

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
EXECUTION APPLICATION NO.....⁰⁵.....2025
ORIGINAL APPLICATION NO.109 of 2023/EZ**

IN THE MATTER OF

Satrughan Meher

Applicant

Versus

State of Odisha and Others

Respondent(s)

INDEX

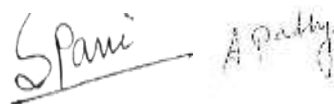
SI NO	PARTICULARS	PAGE NO
1	Execution Application	1-9
2	Copy of the order dated 10/01/2025 as ANNEXURE-1.	10-59
5	Vakalatnama	60

PLACE: Bhubaneswar

DATE: 12/09/2025

SANKAR PRASAD PANI,

ASHUTOSH PADHY



ADVOCATES

Plot 2132/4814, NageswarTangi, Bhubaneswar 751002 Cell-9437279278,

Email: sankarprasadpani@gmail.com

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

*(Under Section 26 read with Section 18 of the National Green Tribunal
Act, 2010)*

EXECUTION APPLICATION2025

**ARISING OUT OF Original Application No 109 OF 2023/EZ DISPOSED ON
10/01/2025**

IN THE MATTER OF:

1. Satrugan Meher, S/o- Late Lingaraj Meher, aged about 48 years, AT-
SALETIKIRA, PO-MARAKUTA, PS- JHARSUGUDA SADAR, DIST-
JHARSUGUDA, 768202 **APPLICANT**

VERSUS

1. State of Odisha, Through Chief Secretary, Government of Odisha, Lokaseba
Bhawan At/po-Bhuabneswar, Dist Khurdha, 751002 email: csori@nic.in
2. District Collector, JHARSUGUDA Office of the District Magistrate and
Collector Jharsuguda PIN-768204 Odisha Email: dm-jharsuguda@nic.in,
3. Member Secretary, Odisha State Pollution Control Board A/118, Unit-VII,
Nilakantha Nagar, Bhubaneswar, PIN 751012, Odisha Email:
paribesh1@ospboard.org
4. Member Secretary, State Environment Impact Assessment Authority (SEIAA)
Odisha, Bhubaneswar, 5RF-2/1, Acharya Vihar, Unit – IX, 751022 Email:
seiaaorissa@gmail.com

5. Superintendent of Police, JHARSUGUDA Office of the District Police Office
At./P.O.: Jharsuguda, PIN- 768204, Dist.: Jharsuguda EMAIL-
spjds.orpol@nic.in
6. Tahasildar, Jharsuguda At/Po-Jharsuguda, Dist-Jharsuguda,768204, Odisha,
Email- tah.parjang-od@nic.in
7. DIVISIONAL FOREST OFFICER- JHARSUGUDA Office of the Divisional
Forest Officer AT/Po-Badmal, KM Road, Jharsuguda, Pin-768202 ·
dfo.jharsuguda@odisha.gov.in.
8. Deputy Director General of Forests (C), Ministry of Environment, Forest and
Climate Change, Regional Office (EZ),A/3, Chandersekharpur, Bhubaneswar
– 751023, Email: roez.bsr-mef@nic.in
9. RSA infra project Private Limited. Address:- Shree Shyam Tower,Kavita
Nagar, Avanti vihar Main Road.Raipur, Chhatisgarh.Mail Id :-
info@rsainfra.in

RESPONDENTS

MOST RESPECTFULLY SHOWETH:

- I. The address of the Applicant is given above for the service of notices of this Application.
- II. The addresses of the Respondents are given above for the service of notices of this Application.

FACTS

1. That the Original Application was filed Challenging the illegal lifting of Moorum/Murum (weathered laterite), Sand, Stone AND Ordinary Earth in Jharsuguda Tahasil of Jharsuguda District from Government land without any Environment Clearance. The illegal mining is ongoing by felling big trees from Revenue Forest Land but no action has been taken by the District Administration and DFO, Jharsuguda despite of repeated complaints against the illegal mining by the private respondent. The Tahasildar has only issued a demand notice but took no deterrent action like Criminal Prosecution to prevent from further illegal mining.
2. That the Original Application No 109 of 2023 was disposed of on 10th January of 2025 with the following direction's to the respondents

*“Para 66, We, therefore, dispose of the present Original Application with a direction to the Joint Committee to re-compute the environmental compensation in the light of the observations made hereinabove **within a period of two months**, giving an opportunity of being heard to the Project Proponent on the quantum of compensation. The computation of environmental compensation already made by the Joint Committee shall be subject to the any final order which may be passed by it.”* Copy of the order dated 10/01/2025 is annexed here unto as **ANNEXURE-1.**

3. It is pertinent to mention here that though more than 5 months have passed but as on date no steps has been taken by the joint committee to re-compute the environmental compensation.
4. That Section 26 in The National Green Tribunal Act, 2010 prescribes for Penalty for failure to comply with orders of Tribunal and same is reproduced as follows

“(1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention: Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crores of rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code.

5. Similarly Section 28 in The National Green Tribunal Act, 2010 prescribes for Offences by Government Department. And same is reproduced as follows

“(1) Where any Department of the Government fails to comply with any order or award or decision of the Tribunal under this Act, the Head of the Department shall be deemed to be guilty of such failure and shall be liable to be proceeded against for having committed an offence under this Act and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly”.

6. That since the Respondents has not executed the order of the Honble Tribunal and deliberately violating the same, appropriate action deemed under section 26 and 28 of the National Green Tribunal Act 2010.

Grounds

That, the applicant is therefore approaching this Hon'ble Tribunal in view of the of the Non-Compliance of order of Hon'ble NGT dated 10TH January 2025

- a) That the non-implementation of the order invokes section 26 and 28 of the NGT Act 2010 where in stricter punishment such as 3years imprisonment or 10crores rupees penalty or both has been prescribed and knowing the same the respondents are willfully violating the order.

LIMITATION

That there is a subsisting cause of action because of the continuing violation of Hon'ble order of NGT dated 10/01/2025 and the respondents did nothing within the deadline in the order, hence this Execution application is not barred by limitation.

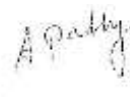
PRAYER

In light of the present facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be please to

- a) Direct the Respondents to show cause why the criminal proceedings shall not be initiated for violation of the Order of the Hon'ble Tribunal dated 10th January 2025 in paragraph 66.
- b) Direct the Respondent to show cause what steps they have taken to implement the order of Hon'ble NGT dated 10th January 2025 in paragraph 66.
- c) Direct the respondents to file their compliance report.
- d) Failure to provide satisfactory explanation the Hon'ble Tribunal may direct for the appropriate proceedings as provided under Section 26 and 28 of NGT Act 2010.
- e) Pass such order/s as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.

