

BEFORE THE NATIONAL GREEN TRIBUNAL EASTERN ZONE

BENCH, KOLKATA

I.A No. 129 /2024

(Arising Out of ORIGINAL APPLICATION NO. 167/2023)

IN THE MATTER OF –

SRIKANT KUMAR PAKAL AND OTHERS

... APPLICANTS

VERSUS

STATE OF ODISHA AND OTHERS

... RESPONDENTS

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CUTTACK

BY THE RESPONDENT NO. 13 THROUGH

DATE - 18.12.24


ADVOCATE

BPSWA CHANDAN MOHANTY
(ADVOCATE)

En - 0-540/2018

Ph - 9658795557



BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

I.A No. _____/2024

(Arising Out of ORIGINAL APPLICATION NO.
167/2023)

IN THE MATTER OF –

An application U/s- 19 (4) (k) r/w- Section 18 (1) of the
National Green Tribunal Act, 2010.

AND

IN THE MATTER OF –

An application for dismissal of the Original Application
on the ground of Non Joinder and Mis Joinder of the
necessary parties.

IN THE MATTER OF –

Srikant Kumar Pakal And Others ... APPLICANTS

VERSUS

State Of Odisha and Others ... RESPONDENTS

(The humble petition of
the Respondent No.13)

SHANTI CONSTRUCTION SAMBALPUR (P) LTD.
Managing Director

Handwritten signature

Pradipta Kumar Mohan
PRADIPTA KUMAR MOHAN
Notary, Cuttack Town
Regd.No-ON-84/1995

MOST RESPECTFULLY SHEWETH:-

1. That the present Original Application have been filed by the applicant by challenging the illegal lifting of Moorum/Murum (weathered Laterite), Stone, Sand and Soil (Minor Minerals) in Mania, Uchapada village under Tangi-Choudwar under Cuttack district from government land by the Respondent No. 13 without having any Environment Clearance.
2. That as the matter stud thus, the Respondent No. 13 has come to know from the reliable sources which he believes to be true that, for the work as alleged by the applicant in the area including Plot No. 1606, Khata No. 529 under Mania Village, Khata No. 530, Plot No. 48 and Khata No. 532, Plot No. 550 under Uchapada Panchayat, Tangi-Choudwar Tahasil, there were other six numbers of contractors/parties who were working for the self same work i.e. " Bhadrak- Nergundi 3rd line project-Execution of balance Earthwork and minor ridges in flyover portion between Byree-Kapilas Road (Ch-1500 to Ch- 6200 from CSB of Byree) of Bhadrak-Nergundi 3rd Line of East Coast Railway". Therefore, the Applicant ought to have made all the six contractors as parties before this Hon'ble Tribunal but he only choose to make party to the Respondent No.13 in this original application and levelled all the

Pradipta Kumar Mohanti
Notary

SHANT CONSTRUCTION & MATERIALS PVT. LTD.
Managing Director

Pradipta
PRADIPTA KUMAR MOHANTI
Notary, Cuttack Town
Regd.No-ON-04/1995

allegations against the Respondent No.13. However, from this conduct it creates doubt over the intention of the Applicant before this Hon'ble Tribunal as the Applicant has not approached with the clean hands. Further it cannot be ruled out that, the other contractors who are/were doing the same work are in hand in gloves with the Applicant. Therefore, it is sufficient to dismiss the Original Application with cost for non-joinder and mis-joinder of necessary parties.

3. That further it is important to mention here that, the said contractors have completed their works and utilised the soil and morrums. But as per the work order issued to the Respondent No. 13, does not include any such work which requires morrum or requires cutting down of trees in any manner whatsoever and which can be verified from the agreement which has been annexed by the Respondent No. 13 in its counter affidavit under annexure A/13 SERIES.

4. That in so far as the report made by the committee is concerned, the committee could have got the exact and relevant information if all the contractors who have been working in the self same project would have been parties and called during the inquiry. However, as at the time of inquiry they have not been called for, the said enquiry report is bad in the eye of law.

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.

Managing Director

PRADIPTA KUMAR MOHANT,
 Notary, Cuttack Town
 Regd.No-QN-04/1995

Furthermore, the Railway i.e. the Respondent No.8 also not disclosed before this Hon'ble Tribunal that, before the Respondent No. 13 there were many contractors who were doing the same work at the said alleged plots. Hence, the correct picture with regard to the lis-pendens before this Hon'ble Tribunal neither brought by the Applicant not by the Respondent No.8 i.e. Railway for arriving at a just decision by this Tribunal.

5. That from the bare reading of the Original Application it is crystal clear that, the Applicant has made only allegations as against the Respondent No. 13 but it is absolutely clear from the petition that, the Applicant was very well aware about the other contractors but deliberately being hand in gloves with those contractors as well as with the other respondents, the Applicant has made only allegation against the Respondent No. 13. However, the Applicant failed to appraise this Tribunal about the illegal lifting of morrum and cutting down of trees. Therefore, it is humbly submitted that, the lifting of morrum and cutting down of trees does not come within the scope of work of the Respondent no 13 which has been allotted by the Railway. Fact remains that, there were many other contractors who were doing the self-same project and have not been made parties by the

Pradipta Kumar Mohanti

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.

