the Respondent no 4 have been turned to be useless. The Project Proponent in gross violation to the provision of Odisha Minor Mineral Rules 2016 and amendment rule 2017 and 2018 and the NMDR Act 1957 and sustainable sand management Guidelines of 2016 and of 2020 and guidelines prescribed in the Environment Clearance dt 04 09 2021 and Transfer of environment clearance letter dt 18 12 2021 issued by the Respondent No 1 is lifting the sand which are totally illegal and liable to be set aside



K Saha

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Copies of Photographs regarding transportation of sand through Heavy Trucks in the village road are filed herewith as Annexure-9 series which will clarify the position

18 That according to the Geological survey of India river bed mining causes a lot of alterations to the physical characteristics of both river and river bed There is huge impact on the eco-system and affect the habitat, plants animals riparian. In sand mining the minerals like rutile, illeminate, Zircon which contains huge quantity of titanium, Zircorium Depletion of sand in the stream bed and along coastal areas causes deepening of the rivers and estuaries and enlargement of river mouths and coastal inlets It includes bed degradation and bed coarsening Sand mining transforms the riverbed in large and deep pits as a result the ground water table leaving, the drinking water wells on the embankments of these dry rivers Damning and mining will reduce sediment delivery from rivers to many coastal areas leading to accelerated beach erosion By the said sand mining water level of the area will go down and farmers will not get water for agricultural purposes and the sources of drinking water will be dried up and there will be serious scarcity in village and that the entire agricultural operation will be seriously affected

G R O U N D S

Being aggrieved with the inaction of the Respondent No 6 in the matter of non compliances to the guidelines issued by the Collector Jajpur dt 08 10 2020 (Annexure-3 and order of the Learned Collector dt 10 08 2022 Annexure -6 series) and to the guidelines stipulated in the environment clearance letter dt 04 09 2021 and transfer of Environment



2022

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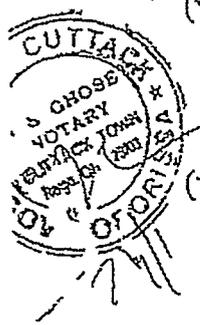
direction to the Tahasildar Vyasaganar to amend the lease deed accordingly, the Tahasildar Vyasaganar has not taken any step in the matter against the project proponent. The project Proponent is transporting the sand over the said area till date causing great inconvenience to the villagers

(iv) FOR THAT the Respondent No 6 is operating the sand mining at the cost of the villagers and transporting the sand in the reserve land which is meant for Grama Jungle, Play Ground and Smashan and affecting the eco-diversity of the area by uprooting the trees and affecting the faith, feelings and sentiment of the villagers

(v) FOR THAT the Applicants have right to free air and water and Natural resources

(vi) FOR THAT the above road is the life line of the entire Mulapal Panchayat but by the said sand mining, the villagers of Mulapal Panchayat who are using the road for all purposes will be deprived of the free passage and also will suffer from different disease due to throwing of sand and dust and dripping of sand from the heavy trucks who are transporting the sand

(vii) FOR THAT under section 18(1) read with section 14 of the National Green Tribunal Act 2010, the Hon'ble Tribunal has ample jurisdiction to adjudicate the matter



(viii) FOR THAT under Section 18(2) read with section 14 of the NGT Act 2010, the Applicants are also competent to file the present application

(ix) FOR THAT confirmation and finalization of bid in favour of Respondent No 6 without taking note of the submission of villagers and physical verification of the field is totally illegal

10/11/2018

11/11/2018

(x) FOR THAT the Collector Jajpur without taking note of the decisions of the Hon'ble Supreme Court and different state High courts finalized the representation of the villagers and allowed the project proponent to lift the sand from Baitarani River at Dhanatri and salaba which is totally illegal

(xi) FOR THAT the Respondent No 6 is operating the mining at the cost of bread and butter of the villagers and affecting the eco diversity of the area

(xii) FOR THAT the Applicants have right to free air and water and Natural resources

CAUSE OF ACTION

The cause of action arose on 26 02 2021 when allotment order/intimation letter No 1447 dt 26 02 2021 issued in favour of Respondent no 6 namely Sri Bikash Swain under Annexure-4 and the cause of action also arose on 04 09 2021 when the State Level Environment impact Assessing Authority (Respondent No 1) issued Environment clearance dated 04 09 2021 and also arose when finally the State Level Environment Impact Assessment Authority (Respondent No 1) transferred the environment clearance in favour of the Respondent No 6, dated 18 12 2021 under Annexure-1 Series and the cause of action also arose on the date when the Tahasildar (Respondent No 5) executed the lease deed on 28 03 2022 under Annexure-5 series and the cause of action arose when the collector passed order dt 10 08 2022 in Misc case No 54/22 under Annexure-6 Series clearly directing the project proponent and Tahasildar Vyasagar not to transport sand over the Reserve land and the cause of action in the matter of sand mining is a continuing cause of action and survives till date



A 18/12/2021

P R A Y E R

In view of the aforementioned facts and grounds, the Applicants humbly pray that the Hon'ble tribunal be graciously pleased to grant following reliefs

- 1 To revoke the Environment clearance under Annexure 1 series issued in favour of the Respondent No 6 as the Respondent No 6 has seriously failed in making compliances to the guidelines under the said Environment Clearance
- 2 To direct the Respondent No 6 not to take any step for lifting of sand awaiting the order passed by Hon'ble Tribunal
- 3 To restrain the Respondent No 6 not to transport the sand in the reserve lands over the Grama Jungle, Play ground and Smashan as per direction of the Learned Collector dt 10 08 22 under Annexure 6 series
4. To fix accountability on Respondent No 6 for illegal uprooting of the trees planted by the villagers and in destroying the eco diversity of the area and in making pollution of the area by lifting the sand with JCB Machine and transporting the sand with heavy trucks
- 5 To fix accountability on the public authorities for their in-action and to allow the criminal proceeding against the public authorities who have allowed transportation in gross violation of norms, guidelines

And be pleased to pass other order /directions as may be deemed fit and proper including granting of appropriate reliefs in the interest of justice

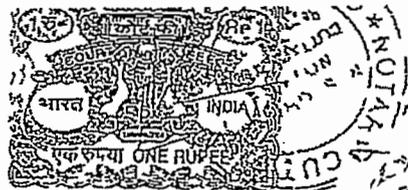
And for which act of kindness the Applicants shall ever pray as in duty bound

Kolkata

Date 24 01 2023

By the Applicant through
A K. Saha
Advocate





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BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN ZONE BENCH AT KOLKATA ORIGINAL APPLICATION NO 14 OF 2023

Krushna Chandra Khatua & others APPLICANTS

VRS.

State Level Environment Impact Assessment Authority, Odisha Bhubaneswar Represented by its Chairman & others RESPONDENTS

AFFIDAVIT

I, Sri Krushna Chandra Khatua aged about 40 years Son of late Naran khatua At-Govindapur of Mulapal Panchayat Po- Rudhia Ps- Pankoil Dist-Jajpur do hereby solemnly affirm and declare as under

1 That I am one of the Applicants in the above mentioned application and I am fully conversant with the fact and circumstances of the case and authorized by other applicants to swear the Affidavit

2 That I have read over the contents of the accompanying Affidavit and the same is true and correct and is drafted on my instruction

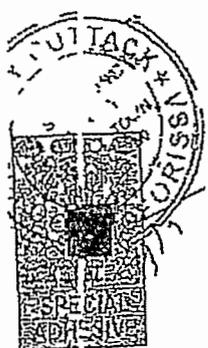
Identified by A K Sahoo Advocate

Krushna Chandra Khatua

DEPONENT

VERIFICATION

I do hereby solemnly affirm and verify that the contents of the above application are true and correct to the best of my Knowledge and belief and nothing material has been concealed there Verified at Cuttack



the above named deponent is the son of late Naran Khatua At Govindapur, Panchayat Mulapal, P.S. Pankoil, Dist. Jajpur. A K Sahoo Advocate. VERIFICANT. By the Applicants through Advocate. Date 24 01 2023. Cuttack.

Handwritten signature and date 24/1/23.

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ANNEXURE-A4

**OBSERVATIONS MADE DURING JOINT VISIT CONDUCTED
ON 03-04-2023 IN PURSUANT TO THE ORDER OF HON'BLE NGT,
EASTERN ZONE, KOLKATA IN OA NO 14/2023/EZ**

The Hon'ble NGT, Eastern Zone, Kolkata vide order dated 09-02-2023 directed to constitute a committee to inspect the area in question

In pursuant to the above order, the site was inspected on dtd 03-04-2023 as per schedule fixed by the Collector & District Magistrate, Jajpur. Following officers were present during the visit

- 1 Sri Santosh Kumar Mishra, Additional District Magistrate, Kalinganagar (Nominee of Collector & DM, Jajpur)
- 2 Sri Pramod Kumar Behera, Regional Officer, SPCB, Kalinganagar
- 3 Sri Ashok Kumar Majhi, Tahasildar, Vyasaganar

The petitioners were informed to remain present during the field verification But, they did not appear on the spot.

General Observation: -

The lessee of Dhanatri Baitarani River Sand Quarry has obtained all the statutory clearances from the competent authorities i.e Environment Clearance (EC) from SEIAA, Bhubaneswar vide letter No 2607/dt 04 09 2021, 3635/dt 18.12 2021 & File No SIA/OR/MIN/29490/2022/dt 07 01 2023, Consent to Establish (CTE) from Regional Officer, SPCB, Kalinganagar vide letter No 218/dt 01 02 2022 and Consent to Operate (CTO) from Regional Officer, SPCB, Kalinganagar vide letter No 953/dt 04 04 2022 & 77/dt 07 01 2023

The followings were observed during the field visit with respect to the direction of the Hon'ble NGT

Sl No	Issues raised in the Direction of Hon'ble NGT	Observation
1	The allegation of the applicants in the Original Application is that the Respondent No-6, private respondent, is carrying on operation of sand mining and lifting the sand from the Baitarani River Dhanatri Sand Sairat by engaging heavy trucks and transporting the same over the village road It is stated that	During the visit of the Committee, no such instances of engagement of heavy trucks for transportation of sand were found Besides, no JCB machines were engaged in excavation of sand The matter is considered seriously and the administration is keeping close watch to it Stringent action will be taken if the lessee engages JCB

	<p>the village road is a reserved area for Gramya Jungle and Smasan and the collector, Jajpur has directed the Tahasildar, Vyasagar not to allow any transportation of sand over the reserved areas</p>	<p>machine and heavy trucks in future</p> <p>Further, the lessee is strictly adhering to the proposed road mentioned in the mining plan i.e Plot No 2378 (Kisam-Nayanjori) and Plot No 2379 (Kisam-Patita)</p>
2	<p>It is also stated that in spite of the order of the Respondent No. 4, Collector, Jajpur in Miscellaneous Case No 54/2022 not to transport sand over the Plot Nos 1886, 1887, and 1891 which are reserved lands of Gobindapur village, specifically meant for Gramya jungle, Smasan and Pani Nala but the project Proponent, Respondent No 6 is flouting the order and transporting the sand on heavy vehicles through the said plot</p>	<p>It is observed during the visit that Plot No 1886, 1887 of Khata 437 and Plot No 1891 of Khata 436 under Mouza-Gobindapur is not part of the road used for transportation of sand by the lessee</p>
3	<p>It is alleged that more than 120 local varieties of trees planted by the villagers and nearby school children, have been uprooted and destroyed in the process of transportation of sand by heavy vehicles over the prohibited land</p>	<p>During the field visit, no sign of uprooting of trees were found Besides, the Sarapanch, Mulapal GP and some other villagers were present during the field visit They have submitted that no plants have been uprooted or destroyed due to transportation of sand (Statement Enclosed)</p>
4	<p>It is also alleged that the project Proponent, Respondent No 6 is acting in violation of the directions given in the Environmental Clearance for sand mining granted vide order dated 04 09 2021 by the SEIIA, Odisha, Respondent No-1</p>	<p>During the field visit, no violation of the directions given in the Environmental Clearance is found</p>

Annexure-1/5

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA

O.A. NO.14/EZ/2023

In the matter of

Krushna Chandra Khatua & Ors

APPLICANTS

-VERSUS-

State of Odisha & Others

RESPONDENTS

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CUTTACK

(TARUN PATNAIK)

Date: 13.04.2023

ADDL STANDING COUNSEL

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA

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O A. NO.14/EZ/2023

In the matter of

Krushna Chandra Khatua & Ors

APPLICANTS

-VERSUS-

State of Odisha & Others

RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF
THE RESPONDENT NO.4

I, Chakravarti Singh Rathore, aged about 35 years, S/o-
Hari Singh Rathore, at present working as Collector and District
Magistrate, Jajpui, At/PO/Dist - Jajpur, Odisha, do hereby
solemnly affirm and state as follows -

1 That, I have been arrayed as the Respondent No 4 in the
present Original Application

2 That, I have gone through the Original Application along
with the Annexures appended thereto and understood the content
thereof. I am well acquainted with the facts of the case and thus
competent to swear this affidavit in my official capacity

3 That, the present Original Application has been filed by
the Applicants challenging the action of the project proponent in

transporting the sand from the sand Sairat at Dhantari in the district of Jajpur and prayed for following reliefs -

- i *To revoke the Environment clearance under Annexure-1 Series issued in favour of the Respondent No 6 as the Respondent No 6 has seriously failed in making compliances to the guidelines under the said Environment Clearance*
 - ii *To direct the Respondent No 6 not to take any step for lifting of sand awaiting the order passed by Hon'ble Tribunal*
 - iii *To restrain the Respondent No 6 not to transport the sand in the reserve lands over the Grama jungle, Play ground and Smashan as per direction of the Learned Collector dtd 10 08 2022 under Annexure 6 series*
 - iv *To fix accountability on Respondent No 6 for illegal uprooting of the trees planted by the villagers and in destroying the eco diversity of the area and in making pollution of the area by lifting the sand with JCB Machine and transporting the sand with heavy trucks*
 - v *To fix accountability on the public authorities for their in-action and to allow the criminal proceeding against the public authorities who have allowed transportation in gross violation of norms guidelines*
- 4 That, all averments, contentions and/or statement contained in the Original Application filed by the Applicants, which may not have been specifically denied or traversed by the

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Applicants herein but are in essence, contrary to the substance of this Counter Affidavit, should not be deemed to be admitted by reason of mere non-traverse, but should be treated as expressly denied and the Applicants should be put to strict proof in respect thereof. The Opp Parties / Respondents further crave leave of this Hon'ble Court to file further Affidavit / Counter, if the same is deemed necessary

5 That, this Hon'ble Tribunal on 09/02/2023 has been pleased to issue notice and had directed the following in the aforesaid order -

"xx xx xx

15 *Considering the allegations made, we deem it appropriate to constitute a Committee comprising of the following Members -*