For this act of kindness the applicant shall remain grateful
for ever

APPLICANTS THROUGH



ADVOCATE

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

E.A NO. _____ OF 2025

ARISING OUT OF ORIGINAL APPLICATION NO . 109 OF 2023/EZ
IN THE MATTER OF:

SATRUGHAN MEHER

APPLICANT

VERSUS

STATE OF ODISHA AND OTHERS ...

RESPONDENTS

Affidavit

12 SEP 2025

I, SATRUGHAN MEHER, S/O, LATE LINGARAJ MEHER, AGED ABOUT-
49 YEARS, AT- SALETIKIRA, PO-MARAKUTA, PS- JHARSUGUDA
SADAR, DIST-JHARSUGUDA, 768202 hereby solemnly affirm, and declare
as under:

1. That I am the Applicant in the abovementioned Execution Application. I am fully conversant with the facts and circumstances of the case and therefore competent to swear this 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

Satrughan Meher
DEPONENT

VERIFICATION

12 SEP 2025

Verified on this the day of 2025 at Bhubaneswar that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed there from.

Identified By 08/23

the above named deponent(s) being
duly identified by Sr. Advocate, Bhubaneswar
Appears before me on 12 SEP 2025
at A.M./P.M. States
on oath the contents of this affidavit
are true to the best of his / her / their
knowledge and belief

Notary, Bhubaneswar

Satrughan Meher
DEPONENT

JANMEJAYA RAUTRAY
NOTARY, GOVT. OF ODISHA
BHUBANESWAR
REGD. NO. ON-282012
Mob No-9978391217



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

.....

ORIGINAL APPLICATION No. 109/2023/EZ

IN THE MATTER OF:

Satrughan Meher,
S/o Late Lingaraj Meher,
Aged about 47 years,
Saletikira, P.O.-Marakuta,
P.S.-Jharsuguda Sadar,
Dist.-Jharsuguda,
PIN – 768202,

....Applicant(s)

Versus

- 1. State of Odisha,**
through Chief Secretary,
Government of Odisha,
Lokaseba Bhawan,
P.O.-Bhubaneswar,
Dist.-Khurdha,
PIN-751002,
- 2. District Collector, Jharsuguda,**
Office of the District Magistrate and Collector,
Jharsuguda, Odisha,
PIN-768204,
- 3. Member Secretary,**
Odisha State Pollution Control Board,
A/118, Unit-VII, Nilakantha Nagar,
Bhubaneswar, Odisha,
PIN-751012,
- 4. Member Secretary,**
State Environment Impact Assessment Authority (SEIAA),
5RF-2/1, Acharya Vihar, Unit – IX,
Bhubaneswar, Odisha,
PIN-751022,

5. **Superintendent of Police, Jharsuguda,**
Office of the District Police Office
At P.O.-Jharsuguda,
Dist.-Jharsuguda,
PIN-768204
6. **Tahasildar, Jharsuguda,**
P.O.- Jharsuguda,
Dist.-Jharsuguda, Odisha,
PIN-768204,
7. **Divisional Forest Officer, Jharsuguda,**
Office of the Divisional Forest Officer
At P.O.-Badmal, KM Road, Jharsuguda,
PIN-768202,
8. **Deputy Director General of Forests (C),**
Ministry of Environment, Forest and Climate Change,
Regional Office (EZ), A/3, Chandersekharpur,
Bhubaneswar-751023,
9. **RSA Infra Project Private Limited,**
Shree Shyam Tower, Kavita Nagar,
Avanti Vihar Main Road,
Raipur, Chhattisgarh,
10. **Divisional Railway Manager,**
South East Central Railway,
Bilaspur Division, Bilaspur,
11. **M/s RSA SK Joint Venture,**
Shri Shyam Tower,
Kavita Nagar Main Road,
Avanti Vihar, Raipur, Chhattisgarh
PIN-492001,

....Respondent(s)

COUNSEL FOR APPLICANT(S):

Mr. Sankar Prasad Pani, Advocate

COUNSEL FOR RESPONDENT(S) :

Mr. Satyabrata Mohanty, AGA for R-1, 2, 5 to 7,

**Mr. Dipanjan Ghosh, Advocate for R-3,
Mr. Apurba Ghosh, Advocate for R-4,
Ms. Rashmi Singhee, Advocate for R-8,
Mr. Ashok Prasad, Advocate for R-10,
Mr. Ankur Upadhyay, Advocate for R-9 & 11,**

JUDGMENT

PRESENT:

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

HON'BLE Dr. ARUN KUMAR VERMA (EXPERT MEMBER)

**Reserved On:- January 2nd, 2025
Pronounce On:- January 10th, 2025**

1. Whether the Judgment is allowed to be published on the net? **Yes**
 2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**
-

The allegation of the Applicant in the present Original Application is that the Respondent No.9, RSA Infra Project Private Limited, is executing the fourth Railway Line Track from Jharsuguda to Bilaspur for which earthbed has been constructed by excavating earth/morrum from various places including Khata No.59 Plot No.233/331, Khata No.60 Plot No.255/333, Khata No.1 Plot No.287/346.

2. It is stated that about 20 lakh cubic meters of morrum have been illegally lifted/extracted from various places in Jharsuguda. It is stated that the Applicant made a complaint to the Additional Chief Secretary, Water Resource Department, mentioning that one company, namely, Radheshyam Agarwal (RSA) Group, is

continuously extracting soil and earth from the acquired area of the Hirakud Reservoir in Jamuapali and Singhabaga, Pudapali, IB and other villages illegally in connivance with local officials of the Irrigation Department.

3. It is alleged that illegal morrum mining has been carried out in the Revenue Forest land of different villages and trees have been felled by the Private Respondent for mining of morrum.

4. The details of the Khata number and Plot number of the land from where morrum and soil are alleged to be lifted in the Jharsuguda Tahasil have been given in para 13 of the Original Application which read as under:-

SL No	Name of Recorded Tenant	Khata No.	Plot No.
1	Cultivable Waste Land	59	233/331
2	South East Railway	60	255/333
3	Irrigation and Electricity Department	1	287/346

5. It is also stated that the illegal lifting and transportation of Morrum for use in Railway Project Works was also highlighted by the Tahasildar, Jharsuguda, vide his letter dated 16.06.2023 (Anneuxre-1, page 26, to the Original Application), addressed to the Project Proponent, RSA SKJV Pvt. Ltd. (Respondent No.11 herein), and Royalty + Additional Charges for 45,018 cum of Morrum have been computed totalling Rs.31,91,170/- (Rupees Thirty One Lakhs Ninety One Thousand One Hundred Seventy only).

6. Reference has also been made to the Office Memorandum dated 08.08.2022 (Annexure-5, page 42, to the Original Application), issued by the Ministry of Environment, Forest and Climate Change, in the nature of a clarification on the applicability of EIA Notification, 2006, for excavation of ordinary earth from borrow area for linear projects.

