

BEFORE THE NATIONAL GREEN TRIBUNAL EASTERN ZONE

BENCH, KOLKATA

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- 16.12.24


ADVOCATE

BISWA CHANDAN MOHANTY
(ADVOCATE)

En. O-540/2018

Ph- 9658745557.



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

ESTERN ZONE BENCH,

KOLKATA

ORIGINAL APPLICATION NO. 167/2023

IN THE MATTER OF-

SRIKANT KUMAR PAKAL & ORS ... APPLICANTS

Versus

STATE OF ODISHA & ORS ... RESPONDENTS

PRELIMINARY OBJECTION TO THE REPORT FILED BY THE

RESPONDENT NO. 9

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 the respondent No. 13 most humbly files the preliminary objections in the present case after receiving the report of the enquiry committee constituted by the order of his Hon'ble Tribunal.
2. That the preliminary objection is based on some substantial as well as material fact and law which is to be adjudicated by This Hon'ble Tribunal in the interest of Justice.
3. That at the outset Respondent No.13 object to the report filed by the Respondent No.9 as per the order passed by this Hon'ble Tribunal in the present case in hand vide order dated 23.11.2023.
4. That firstly it is noteworthy to mention here that, the joint committee report which was filed by the Respondent No.9 under Annexure R9/1 colly, has been made behind the back of the Respondent No. 13 and it is humbly submitted that no notice was served upon the Respondent

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SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.
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Managing Director

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

No. 13 to be present during the enquiry at the alleged plot in any manner whatsoever. However, this highhandedness of the Respondent No.9 clearly violates the principle of natural justice as because the Respondent No. 13 ought to be informed and also should be given an opportunity to explain or rebut.

5. That it is pertinent to mention here that, apart from the present answering respondent there were many other contractors who were engaged by the railway over a period of time to construct same work i.e. "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". However, the Respondent No. 13 managed to get the names of only these contractors which is mentioned in the chart below by describing their nature of work.

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 CSB of Byree) of Bhadrak-Nergundi 3rd Line of East Coast Railway.		Work in Progress		
4	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		

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

5	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	
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6. That it is pertinent to mention here that, as per the order dated 23.11.2023 passed by this Hon'ble Tribunal in which it was specifically observed in Para 13,14 and 15 that, notice issued to the Respondent No. 13, directed the respondents to file their counter and constituted a committee comprising some experts. The Para No. 13,14 and 15 of the order passed by this Hon'ble Tribunal is quoted here under.

**** 13. Issue notice to Respondent No. 13, Private Respondent, returnable within four weeks.*

14. The Respondents shall file their counter-affidavits within four weeks.

15. Considering the allegations made out in the Original Application, we deem it appropriate to constitute a committee comprising of the following members: -

- i) Senior Scientist, Odisha State Pollution Control Board;*
- ii) District Mining Officer, Cuttack;*
- iii) District Collector, Cuttack or his representative Officer not below the rank of Additional District Magistrate (A.D.M); and*
- iv) Divisional Forest Officer, Cuttack***"*

Therefore, it is humbly submitted that, it is incumbent upon the committee to issue notice to the Respondent No. 13 to be remain present during the inquiry at the alleged plots. However, if the committee would have called us to remain present during the time of

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

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.
 Director

Pradipta

inquiry, the Respondent No. 13 would have provided documents in his support as because the work order issued to the Respondent No. 13 does not require morrum to be lifted or cutting down of trees in any manner whatsoever. However, the Respondent No. 13 could have also brought to the notice of the Committee that there were other many contractors except the Respondent No. 13, who are/were executing the self-same work and could also have explained that, he had not lifted morrum or done any illegal work in any manner whatsoever.

7. That it is may not be out of place to mention here that, it is a well settled principle of law that NGT is a judicial body and therefore exercises adjudicatory functions. The very nature one adjudicatory function would carry with it the requirement of principle of natural justice are complied with, particularly when there is an adversarial system of hearing up the cases before the Tribunal or for that matter before the Courts in India. The NGT though is a special adjudicatory body constituted by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance with the principles of natural justice as envisaged in Section 19(1) of the Act.

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8. That in the present case in hand, as the notice has not been served to the Respondent No. 13 to remain present at the time of enquiry and an inquiry report has been made behind the back of the Respondent No. 13, clearly violates the principle of natural justice.

9. That since the fact that, which can also be verified from the Railway i.e. the Respondent No. 8 that there were/are other six contractors working on the same site for the Respondent No. 8 on the same project

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SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.
Managing Director

Pradipta
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Notary, Cuttack Town
Regd.No-ON-01/1995

which are enumerated at Para 5 in the chart form. Since, those contractors have not been made parties to the present Original Application by the Applicant, in absence of them the inquiry report is also incomplete apart from the ground that, there is a clear violation of natural justice as no notice was served to the Respondent No.13 in any manner whatsoever. Hence, the grounds stated hereinabove, the inquiry report is bad in law and also liable to be dismissed with heavy cost.

10. The Respondent No. 13 reserves the right to file a detailed objection to the alleged report in case this preliminary objection on the ground stated hereinabove are not accepted by this Hon'ble Tribunal.

Identified By

Bipin Chandra Mohanty
Advocate

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.

[Signature]
Managing Director

Deponent
(BIPIN AGRAWAL)

Cuttack
Date- 18.12.2024



Solemnly sworn before me by..... Bipin Agrawal.
being identified by..... B.C. Mohanty Adv
at Cuttack Town Dated..... 18/12/2024
[Signature]
18/12/2024
P.K. MOHANTY, Notary, Cuttack Town
Regd. No-ON-04/1995

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



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Date 19 Dec 2024 at
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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.

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