(i) Senior Scientist from the Odisha State Pollution control Board, and

(ii) Collector & District Magistrate, Jajpur, or his nominee

16 *The Committee shall inspect the site in question and submits its Report taking the benefit of Satellite Imagery also with regard to the allegations of illegal sand mining*

17 *The Collector & District Magistrate, Jajpur, shall be the Nodal Officer for filing the Report of the Committee and for all logistic purposes*

Xi xx xx"

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6 That, in compliance to the aforesaid order, a committee comprising of Tahasildar, Vyasagar, Regional Officer, SPCB, and the Additional District Magistrate, Kalinganagar, (Nominee of the Collector, Jajpur) carried out an inspection on 03 04.2023

It is pertinent to mention that despite there being intimation to the Applicants to be remained present on the spot, the Applicants were not present

7 That, after the inspection carried out on 03 04 2023, it was observed the following -

- a) The Lessee is strictly adhering to the proposed road mentioned in the mining plan i.e Plot No 2378 (Kisam-Nayanjori) and Plot No 2379 (Kisam-Patita)
- b) It is observed during the visit that Plot No 1886, 1887 of Khata 437 and Plot No 1891 of Khata 436 under Mouza-Gobindapur is not part of the road used for transportation of sand by the lessee
- c) During the field visit, no sign of uprooting of trees were found Besides, the Sarapanch, Mulapal GP and some other villagers were present during the field visit They have submitted that no plants have

been uprooted or destroyed due to transportation of sand

d) During the field visit, no violation of the directions given in the Environmental Clearance is found

8 That, insofar as the allegation of using JCB machines for extraction of sand in the sand sarat source concerned, it has come to the knowledge of the deponent that in the mid night of 12 04 2023, the Respondent No 6 has allegedly used JCB machines in the sand sarat area. It is submitted that to enquire into the allegations of using JCB machines for the sand sarat sources, the deponent needs some further time to present the actual state of affairs before this Hon'ble Tribunal

9 That, in reply to the averments made in Paragraph No 1 of the Original Application, it is humbly submitted that there has been no violation of the conditions mentioned in the Environmental Clearance. It is disputed and denied that heavy trucks are being used by the Respondent No 6 for transportation of the sand. It is also disputed and denied that the transportation of sand is being done through Gram Jungle or Smashan

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It is stated that during the transportation of sand, the Respondent No 6 is using tarpaulins to cover the sand while transporting sand by the trucks. It is disputed and denied that 120 nos of trees have been uprooted by the Respondent No 6.

Further, no evidence has been put forth by the Applicants with respect to their allegations of uprooting of 120 nos of trees, the Applicants are put to strict proof for the same.

10 That, in reply to the averments made in Paragraph Nos 2 to 7 of the Original Application, it is submitted that the Collector, Jajpur vide its order dated 08/10/2020 had considered the grievances raised by the villagers with respect to leasing out of the present sarat in question and has directed the Tahasildar, Vyasagar to ensure that suggestions given by the Executive Engineer, Irrigation and Geologist regarding distance of lifting of sand, stopping operation during monsoon season and pillar posting be done by the Respondent No 6 i.e. the Lessee. The said directions are being complied in letter and spirit. The satellite imagery was also obtained from the Odisha Space Application Center (ORSAC), Bhubaneswar, to enquire into allegations.

Insofar as the allegations of the Applicants pertaining to movement of trucks over Plot Nos 1886, 1887 and 1891 clarified

as Gram Jungle or Smashan, it is submitted that the Respondent No 6 is transporting sand through Plot Nos 2377, 2378, 2379 and 2398 under Mouza- Dhantri and these plots are near the sand sarat source in question. It is submitted that the directions given by the Collector, Japur vide his order dated 10/08/2022 passed in Misc. Case No.54/2022 has been strictly complied with

11 That, in reply to the averments made in Paragraph Nos 8 to 14 of the Original Application, it is submitted that as per the Inspection Report, it is found that there is no violation of the conditions of the Environmental Clearance. It is also submitted that the area of the quarry lease has been demarcated by fixing concrete pillars, which is due compliance of the conditions of the Environmental Clearance

12 That, in reply to the averments made in Paragraph Nos 15 to 18 of the Writ Petition, it is submitted that the allegations pertaining to uprooting of 120 nos of trees, it is disputed and denied by the deponent

13 That, in view of the aforesaid facts and circumstances, the prayers made in the Original Application are devoid of merit and hence, liable to be rejected. Consequently, the Original

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BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN ZONE
BENCH: AT KOLKATA.
(Though Physical Hearing with Hybrid Mode)

ORIGINAL APPLICATION NO. 14 OF 2023
Krushna Chandra Khatua & Others - . APPLICANTS
VRS.

State Level Environment Impact & Others... RESPONDENTS
FURTHER AFFIDAVIT OF THE APPLICANTS TO THE
COUNTER AFFIDAVIT FILED BY THE RESPONDENT NO 4.

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Cuttack
Date-15 05.2023

By the Applicants through
Advocate

Ajit Kumar Sahoo
Advocate for the Applicants
Mr. Ajit Kumar Sahoo
Advocate

Orissa High Court
At-Mahammadia Bazar
Po-Chandinichouwk
Ps-lalbag, dist-cuttack
Pin-753002

Mail id advajitsahoo@gmail.com
Mobile No 9437378527, 7008524831



Dhruva Ch. Sahoo
NOTARY, CUTTACK

BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH AT KOLKATA

(UNDER SECTION 18 (1) READ WITH SECTION 14 OF
THE NATIONAL GREEN TRIBUNAL ACT 2010)

ORIGINAL APPLICATION NO. 14 OF 2023/EZ

In the matter of :

Krushna Chandra Khatus & others APPLICANTS

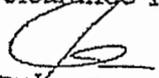
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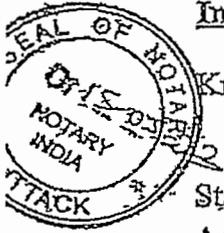
State Level Environment Impact
Assessment Authority, Odisha Bhubaneswar Represented by its
Chairman & others RESPONDENTS

FURTHER AFFIDAVIT OF THE APPLICANT TO THE COUNTER
AFFIDAVIT FILED BY THE RESPONDENT NO 4.

I, Sri Krushna Chandra Khatus aged about 40 years S/o Late Naran
Khatus of At-Gobindapur of Mulapal Panchayat, Po- Rudhia, Ps-
Panikoili, Dist-Jajpur, do hereby solemnly affirm and declare as under.

1. That I am Applicants No 1 of the above mentioned Application and I
am fully conversant with the fact and circumstances of the Case and
authorized by other applicants to swear the Further Affidavit.
2. That the Applicants filed the application before the Hon'ble National
Green Tribunal with the following prayers which is base on mainly on
five (5) points;-
 - (i) The Project Proponent on the basis of transfer of Environment
clearance 18 12 2021 issued by the Respondent No 1 in favour of the


Dhruva Ch. Sahoo
NOTARY, CUTTACK

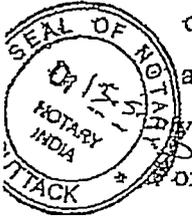


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Respondent No 6, the Respondent No. 6 is lifting the sand from Baitarani River Dhanuri Sand Sairat by engaging Heavy Trucks and transporting the sand over village Road

(ii) The Project Proponent (Respondent no 6) is forcibly carrying the sand from the sand Sairat, in the river Baitarani near Dhanuri village engaging heavy trucks over the passage which are reserved area for Grama Jungle and Smashan.

(iii) That the Respondent no 6 has uprooted more than 120 local varieties of Trees planted by the villagers and nearby School Students destroying the atmosphere of the area. Even though villagers have complained before the Collector and Local Police and other revenue authorities and those officials have visited the spot and assured the villagers to take action against the miscreants but due to involvement of local politician, no action has been taken by the local police officers



(iv) That by virtue of the approval order dated 04.09.2021 issued by SEIAA and subsequent transfer of Environment Clearance order dt 18.12.2021, the Project Proponent is using the village road and for that reason the village road is being fully congested and due to slippage of sand on the way, some times it causes slipping of two wheeler causing small and heavy serious accidents. Due to carriage of sand without coverage with tarpaulin villagers are unable to move in that road in the day and especially in the night hour due to dropping of the sands from the trucks. The school going children's who are going to their schools which is situated very near to the public Road are facing difficulties in moving in By-cycle or school children's who are

Dhruba Ch. Sahoo
NOTARY, CUTTACK

gathering in the play ground are suffering a lot due to such transportation over the play ground.

(v) That the Project proponent violating the term and conditions of the Environment Clearance is lifting the sand with Heave Trucks by using JCB Machines without engaging the local workers. Besides the total allotted area has not been demarcated till date even after expiry of one and Half Years. On the above grounds, it was prayed that the Environment Clearance under Annexure-1 series be revoked and to fix accountability on illegal uprooting of the trees planted by villagers and for destroying Eco-diversity of the area and to fix accountability on the public authorities for their inaction allowing the respondent no 6 to transport sand violating the term and guidelines.



That the Respondent No 4 i.e Collector Jajpur has submitted his reply on the following grounds.

- (i) In compliance to the direction of the Hon'ble Tribunal a committee comprising of Tahasildar Vyasanagar, Regional Officer SPCB and Addl. District Magistrate Kalinga Nagar was constituted who carried out inspection on 03.04.2023 and verified as follows:-
- (ii) The Lessee is strictly adhering to the proposed Road in the mining plan i.e plot no 2378 (Kisam Nayan Jodi) and plot no 2379 (Kisam Patita) and Plot no 1886,1887 of khata no 437 and plot no 1891 of khata no 436 under Mouza- Govindpur is not part of the road used for Transportation of sand by Lessee
- (ii) During visit no sign of uprooting of trees were found and no violation to the direction given in the Environment Clearance has been made.


Dhruba Ch. Sahoo
NOTARY, CUTTACK

(iii) On 12.04.2023 the Respondent No. 6 allegedly used the JCB Machine which requires some more time to verify.

(iv) No heavy truck have been engaged for transportation of Sand and no transportation of sand being made through Grant Jungle or Simaśhan.

(v) The Respondent No. 6 is using tarpaulins to cover the sand while transporting. Regarding uprooting the trees it is a disputed fact.

(vi) The lease area has been demarcated by fixing concrete pillars.

4. That the above Counter filed by the Respondent No. 4 is totally false and only to save the project proponent and Counter has been filed without application of mind and without verification of the facts of the case.

5. That the averments of paragraph 1 to 4 are matters on record and order passed by the Hon'ble Tribunal and prayer of petitioner and denial aspect in general and as such need no comment

That in reply to averments of Paragraph 5 & 6 of the Counter Affidavit it is submitted that the Tahasildar Vyasagar had informed the Petitioner to be present at the spot on but on that date movement of buses were stopped in Odisha due to strike notice given by the Drivers of Private Buses and strike was going on at different places. Apprehending untoward incidence to happen, the petitioners intimated the Tahasildar to adjourn the date to some other date and on that ground the inspection was not taken up on 15.03.2023. Since no inspection was done, the State Counsel on 24.03 2023 took time for filing the Counter. As regards the inspection done on 03 04.2023 there was no intimation to petitioners through any mode of communication. The inspection was done at the back of Petitioners



Dhruva Ch. Sahoo
NOTARY, CUTTACK

7. That in reply to averments of Paragraph 7(a) of the Counter Affidavit it is submitted that the averments are totally false. Even though the Collector Jajpur (Respondent No 4) clearly directed the Tahasildar Vyasaganar not to allow any transportation of the sand over the reserved areas and specifically passed order in Misc case no 54/2022 directing the Respondent No 5 (the Tahasildar Jajpur) and the Project Proponent (Respondent No. 6) namely Bikash Swain (Lease Holder) not to transport the sand over Plot No. 1886, 1887, 1891 which are reserved lands of Govindpur Village specifically meant for Gramya Jungle, Smashan and Pani Nala and directed that the project Proponent to transport the sand through the Plot No. 2398 (Kisam Nadi) under khata No 477 and plot no 2379 (Kisam Patita) under Khata No. 476 and Plot No 2378 (Kisam Nayanjori) and Plot No. 2377 (Kisam Bandha) under khata No 480 belonging to Irrigation Department of Mouza Dhanitri but the Project Proponent violating the above order of Learned Collector is using the said road specifically meant for Gramya Jungle, Smashan and Pani Nala for transportation of sand from River Baitarani from Dhanitri Sand Sairat by using muscle Power and local revenue Authorities. Since Project Proponent forcibly used the above passage even though, it was not as per the mining plan, petitioners, the villagers of the area, approached the Hon'ble High Court in WP©12335/2022 alleging violation being caused by the Project Proponent and the collector also admitted the above fact in its order and as per direction of Hon'ble High Court, the Collector Jajpur (Respondent No 4) passed order in Misc Case No 54/2022 under Annexure-6 placed at page 63 that the project Proponent is using the passage which is not as per the mining plan and



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he is to transport the sand through the Plot No 2398 (Kisam Nadi) under khata No. 477 and Plot No. 2379 (Kisam Patita) under Khata No. 476 and Plot No. 2378 (Kisam Nayanjori) and Plot No. 2377 (Kisam Bandha) under khata No 480 belonging to Irrigation Department of Mouza Dhanitri. So when it was Learned Collector admitted the fact that the project Proponent is violating the order and petitioners approached the Hon'ble Tribunal for appropriate Direction, the Learned Collector (Respondent No. 4) has changed the voice and submitted the Counter, that there is no violation which is totally illegal. The photographs taken over the passage belonging to Grama Jungle reveals the truth and it clearly reveal that the Project Proponent is using the passage of Gramya Jungle and Smashan violating the mining plan



Copy of the Photographs are filled herewith as Annexure-10 series.

8. That in reply to averments of Paragraph 7 (b) and 7(c) of the Counter Affidavit, it is submitted that the project proponent uprooted 120 local varieties trees for preparation of passage for transportation of sand road and for that purpose ~~the project proponent uprooted those plants over the plot No. 996, 1011 and 1015 of village Barapada which are under protection of Saraswati Sisu Mandir. The school children's and village committee members had planted those plants during 2019-2020 which were well grown up and fruit bearing trees. The secretary of the Lingeswar Development Committee namely, Sri Pradeep Kumar Dhal filed the F.I.R. before the Panikojilli Police station and also before the Superintendent of police Jajpur on 08.12.2022. After F.I.R. was filed the S.D.P.O Jajpur Road was investigating the~~

Dhruva Ch. Sahoo
NOTARY, CUTTACK

matter. The IIC and Tahasildar Vyasnanagar also visited the spot. The F.I.R. filed before the Superintendent of police on 08.12.2022 has been submitted in the Original Application placed at Page 68/c and photograph at page 69/c and paper publication at page 71 and 75 but no action has been taken in the matter till date due to political interference. In spite of the above facts and records available before the Hon'ble Tribunal, the blatant denial in the counter Affidavit filed by the Respondent No. 4 i.e. the Collector and District Magistrate of the district Jajpur that no trees have been uprooted is totally illegal and concocted. This counter Affidavit has been filed only to support the Project Proponent (Respondent No. 6) who even though has been impleaded as necessary party but has not entered appearance and playing his game under the protection of the Respondent No. 4 and Respondent No. 5. Even though the stipulation vide clause-9.14 of the Environment clearance letter no 2607 dated 04.09.2021 under Annexure 1 to the Original Application placed at page 31 clearly indicate that the Proponent is to plant 100 saplings of Local varieties along with approach road, river Bank and in community area but the above stipulations have not been followed by the Project Proponent rather 120 trees of local varieties have been uprooted by the Proponent for preparation of road which is totally illegal. The Counter Affidavit filed by the Respondent no 4 to that extent is totally silent and as such illegal. The F.I.R. filed by the villagers since was not registered, villagers approached the Hon'ble High Court in CRLMP 149/2023 and the Hon'ble High Court directed for registration vide its order dated 02.02.2023.