7. Mr. Sankar Prasad Pani, learned Counsel for the Applicant submitted that this Office Memorandum was issued in pursuance of a challenge given to Ministry's earlier Notification S.O. 1224 (E) dated 28.03.2020, whereby Appendix IX of the EIA Notification, 2006, had been amended providing, *inter-alia*, exemption from Environmental Clearance for "*extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines etc.*" The said Notification was challenged before the National Green Tribunal, Principal Bench, in Original Application No.190/2020 (*Noble M. Paikada Vs. Union of India & Ors.*), and the Tribunal while disposing of the said Original Application vide its order dated 28.10.2020 held that "*....the exemption shall strike balance and instead of being blanket exemption, it needs to be hedge by appropriate safeguards such as the process of exemption and quantum...*" and directed the Ministry to revisit the Notification dated 28.03.2020. Subsequently, M.A. No.07/2022(WZ) and M.A. No.08/2020(WZ) in Original Application No.68/2020(WZ) (*Shri Rajiv Babasaheb Waman & Ors. Vs. Ministry of Environment, Forest & Climate Change & Ors.*), were filed. The said two M.As. were also disposed of by the Tribunal vide its order dated 31.05.2022 and it was held that "*.....that*

excavation of earth and mining of sand and other minor minerals being hazardous activity having serious adverse impact on environment in view of “Precautionary” and ‘Sustainable Development’ principles, such activity cannot be left unregulated by statutory enforceable mechanism. Blanket exemption is against ecologically sustainable development norms and judgment of Hon’ble Supreme Court...”

8. The Office Memorandum of the Ministry of Environment, Forest and Climate Change dated 08.08.2022 further mentions that the matter was referred to the Expert Appraisal Committee (EAC) for deliberation and after deliberation the EAC was of the opinion that if such linear project has obtained Environmental Clearance based on EIA studies incorporating such sourcing of construction material or other activities, necessary safeguards are already incorporated in the Environmental Clearance appraisal process. However, if such sourcing of material is not considered in the EIA or such linear project does not attract the provisions of Environmental Clearance, then such individual activities will be subject to extant environmental regulations as per EIA Notification, 2006, as amended and/or applicable environmental safeguard related directions issued by the State Government/SPCB which need to be observed while sourcing construction material. The Office Memorandum further mentions that the matter has been examined by the Ministry in detail and it has been decided that the exemption from Environmental Clearance provided under S.O. 1244 (E) dated 28.03.2020 for “*extraction or sourcing or borrowing of ordinary earth*

for linear projects such as roads, pipelines etc.” shall be subject to Standard Operating Procedure (SOP) as enclosed to this Office Memorandum. The said SOP has been filed at page nos.44-45 of the paper book, which reads as under:-

“SOP for Borrow Area Identification; its operation, safety and redevelopment

1. Selection of site, operation and site-specific measures to adopt

- i. Environmental issues like siting borrow pit location, soil erosion aspects, accumulation of run-off and associated problems, disposal of debris by local community in open borrow area, transport of borrow earth to construction site, preservation of top soil of 15m depth and reuse for plantation, reinstatement of borrow pits and sites shall be considered before selection of site.*
- ii. Guidelines, Manuals, Notifications etc. issued by various agencies from time to time like IRC, MoRTH, MoEFCC etc. shall be followed.*
- iii. For selection of the site for the borrow area, agricultural land, cut material available from other road construction projects, dredging, material from dredging operations of ponds, lakes, rivers and canals, material from barren land or land without tree cover outside the road RoW, material from excavation of proposed culverts can be considered. Provided further that, highly productive top-soil shall be stored separately and used for plantation activity.*
- iv. Borrowing shall be avoided on the lands close to toe line, irrigated agricultural lands, grazing land, lands within settlements, 1 Km from environmentally sensitive areas such as Reserve Forests, Protected Forests, Sanctuary, National Parks, Conservation Reserve, Wetlands etc, unstable and fragile side-hills, streams and seepage areas, areas supporting rare plants/ animal species. It should be ensured that*

unsuitable soft rock is not prominent within the proposed depth of excavation which will render rehabilitation difficult.

2. The General Guidelines

- i. The preservation of topsoil will be carried out in stockpile.*
- ii. A 15 cm topsoil will be stripped off from the borrow pit and this will be stored in stockpiles in a designated area for height not exceeding 2m and side slopes not steeper than 1:2 (Vertical : Horizontal).*
- iii. Preservation of Top Soil of 15 cm depth and its reuse for plantation.*
- iv. Validation of the work of re-use of Top Soil by the AE/IE. Competent authority of check the re-use anytime if warranted.*
- v. Borrowing of earth will be carried out up to a depth of 2m from the existing ground level.*
- vi. Borrowing of earth will not be done continuously throughout the stretch.*
- vii. Ridges of not less than 8m widths will be left at intervals not exceeding 300m.*
- viii. Small drains will be cut through the ridges, if necessary, to facilitate drainage.*
- ix. Depends upon the location of borrow areas, the safeguard measures & management specific treatment as a particular borrow area depending upon its location viz Agriculture Land, Elevated Land, Waterbody, near Settlement and along the alignment.*

3. Re-development of Borrow Areas

The objective of the rehabilitation programme is to return the borrow pit sites to a safe and secure area, which the general public should be able to use safely. Securing borrow pits in a stable condition is fundamental requirement of the rehabilitation process. This could be achieved by filling the borrow pit approximately to the road level. Following measures shall be taken for Rehabilitation:

i. Borrow pits shall be backfilled with rejected construction wastes (unserviceable materials) including fly ash, compacted and will be given a turfing or vegetative cover on the surface. If this is not possible, then excavation slope should be smoothened, and depression is filled in such a way that it looks more or less like the original ground surface.

ii. During works execution, the Contractor shall ensure preservation of trees during piling of materials; spreading of stripping material to facilitate water percolation and allow natural vegetation growth; re-establishment of previous natural drainage flows; improvement of site appearance; digging of ditches to collect runoff; and plantation may be carried out wherever feasible or pit may be developed for water storage as per Amrit Sarovar Scheme of MoRTH.

4. Development of Amrit Sarovar

Under Amrit Sarovar Programme, water bodies are being developed by MoRT&H/NHAI/other road development agencies and the desilting of existing water body is also being taken up for water harvesting and re-charge of ground water. The earth available from development of such water bodies is to be utilized for road works and plantations as per suitability of soil. The State Authorities have already been advised not to levy any royalty for borrowing of earth for development of water bodies under Amrit Sarovar Programme.”