[Signature]
Managing Director

[Signature]

PRADIPTA KUMAR MOHANTI
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Regd.No-QN-04/1995

applicant for the reason best known to him. However, the Respondent No.13 with much difficulty managed to get the details of only 5 nos of contractors who were/are working on the self same project. It is to be submitted that those contractors were working before the work order issued to the Respondent no -13 and the work order was subsequently cancelled by the Railway as he could not perform his work . After which, the Railway has issued another work order for the self same work. Therefore, it can be safely concluded that, the Applicant has not approached this Hon'ble Tribunal with clean hands and hence he does not deserve any relief from this Hon'ble Tribunal. A detailed chat of other contractors who are/were working on the self-same project are given below

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.
Managing Director

Contractor's List

| Sl. No | Name of the Contractor | Project Name | Duration | | Agreement No | Remarks |
|--------|---------------------------------|---|------------|------------------|--------------|---------|
| | | | Start Date | Completion date | | |
| 1 | Fortunes Pvt Ltd | Bhadrak - Nergundi 3rd line project- Execution of Earthwork and minor bridges in flyover portion between Byree Kapilas Road (Ch-6200 to Ch-9000 from CSB of Byree) of Bhadrak-Nergundi 3rd Line of East Coast Railway. | | | | |
| 2 | BKD-Sahu Engineers JV | Bhadrak - Nergundi 3rd line project- Execution of balance Earthwork and minor bridges in flyover portion between Byree Kapilas Road (Ch- 6200 to Ch-9000 from CSB of Byree) of Bhadrak-Nergundi 3rd Line of East Coast Railway. | | | | |
| 3 | Amulya Das Construction Pvt Ltd | Bhadrak - Nergundi 3rd line project- Execution of balance Earthwork and minor bridges in flyover portion between Byree Kapilas Road (Ch- 6200 to Ch-9000 from | | Work in Progress | | |

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Regd.No-ON-04/1995

| | | | | | | |
|---|-----------------------------------|--|------------------|------------------|---|--|
| | | CSB of Byree) of Bhadrak-Nergundi 3rd Line of East Coast Railway. | | | | |
| 5 | Thomathu Infra Projects Pvt. Ltd. | Bhadrak - Nergundi 3rd line project- Execution of balance Earthwork and minor bridges in flyover portion between Byree Kapilas Road (Ch- 1500 to Ch-6200 from CSB of Byree) of Bhadrak-Nergundi 3rd Line of East Coast Railway. | | Work in Progress | | |
| 6 | M/s RKIPL-KVRECPL-SKC JV | Bhadrak-Byree 3rd line Project: Execution of earthwork in formation, major bridges, minor bridges, service buildings, ballast supply, P.Way linking, general electrification of service buildings and other allied works in between Ranital Junction to Jakhapura (57 Km approx) and Haridaspur to Byree (16 Km approx.) of East Coast Railway. | 15 February 2021 | Work in Progress | C.Agt No. 10/CPM/III/B BS/ECO R/2021 Dtd.16.06.2021 | |

6. That as the Applicant has not approached this Hon'ble Tribunal with clean hand as because he has not made those contractors as necessary parties and as also the Applicant suppressed the material facts but on the other hand the Applicant intentionally made allegation only against one person i.e Respondent no 13 and left other contractors deliberately by not making them parties. Therefore, the Original Application of the Applicant is liable to be dismissed on the ground of non joinder, misjoinder and necessary of parties, as the Applicant has not approached this Hon'ble Tribunal with clean hands.
7. That on the aforesaid facts and circumstances it is settled provision of law that, if an applicant does not come with clean hands, then he is not entitled to get any relief and furthermore, in the present case as the

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD,
Managing Director

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Notary, Cuttack Town
Regd.No-ON-04/1995

applicant did not made the other contractors as necessary parties, on this ground alone the Original Application may be dismissed with exemplary cost. This IA for dismissing the Original Application on the ground of mis joinder and non-joinder of necessary parties is bonafide.

PRAYER

In view of the above facts and circumstances, the Respondent No. 13 humbly prays that this Hon'ble Tribunal may graciously be pleased to admit this application,

And may further be pleased to dismiss the Original Application filed by the Applicant, on the ground of mis-joinder and non -joinder of necessary party

And may be pleased to pass any other order(s) and/or direction(s) as this Hon'ble Tribunal may deem fit and proper;

And for this act of kindness, the Respondent No. 13 as in duty bound shall ever pray.

Cuttack By the Respondent No. 13 through


Date- 18.12.2024


Advocate

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.

Managing Director




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I.A No. _____/2024

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IN THE MATTER OF –

Srikant Kumar Pakal And Others ... APPLICANTS

VERSUS

State Of Odisha and Others ... RESPONDENTS

AFFIDAVIT

I, Bipin Agrawal, aged about- 62 years, S/o- Late Hariram Agrawal, resident of at- Plot No. 1104/2707, Bangalipara, badabazar, Sambalpur-768006 being the Managing Director of Shanti Construction Pvt. Ltd, do solemnly affirms and state as follows-

1. That I am the Managing Director of the Respondent No. 13 and I am acquainted with the facts of the case. I am swearing the affidavit being duly authorised on behalf of the company.
2. That facts stated in this petition are true to the best of my knowledge and belief.

Identified By

Biswa Chandra Mohanty

Advocate

SHANTI CONSTRUCTION PVT. LTD.

Bipin Agrawal

Deponent

Solemnly sworn before
me by..... *Bipin Agrawal*
being identified by..... *B.C. Mohanty Advocate*
at Cuttack Town Dated..... *18/12/2024*

(BIPIN AGRAWAL)

P.K. MOHANTY, Notary, Cuttack Town
Regd. No-CN-04/1995

Copy of the IA and Preliminary
Objection filed by the
respondent no. 13 in OA No. 167
of 2024 **Inbox**



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to csori, revsec.od, fesecc.o... ^

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I on behalf of the Respondent No. 13 files the copy of the Interim application and the copy of the Preliminary Objection to the counter affidavit/report filed by the Respondent no. 9.

Please find the attachments below.

Biswa Chandan Mohanty

LL.M

ADVOCATE

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Off/Res- Nayabazar, Cuttack, Odisha.

IA Pakal.pdf

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Preliminary
Objection Pakal...

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