Dhruba Ch. Sahoo
NOTARY, CUTTACK

Copy of the F I R filed before the IIC, Panikoil, on 8 12 2022 & 8 02 2023 are filed herewith as Annexure-11 series

9 That in reply to the averments of Paragraph 7 (d) of the Counter Affidavit it is further submitted that at every point there are violations caused by the Project Proponent to the stipulations given by the Respondent No 1

10 That in reply to the averments of Paragraph 8 of the Counter Affidavit, it is submitted that the project proponent is transporting the sand by engaging the JCB Machine in violation to the stipulations given vide Clause 9 3 of the Environment clearance letter dated 04.09 2021 under Annexure-1 (Page 29/c) The photographs given at 64, 65 and 66 clearly reveals the fact The Original Application was used on 24/01/2023 with the above photographs which indicate that violation was being made by the project Proponent to the stipulations of EC since the clearance letter dated 04 09 2021 was issued and the Project proponent started work of lifting the sand But in the counter Affidavit it has been indicated that the project proponent has engaged the JCB Machine which came to knowledge of the Respondent No 4 only on 12 04 2023 and the matter is under investigation and the deponent requires some more time to submit the actual state of affairs which is totally illegal The project Proponent is causing violations to the EC since work of lifting the sand started

11 That in reply to the averments of Paragaph-9 of the Counter Affidavit, it is submitted that there are violations to the EC in every respect The Project Proponent is carrying the sand by engaging the heavy trucks The petitioners filed

the photographs of Heavy trucks engaged in the transportation of sand which is placed at 69/c which shows that at a time 8(Eight) big trucks were transporting the sand for which there was strike among the villagers and Trucks were not allowed to pass through The photograph clearly indicates the grave situation there Presently also the project proponent transports the sand by engaging Heavy Trucks It is further submitted that the project proponent is transporting the sand through the Gram Jungle without covering Trucks with Tarpaulins and 120 trees have been uprooted by the Project Proponent for the construction of a Passage for the transportation of sand

Copy of the Recent Photographs taken regarding the transportation of sand by engaging heavy trucks are filed herewith as Annexure 12 Series 12 That in reply to the averments of Paragraph 10 of the Counter Affidavit, it is submitted that in pursuance to the direction of the Hon'ble High Court passed in WP© 22725/2020 and WP 22727/2020 the Collector Jajpur directed the Executive Engineer Irrigation Division Jajpur and Geologist collectorate Jajpur and Tahasildar Vyasaganar to visit the place and submit the report and on the basis of the said report the Respondent No 4 disposed the case with the observation that the report of the committee consisting of the Executive Engineer Irrigation Division Jajpur and Geologist collectorate Jajpur and Tahasildar Vyasaganar shall form part of the record The Committee report suggests that only light vehicles are allowed to transport the sand from the sand Sarat But the Project Proponent is lifting the sand by engaging Heavy Trucks which is a clear violation to the order of the Respondent No 4 dt 08 10 2020 placed in Annexure-3 at page 39/c

The report of the committee which forms part of the order of the Respondent No 4 is filed herewith as Annexure 13 series

13. That in reply to the averments made in sub para to Para 10 of the counter Affidavit it is submitted that the Project Proponent is transporting the sand over plot no 1886,1887,1891 mentioned as Grama Jungle or Smashan. There is gross violation to the said order passed in Misc case no 54/22.

14. That in reply to the averments made in para 11 of the Counter Affidavit, it is submitted that the inspection report has been prepared at the Back of the Petitioners and as such the said report cannot be accepted. The lease area has not been demarcated and no pillar posting has been made over the area so far.

15. That in reply to the averments made in para 11 of the Counter Affidavit, it is submitted that 120 plants of local varieties planted by the little children's and Committee members have been uprooted by the Project Proponent which is clear from the F.I.R. filed by the secretary of the Lingeshwar Development Committee namely Sri Pradeep Kumar Dhal filed before the Panikouli Police station and also before the Superintendent of police Jajpur on 08.12.2022. After F.I.R. was filed the S.D.P.O Jajpur Road was investigating the matter. The IIC Chinmayee Behera and Tahasildar Vyasagar also visited the spot. The F.I.R. filed before the Superintendent of police on 08.12.2022 has been submitted in the Original Application placed at Page 68/c and photograph placed at page 69/c and paper publication placed at page 71 and 75.

16. That in reply to the averments made in para 13 of the Counter Affidavit, it is submitted that the project Proponent is carrying sand

Dhruva Ch. Sahoo
NOTARY, CUTTACK



with Heavy vehicles in village road in violation of the stipulations vide clause 9.11 of the Clearance Order dated 04.09 2021 page 30/c and Photograph of the passage through village Road are placed at 69/c and 76/c. Due to carriage of heavy vehicles in the village road which is the only road for the villagers and School and College going students, villagers are facing lots of difficulties because roads are being damaged severely and heavy congestion is caused on the road due to passage of large number of heavy vehicles at a time. The Counter Affidavit of the Respondent No 4 is totally silent over it which is illegal.



17. That in view of the facts stated above, the Counter Affidavit filed by the Respondent No. 4 may kindly be ignored and rejected and responsibility may be fixed on the erring officials for the lapses being caused to the stipulations under Annexure-1.

18. That the facts stated above are true to the best of my knowledge and belief

Ajit Kumar Sahoo
Identified by Advocate

Krushna Ch. Mishra
D E P O N E N T

CERTIFICATE

The above named Deponent is being identified by Ajit Kumar Sahoo Advocate Solemnly affirms that the contents of the Affidavit are true to his knowledge and further certified that due to non availability of cartridge paper this Affidavit has been typed on thick papers.

Cuttack
Date.12.05.2023

For the Appellants
Advocate


Dr. Diba Ch. Sahoo
NOTARY, CUTTACK

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

O.A.NO. 14 of 2023

In the matter of:

Krushna Chandra Khatua & Others .. Applicants

-Versus-

State Level Environment Impact Assessment
& Others Respondents

Reply Affidavit on behalf of Respondent No.4

I, Sri Chakravarti Singh Rathore, aged about 35 years S/o Sri
Hari Singh Rathore, at present working as Collector & District
Magistrate, Jajpur, At/P O /Dist Jajpur do hereby solemnly
affirm and state as follows -

1. That, I am the deponent to this affidavit and arrayed as
opposite party No 4.
2. That, the present affidavit is being filed in reply to the further
affidavit dated 15 05 2023 filed by the Petitioner

AND
15/5/2023

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Annexure - 1 P/7

3. That, in reply to the averments made in Para-6, it is humbly submitted that the inspection which was scheduled to be held on 15 03 2023 had been adjourned as per the request of the petitioner. The next date for inspection was fixed to be held on 03 04 2023 at 4 PM and the petitioner had been intimated on the same day at about 11 AM by phone to be present at the time of inspection. But, none of the petitioners were present at the time of inspection. Hence, the allegation that the inspection done at the back of the petitioner is false and baseless.

4. That, in reply to the averments made in Para-7, it is humbly submitted that the lessee is using the road as approved in the Mining Plan for transportation of sand which is observed by the Committee during inspection. The reliance placed by the Petitioners on the order dated 10 08 2022 passed in Misc Case No 54 of 2022 to contend that the lessee is plying the vehicles on Plot No 1886, 1887 and 1891 is incorrect. After it was noticed that the lessee were using the aforesaid plots for plying the vehicles, the Deponent vide its order dated 10 08 2022 had

directed the Tahasildar Vyasanagar to ensure that the lessee uses Plot nos 2379, 2378 and 2377 The Petitioner has not adduced any evidence to support their claim and rather the same is a bald assertion without any sufficient proof. The Petitioner's reliance on the photos annexed at Pg 12 & 13 of the affidavit relates to Gobindpur Village and the present sand quarry is situated in Dhanitri Village. Therefore, the aforesaid photos do not prove the fact that the Lessee is plying vehicles over Gramya Jungle or Samshan

5. That, in reply to the averments made in Para-8, it is humbly submitted that allegation pertaining to uprooting of trees in Plot nos 996, 1011 and 1015 relates to village Barapada and the sand quarry is situated in Village Dhanitri. Hence, the allegation of uprooting 120 trees cannot be established. Furthermore, the letter dated 08 12 2022 [Annexure-11 Series] regarding allegations pertaining to uprooting of trees under the supervision of Saraswati Sishu Mandir does not relate to Respondent No 6 i e Lessee. The contention of the Applicant that 100 saplings of local varieties have not been planted is

ANDA
12/12/22



disputed and denied. The said condition has been complied with by the Respondent No 6.

6. That in reply to the averments made in Para 9, 10, 11 & 12, it is humbly submitted that a complaint regarding usage of JCB machines and heavy trucks came to the knowledge of Tahasildar, Vyasanagar on 12 04.2023. Thereafter, the Tahasildar, Vyasanagar went to the spot and found three heavy trucks had been deployed in the quarry for carrying the sand. The said three trucks were seized by the Tahasildar, Vyasanagar. On 15 04 2023, the Tahasildar, Vyasanagar wrote a letter to the IIC, Panikoli Police Station for initiating legal action against the seized vehicles. Based on such letter, a FIR has been lodged i.e. PS Case No 76 dated 15 04 2023 under Section 379/34 of IPC read with Section 21 of MMDR Act, 1957.

Copy of the FIR No 76 dated 15 04 2023 and the letter dated 15 04.2023 of the Tahasildar, Vyasanagar is annexed herewith as Annexure-A/4 Series.

NGIK PANDA
Dist. Jaipur,
No 462/2002

Besides, enforcement teams headed by the Tahasildar, Vyasagar are often making surprise visits to the sand sarrat sources to restrict any transportation by using heavy trucks or excavation by JCB machines. It is pertinent to mention that the photographs annexed by the Petitioners to contend that JCB machines are being used for excavation do not relate to the present sand sarrat in question. The photographs do not contain coordinates to ascertain the exact place where such machines had been deployed. The present sarrat source is surrounded by other sand sarrat sources also and until and unless, exact coordinates with date & time is given, it will be difficult on the part of the District Administration to ascertain as to where such machines are being deployed.

7. That, in reply to the averments made in Paras-13, 14, 15 & 16, it is humbly submitted that the allegations of uprooting 120 trees could not be established by the joint committee. The Applicant has also not provided any details as to whether FIR has been registered on the basis of the allegations in the letter annexed at Pg 16

PANDA
Jajpur,
26/2/02



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8. That, the facts stated above are true to the best of my knowledge and based on official records

Identified by

Depoent
COLLECTOR & DISTRICT MAGISTRATE
JAJPUR

Advocate

VERIFICATION

I, Sri Chakravarti Singh Rathore, son of Sri Hari Singh Rathore working as Collector Jajpur, do hereby solemnly affirm and verify the contents of paragraph of the present Counter Affidavit are true to my knowledge and that I have not suppress any material facts

I sign this verification at Jajpur on 12/07/2023

VERIFICANT.

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ANNEXURE-P/8

Department of Pathology

All India Institute of Medical Science

Tel +91 26588500/26588700 Fax 91-11-28588500/26588700

Patient Name	Rashmi Bala Swain	Acc No	236250
F/H Name	Bikash Swain	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02 2023	reporting date	16-02-2023

HISTOPATHOLOGY REPORT

Report Finding

137

Received single paraffin-embedded tissue block for review as an ultrasound-guided biopsy from retroperitoneal mass' labeled S-1125/23

Sections examined show two tiny fragmented tissue bits composed of variably sized adipocytes. They are mixed with stellate-shaped stromal cells in a myxoid collagenous stroma.

The stromal cells show moderate pleomorphism and nuclear hyperchromasia.

These cells are focally positive for MDM2 and S100.

Overall features favor liposarcoma.

Please correlate with radiological features as the tumor size is around 2.0 cm.

Hematological WNL

Details

Tumor Markers

Chest X Ray NAD

Mammogram

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Skeletal Survey

Bone Scan

USG Details

CT Details

Distak Loopogram 2/5/23 IRCH Study

MRI Details

Endoscopy Details

Tissue Diagnosis

HPE Reports

Patient Name	Rashmi Bala Swain	Acc No	236250
F/H Name	Bikash Swain	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02 2023	reporting date	16-02-2023

Clinical presentation Stoma post Excision of the mass + LAR + Diversion loop

_____ on 29/03/2023

General Examination ECOG1

Local Examination stoma site over right lumbar region

PR Healthy anastomotic site @4cm from the anal verge

Preoperative treatment EL+ Excision of mass + LAR+ Diversion loop

Heostomy on 29/03/2023

Surgical Procedure Heostomy reversal

Operative Finding ileostomy in RIF, Minimal adhesions along the anterior

abdominal wall and small bowel loops Visualized small bowel loops normal

Steps Under GA patient is supine, and the Circumferential incision is made around loop ileostomy, separated from the rectus sheath Proximal and distal divided with NTLC 75 BLUE LOAD STAPLERS Side-to-side ileoileal anastomosis done with NTLC 75 blue load staplers Four layers of outer silk and inner vicryl Mesenteric defect closed The sheath is closed with loop nylon Skin edges flushed and closed

Postoperative Course Uneventful

Treatment Plan Surveillance

141

Advise Discharge T Flexon 1 tab TDS and Pantop 40 mg OD 7 days maintain local hygiene High high-protein and high-calorie diet contains use anti-diabetic medication as advised before

To come date 23 may 2023 follow up place SOW sf at 9am

DISCHARGE SUMMARY

DEPARTMENT OF SURGICAL ONCOLOGY, IRCH AIIMS NEW DELHI

UHID 106509934

IRCH NO 290071

NAME RASHMI BALA SWAIN

AGE/SEX 44/F

DOA 01/05/2023

DOD 04/05/2023

142

DIAGNOSIS - WD RETROPERITONEAL SARCOMA POST EXCISION +
LAR WITH DIVERSION ILEOSTOMY

COURSE DURING STAY The Patient was admitted with a plan of stoma
closure Patient being discharged in stable condition i/v/o OT slots to be
readmitted on Saturday 6/5/23

ADVICE ON DISCHARGE

F/U IN sow 5f on 6/5/23 at 8 am for readmission in private ward

Senior resident Dr Shivani CONSULTANT Prof SVS DEO

RADIOLOGY UNIT

Dr B R Ambedkar instate Rotary Cancer Hospital

All India institute of medical Sciences New Delhi - 110029

	Age/Gender 44years and 2 months
Patient UHID 106909934	IRCH No, 290071

143

Accession No 124305	Location PRIVATE WARD (3 RD floor
---------------------	---

Date of Examination May 2023 11 12 Am

Procedure Distal logogram

The distal loop was cannulated using 8 Foley s catheters and diluted iodinated contrast was slowly instilled No leaking of contrast was seen

Distal ileal loops ascending colon transverse descending colon sigmoid colon and rectum are well demonstrated and appear normal

Impression Normal Study

Radiologist / Dr Chandan M (SR)

144

RADIOLOGY UNIT

Dr B R Ambedkar Instate Rotary Cancer Hospital

All India Institute of Medical Sciences New Delhi - 110029

	Age/Gender 44 years and 2 months
Patient UHID 106909934	IRCH No, 290071
Accession No 124305	Location PRIVATE WARD (3 RD floor)

Procedure CECT of chest Abdomen and Pelvis

Clinical background _____

Chest

Both lungs; NO metastasizes

Mediastinum Normal No lymph node enlargement

Trachea main bronchi Normal

Serosal spaces NO pleural or pericardial effusion

145

112

Abdomen and Pelvis

There is a large tower retroperitoneal mass extending from the pelvic floor umbilical region, measuring 22,8cm in LAD. The mass is predominantly fatty but contains large cystic and solid areas. It is predominantly on the left side but also crossing the midline to the right side. The mass is displacing UB, uterus and rectum anteriorly with a circumferential presence of abnormal fat around this organ but no invasion. The soft tissue component is seen abutting the urinary bladder with focally indistinct fat planes. Small bowel loops displaced to the right side. No obstruction. IMA is seen encased however no stenosis. Mild prominence of left ureter.