9. Learned Counsel for the Applicant referring to this SOP submitted that the said SOP not only provides for selection of site, operation and site-specific measures to be adopted but also lays down the general guidelines as to how excavation is to be carried out and re-development of borrow areas and development of Amrit Sarovar. It is, therefore, submitted that in the present case Morrum

has been extracted randomly by the Project Proponent from various places in Jharsuguda not only from Revenue Forest land by felling of trees but also from Government land for the Railway Project in question and other allied activities. Learned Counsel further submitted that the Project Proponent had carried out illegal mining in violation of the Odisha Minor Mineral Concession Rules, 2016, Section 29 of which provides for Environmental Clearance for grant of quarry lease and Section 51 of which provides for penalty and punishment with simple imprisonment for violations of the said Rules under Section 51 thereof.

10. At the time of admission, the Tribunal constituted a Joint Committee comprising of the following Members:-

- (i) *Senior Scientist, Odisha State Pollution Control Board,*
- (ii) *Senior Scientist, State Environment Impact Assessment Authority (SEIAA), Odisha;*
- (iii) *Representative of the District Collector, Jharsuguda not below the rank of Additional District Magistrate (ADM); and*
- (iv) *Divisional Forest Officer (DFO) or his Representative,*

11. The Committee was directed to visit the site in question and after inspection submit its report. It was also directed that in case violations are found, the Committee shall recommend penalty as well as environmental compensation and also suggest remedial measures.

12. The SEIAA, Odisha, Respondent No.4, has filed affidavit dated 13.10.2023, stating therein that no Environmental Clearance has been issued by the SEIAA, Odisha, for taking earth/morrum from various places including from Khata No.59, Plot No.233/331, Khata No.60, Plot No.255/333, and Khata No.1, Plot No.287/346 by the Project Proponent for execution of the Fourth Line Railway Track from Jharsuguda to Bilaspur for construction of earthbed. It is also stated that the Joint Committee constituted by the Tribunal in its site inspection carried out on 06.10.2023 has observed that the total plot area is 109.69 acres or 44.38 hectares, out of which mining activities have taken place only in 13.00 hectares and that the four-line Railway work at IB Station, Jharsuguda, was started from 2019-20. The Committee during field visit and from satellite view (google earth map) also observed that approximately 1,30,000 sqm. of area was excavated with average 3.5 meters depth of mining and the total quantity of morrum extracted from the alleged Khata No.59, Plot No.233/331, Khata No.60, Plot No.255/333 and Khata No.1, Plot No.287/346 is 4,55,000 cum.

13. In the Joint Committee Report, it is further noted by the Committee that the Tahasildar, Jharsuguda, has calculated the quantity of material extracted @ 4,44,907 cum by M/s RSA Infra Project Pvt. Ltd., from different places of Jharsuguda District. The stand of the SEIAA, Odisha, is that total quantity of 4,55,000 cum of morrum has been extracted from the site in question without any Environmental Clearance and without any permission from the competent authority of other departments and, therefore, such

extraction would be treated as illegal and accordingly environmental compensation was computed to Rs.9,39,24,573/- (Rupees Nine Crore Thirty Nine Lakhs Twenty Four Thousand Five Hundred Thirty Seven only), but in the present case environmental compensation was computed to Rs.92,92,955.58/- (Rupees Ninety Two Lakhs Ninety Two Thousand Nine Hundred Fifty Five and Fifty Eight Paise only) for 45,018 cum only of material extracted, since it is informed by the Tahasildar, Jharsuguda, that only 45,018 cum of morrum has been extracted by the Project Proponent from the area in question but the rest quantity of 4,09,982 cum may have been extracted by some other agency.

14. Along with the affidavit of the SEIAA, Odisha, a Joint Committee Enquiry Report of field visit conducted on 06.10.2023 has also been filed which reads as under:-

“Joint Committee enquiry report with regards to the direction of Hon’ble NGT order dated:-13.09.2023 in OA No.109/2023/EZ- Satrugan Meher s State of Odisha & Ors.

As per the direction of the Hon’ble NGT order dated 13.10.2023 in OA No.109/2023/EZ – Satrugan Meher Vs. State of Odisha & Ors., a committee has been constituted, comprising of Senior Scientist, SPCB, Odisha, Senior Scientist, SEIAA, Odisha, Representative of District Collector, Jharsuguda not below the rank of Addl. District Magistrate and Divisional Forest officer or his representative and directed for inspection of the site in question and submit its report. It is also directed that in case of violations are found, the committee shall recommend penalty as well as Environmental Compensation and also to suggest remedial measures, if any.

In this regard, a field enquiry was conducted on 06.10.2023 in and around the alleged site. The following members of Joint Committee were present during the field visit: -

- 1. Sri Brajabandhu Bhoi, O.A.S (S), Additional District Magistrate (Gen), Jharsuguda.*
- 2. Er H.K. Nayak, Regional Officer, SPCB, Odisha, Jharsuguda.*
- 3. Sri Pardipta Nayak, Environment Scientist, SEIAA, Odisha*
- 4. Sri Lalit Naik, Assistant Conservator of Forests (ACF), Jharsuguda*

In addition to the above committee members, the following representatives and villagers were also present during the site visit: -

- 1. Sri Basant Kumar Hati, Tahasildar, Jharsuguda*
- 2. Smt A. Ekka, Dy. Env. Scientist, SPCB, Odisha*
- 3. Sri Tejraj Singh, resident of Jamera village and representative of Sri Satrugan Meher.*
- 4. Sri Iswari Neti, resident of Jamera village and representative of Sri Satrugan Meher.*
- 5. Sri Nityanand Meher, resident of Jamera village and representative of Sri Satrugan Meher.*
- 6. Sri Biswajit Meher, resident of Jamera village and representative of Sri Satrugan Meher.*
- 7. Sri Vikash Agarwal, representative of R S A Infratect Pvt. Ltd.*

Observations:-

- All over the alleged site was visited by the committee except Singhabagha village, which was submerged by the water of Hirakud reservoir.*
- No excavation work was in progress during the visit. However, soil with morrum was found to be excavated from the alleged site. The land details of the alleged site are as follows:-*

<i>Khata No.</i>	<i>Plot No.</i>	<i>Mouza</i>	<i>Kisam</i>	<i>Total Area in Acres</i>
59 (AJA)	233/331	Jamuapali	Dungri	43.920
60 (SER)	255/333	Jamuapali	Ib Station	63.970
01	287/346	Jamuapali	Jalabhandar	1.800