Is seen encased however no stenosis. Mild prominence of left ureter.

Liver Fatty liver. 2 enhancing SOLs are seen in segments 5 and 6 of liver. Larger one in segment 6 measuring 1.9 cm in LAD. Hexagons (stable compared to the previous scan). Hemangioma (Stable compared to previous Scan).

CBD/ Gall bladder Normal

Pancreas Normal

Spleen Normal

Both kidneys ureters Normal No hydronephrosis NO RP enlarged node seen

Uterus appears normal

Minimum free fluid is seen in right paracolic gutter

Comparison compared to the previous scan dated 10/02/2023 no significant interval change in stable disease

Impression

Large abdominal pelvic liposarcoma

Enhancing SOL in segments 5 and 6 of liver – hemangiomas (stable compared to the previous scan)

Delhi

All India Institute of Medical Science

Department of Pathology

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Patient Name	Rashmi Bala Swam	Acc No	236250
F/H Name	Bikash Swam	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02 2023	reporting date	16-02-2023

Histopathology Reports

Report Finding

Guided biopsy from pelvic mass shows a feature of a well-differentiated liposarcoma. The tumor cells are immunopositive for MDM2.

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Patient Name	Rashmi Bala Swam	Acc No	236250
F/H Name	Bikash Swam	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02.2023	reporting date	16-02-2023

Sample Details

Reports

Test Name	Result	Comment	normal range
HbA1c	7.60000		<5.7

150

अखिल भारतीय आयुर्विज्ञान संस्थान

ALL INDIA INSTITUTE OF MEDICAL SCIENCE NEW DELHI

NATIONAL CANCER INSTITUTE

Patient Name	Rashmi Bala Swam	Acc No	236250
F/H Name	Bikash Swam	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02 2023	reporting date	16-02-2023
Report generated date	Dr Atul Sharma	Lab Reference no	

Sample date P090223026

Report

151

Test Name	Result	comment	Normal Range
PROTHROMBIN			
PT	10 20SEC		10 2-13 2
INR	0 90		<1 1

अखिल भारतीय आयुर्विज्ञान संस्थान

ALL INDIA INSTITUTE OF MEDICAL SCIENCE NEW DELHI

NATIONAL CANCER INSTITUTE

Patient Name	Rashmi Bala Swain	Acc No	236250
F/H Name	Bikash Swain	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02 2023	reporting date	16-02-2023
Report generated date	Dr Atul Sharma	Lab Reference no	

152

Sample Details G090223001

REPORT

Test name	Result	comment	normal range
	<u>Glucose</u>		
<u>Glucose PP</u>	138 mg/dl		<140 mg/dl

Over All Comment

Authorised Signatory

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अखिल-भारतीय. आयुर्विज्ञान संस्थान

ALL INDIA INSTITUTE OF MEDICAL SCIENCE NEW DELHI

NATIONAL CANCER INSTITUTE

Patient Name	Rasnumi Bala Swain	Acc No	236250
F/H Name	Bikash Swain	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02 2023	reporting date	16-02-2023
Report generated date	Dr Atul Sharma	Lab Reference no	

Sample Detail S090223105

REPORT

Test name	Result	comment	normal range
HBsAg	<0 10	>INDEX REACTIVE	

154

HIV <0.050 >1 IEX NON REACTIVE

HCV 0.050

LFT

TOTAL BILIRUBIN 0.200 Mg/dl

DIRECT BILIRUBIN 0.100mg/dl

INDIRECT BILIRUBIN 0.1mg/dl

SGPT/ALT 26 u/l

SGOT/AST 24 u/l

TOTAL PROTEIN 7.800g/dl

ALKALINE PHOSPHATASE 76 I U

GLOBULIN 3.2

A/G Ratio 1.4375 ratio

Albumin 4.600 g/dl

Gamma Glutamyl Transferase 6

REFT

UREA	21 mg/dl
CREATININE	0.570 mg/dl
CALCIUM	9.600 mg/dl
PHOSPHOROUS	3.800
SODIUM	140
POTASSIUM	5.000 mmol/l
CHLORIDE	
URIC ACID	106 mmol

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OVER ALL COMMENT

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अखिल भारतीय आयुर्विज्ञान संस्थान

ALL INDIA INSTITUTE OF MEDICAL SCIENCE NEW DELHI

NATIONAL CANCER INSTITUTE

Patient Name	Rashimi Bala Swain	Acc No	236250
F/H Name	Bikash Swain	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02 2023	reporting date	16-02-2023
Report generated date	Dr Atul Sharma	Lab Reference no	

Sample Detail E090223104

Test	Result	Comment	Normal Range
Hemoglobin	9 000g/dl		12-15
Hematocrit	32 6116;		36-46

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RBC Count	6 130 10	3 8-4 8
WBC Count	16 530	4-101
Platelet Count	422	150-400
MCV	53 200	83-101
MC	14 6819	27-32
MCHC	27 5975	31 5-34 5
RDW	18 900	11 6-15

DLC

Neutrophils	62 200
Lymphocytes	30 000
Eosinophils	2 400
Monocyte	2 500
Basophils	0 5000

Over All Comment

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अखिल भारतीय आयुर्विज्ञान संस्थान

ALL INDIA INSTITUTE OF MEDICAL SCIENCE NEW DELHI

NATIONAL CANCER INSTITUTE

Patient Name	Rashmi Bala Swam	Acc No	236250
F/H Name	Bikash Swam	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02 2023	reporting date	16-02-2023
Report generated date	Dr Atul Sharma	Lab Reference no	

Sample Details MUR-100423118

TEST NAME, URINE FOR ANTIMICROBIAL SUSCEPTIBILITY TESTING

Antimicrobial

Escherchia

MIC

MIC

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Amikacin	S
Cefotaxima	R
Ceftazidime	R
Cefaperazone-sulbactam	S
Ciprofloxacin	R
Imipenem	S
Meropenem	S
Nitrofurantoin	S
Netilmicin	S
Piperacillin tazobactam	S
Fosfomycin	s

Dept of Surgical Oncology, Dr BRAIRCH

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Amikacin	S
Cefotaxima	R
Ceftazidime	R
Cefaperazone-sulbactam	S
Ciprofloxacin	R
Imipenem	S
Meropenem	S
Nitrofurantoin	S
Netilmicin	S
Piperacillin tazobactam	S
Fosfomycin	s

Dept of Surgical Oncology, Dr BRAIRCH

BLADDER

_____ normal

Lateral wall normal

Anterior wall normal

Posterior wall normal

URETHRA Not Taken

BIOPSY

IMPRESSION Normal Study

BLADDER

_____ normal

Lateral wall normal

Anterior wall normal

Posterior wall normal

URETHRA Not Taken

BIOPSY

IMPRESSION Normal Study

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Department of Radiology

Dr B R A Institute Rotary Cancer Hospital

AIIMS NEW DELHI- 110029

Patient Name	Rashmi Bala Swan	Acc No	236250
F/H Name	Bikash Swan	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02 2023	reporting date	16-02-2023
Report generated date		Dr Atul Sharma	Lab Reference no

Post Intervention Notes

Ultrasound CT guided FNAC/ Core Biopsy /Drainage procedure of

Biopsy from Abdominal mass 18g -----under aseptic

precaution Procedure is uneventful Post procedure the patient is stable with

normal vital parameters

164

Department of Radiology

Dr B R A Institute Rotary Cancer Hospital

AIIMS NEW DELHI- 110029

Patient Name	Rashmi Bala Swain	Acc No	236250
F/H Name	Bikash Swain	Hosp Reg No	290071
Age/Sex	44Y/Female	UDH No	-----
Clinic/Dep/Unit	09 02 2023	Consultant in charge	Dr S V S Deo
Reg Date	09 02 2023	reporting date	16-02-2023
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Post Intervention Notes

Ultrasound CT guided FNAC/ Core Biopsy /Drainage procedure of

Biopsy from Abdominal mass 18g -----under aseptic

precaution Procedure is uneventful Post procedure the patient is stable with

normal vital parameters

165

129

100-100

Advice

Monitor vitals

Monitor for local bleeding or hematoma

Monitor for breathlessness

Analgesic sos

Call Radiology senior Resident/consultant if required

Reports to be collected from counter No 3 (FNAC) Room No 1085(Biopsy)after

7-10 days

Any other

166

229

100 113

Advice

Monitor vitals

Monitor for local bleeding or hematoma

Monitor for breathlessness

Analgesic sos

Call Radiology senior Resident/consultant if required

Reports to be collected from counter No 3 (FNAC) Room No 1085(Biopsy)after

7-10 days

Any other

167

ANNEXURE-2/9

Item No 07

Court No 1

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

Original Application No 14/2023/EZ

Krushna Chandra Khatua & Ors

Applicant(s)

Versus

Odisha State Level Environment Impact
Assessment Authority & Ors

Respondent(s)

Date of hearing 17 07 2023

CORAM. HON'BLE MR JUSTICE B AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s) Mr Gopal Prasad Jena, Advocate (in Virtual Mode)

For Respondent(s) Mr Tarun Patnaik, ASC for State Respondents (in Virtual Mode),
Mr Apurba Ghosh, Advocate for R-1 (in Virtual Mode),
Mr Dipanjan Ghosh, Advocate for R-7

ORDER

1 Mr Gopal Prasad Jena, learned Counsel is present (in Virtual Mode) on behalf of the Applicants

2 Affidavit dated 12 07 2023 has been filed on behalf of the Respondent No 4, Collector and District Magistrate, Jajpur, the same is taken on record

3 No one has appeared on behalf of the Respondent No 6, Private Respondent

(Final order of the said case will be uploaded in website by separate sheets of paper)

B. Amit Sthalekar, JM

Dr Arun Kumar Verma, EM

July 17, 2023,
Original Application No 14/2023/EZ
SKB

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Item No 07

Court No 1

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

Original Application No 14/2023/EZ

In the matter of:

1. **Krushna Chandra Khatua**
Aged about 40 years,
Son of late Naran Khatua,
At-Govindapur, P O - Rudhua,
P S - Panikoli,
Dist - Jajpur,
Pin - 755043
2. **Sri Kishore Chandra Pal**
Aged about 78 years,
Son of late Laxmidhar Pal,
At-Ranapal, P O - Rudhua,
P S - Panikoli,
Dist - Jajpur,
Pin - 755043
3. **Sri Sarat Chandra Jena**
Aged about 44 years,
Son of Mahanta Jena,
At-Dhanatri (Khuro), P O - Rudhua,
P S - Panikoli,
Dist - Jajpur,
Pin - 755043

--- Applicant(s)

Versus

1. **The State Level Environment Impact Assessment Authority,
Odisha, Bhubaneswar**
Represented by its Chairman,
SRF-2/1, Unit-IX,
Bhubaneswar,
Pin - 751022
2. **State of Odisha**
Represented by Principal Secretary to Govt ,
Panchayat Raj Department,
At - Secretariat Building,
P O - Secretariat Building,
Munsif - BBSR,
Dist - Khordha
Pin - 751001

- 3 State of Odisha,
Represented by Principal Secretary to Govt ,
Revenue and Disaster Department,
At - Secretariat Building,
P O - Secretariat Building,
Munsif - BBSR,
Dist - Khordha
Pin - 751001
- 4 Collector and District Magistrate, Jajpur,
At/P O - Jajpur,
Dist - Jajpur,
Pin - 755001
- 5 Tahasildar Vyasaganar,
Jajpur Road,
At/P O - Jajpur Road,
Dist - Jajpur,
Pin - 755019
6. Bikash Swain,
Son of Late Basudev Swan,
Plot No HIG Duplex-26 Salseshreevihar,
Bhubaneswar,
P S - Chandrasekharapur,
Dist - Khordha,
Pin - 751021

... Respondent(s)

Date of hearing 17 07 2023

CORAM HON'BLE MR JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s) Mr Gopal Prasad Jena, Advocate (in Virtual Mode)

For Respondent(s) Mr Tarun Patnaik, ASC for State Respondents (in Virtual Mode),
Mr Apurba Ghosh, Advocate for R-1 (in Virtual Mode),
Mr Dipanjan Ghosh, Advocate for R-7

ORDER

- 1 The allegation of the Applicants in the present Original Application is that the Respondent No 6, Private Respondent, is carrying on operation of sand mining and lifting the sand from the Batarani River Dhananti Sand Sarat by engaging heavy trucks and transporting the same over the village road. It is stated that the village road is a reserved area for Gramya Jungle and Samshan and

the Collector, Jajpur, has also directed the Tahasildar-Vyasanagar, not to allow any transportation of sand over the reserved areas.

2. It is also stated that inspite of the order of the Respondent No 4, Collector, Jajpur, passed in Miscellaneous Case No 54/2022 not to transport sand over the Plot Nos 1886, 1887, and 1891, which are reserved lands of Govindpur Village, specifically meant for Gramya Jungle, Samshan, and Pani Nala the Project Proponent, Respondent No 6, is flouting the order and transporting the sand on heavy vehicles through the said plots

3 It is alleged that more than 120 local varieties of trees planted by the villagers and nearby school children have been uprooted and destroyed in the process of transportation of sand by heavy vehicles over the prohibited plots.