- As reported by the Tahasildar Jharsuguda, M/s RSA Infra Project Pvt. Ltd. has been penalized for 45018 cum of soil with a penalty & royalty amounting to Rs.31,91,170 for unauthorized lifting.
- Apart from the above, as per the statement submitted by the Tahasildar, Jharsuguda, M/s RSA Infra Project Pvt. Ltd. has extracted and utilized soil of quantity 4,39,244 cum, morrum of quantity 5,663 cum for Jharsuguda-Bilaspur Railway line construction work as contractor.
- M/s RSA Infra Project Pvt. Ltd. has been imposed Rs.2,30,48,693 as Royalty and Rs.27,17,854 as penalty amounting to total of Rs.2,57,66,547, out of which the agency has deposited Rs.84,73,308 as royalty and Rs.13,17,854 as penalty amounting to total of Rs.9,91,162.
- But during joint inspection the committee observed in the field and from the satellite view (google earth map) that about approximately 130000 sqm of area has been excavated with average depth of mining is 3.5 meter so, the total quantity of morrum extracted from the alleged Khata no. 59, Plot no.233/331, Khata no.60, Plot No.255/333 & Khata No.01, Plot No.287/346 is 4,55,000 cum. The Tahasildar, Jhasuguda has calculated the quantity of material extracted 4,44,907 cum by M/s RSA Infra Project Pvt. Ltd. However, morrum except the quantity 4,44,907 cum if excavated by any other company is not known.
- As per the joint visit made by Forest Officials, Asst. Mining Officer and Tahasildar, Jharsuguda on 10.06.2023, there was no tree growth on the above schedule land, only climbers and unwanted bushes like Dhatuki, Kurei, Lantina were available. In this regard, different cases have been instituted by forest officials of Jharsuguda Forest Range and imposed penalties against the person involved through M/s RSA Infra Project Pvt. Ltd.

- As reported by the representative of M/s RSA Infra Project Pvt. Ltd. and documents submitted they had received the work order by South East Railway vide no-CES/BSP/ER/T/22-23/19/IB Fly Over/510, dtd:-03.11.2022.
- As reported by the local villagers the excavation work is going on since 2019.
- For excavation of Morrum the project proponent has not obtained Environment Clearance from SEIAA, Bhubaneswar and valid CTE and CTO from SPCB, Odisha.

Penalty

- M/s RSA Infra Project Pvt. Ltd. has deposited royalty and penalty to the office of the Tahasildar, Jharsuguda. Out of 444907 cum of excavated soil and morrum, the agency has made the payment for only 207354 cum. The agency has to pay the royalty and penalty for the balance 237553 cum of excavated soil and morrum.
- Penalty amounting to Rs.15,000.00 has also been imposed by DFO, Jharsuguda for damaging the natural vegetation like Dhatuki, Kurei, Lantina by the agency at the excavated site.

Calculation for Environmental Compensation of morrum mixing with soil material in accordance to the order of Hon'ble NGT in O.A. 150/19 and CPCB guidelines

- As in absence of any market value for morrum material at District Administration, Jharsuguda the Committee has finalized the market value of Morrum of Rs.62/- i.e. highest bidding amount of the Jharsuguda District.
- Here the environmental compensation is calculated only 45018 cum of morrum on basis of information given by Tahasildar, Jharsuguda that 45018 cum of morrum extracted by the M/s RSA Infra Project Pvt. Ltd. from the allegation plot illegally but rest of quantity i.e. 4,09,982 cum may be extracted by some other agency which is not known as informed by Tahasildar, Jharsuguda.
- The market value of illegally/un-authorized mined out Morrum (D) = 45018 cum x R.62/- = 27,91,116/-.

Market value of illegally mined material (D)	45018 cum x Rs.62/- per cum	= Rs.27,91,116/-
Annual value of Foregone Ecological Values (D x RF) i.e. Risk factor taken as 1 for severe case.	27,91,116 x 1	= Rs.27,91,116/-

Discount Rate may be considered as below:

Severity	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount Rate	8%	7%	6%	5%

- **Present value of Foregone Ecological values (@ 5% discount rate and over 5 years)**
 $PV = \sum_{t=1}^5 (D \cdot RF) / (1+r)^t$
 $= \sum 2791116 / (1+0.05)^1 + 2791116 / (1+0.05)^2 + 2791116 / (1+0.05)^3 + 2791116 / (1+0.05)^4 + 2791116 / (1+0.05)^5$
 $26,58,205.71 + 25,31,624.48 + 24,11,070.94 + 22,96,258.04 + 21,86,912.41 = \text{Rs.}1,20,84,071.58/-$
- Net present value (after netting out market value of illegally mined material) – i.e., Total Compensation to be levied
 $= NVP = PV - D$
 $= \text{Rs.}1,20,84,071.58 - \text{Rs.}27,91,116 = \text{Rs.}92,92,955.58/-$

Recommendation:-

- *M/s RSA Infra Project Pvt. Ltd. may be directed to develop plantation of indigenous species on the above plots for damaging the natural vegetation without the permission of competent authority.”*

15. The Superintendent of Police, Jharsuguda, Respondent No.5, has filed affidavit dated 12.10.2023, stating that 83 cases of Coal and Sand have been registered and 321 accused persons have been arrested under different heads of the Orissa Minerals (Prevention of Theft, Smuggling and Illegal Mining and Regulation of Possession,

Storage, Trading and Transportation) Rules, 2017, and the Mines and Minerals (Development and Regulation), from 2018 to 09.10.2023. It is stated that no information has been received regarding theft of Morrum.

16. The State Pollution Control Board, Odisha, Respondent No.3, has filed affidavit dated 13.10.2023, bringing on record the Joint Committee Enquiry Report of site visit conducted on 06.10.2023, which has already been extracted hereinabove.

17. This Report mentions that soil with morrum was found to be excavated from the site in question, land details of which are given in the table, already extracted hereinabove.

18. We find from the extract of the letter dated 06.06.2023 issued by the Revenue Inspector, H. Katapali, addressed to the Tahasildar, Jharsuguda, (page no.85 of the paper book), wherein it is mentioned that one Sri Rahul Agrawal, S/o Gobardhan Agrawal, Raipur, Chhattisgarh, has excavated 1385m x 13 mx 2.5 = 45,018 cum of Morrum without any permission and used it for Railway Work from below mentioned land of Mouza: Jamuapali, which reads as under:-

“Mouza: Jamuapali

<i>Khata No.</i>	<i>Plot No.</i>	<i>Kisam</i>	<i>Area</i>
<i>59 (Abadi Jogya Anabadi)</i>	<i>233/331</i>	<i>Dunguri</i>	<i>Ac 43.920 Dec</i>
<i>60 (South East Railway)</i>	<i>255/333</i>	<i>Ib station</i>	<i>Ac 63.97 Dec</i>
<i>1 (Irrigation and</i>	<i>287/346</i>	<i>Jal Bhandar</i>	<i>Ac 1.80 Dec”</i>