4 It is also alleged that the Project Proponent, Respondent No.6, is acting in violation of the directions given in the Environmental Clearance for sand mining granted vide order dated 04 09 2021 by the SEIAA, Odisha, Respondent No 1

5 Considering the allegations made, the Tribunal constituted a committee comprising of the following members

(1) Senior Scientist from the Odisha State Pollution Control Board,
and

(1) Collector & District Magistrate, Jajpur, or his nominee,

6 The Committee was directed to visit the site in question and submit its Report taking the benefit of Satellite Imagery also with regard to the allegations of illegal mining

7 According to the applicant respondent No 6 Project Proponent is mining and

Extracting sand in violation of the environmental clearance dated 04 09 2021 granted by state-level Environment clearance dated 18 12 2021 It is however alleged that the Project Proponent on the basis of such transfer of environment clearance is lifting from Batarani River Dhantari Sand Sairat by engaging heavy truck and transporting the same over village road It is further stated that the sand over reserved area It is stated that specific order were issued in MIC cases NO 54/2022 directing respondent No 5 Tahsildar, Jaipur as well as Respondent No 6, Lease Holder to transport sand over plot No 2398 under khata no 477 and plot no 2379 (kizam patita) under khata no 476 and plot no 2378 (kizam Naayanjori) and plot no 2377 (kizam Bandha) under khata no 480 Irrigation Department of Mouza Dhantri and not to transport sand over plots Nos 1886,1887 and 1891 which are reserve land of Govindpur village specifically meant for Gramya Jungle Smashan and Pani Nala

8 It is also alleged that the environmental clearance was issued on 04 09 2021 and clause 9 2 thereof stipulated that the clearance was granted for one year liable to be revoked after 15 10 2022 if satisfactory compliance Replenishment study Report is not given within one year but just after three months vide letter no 3635 dated 18 12 2021 the environment was permanently transferred in favor of the project proponent, Respondent no 6 It is stated that Clause 9 3 of Environmental Clearance stipulates that the Project Proponent shall carry out river bed sand mining manually by engaging local labor to check over-exploitation of sand at the source but the Project Proponent is lifting the sand on heavy trucks by engaging JCB which would be clear from the photographs filed as Annexure-7 (Colly) to the Original Application

9 Affidavit dated 12 04 2023 has been filed by the Respondent No 1, I State Environment Impact Assessment Authority (SEIAA), Odisha, stating therein that Environmental Clearance was granted for Dhanatri Baitarani River sand bed over an area of 12 00 acres or 4 86 hectares at Village-Dhanatri, Tahasil-Vyasnagar, Dist -Jajpur on 04 09 21 The Environmental Clearance was transferred in favour of the Tahasildar, Vyasnagar, which was later transferred from the Tahasildar, Vyasnagar, to the successful bidder/lease holder, Sri Bikash Swam, Respondent No 6 The Respondent No 6 applied for amendment of the Environmental Clearance attaching the annual rate of Replenishment Study Report as it was mentioned in the Condition No 9 2 in the Environmental Clearance for 1 production 5000 cum m ad-hoc manner is liable to be revoked after one year Le

15 10 2022 if satisfactory Replenishment Study Report is not submitted. Based on the Replenishment Study Report, the SELAA, Odisha, amended the environment clearance on 07.01.2023

10 the respondent No 4 collector and district magistrate Jaipur has filed an affidavit dated 13 04.2023 paragraph-7 of the affidavit read as under

a) *The lessee is strictly adhering to the proposed road mentioned in the mining plan i e Plot 2378 (kasam -Nayanjori) and Plot no 2379 (kasam -Patita)*

b) *It is observed during the visit that Plot No 1886, 1887 of Khata 437 and Plot NO 1891 of Khata 436 under Mouza-Gobindapur is not part of the road used for transportation of sand by the lessee*

c) *During the field visit, no sign of uprooting of trees were found Besides, the Sarpanch, Mulapal GP and some other villagers were present during the field visit They have submitted that no plants have been uprooted or destroyed due to the transportation of sand*

d) *During the field visit, no violation of the directions given in the Environmental Clearance is found "*

11 As regards the use of JCB machines for extraction of sand in the sand sarat source, it is stated that it came to the knowledge of the Collector that in the night of 12 04 2023, Respondent No 6 had allegedly used JCB machines in the sand sarat area It is also stated that during the transportation of sand by trucks, Respondent No 6 used tarpaulins to cover the sand

12 it is, however, denied that 120 trees have been uprooted by Respondent No 6 It is stated that to ensure the suggestions given by the Executive Engineer,

Irrigation and Geologist regarding the distance of lifting of sand, stopping operations during monsoon season, and pillar posting by Respondent No 6, Lessee, directions were issued to the Tahasildar, Vyasnanagar, on 08 10 2020 It is also stated that respondent No.6 is transporting sand through Plot Nos 2377,

2378, 2379, and 2398 under Mouza-Dhanitri and these plots are near the sand sarat source and the directions given by the Collector, Jajpur in Misc Case No 54/2022 is being strictly complied

13 The Applicant has filed an affidavit dated 12 05 2023 and the averments made by the Collector Jajpur, in his affidavit, have been denied It is stated that with regard to the inspection carried out on 03 04 2023, no intimation was given to the Petitioners/Applicant It is also stated that the villagers of the area filed W P (C) No 12335/2022 in the Hon'ble High Court of Orissa at Cuttack, alleging violation caused by the Project Proponent and based on the orders of the Hon'ble High Court therein, the Collector, Jajpur, passed orders in Misc Case No 54/2022 It is further stated that FIR was lodged before the Panikoih Police Station and also before the Superintendent of Police, Jajpur on 08 12 2022, and the matter is under investigation, and though the Investigating Officer and Tahasildar, Vyasnanagar, visited the site but no action has been taken till date It is also stated that directions were given by the Hon'ble High Court in W P (C) No 22725/2020 and W P (C) No 22727/2020 and in pursuance

thereof, the Collector, Jajpur, directed the Executive Engineer, Irrigation Division, Jajpur and Geologist and Tahasildar, Vyasaganar, to visit the site and submit report The Committee Report suggests that only light vehicles are allowed to transport sand from the sand Sarat but it is again alleged by the Applicant that the Project Proponent is lifting sand using heavy trucks

14 Affidavit dated 12 07 2023 has been filed by Respondent No 4, Collector & District Magistrate, Jajpur, wherein it is stated that the date of inspection of 03 04 2023 to be conducted at 04.00 P M was intimated to the petitioner/applicant at 11 00 A M by phone requesting him to be present at the time of inspection but none of the petitioner/applicant were present at the time of inspection It is also stated that after it was noticed that the lessee was using Plot Nos 1886, 1887, and 1891 for plying vehicles, the Collector, Jajpur, vide order dated 10 08 2022 directed the Tahasildar, Vyasaganar to ensure that the lessee only uses the plot Nos 2379,2378 and 2377, ensure that the lessee only uses the Plot Nos 2379, 2378 and 2377 It is further stated that the allegation of the uprooting of trees in Plot Nos 996, 101, and 105 made by the Applicant refers to Village Barapada whereas the sand quarry is situated in Village Dhantri It is stated that on receiving allegations of usage of JCB machines and heavy trucks, the Tahasildar, Vyasaganar visited the spot and found three heavy trucks had been deployed in the quarry for carrying sand The said trucks were seized by the Tahasildar, Vyasaganar On 15 04 2023, the Tahasildar, Vyasaganar, wrote to the IIC, Panikioilli Police Station to initiate legal action against the seized vehicles, and

accordingly, FIR has been lodged i.e. P.S. Case No 76 dated 15/04/2023 under Section 379/34 of IPC read with Section 21 of MMDR Act, 1957

15 No one has appeared on behalf of Respondent No 6 nor has any counter-affidavit been filed although the Respondent No 6 has been duly served notice of the case as would be clear from the affidavit of service filed by the Applicants which is on record

16 From the report of the inspection carried out by the Tahasildar, Vyasaganar, it has been established that three heavy trucks had been deployed in the quarry for quarrying sand, which were seized and an FIR has been lodged. Photographs that are on record of the Original Application and the further affidavit filed by the Applicants clearly show JCB being used for excavation of sand and loading of the same in heavy trucks

17 From the affidavit of the collector and DM Jaipur, it is also established that the Project proponent was carrying sand laden heavy truck over Plot no 18886, 1887, and 1891 and an aggrieved person had filed W.P. © No 22725/2020 in hon'ble high court

18 In this view of the matter, we find that Respondent No 6 is guilty of brazenly acting in violation of the EC condition and, therefore, is liable for payment of Environmental Compensation and other penal actions as may be initiated against him by the State Respondents

19 We accordingly direct the Respondent No 1, State Level Environment Impact Assessment Authority (SEIAA), Odisha, with the logistic support of the Collector & District Magistrate, Jaipur, and satellite imagery, to take steps for the determination of

Environmental Compensation against the Respondent No 6 for illegally quarrying sand in violation of EC conditions and proceed to recover the same from the Respondent No 6. The amount of Environmental Compensation shall be recovered from the Respondent No 6 after giving him due notice of the amount so computed as also inviting his objections, if any, to the same and thereafter, proceed to recover the same within a period of three months.

20 The SEIAA, Odisha, shall also take immediate steps for revocation of the Environmental Clearance (EC) including the amended EC granted in favor of Respondent No 6.

21 Affidavit of compliance shall be filed by the SEIAA, Odisha, before the Registrar, National Green Tribunal, Eastern Zone Bench Kolkata, by 01 11 2023.

22 With the aforesaid directions, the Original Application No 14/2023/EZ is disposed of.

23 Interlocutory Applications, if any, stand disposed of accordingly.

24 There shall be no order as to costs.

B Amit Sthalekar, JM

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ANNEXURE - PHO

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP (C) No 25072 of 2023

Bikash Swam

Petitioner

Mrs Chandana Mishra Adv

-versus-

Krushna Chandra Khatua &
others

Opp Parties

Mr Ch S Mishra, AGA

CORAM
DR JUSTICE-S K PANIGRAHI

Order
No

ORDER
11 08 2023

- 01
- 1 This matter is taken up through hybrid arrangement
 - 2 Without going into the merit of the case, since the order passed by the learned National Green Tribunal Eastern Zone Bench, Kolkata in Original Application No 24 of 2023 is appealable under Section 22 of the National Green Tribunal Act, 2010 it cannot be heard here The said Section 22 may be extracted hereinbelow

"22 Appeal to Supreme Court- Any person aggrieved by any award decision or order of the tribunal, may file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908(5 of 1908)

Provided that the Supreme Court may, entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was

Page 1 of 2

Signature Not Verified

Digitally Signed
Signed by LINGARAJ BEHERA
Designation Sr Stenographer
Reason Authentication
Location Orissa High Court Cuttack
Date 17 Aug 2023 10:47:11

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prevented by sufficient cause from preferring
the appeal "

3 In view of the above, the petitioner is directed to approach
the Hon'ble Supreme Court by way of appeal Accordingly,
the Writ Petition(Civil) stands disposed of

(Dr S K Panigrahi)
Judge

LB

Signature Not Verified

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Signed by LINGARAJ BEHERA
Designation Sr Stenographer
Reason Authentication
Location Orissa High Court Cutack
Date 17 Aug 2023 10:47:11

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ANNEXURE - P/177

IN THE HIGH COURT OF ORISSA CUTTACK

WA NO 2051/2023

Sri Bikash Swain . Appellant

-Versus-

Krushna Chandia Khatua
& others . . Respondents

SYNOPSIS

The appellant in the instant writ appeal begs to challenge the order 11 08 2023 passed in WP(C) No 25072/2023 by the Hon'ble Single Judge, who declined to entertain the WP(C) No 25072/2023 filed by the appellant challenging the order dt 17 07 2023 passed in O A No. 24/2023 by the National Green Tribunal (NGT), Eastern Zone Bench, Kolkata, on the ground that such order is appellable U/s 22 of the National Green Tribunal Act, 2010

Cuttack

By the Appellant through

Date / 8-8, 2023

Advocate

IN THE HIGH COURT OF ORISSA CUTTACK

WA NO 2051/2023

Sri Bikash Swain . Appellant

-Versus-

Krushna Chandra Khatua
& others ... Respondents

DATE CHART

- 03.04 2023 . Report submitted by the ADM, Kalinga Nagar, Dist Jajpur, Regional Officer, SPCB, Kalinga Nagar, Dist. Jajpur and the Tahasildar, Vyasaganagar
- 13 04 2023 Counter affidavit filed by the Collector, Jajpur
- 15 05 2023 Further affidavit filed by the Collector, Jajpur with photographs
- 13 07 2023 Reply affidavit filed by Collector, Jajpur
- 17.07 2023 The final order passed in O A No 24/2023 by the National Green Tribunal (NGT), Eastern Zone Bench, Kolkata
- 11 08.2023 WP(C) No 25072/2023 was disposed of

Cuttack By the Appellant through

Date 18-8-2023 Advocate

IN THE HIGH COURT OF ORISSA CUTTACK

(WRIT APPELLATE JURISDICTION CASES)

W.A NO 2051 /2023

(Arising out of WP(C) No 25072/2023 disposed of on
11 08 2023)

Code No 310300

IN THE MATTER OF

An Appeal under Clause – 10 of
Letter Patent read with Article 4 of
Orissa High Court Order, 1948 ,

AND

IN THE MATTER OF

Sri Bikash Swam, aged about 49
years, S/o Late Basudeb Swam,
Plot No. C/26, HIG Duplex,
Sailashree Vihar, PS.-
Chandrasekharipur, Bhubaneswar,
Dist - Khurda

(Petitioner before the Hon'ble Single Judge)

Appellant

Versus

- 1 Krushna Chandra Khatua, aged about 40 years, S/o Late NaranaKhatua, At - Gobindapur, PO -Rudhia, PS - Panikoili, Dist.- Jajpur, PIN - 755043
2. Kishore Chandra Pal, aged about 78 years, S/o. Late Laxmidhar Pal, At - Ranapal, PO -Rudhia, PS.- Panikoili, Dist.- Jajpur, PIN - 755043
- 3 Sarat Chandra Jena, aged about 44 years, S/o. Mahanta Jena, At - Dhanatri (Khuro), PO -Rudhia, PS - Panikoili, Dist.- Jajpur, PIN - 755043

(Opp. Parties before the Hon'ble Single Judge)

Respondents

- 4 The State Level Environment Impact Assessment Authority (SEIAA), Odisha, represented by its Chairman, SRF-2/1, Unit - IX, Bhubaneswar 751022, Dis: Khurda

- 5 State of Odisha, represented by
Principal Secretary to Govt,
Panchayat Raj Dept., At
LoksevaBhawan, Bhubaneswar,
Dist -Khurda.