<i>Electric Department)</i>			
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19. The Joint Committee Enquiry Report further mentions that the Tahasildar, Jharsuguda, has reported that M/s RSA Infra Project Pvt. Ltd., Respondent No.9 herein, has been penalized for 45,108 cum of soil with a penalty and royalty amounting to Rs.31,91,170/- (Rupees Thirty One Lakhs Ninety One Thousand One Hundred Seventy Only only), for unauthorized excavation/lifting. The Report further mentions that the Tahasildar, Jharsuguda, has reported that M/s RSA Infra Project Pvt. Ltd., Respondent No.9, has extracted and utilized soil of quantity 4,39,244 cum and morrum of quantity 5,663 cum for Jharsuguda-Bilaspur Railway line construction work as contractor. The Report further mentions that M/s RSA Infra Project Pvt. Ltd. has been imposed Rs.2,30,48,639/- (Rupees Two Crore Thirty Lakhs Forty Eight Thousand Nine Hundred Ninety Three only) as royalty and Rs.27,17,854/- (Rupees Twenty Seven Lakhs Seventeen Thousand Eight Hundred Fifty Four only) as penalty, total amounting to Rs.2,57,66,547/- (Rupees Two Crore Fifty Seven Lakhs Sixty Six Thousand Five Hundred Forty Seven only), out of which the agency has deposited Rs.84,73,308/- (Rupees Eight Four Lakhs Seventy Three Thousand Three Hundred Eight only) as royalty and Rs.13,17,854/- (Rupees Thirteen Lakhs Seventeen Thousand Eight Hundred Fifty Four) as penalty, total amounting to Rs.97,91,162/- (Rupees Ninety Seven Lakhs Ninety One Thousand One Hundred Sixty Two only).

20. The stand of the Ministry of Environment, Forest and Climate Change, Respondent No.8, in its affidavit dated 03.01.2024 is that the Ministry has issued Environment Impact Assessment Notification dated 14th September, 2006, which requires certain projects to obtain prior Environmental Clearance before any construction work in case of new projects or expansion and modernization of existing projects or activities. The details of categories or projects or activities which require prior Environmental Clearance have been given in the Schedule to the said Notification. It is also stated that all projects and activities are broadly categorized into two categories, namely, Category “A” and Category “B”. It is further stated that vide Notification S.O. 637 (E) dated 28.02.2014, the Ministry has delegated the power conferred under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986, to the State Environment Impact Assessment Authorities (SEIAAs) constituted in different States/UTs to discharge the functions of the regulatory authorities for the respective States/UTs and grant of all Environmental Clearances in terms of Notification S.O. 1886 (E) dated 20.04.2022 in respect of minor minerals shall be dealt with at the State level irrespective of mine lease area.

21. The Applicant with reference to the Joint Committee Enquiry Report and the averments made in the affidavit of the State Pollution Control Board, Odisha, has alleged in his affidavit dated 23.01.2024 that though details of unauthorized excavation/lifting of soil from Badmal, Brundamal, Jamupali, Beherapali Pandaripathar and Kukur Jangha, have been given in the affidavit

which suggest that the Respondent No.9, M/s RSA Infra-Project Pvt. Ltd., has unauthorizedly lifted around 3,40,000 cum of ordinary earth, out of total 4,44,907 cum and the rest has been lifted by the Joint Venture, but the environmental compensation has been computed only in respect of 45,000 cum.

22. The Respondent No.9, M/s RSA Infra Project Pvt. Ltd., has filed affidavit dated 24.01.2024, stating that the alleged construction work referred to in the present Original Application was awarded by the South East Central Railway to M/s RSA-SK JV Private Limited and not to the Respondent No.9, M/s RSA Infra Project Private Limited, and has further referred to the Letter of Acceptance dated 03.11.2022 (page no.139 of the paper book), issued by the South East Central Railway to M/s RSA-SK JV Private Limited, Respondent No.11 herein, for execution of earth work in formation, construction of ROR, minor bridges, major bridges, RUB's, supply of track ballast, track linking works, construction of service buildings, transportation of P. Way materials, supplying, fabrication and launching of steel girders with allied associated works in connection with provision of flyover at IB Station of Bilaspur Division. It is further stated that M/s RSA-SK JV Pvt. Ltd., Respondent No.11 herein, and M/s RSA Infra Project Pvt. Ltd., Respondent No.9 are distinct jural entities. The Letter of Acceptance dated 03.11.2022 is extracted herein below:-

“SOUTH EAST CENTRAL RAILWAY

*OFFICE OF THE
CHIEF ADMN. OFFICER (CON)/BILASPUR*

No:CEC/BSP/ER/T/22-23/19/IB Fly Over/50 (510) Dated:03.11.2022

To
M/s RSA-SK JV
Shri Shyam Tower
Kavita Nagar, Main Road, Avanti Vihar
Raipur, Chhattisgar-492001

Sub:-	Execution of earth work in formation, construction of ROR, minor bridges, major bridges, RUBs, supply of track ballast, track linking works, construction of service buildings, Transportation of P. Way materials, supplying, fabrication and launching of Steel girders with allied associated work in connection with provision of Fly Over at IB Station of Bilaspur Division. Tender No. CEC/BSP/22-23/19 dated 25.08.2022. Ref: Technical bid opened on 22.09.2022, Price Bid opened on 14.10.2022 and e-Reverse Auction held on 18.10.2022
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Dear Sirs

Your offer for the subject work has been accepted by the competent authority (i.e. Chief Administrative Officer/con/SECR) for and on behalf of the President of India at the value of Rs.175,53,24,134.63. (Rs. One Hundred Seventy Five Crore Fifty Three Lakhs Twenty Four Thousand One Hundred Thirty Four and Sixty Three paise) at the following accepted rate:-

- (i) At Par with a rebate of 1.93% (One point Nine Three Percent) against departmental rates for all times under Schedule "1".
- (ii) 7% (Seven Percent) below with further rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule "2".
- (iii) 5% (Five Percent) below with further rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule "3".
- (iv) 10% (Ten Percent) below with further rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule "4".
- (v) 10% (Ten Percent) below with further rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule "5".
- (vi) 5% (Five Percent) below with further rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule "6".
- (vii) At par with a rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule "7".

- (viii) *At par with a rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule “8”.*
- (ix) *10% (Ten Percent) above with rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule “9”.*
- (x) *5% (Five Percent) above with rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule “10”.*
- (xi) *8% (Eight Percent) below with further rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule “11”.*
- (xvi) *15% (Fifteen Percent) below with further rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule “12”.*
- (xvii) *20% (Twenty Percent) above with rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule “13”.*
- (xviii) *15% (Fifteen Percent) above with rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule “14”.*
- (xix) *8% (Eight Percent) below with further rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule “15”.*
- (xx) *20% (Twenty Percent) below with further rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule “16”.*
- (xxi) *10% (Ten Percent) above with rebate of 1.93% (One point Nine Three Percent) against departmental rates for all items under Schedule “17”.*

Note: Accepted rates of Schedule 4, 5, 8, 10, 12, 14, 13, 15, 16 & 17 should not be referred in future tenders in isolation.

You are hereby authorized to commence the work on the strength of this letter to ensure the completion of above subject work within (thirty months) i.e. upto 03.05.2025. in this regard you are requested to contact Dy. Chief Engineer (Con)/Brajranjnagar for taking further instructions immediately.

The security deposit required for faithful fulfilment of the contract is Rs.8,77,66,207/- which will be recovered from your on account bills as per extant rules.

You are requested to submit the Performance guarantee amounting to Rs.5,26,59,724/- within 21 days from date of issuance of this Acceptance letter, in the form of an irrevocable Bank Guarantee in the prescribed proforma given in the tender document or in any of the acceptable form mentioned in the tender document valid upto original completion period plus 60 days i.e. upto 03.07.2025.

You are requested to attend this office on any working day after submission of requisite Performance Guarantee for signing the contract agreement.

You are requested to obtain labour license from the concerned Labour Commissioner (Central) and to register your firm/company etc. and upload details of letter of acceptance in 'Shramik Kalyan Portal' of Indian Railways.

Please note that, until a formal agreement is executed, acceptance of this tender shall constitute a binding contract between Railway and yourself, subject to modification as may be mutually agreed between us. No separate work order will be issued except for USSOR/SOR items.

Please acknowledge the receipt of this letter and confirm that the auction is being taken by you accordingly.

Thanking you,

Encl: (i) Sch '1' to '17' with other tender conditions."

23. Be that as it may, M/s RSA-SK JV Pvt. Ltd., is also party to the present proceedings and has been impleaded as Respondent No.11 and Mr. Ankur Upadhyay, learned Counsel, is representing both Respondent No.9, M/s RSA Infra Project Pvt. Ltd., as well as Respondent No.11, M/s RSA-SK JV Pvt. Ltd., respectively.

24. The District Magistrate, Jharsuguda, Respondent No.2, has filed affidavit dated 19.06.2024 bringing on record the Joint Enquiry Report of an enquiry conducted on 24.05.2024. The Joint Enquiry Report reads as under:-

"Joint enquiry report with regards to the O/A No.109/2023 EZ filed by Satrugan Meher-vrs Sate of

Odisha & others before the Hon’ble National Green Tribunal, Eastern Zone Bench, Kolkata

As per kind direction vide ZLetter No.6068/G&M dated 10/05/2024 of Dist. Office, Jharsuguda, a joint enquiry have been conducted on dt-24/05/2024 in and around the alleged site. The following members were present during the field visit:-

1. Sri Sabyasachi Panda, OAS (SB), Sub-Collector, Jharsuguda,
2. Sri Takshakraj Bhitiria, OAS (JB), Tahasildar, Jharsuguda,
3. Sri Duryodhan Behera, Asst. Mining Officer, Jharsuguda,

Observation:-

During the Joint visit conducted by the members of the committee it is found that no further illegal mining of earth/morrum is going on at the alleged site. However some quantity of soil with morrum excavated earlier is lying at the same site.

The land details of the alleged site are as follows:

Khata No.	Plot No.	Kissam	Total Area of Plots in Acre
59 (AJA)	233/331	Dungri	43.920
60 (S.E.R.)	255/333	Ib station	63.970
1	287/346	Jalabhandar	1.800

This is for favour of your kind information and necessary action.”

25. The Committee has reported that no further illegal mining of earth/morrum is going on at the alleged site, however, some quantity of soil with morrum excavated earlier is lying at the site. The land details of the alleged site in question have been given in the Report.

26. The Respondent No.9, M/s RSA Infra Project Pvt. Ltd., has filed further affidavit dated 17.07.2024 denying the allegation of violation of environmental norms as made in the Original Application stating therein that the Project Work has been awarded to M/s RSA-SK JV Pvt. Ltd., Respondent No.11, by the South East Central Railway, acting as the Railway Administration within the meaning of Section 2 (32) of The Railways Act, 1989. Para 'vi' of the affidavit is relevant, since it has been stated by Shri Sanjay Agrawal, Director of M/s RSA Infra Project Pvt. Ltd., Respondent No.9, who has sworn the affidavit, that answering Respondent is a part of M/s RSA-SK JV Pvt. Ltd. It is stated that in pursuance of the Letter of Acceptance executed on 03.11.2022 an agreement dated 22.03.2023 has been entered into between the South East Central Railway and the Project Proponent.

27. In para 'x' of the affidavit, it is admitted that for purposes of constructing the earthbed/embankment for laying of the railway tracks, the Project Proponent was required to use ordinary earth/soil. It is stated that such ordinary earth/soil was lifted by the Project Proponent from the alleged plots for its exclusive use towards Railway Project Works. Para 'x' of the affidavit reads as under:-

“(x) For the purposes of constructing the earth bed/embankment for laying of the railway tracks, the project proponent was required to use ordinary earth/soil. Such ordinary earth/soil was lifted by the project proponent from the alleged plots for its exclusive use towards the Railway Project Works.”

28. The stand of the Project Proponent is that no Environmental Clearance was sought or obtained prior to lifting of ordinary earth/soil from the alleged plots for the reason that Railway Projects are exempted from seeking Environmental Clearance. It is further stated that the Environment (Protection) Act, 1986, is not applicable to Railway Projects and, therefore, no violation has been committed by the Project Proponent in lifting of ordinary earth/soil for its use in the Railway Project Work in the present case. It is further stated that vide Notification dated 28.01.1993 issued by the Ministry of Environment, Forest and Climate Change, Railway Projects were included in a separate category which require Environmental Clearance but in the subsequent Notification dated 28.01.1994 issued by the Ministry of Environment, Forest and Climate Change, Railway Projects were consciously deleted and thus, the legislative intent clearly was to exclude Railway Projects from the need to seek or obtain prior Environmental Clearance, which, it is stated that, this aspect has also been clarified by the Railway Board, Ministry of Railways, vide its letter dated 10.12.2008.

29. The case of the Project Proponent is that the Ministry of Environment, Forest and Climate Change vide Office Memorandum dated 06.10.2023 has specifically stated that the Railway Projects are exempted from prior Environmental Clearance in terms of Section 11 of The Railways Act, 1989, and the Railway Board also,

vide its letter dated 13.10.2023, has granted exemption to Railway Projects from application of the Environment (Protection) Act, 1986.