- 6, State of Odisha, represented by
Principal Secretary to Govt.,
Revenue & Disaster Management
Dept, At LoksevaBhawan,
Bhubaneswar, Dist -Khurda

- 7 Collector & District Magistrate,
Jajpur, At/Po /Dist - Jajpur

- 8 Tahasildar, Vyasagar, Jajpur
Road, At/Po -Jajpur Road, Dist -
Jajpur

- 9 State Pollution Control Board
(SPCB), Odisha, PariveshBhawan,
A/118, Nilakantha Nagar, Unit -
VIII, Bhubaneswar 751012, Dist
Khurda.

(Proforma Opp Parties before the Hon'ble
Single Judge)

Proforma Respondents

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The matter out of which this writ appeal arises was before this Hon'ble Court in WP(C) No 25072/2023 disposed of on 11 08 2023.

To

The Hon'ble Chief Justice of Orissa High Court
and His Lordship's other Companion Justices of
the said Hon'ble Court

STATEMENT OF FACTS / APPEAL MEMO

1 That the appellant in the instant writ appeal begs to challenge the order 11.08 2023 passed in WP(C) No 25072/2023 by the Hon'ble Single Judge, who declined to entertain the WP(C) No. 25072/2023 filed by the appellant challenging the order dt 17 07 2023 passed in O A. No 24/2023 by the National Green Tribunal (NGT), Eastern Zone Bench, Kolkata, on the ground that

such order is appellable U/s 22 of the National Green Tribunal Act, 2010 A copy of the said order dt 11 08 2023 passed in WP(C) No. 25072/2023 is annexed hereto as ANNEXURE-

1

- 2 That the factual matrix of the case are as follows
- 3 That the Respondent No 1 to 3 are the petitioners in O A No 24/2023 which was filed before the NGT with the following allegations :

i)The Respondent No. 1 to 3 who are the applicants in O.A No 14/2023 are the villagers of villages such as Dhanatri, Ranapal and Gobindapur under VyasanagarTahasil in the district of Jajpur and they are depending upon Batarani river which according to them is a major seasonal river of that area and flows through the district of Jajpur

ii) The Appellant is a lessee in respect of Dhanatri Baitarani river sand Quarry (hereinafter called as the said sand quarry) which has been created over Plot No. 2398(P) under Khata No. 477 (A Aj.A) in Mouza Dhanatri over an area Ac.12 00 dec. out of Ac 44 18 dec. in the district of Jajpur

iii) It is alleged that the villagers are seriously affected due to illegal and arbitrary action of the Appellant/ lessee in respect of the said sand quarry as he is illegally, arbitrarily and in utter disregard to the guidelines specified in the Environment Clearance (EC) dt 04 09 2021 and transfer of Environment Clearance (EC) dt 18.12 2021 issued by SEIAA is extracting and transporting the sand from the said sand quarry

iv) It is further alleged that the EC was transferred for a period of 5 years by SEIAA and the Appellant / lessee on the basis of it, is lifting the sand

from the said mining quarry by engaging heavy trucks and transporting over village road and further the appellant / lessee are forcibly carrying sands through heavy trucks over the passage which are reserved area for Grama Jungle and Smaasan, despite the restrictive order of the Collector, Jajpur in Misc. Case No 54/2022

v) It is further alleged that the appellant / lessee has uprooted 120 local varieties of trees planted by the villagers and destroying the atmosphere of the area. Besides due to carriage of sand without coverage the villagers are unable to move in that road and the road is congested

vi) It is further alleged that the appellant / lessee has violated the terms and conditions of the EC and is lifting the sand with heavy trucks by using JCB machines without engaging the local workers. The allegation was raised against the appellant / lessee

before Collector, Jajpur by villagers which has not been given importance

4 That it is stated in the Original Application that prior to filing of the same, one WP(C) No 22727/2020 was filed by the villagers of Dhanatri in the Hon'ble High Court challenging the tender notice No 5220 dt. 24 08.2020 in respect of Dhanatri Sand Quarry and other adjacent sand quarries which was disposed of by the Hon'ble High Court by order dt 14 09 2020 with a direction to the Collector, Jajpur to dispose of the representation of the villagers after giving opportunity of hearing to them. It is alleged that the said representation was disposed of unilaterally and the tender was finalized

5 That it is alleged that the appellant / lessee without constructing separate passage for transportation of sand used the road meant for

Gramma Jungle, Playground and Smanan for which immense difficulties being faced by the villagers for which the villagers again filed one WP(C) No 12335/2022 in the Hon'ble High Court which was disposed of by the Hon'ble High Court with a direction to Collector, Jajpur to decide the matter

6 That accordingly the Collector, Jajpur registered one Misc Case No 54/2022 arising out of WP(C) No 12335/2022 and passed final order on 10.08.2022 directing the appellant / lessee not to carry sand over Plot No. 1886, 1887 and 1891 which are meant for Gramma Jungle, Smanan and Playground and it is alleged that despite such order the appellant/ lessee is forcibly carrying the sand over the said plots violating the order of the Collector, Jajpur and the Tahasildar, Vyasaganagar is sitting silent over the said issue

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- 7 That it is further stated in the O A that the appellant/ lessee has violated clause No 9 3 of the EC as the sand is lifted from the said sand quarry by engaging JCB machines and with heavy trucks Besides it is alleged that clause No 9 6 of the EC has also been violated as the appellant/ lessee has not demarcated the area and no concrete pillars have been erected.
- 8 That it is further alleged that there is also violation of clause Nos 9 11 and 9 13 of the EC by the appellant / lessee as there is transportation over Grama Jungle land and further heavy vehicles have been engaged for transportation of sand from the said sand quarry
- 9 That it is thus alleged that the appellant / lessee has violated the guidelines prescribed in EC and also violated the provisions of OMMC Rules, 2016 In that view of the matter the prayer was

made in the O A to revoke the EC granted in favour of the appellant/ lessee on the ground of non-compliance of the guidelines and further direct the appellant/ lessee not to take any step for lifting of sand and not to transport the sand in the reserved land and also to fix accountability on the appellant / lessee for making pollution in the area by lifting sand with JCB machines and transporting it with heavy trucks. A copy of the O.A No. 14/2023 filed by the OP No. 1 to 3 before NGT alongwith its Annexures consisting of 78 pages is annexed hereto as ANNEXURE – 2 (collectively)

10 That the LD NGT during pendency of the case by order dt 09 02 2023' directed to constitute a committee to inspect the area and pursuant to the said direction on 03 04 2023 the ADM, Kalinga Nagar, Dist Jajpur, Regional Officer, SPCB, Kalinga Nagar, Dist Jajpur and the Tahasildar,

Vyasanagar purportedly inspected the site and submitted their observations in shape of a report to NGT. A copy of the said report is annexed hereto as ANNEXURE - 3

11 That the Collector, Jajpur being noticed in the said case filed counter affidavit on 13 04 2023. A copy of the said counter affidavit is annexed hereto as ANNEXURE - 4

12 That after receipt of the counter affidavit the Respondent No 1 to 3 filed a further affidavit on 15 05 2023 with photographs. A copy of the said further affidavit is annexed hereto as ANNEXURE - 5

13 That in reply to the said further affidavit the Collector, Jajpur filed a reply affidavit on 13 07 2023. A copy of the said reply affidavit is annexed hereto as ANNEXURE - 6

14 That the appellant/ lessee although noticed in the said OA but on account of genuine reasons, he could not appear and contest the case. In fact the wife of the appellant / lessee namely Rasmibala Swam suddenly detected breast cancer for which she was admitted in AIIMS Hospital at New Delhi. The entire medical records of the wife of appellant / lessee is annexed hereto as ANNEXURE-7 (Collectively) Due to such bonafide reason and absence of the appellant/ lessee, he could not appear and contest the case

15 That as aforesaid the Collector, Jajpur filed two affidavits on 13.04.2023 and 17.07.2023 (Annexure - 4 and 6 respectively) The salient features of the first affidavit of the Collector, Jajpurdt 13 04 2023 (Annexure-4) are as thus -

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- i) The allegations made by the applicants / Respondent No 1 to 3 in the OA are completely denied
- ii) In pursuance of the order of the NGT a committee was constituted who conducted the enquiry on 03 04.2023 and the report of the said committee is at Annexure - 3 in which it has been specifically mentioned that during the field visit, no violation of the directions given in EC is found.
- iii) The allegation of using JCB machines in the said sand quarry, some further time is required to present the actual state of affairs
- iv) It is disputed and denied that heavy trucks are being used by the appellant / lessee for transportation of the sand
- v) It is further denied that the transportation of sand is being done through Grama Jungle and Smasan land

- vi) It is stated that during the transportation of sand the appellant / lessee is using tarpaulin to cover the sand by the trucks
- vii) The Collector, Jajpur vide order dt 08 10 2020 directed the Tahasildar, Vyasaganar to ensure that suggestion given by Executive Engineer, Irrigation and geologist regarding distance of lifting of sand & pillar posting be done
- viii) In so far as the allegation of movement of trucks over Plot No 1886, 1887 and 1891 classified as Grama Jungle and Smasan, the same is not correct, on the other hand the appellant/ lessee is transporting sand through Plot No 2377, 2378, 2379 and 2398 under MouzaDhanatri and they are near the said sand quarry

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- ix) As per the enquiry report (Annexure-3), it is found that there is no violation of the conditions of the EC
- x) The area of the said sand quarry has been demarcated by fixing concrete pillars in compliance of the conditions of the EC

On the aforesaid grounds the first affidavit (Annexure - 4) was filed by the Collector, Jajpur in which prayer was made to dismiss OA

16 That thereafter on 15 05 2023 the applicants/ Respondent No. 1 to 3 filed an additional affidavit (Annexure 5) A bare perusal of the said additional affidavit would go to show that same allegations made in the OA have been reiterated Besides some photographs were enclosed to the said additional affidavit to show that heavy vehicles are used for transportation of the sand from the said sand quarry It is further mentioned in the additional affidavit that one

FIR was lodged by Lingeswar Development Committee in Panikoili P S regarding illegal transportation of heavy vehicles etc on the village road In any case the averments made in the complaint petition (Annexure - 1) and that of the additional affidavit (Annexure - 5) are mostly identical and similar

17 That in reply to the said additional affidavit the Collector, Jajpur filed an affidavit on 13 07 2023 (Annexure - 6) in which it is stated that the allegation that the enquiry was conducted behind the back of the complainant / Respondent No. 1 to 3 is incorrect Secondly, it is denied that the appellant/ lessee is plying the vehicles on Plot No 1886, 1887 and 1891 classified as Grama Jungle and Smasan and in this regard the Collector, Jajpur has directed the Tahasildar, Vyasaganai to ensure that the appellant / lessee

use Plot No 2379, 2378 and 2377 for transportation of sand

18 That it is further stated in the reply affidavit (Annexure - 6) by the Collector, Jajpur that the photographs annexed to the additional affidavit (Annexure - 5) relates to Gobindapur village and not Dhanatri village where the said sand quarry is situated, therefore those photos do not prove that the appellant / lessee is plying vehicles over Grama Jungle or Smasan land

19 That it is further stated in the reply affidavit (Annexure - 6) by the Collector, Jajpur that the allegation of uprooting 120 standing trees over Plot No. 996, 1011 and 1015 of village Barapada is not at all established and more so the said sand quarry is situated in village Dhanatri

20 That it is further stated in the reply affidavit (Annexure - 6) by the Collector, Jajpur that the letter dt 08 12 2022 (Annexure - 11 Series of

the OA) pertaining to uprooting of trees under the supervision of SaraswatiSishuMandir does not relate to the appellant/ lessee More so the appellant/ lessee has complied the condition of planting trees of local varieties

21. That it is further stated in the reply affidavit (Annexure - 6) by the Collector, Jajpur that on the basis of a complaint made before the Tahasildar, Vyasaganar on 12 04 2023 it was found on enquiry that heavy trucks have been deployed in the said sand quarry and those three trucks were seized by the Tahasildar, Vyasaganar on 15 04 2023 by local police in Panikouli P S Case No. 76 dt 15 04 2023 at Jajpur

22 That it is further stated in the reply affidavit (Annexure - 6) by the Collector, Jajpur that the Tahasildar, Vyasaganar is often making surprise visits to the said sand quarry to restrict heavy

trucks or excavation by JCB machines. It is specifically denied by the Collector, Jajpur that the photographs annexed to the additional affidavit (Annexure - 5) to contend that JCB machines are used for excavation do not relate to the present sand quarry at Dahantri and that the said photographs do not contain the exact place where such machines had been deployed. The Dhanatri sand quarry is surrounded by other sand sources and unless exact date and time is given it is difficult to ascertain as to where the machines are deployed. At the same time the allegations regarding uprooting of standing trees are stoutly denied by the Collector, Jajpur in the said reply.

23 That these are the pleadings available from the side of the complainant / Respondent No 1 to 3 and the Collector, Jajpur with regard to the case. The matter was heard on 17/07/2023 and on the

same day the NGT passed final order, a copy of the said final order of the NGT in O.A. No 24/2023 is annexed hereto as ANNEXURE – 8

24. That the NGT in the said final order (Annexure – 8) recorded the following findings in para – 16 to 18 of the same

“16 From the report of the inspection carried out by the Tahasildar, Vyasanaagar, it has been established that three heavy trucks had been deployed in the quarry for quarrying sand, which were seized and FIR has been lodged Photographs which are on record of the Original Application and the further affidavit filed by the Applicants clearly show JCBs being used for excavation of sand and loading of the same in heavy trucks

17 From the affidavit of the Collector & District Magistrate, Jaipur, it is also established that the Project Proponent was carrying sand laden heavy trucks over Plot No 1886, 1887 and 1891 and aggrieved persons had filed WP (C) No.22725/2020 in the Hon'ble High Court 10 of Orissa, and, thereafter, orders were passed by the Collector, Jaipur, in Misc Case No.54/2022 directing the Tahasildar, Vyasanaga, to ensure that sand laden trucks are not carried over Plot Nos 1886, 1887 and 1891 and that the same shall be carried only over Plot Nos 23777, 2378 and 2379

18 In this view of the matter, we find that the Respondent No 6 is guilty of brazenly acting in violation of the EC conditions and, therefore, is liable for payment of

Environmental Compensation and other penal action as may be initiated against him by the State Respondents”

25 On the basis of these findings the OA was disposed of by NGT. So far as the rest part of the final order (Annexure – 8) is concerned, they are only related to the pleadings from both the sides. It seems that without proper analysis of the facts and the pleadings, the NGT passed the final order under Annexure – 8 directing revocation of the EC granted to petitioner / lessee

26 That the appellant / lessee challenging the abovesaid findings of the NGT in the final order (Annexure – 8) filed one WP(C) No 25072/2023 and the grounds of challenge in the said writ petition are that the findings in the

final order of NGT (Annexure-8) suffer from error of record and also lot of legal infirmities

27 That at the outset it is humbly submitted that although several pleadings in shape of affidavits were filed before the NGT by both the parties more particularly by the Collector, Jajpur and also the enquiry report of the committee, but the NGT did not analyse those facts nor taken into consideration the same and ultimately came to an irrational finding which is contrary to the enquiry report as well as the affidavit of Collector, Jajpur

28 That it is held by the NGT that as per the inspection carried out by the Tahasildar three heavy vehicles have been deployed in the said sand quarry which were seized and FIR has been lodged and further affidavit of the applicants /RespondentNo 1 to 3 show that JCBs being used for excavation and loading of

sand in heavy trucks This conclusion of NGT is not based on materials on record in as much as in the enquiry report (Annexure - 3) there is no finding regarding deployment of heavy vehicles in the said sand quarry and furthermore in the first affidavit (Annexure - 4) the Collector, Jajpur stoutly denied the allegation of deployment of heavy vehicles in the said sand quarry for extraction and transportation. It is only in the last reply affidavit (Annexure - 6) the Collector, Jajpur has mentioned about a distinct incident of 15 04 2023 which was reported by the Tahasildar, Vyasaganagar for which FIR has been lodged in Panikoili P S The said FIR lodged by Tahasildar is annexed as Annexure-A/4 to the reply affidavit (Annexure-6).

29 That a bare perusal of the FIR (Annexure - A/4) would go to show that the Tahasildar,

Vyasanagar has alleged that the heavy vehicles were seized at Sathipur which is 10 Kms away from the said sand quarry and as per the statement of the drivers the sand was lifted from Dhanatri sand quarry. So fact remains that the trucks were not seized from the said sand quarry nor from nearby places and they are seized from Sathipur which is 10 Kms away from the said sand quarry. Secondly, the FIR was lodged merely on the statement of the drivers of the trucks. There is no material to show that those drivers are the employees of the appellant/ lessee and they are engaged by him. Moreover, the case is under investigation by the police, so at this stage it cannot be held that the vehicles which are seized by the police were carrying sand from the said sand quarry of the appellant / lessee. The recital of the FIR (Annexure - A/4) and the statement of the

drivers made before the police cannot be conclusive piece of evidence to show that the said three vehicles were used for transportation of sand from Dhanatri sand quarry

- 30 That the NGT merely on the basis of the FIR (Annexure - A/4) and the so called statement of the drivers who are unknown to the appellant / lessee has recorded its findings in para-16 of the final order (Annexure-8) Besides the so called photographs filed by the complainant / Respondent No 1 to 3 which are relied upon by NGT are all along disputed by the Collector, Jajpur in both the affidavits (Annexure - 4 and 6) The enquiry report (Annexure - 3) suggests that there is no use of JCBs for excavation of sand The NGT without taking into consideration the enquiry report and affidavit of the Collector, Jajpur, solely on the basis of some disputed photographs recorded a finding

that JCBs are used for excavation of sand from the said sand quarry. This is an incorrect appreciation of materials on record and such an important finding could not have been rendered solely on the basis of some disputed photographs. Therefore both the findings in para - 16 of the final order (Annexure - 8) are illegal and unsustainable.

- 31 That similarly the findings recorded in para - 17 of the final order (Annexure - 8) is a clear error of record. It is stated in the said para - 17 that the affidavit of the Collector, Jajpur establish that the appellant/ lessee was carrying heavy trucks over Plot No 1886, 1887 and 1891 which are of Grama Jungle and Smasankisam. On the contrary the Collector, Jajpur in both the affidavits (Annexure - 4 and 6) has clearly stated that the appellant / lessee is not using Plot No 1886, 1887 and 1891 which

are of Grama Jungle and Smasankisam for transportation of sand, On the other hand he is transporting sand through Plot No 2377, 2378 and 2379 of MouzaDhanatri (paragraph - 10 of reply affidavit Annexure - 6) In both the affidavits the Collector, Jajpur has affirmed the same view In Misc Case No. 54/2022 the Collector, Jajpur passed order directing the Tahasildar to ensure that the said Plot No 2377, 2378 and 2379 of MouzaDhanatri are used by the appellant / lessee for transportation of sand. That does not mean that the Collector, Jajpur has acknowledged the allegation of the complainant/ Respondent No 1 to 3 that the appellant / lessee is transporting the sand over Plot No 1886, 1887 and 1891 There is a clear case of error of record in the final order (Annexure - 8) The consistent opinion of the Collector, Jajpur regarding use of road for

transportation of sand has been misread by the NGT. Moreover, the enquiry report (Annexure - 3) on this issue has also not been taken into consideration.

32 That in the above premises the appellant assailed the final order of NGT (Annexure - 8) in WP(C) No 25072/2023. The Hon'ble Single Judge without considering the merit of the case disposed of the writ petition solely on the ground of availability of alternative remedy of filing appeal in the Hon'ble Supreme Court. Therefore the present appeal is being preferred by the appellant challenging the impugned order under Annexure - 1 on the following amongst other -

GROUNDS

A) For that the impugned order under Annexure - 1 of the Hon'ble Single Judge suffers from

gross error of law, hence the same is liable to be set aside

B) For that the Hon'ble Single Judge has committed gross error in not considering the merit of the case put forth by the appellant in the writ petition which apparently establish that the final order of NGT (Annexure - 8) is unsustainable in fact and law.

C) For that the Hon'ble Single Judge should have considered the fact that the appellant has been depriving of contesting the case before the NGT due to the chronic illness of his wife who is a cancer patient and was under treatment in AIIMS during the relevant period which is supported by the medical records Annexure - 7 So for the interest of justice and fairplay the appellant / lessee should have at least given an opportunity to fight out the case in NGT following the principles of natural justice and for that purpose the

Hon'ble Single Judge should have set aside the final order of NGT (Annexure- 8)

D) For that the law is well settled that even if there is an appellate forum available under the NGT Act to examine the correctness of the final order of the NGT (Annexure - 8) still on the ground of principles of natural justice and fairplay and in order to afford an opportunity of hearing to appellant / lessee, who is deprived of contesting the case before the NGT due to bonafide reasons, the Hon'ble Single Judge should have remanded the matter for fresh disposal after setting aside the final order of NGT (Annexure - 8)

E) For that in several decisions the Hon'ble Apex Court has decided that despite the alternative remedy available under the Act the final order of the Tribunal could be challenged in the Hon'ble High Court. In the instant case the appellant / lessee is deprived of contesting his case, so it is a fit

case for interference by the Hon'ble High Court under Article 226 and 227 of the Constitution of India

F) For that the Hon'ble Single Judge should have held that the jurisdiction of the Hon'ble High Court is not excluded by enactment of Section 22 of the NGT Act. The power of superintendence can be exercised by the Hon'ble High Court where there is gross illegality in the order of the Tribunal subordinate to it. Hence it cannot be said that the Hon'ble High Court has no jurisdiction to entertain a writ petition against NGT order.

G) For that the Hon'ble Single Judge lost sight to the voluminous pleadings and documents filed by the appellant / lessee in support of his case. More particularly, the affidavits filed by the Collector, Jajpur in the case before the NGT clearly proves that the appellant / lessee has never violated the terms and conditions of the EC permission. Similarly, the joint

investigation report also negated the allegation of the complainant / Respondent No 1 to 3 with regard to the violation of EC permission. These are the vital pleadings from the side of the District Administration, which ought to have been taken note of by the Hon'ble Single Judge while deciding the case.

H) For that the Hon'ble Single Judge committed illegality and irregularity in not entertaining the writ petition on the ground of maintainability whereas many writ petitions are pending in the Hon'ble High Court which are filed against the final order of NGT

I) For that the impugned order under Annexure - 1 is therefore nonest in the eye of law, hence liable to be set aside

J) For that the Hon'ble Single Judge did not deal with the settled position of law in relation to the challenging the order of NGT before This Hon'ble

Court The Hon'ble Apex Court as well as This Hon'ble Court has settled the position holding that, the provision of appeal under the NGT Act cannot take away the power of this Hon'ble Court to adjudicate the petitioner under Article 226 and 227 of the Constitution of India challenging the order of the Tribunal

33 That the Appellant having no other speedy and efficacious remedy available to him, is constrained to invoke the extraordinary jurisdiction of this Hon'ble Court for appropriate relief.

PRAYER

The appellant most humbly prays that This Hon'ble Court, would graciously be pleased to admit this Writ Appeal, issue notice to the Respondents and after hearing the parties, allow the same and set aside the order of the Hon'ble Single Judge under Annexure - 1

and further after hearing the matter, quash the final order of NGT (ANNEXURE – 8) and resultant O.A. No 24/2023 filed by the complainants/ Respondent No 1 to 3 may be dismissed in the interest of justice ,

And pass such other order(s) / direction(s) as your Lordship deems fit and proper ;

And for this act of kindness, the Appellant as in duty bound shall ever pray

By the Appellant through

Cuttack

Date .

Advocate

AFFIDAVIT

I, Sri Bikash Swain, aged about 49 years, S/o Late Basudeb Swain, Plot No C/26, HIG Duplex, Sailashree Vihar, PS.-Chandrasekharapur, Bhubaneswar, Dist - Khurda, do hereby solemnly affirm and state as follows

1. That, I am the Appellant in this case
2. That, the facts stated above are true to the best of my knowledge and belief

Identified By

Advocate

DEPONENT

CERTIFICATE

Certified that the grounds set forth in the above appeal are good grounds and I undertake to support the same at the time of hearing and due to non-availability of cartridge papers this has been typed on thick white papers

Advocate

ANNEX JRE-P/12 219

IN THE HIGH COURT OF ORISSA : CUTTACK

(Writ Appellate Jurisdiction Cases)

W.A. NO. 2051/2023

(Arising out of W P. (C) No. 25072/2023 disposed
of on 11.08.2023)

Bikash Swain

Appellant

Versus

Krushna chandra
Khatua and others

Respondents

WRITTEN NOTE OF SUBMISSION ON BEHALF OF THE
APPELLANT

1. That the appellant in the instant writ appeal begs to challenge the order 11 08 2023 passed in WP(C) No 25072/2023 by the Hon'ble Single Judge, who declined to entertain the WP(C) No 25072/2023 filed by the appellant challenging the order dt 17 07 2023 passed in O A No 24/2023 by the National Green Tribunal (NGT), Eastern Zone Bench, Kolkata, on the ground that such order is appellable U/s 22 of the National Green Tribunal Act, 2010, hence the writ petition is not maintainable
2. That the main grounds of challenge is as follows

A. The Appeal Provision under Section 22 of The National Green Tribunal Act does not oust the High Court's Jurisdiction under Article 226 and 227 of the Constitution of India Hence Writ is maintainable

B The Principle of Natural Justice has not been followed and as the appellant although was made party but was not heard by the Hon'ble NGT hence the Hon'ble Single Judge ought to have dealt with the merits of the case


A.V.V.

C. Even though the state government's' report and submissions are in favour of the appellant the order of the Hon'ble NGT was against the appellant without dealing with the report hence it is a clear case of Non Application of mind

D. As the order of Hon'ble National Green tribunal is passed without dealing with the favourable report of the state government and also without any violation by the appellant hence it is violative of the Fundamental rights of the appellant hence writ is maintainable

A. WRIT CHALLENGING THE ORDER OF NGT IS MAINTAINABLE EVEN THOUGH APPEAL PROVISION IS THERE U/S.22 OF NGT ACT.

3 That it is most humbly submitted that the Hon'ble High Court can entertain the writ petition even though there is appeal provision For substantiating the above submission following judgements may kindly be perused

L. Chandra Kumar Vs. Union of India (UOI) and Ors. (AIR1997SC1125)

The Hon'ble Apex court has made the following observation

“x+x x-x x+x

78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary

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would indicate that they were very greatly concerned with securing the independence of the judiciary

These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions,

the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions.

The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that



the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded

79 . We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided ”

Madhya Pradesh High Court Advocates Bar Association and Ors. Vs. Union of India (UOI) and Ors. AIR 2022 SC 2713

The Hon'ble Supreme Court while addressing the identical issue is of the following view

“ * * * * * ”

Conclusions

38. In consequence of the above analysis, our conclusions are,

A. The National Green Tribunal Under Section 14 & 22 of the NGT Act does not oust the High Court's jurisdiction Under Article 226 & 227 as the same is a part of the basic structure of the Constitution.

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B The remedy of direct appeal to the Supreme Court Under Section 22 of the NGT Act is intra vires the Constitution of India

C Section 3 of the NGT Act is not a case of excessive delegation of power to the Central Government

D. The seat of the NGT benches can be located as per exigencies and it is not necessary to locate them in every State The prayer for relocating the Bhopal NGT to Jabalpur is unmcrited and is rejected

39. With the foregoing conclusions, the Writ Petition is found devoid of merit and is dismissed The parties to bear their own cost ”

M/S. Hotel The Grand Tulsi and 15 others -Versus- State of UP and 7 Others (Neutral Citation No. – 2023 : AHC.160024-DB)

Hon’ble High Court of Allahabad High Court has observed as follows

“10 Thus, in our opinion considering the ratio of the decisions of the Apex Court particularly, the ratio laid down in the case of Madhya Pradesh High Court Advocates Bar Association and another (supra) there can be no second thoughts about the maintainability of the instant writ petition The writ petition is held maintainable

11 However, from the order of the NGT, Principal Bench, New Delhi, impugned in the instant writ petition, we find that the NGT has taken into consideration the circumstances in respect to the affected parties who were not issued notices by the Forum as is the case of the writ petitioner before us The relevant portion of the order of NGT is being quoted here under - "32 Though opportunity of hearing was available to all the affected parties as

ACB

they have been issued notices by PCB/DMs about present proceedings and will also have opportunity to present their respective cases before the Joint Committee, any party aggrieved by the above order, who claims that opportunity of being heard was not given by the Tribunal, is free to avail such opportunity by moving an application in the present matter, apart from statutory remedies against assessment/recovery of compensation "

12 From the perusal of Para 32, it is borne out that the petitioners have been extended an opportunity to present their respective claims by moving an application before the Joint Committee

13 In the wake of the above, we are not inclined to entertain the writ petition. The petitioners would be at liberty to file appropriate application for interim relief/protection before the Joint Committee

14 With the aforesaid observations, the writ petition is disposed of"

Kalia Sethi and Others -Versus- State of Odisha and others,
2018 (1) OLR 386

The Hon'ble Orissa High Court is of the view as follows

"Para-7 ~*~ **~ ~*~

The National Green Tribunal Act, 2010 does not specifically exclude the power of High Courts under Articles 226 and 227 though it excludes the jurisdiction of civil Court as provided under Section 29, but there is no express exclusion of the jurisdiction of the High Court

Section 22 of the National Green Tribunal Act, 2010 confers power of appeal to the Supreme Court through any person aggrieved by any award, decision or order of tribunal. The same is almost like the second appeal on substantial question of law

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It is evident from the provision of the National Green Tribunal Act, which exercises both original jurisdiction U/s 14 as well as appellate jurisdiction U/s 16, as such it can well be said that whether an order passed by the National Green Tribunal was in its original or appellate jurisdiction, the right of appeal to Supreme Court U/s 22 is put to the same test as that of the second appeal U/s 100 of the Civil Procedure Code

Section 29 of the National Green Tribunal Act bars the jurisdiction of the civil courts. When we have examined the Administrative Tribunal Act, 1985, there is parimateria provision U/s 28 of the Act, 1985 which bars the jurisdiction of the civil Court and the Hon'ble Apex Court taking into consideration the basic structure of Constitution conferring power of judicial review upon the High Court under Articles 226 and 227 has struck down the provision of section 28 laid down under the Administrative Tribunal Act

Similar issue fell for consideration before the Hon'ble Bombay High Court in the case of B Brother Builders v Santosh Daundkar and others (WP/594/2015 with connected writ petitions) wherein at paragraph 22 Hon'ble Bombay High Court has been pleased to hold that the Bombay High Court has jurisdiction to entertain writ petitions filed challenging the order passed by the National Green Tribunal

The Hon'ble Madras High Court in the case of Kollidam Aaru Pathukappu Nala Sangam -vs- Union of India, reported in MANU/TN/1929/2014 2014 (5) CTC 397 has held the writ petition maintainable against the order passed by the National Green Tribunal

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4 That after going through the judgment rendered herein above and discussing the various provisions of the National Green

Tribunal Act, are of the view that in absence of any express exclusion, not to entertain the writ petition under Articles 226/227 of the Constitution, we hereby reject the objection raised by the Pollution Control Board with Control bare respect to maintainability of the writ petition”

Ibrat Faizan Versus Omaxe Build home Private Limited- 2022
Live Law (SC) 481

Hon'ble Apex court while dealing with the similar issue but with respect to the Consumer protection Act has made following observation

“14. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission which has been passed in an appeal under Section 58(1)(a) (iii) of the 2019 Act We are in complete agreement with the view taken by the High Court However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

14.1 The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of *Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97*, which has been consistently followed by this Court (see the recent decision of this Court in the case of *Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29*). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution It goes without saying that even while considering the

grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.

16. In view of the above discussion and for the reasons stated above and subject to the observations made hereinabove, it cannot be said that a writ petition under Article 227 of the Constitution of India before the concerned High Court against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) of the 2019 Act was not maintainable. We are in complete agreement with the view taken by the High Court. As the matter on merits is yet to be considered by the High Court, we do not express anything on merits in favour of either of the parties. However, it is observed that while considering the question of interim relief/stay, the High Court will bear in mind the observations made hereinabove.”

B. THE PRINCIPLE OF NATURAL JUSTICE HAS NOT BEEN FOLLOWED AND AS THE APPELLANT ALTHOUGH WAS MADE PARTY BUT WAS NOT HEARD BY THE HON'BLE NGT HENCE THE HON'BLE SINGLE JUDGE OUGHT TO HAVE DEALT WITH THE MERITS OF THE CASE.

It is most humbly submitted that, the Hon'ble Single Judge should have considered the fact that the appellant has been deprived of contesting the case before the NGT due to the chronic illness of his wife who is a cancer patient and was under treatment in AIIMS during the relevant

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period which is supported by the medical records Annexure - 7 So for the interest of justice and fair play the appellant / lessee should have at least given an opportunity to fight out the case in NGT following the principles of natural justice and for that purpose the Hon'ble Single Judge should have set aside the final order of NGT (Annexure- 8)

D) For that the law is well settled that even if there is an appellate forum available under the NGT Act to examine the correctness of the final order of the NGT (Annexure - 8) still on the ground of principles of natural justice and fairplay and in order to afford an opportunity of hearing to appellant / lessee, who is deprived of contesting the case before the NGT due to bonafide reasons, the Hon'ble Single Judge should have remanded the matter for fresh disposal after setting aside the final order of NGT (Annexure - 8)

C. EVEN THOUGH THE STATE GOVERNMENT'S REPORT AND SUBMISSIONS ARE IN FAVOUR OF THE APPELLANT THE ORDER OF THE HON'BLE NGT WAS AGAINST THE APPELLANT WITHOUT DEALING WITH THE REPORT HENCE IT IS A CLEAR CASE OF NON APPLICATION OF MIND.

AND

D. AS THE ORDER OF HON'BLE NATIONAL GREEN TRIBUNAL IS PASSED WITHOUT DEALING WITH THE FAVOURABLE REPORT OF THE STATE GOVERNMENT AND ALSO WITHOUT ANY VIOLATION BY THE APPELLANT HENCE IT IS VIOLATIVE OF THE FUNDAMENTAL RIGHTS OF THE APPELLANT HENCE WRIT IS MAINTAINABLE.

Handwritten signature/initials

It is most humbly submitted that in so far as the merit is concerned, even though the report joint verification and the observation made there in is completely denied the allegations made against the appellant still the order was passed against the appellant. Thus the impugned order of Hon'ble NGT is not just illegal and arbitrary but also violative of the Fundamental rights of the appellant.

The Joint verification report is at -Annexure-3 Page-123 of the Writ Appeal Memo

The counter filed by the State which is in favour of the appellant is at Annexure-4, Page 125, Relevant page -129

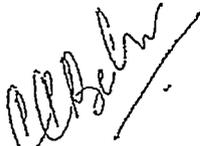
Due to the wrong appreciation of the Hon'ble Tribunal the right of the appellant conferred under Article 19 and 21 of the Constitution is violated.

Thus the Hon'ble Single judge ought to have entertained the present writ petition and adjudicated the same in the interest of justice.

In view of the above this Hon'ble Court may pass appropriate order as deemed fit and proper in the interest of Justice.

And for this act of kindness the appellant as in duty bound shall ever pray.

Cuttack
Date 21 03 2024


(Prabhu Prasanna Behera)
Advocate for the Appellant

IN THE SUPREME COURT OF INDIA
[SCR XXI RULE 3(1)(a)]
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) NO. _____ OF 2024

IN THE MATTER OF:

Bikash Swam

PETITIONER

VERSUS

Krushna Chandra Khatua & Ors .RESPONDENT

APPLICATION FOR EXEMPTION FROM FILING
CERTIFIED COPY OF IMPUGNED ORDER

To,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF
THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
ABOVENAMED PETITIONER

MOST RESPECTFULLY SHOWETH:

1. That the present Special Leave Petition under Article 136 of the Constitution of India has been filed by the Petitioner assailing the impugned judgment dated 19 04 2024 passed in the order of W.A No 2051 of 2023 by the Hon'ble High Court of Orissa at Cuttack in the case titled as "*Bikash*

of Orissa at Cuttack in the case titled as "*Bikash Swain Vs. Krushna Chandra Khatua & Others*" thereby, erroneously the petition filed by the Petitioner without taking into consideration that Ld NGT by passing the order dated 17 07 2017 against the Petitioner without giving any opportunity to be heard which is violation of principle of natural justice as well as the fundamental right of Petitioner provided under Article 21 of Constitution of India

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2. That the certified copy of the order, dated 19 04 2024 could not be obtained during the preparation of the Special Leave Petition and the counsel for the Petitioner/s has asked the Petitioner/s to apply for the certified copy from the Hon'ble High Court After obtaining the same, the Petitioner/s will file certified copy of the order dated 19 04 2024 before this Hon'ble Court if this Hon'ble Court directs for the same
3. That the Application is made bonafide and in the interest of justice

PRAYER

It is, therefore, most respectfully prayed that your Lordships may graciously be pleased to -

- a) Exempt the applicant from filing certified copy of the order dated 19 04 2024 passed by the Hon'ble High Court of Orissa at Cuttack

And/or;

- b) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts & circumstances of the present case

Filed on 2024

Filed By



Devendra Kumar Shukla
Advocate for Petitioner
AOR Code 2774

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SECTION -

IN THE SUPREME COURT OF INDIA
CIVIL / CRIMINAL / APPELLATE / ORIGINAL JURISDICTION

SPECIAL LEAVE PETITION (CIVIL/CRIMINAL) NO OF 20
CRL. MISC. PETITION NO. / I.A. NO. OF 20
WRIT PETITION (CIVIL/CRIMINAL) NO OF 20
REVIEW PETITION (CIVIL/CRIMINAL) NO OF 20
TRANSFER PETITION (CIVIL/CRL) OF 20
CIVIL / CRIMINAL / APPEAL NO OF 20

IN THE MATTER OF

Bikash Swain PETITIONER(S)
PEPELLANT(S)

-VERSUS-

Krushna Chandra Khatao & Ors. RESPONDENT(S)

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1	Synopsis & List of dates		
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3.	ANN. P11 to P12		
4			
5.	Application for exemption		
6.	from filing certified copy		
7	of I/O		
8			
9			
10			
11			



Date - 26/04/2024

Filed by Dhendra Kumar
Adv. for the petitioners
AOR Code - 277A

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VAKALATNAMA
(SCR Order IV Rule 18)
IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL/ORIGINAL/ APPELLATE JURISDICTION
Civil/Cr/SLP/Appeal/TP/Writ Petition(S) NO- OF 2024

IN THE MATTER OF

Bikash Swain

PETITIONER(S)

VERSUS

Krushna Chandra Khata & Ors,
RESPONDENT(S)

I/we petitioner

, the under signed Petitioner(S)/ Appellant(s)/ Respondent(s) in the above Petition/ Appeal/ Reference do hereby appoint

DEVENDRA KUMAR SHUKLA,
Advocate-on-Record,
Supreme Court of India

and retain to act and appear for me/ us in the above suit/ Appeal/ Petition and on my/our behalf to conduct and prosecute or (defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein including proceedings in taxation and applications for review to file and obtain return of documents and deposited and receive money of my/ our behalf in the said Suit/Caveat/Appeal/ Suit/ Petition/ Reference and application and applications of review and to represent me/us and to take all necessary steps on my / our behalf in the above matter I/We agree to ratify act done by the aforesaid advocate in the pursuance of this authority

Dated on this 18, day of April, 2024

ACCEPTED/IDENTIFIED/CERTIFIED



(Devendra Kumar Shukla)
Advocate

Bikash Swain

PETITIONER(S) No / APPELLANT (S)No
RESPONDENT(S)No / CAVEATOR(S)No

It is identified & Certified that the petitioner/Respondent/Caveator has signed the Vakalatnama in my presence

MEMO OF APPEARANCE

THE REGISTRAR
SUPREME COURT OF INDIA
NEW DELHI

Sir,

Please enter my appearance on behalf of the petitioner(s)/ Applicant/ Respondent (s) in the above matter
New Delhi

Dated this the 26 day of April 2024

Address for service.

202, Gagandeep Building, 12 Rajendra Place,
New Delhi-08
Telephone 011- 49124797,
Mobile No 9999652497, 9873104009



(DEVENDRAKUMAR SHUKLA)
Code-2774

Advocate-on-Record

for the Petitioner No /Appellant no
Respondent No /Caveator (s)

RE: O.A. NO. 14/2023, Krushna Chandra Khatua & Ors. Vs. State Level Environment Impact Assessment Authority & Ors.

messages

B.P. Singh <officebpsingh.dl@gmail.com> Thu, Jul 4, 2024 at 5:43 P
o: "advajitsahoo@gmail.com" <advajitsahoo@gmail.com>, "seiaaorissa@gmail.com" <seiaaorissa@gmail.com>, prsecor@nic.in,
svsecod@nic.in, dm-jajpur@nic.in, "tdrvyasanagar@gmail.com" <tdrvyasanagar@gmail.com>, bikashswain@gmail.com,
anbesh1@ospcboard.org

Dear,
Please find attached herewith the application filed in the abovementioned matter.

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With Regards,
BHUPENDRA PRATAP SINGH
ADVOCATE,
SUPREME COURT OF INDIA,
I-5 LGF, JANGPURA EXTENSION
NEW DELHI - 110 014.
09873835833. 085100 45834
Phone: 011- 45875327, 43575328
Email: officebpsingh.dl@gmail.com
officebpsingh@gmail.com

 Krushna Chandra Khatua and Ors.pdf
5885K

B.P. Singh <officebpsingh.dl@gmail.com> Thu, Jul 4, 2024 at 5:46 P
Draft To: "seiaaorissa@gmail.com" <seiaaorissa@gmail.com>

[Quoted text hidden]

 Krushna Chandra Khatua and Ors.pdf
5885K

PROOF OF SERVICE

BEFORE THE NATIONAL GREEN TRIBUNAL EASTERN ZONE
BENCH KOLKATA

M.A. NO. _____/2024

IN
ORIGINAL APPLICATION NO. 14/2023/EZ

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IN THE MATTER OF:

KRUSHNA CHADRA KHATUA & ORS.

...Petitioner

VERSUS
ODISHA STATE LEVEL ENVIRONMENT & ORS.
IMPACT ASSESSMENT AUTHORITY VAKALATNAMA

...Respondent

KNOW ALL to whom these present shall come that I, BIKASH SWAIN S/O. BASUDEB
SWAIN, R/O: C/26 HILL DUPLEX SAILASHREE VIHAR DIST. KHURDA
BHUBANESHWAR, ODISHA

The above named

R. NO. 6

do hereby appoint

B. P. SINGH & ASSOCIATES

B.P. SINGH (UP/8661/19)

OFFICE: I-5, LGF, JANGPURA EXTN.,

OLD NO. D/902-R/1997

NEW DELHI - 110014

(Advocates)

MOBILE: +91-9873835833

Nalcul Nirwan (D/7119/2020)

PHONE: 011-45875327

(hereinafter called the advocate/s) to be my/our Advocates in the above noted case authorize him: -

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each court by me/us.

To sign, file, verify and present pleadings, appeals, cross review revision, withdrawal, compromise or other petitions or affid deemed necessary or proper for the prosecution of the said case in all for each stage.

To file and take back documents, to admit and/or deny the d

To withdraw or compromise the said case or submit to arbit may arise touching or in any manner relating to the said case.

To take execution proceedings.

To deposit, draw and receive monthly cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of said case.

To appoint and instruct and other Legal Practitioner authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.

And I/We the undersigned to hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and proposes.

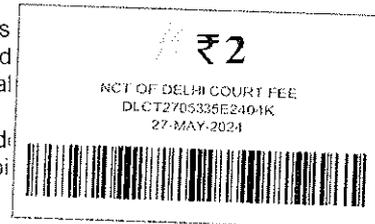
And I/We undertake that I/We or my/our duly authorized agent would appear in Court on all hearings and will inform the Advocate for appearance when the case is called.

And I/We the undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain for himself.

And I/We the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once fee is paid, I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHEREOF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 25 day of 6 2024

Accepted, subject to the terms of the fees.



ons
be
ees
that

[Signature]

ADVOCATES

[Signature]

[Signature]

Clients

(I identify the signatures of the client who have signed in my presence.)