30. The Respondent No.9 has referred to the Notifications dated 08.08.2022 and 21.08.2023 whereby certain enforcement mechanism for enforcement of the Standard Operating Procedure was issued and it is stated that the notifications primarily directed that all Project Proponents should inform the concerned State Pollution Control Board before starting any excavation activity. It is also stated that bids for Project Works were invited by the South East Central Railways by floating a tender notice dated 25.08.2022, on which date the Notifications dated 28.03.2020 and 08.08.2020 were still in vogue. It is further stated that the provisions of the Environment (Protection) Act, 1986, are not applicable to Railway Projects. It is also stated that the Project Proponent commenced the Project Work after 03.11.2022 i.e., after issuance of the Letter of Acceptance, and no lifting of ordinary earth/soil has been undertaken by the answering Respondent after filing of the present Original Application.

31. The stand of the Project Proponent further is that the Project Proponent is the 'Agent' and the Railway Administration is the 'Principal' and the Principal and Agent relationship between the Railway Authority and the Project Proponent exists in view of the agreement entered into between the Railways and the Project Proponent.

32. The Project Proponent has further assailed the computation of environmental compensation on the ground that the Joint Committee has assumed that the Project Proponent has undertaken excavation for the past five years i.e., since 2019 whereas excavation has been undertaken by the Project Proponent for works of Railways only after the Project Works was awarded to it in 2022 and after the filing of the present Original Application no excavation has been undertaken by the Project Proponent.

33. In para 'xxvii' of the affidavit, the stand of the Project Proponent further is that the correct calculation on the alleged quantity of soil extracted is 4,55,000 cum based on "Mild" risk factor and discounting rate. According to the Project Proponent the environmental compensation based on Mild risk factor is 0.25 and discounting rate is 8% and by the said computation nothing is recoverable from the Project Proponent by way of environmental compensation.

34. The South East Central Railway, Respondent No.10, has filed affidavit dated 10.08.2024, stating therein that wherefrom the contractor is taking out earth/morrum for the project is not within the purview of the Railways. It is stated that the Railways only takes the Royalty Clearance Certificate from the contractor issued by the concerned civil authority as per contract conditions. The averments of para 4 of the affidavit of the Railways reads as under:-

"4. That with regard to the statements made in paragraph 1 of the Original Application it is submitted that the contentions

raised in this paragraph are matter of records nothing admitted beyond that. It is also submitted that where from the contractor is taking out the earth/morrum for the project is not in the purview of the answering respondent. Railways only take the Royalty clearance certificate from the contractor issued by the concerned civil authority as per contract condition supra."

35. We have heard the learned Counsel for the parties and perused the documents on record.

36. From the documents on record, namely, the demand notice dated 16.06.2023 issued by the Tahasildar, Jharsuguda, we find that the said notice was issued for illegal lifting and transporting of morrum for use in Railway Project Works and Royalty + Additional Charges for 45,018 cum of morrum and penalty was charged for a total amount of Rs.31,91,170/- (Rupees Thirty One Lakhs Ninety One Thousand One Hundred Seventy only). The Joint Committee Report also refers to the said notice of the Tahasildar and further noted that the Project Proponent has extracted and utilized soil of quantity 4,39,244 cum and morrum of quantity 5,663 cum for Jharsuguda-Bilaspur Railway line construction work as contractor for which royalty of Rs.2,30.48,693/- and penalty of Rs.27,17,854/-, total Rs.2,57,66,547/- was imposed, out of which Rs.84,73,308/- as royalty and Rs.13,17,854 as penalty, total amounting to Rs.97,91,162/- has been deposited by the Project Proponent.

37. The Joint Committee during field visit also observed that approximately 1,30,000 sqm. of area had been excavated with average depth of 3.5 meters and the total quantity of morrum extracted from Khata No.59, Plot No.233/331, Khata No.60, Plot

No.255/333, and Khata No.01, Plot No.287/346 is 4,55,000 cum. The environmental compensation computed by the Committee is to the tune of Rs.92,92,955.58/- (Rupees Ninety Two Lakhs Ninety Two Thousand Nine Hundred Fifty Five and Fifty Eight Paisa only) over five years.

38. A perusal of the Letter of Acceptance dated 03.11.2022 for the Project Works issued by the South East Central Railway to M/s RSA-SK JV, Respondent No.11 herein, shows that the same was for execution of earth work in formation, construction of ROR, minor bridges, major bridges, RUBs, supply of track ballast, track linking works, construction of service buildings, transportation of P. Way materials, supplying, fabrication and launching of steel girders with allied associated works in connection with provision of fly over at IB Station of Bilaspur Division. This letter also mentions that until a formal agreement is executed, acceptance of this tender shall constitute a binding contract between the Railway and the Project Proponent, subject to modification as may be mutually agreed.

39. The District Magistrate, Jharsuguda, in his affidavit has stated that a Joint Enquiry of the site was conducted on 24.05.2024 and it was found that no further illegal mining of earth/morrum is going on at the site in question, though some quantity of soil with morrum excavated earlier is lying at the site.

40. The principal objection raised by the learned Counsel for the Project Proponent is that in view of the provisions of Section 11 of The Railways Act, 1989, the Environment (Protection) Act, 1986,

would have no application, since Section 11 of The Railways Act, 1989, begins with a non-obstante clause and is later in point of time than the referred Environment (Protection) Act, 1986. Section 11 of The Railways Act, 1989, reads as under:-

“11. Power of railway administrations to execute all necessary works.—Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the case of a non-Government railway, to the provisions of any contract between the non-Government railway and the Central Government, a railway administration may, for the purposes of constructing or maintaining a railway—

(a) make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, railway, tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes, oil-pipes, sewers, electric supply lines, or telegraph lines, such temporary or permanent inclined-planes, bridges, tunnels, culverts, embankments, aqueducts, bridges, roads, lines of rail, ways, passages, conduits, drains, piers, cuttings and fences, in-take wells, tube wells, dams, river training and protection works as it thinks proper;

(b) alter the course of any rivers, brooks, streams or other water courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and divert or alter either temporarily or permanently, the course of any rivers, brooks, streams or other water courses or any roads, streets or ways, or raise or sink the level thereof, in order to carry them more conveniently over or under or by the side of the railway;

(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;

(d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper;

¹[(da) developing any railway land for commercial use;]

(e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead;

(f) erect, operate, maintain or repair any telegraph and telephone lines in connection with the working of the railway;

(g) erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway; and

(h) do all other acts necessary for making, maintaining, altering or repairing and using the railway.”

41. Mr. Sankar Prasad Pani, learned Counsel for the Applicant, however, referred to the provisions of Section 24 of the Environment (Protection) Act, 1986, and submitted that Section 24 thereof provides that the provisions of the Act, 1986, and the Rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. Section 24 of the Environment (Protection) Act, 1986, (unamended) reads as under:-

“.....x.....x.....x.....

24. Effect of other laws.-(1) *Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.*

(2) where any act or omission constitutes an offence punishable under this Act and also under any other Act then

the offender found guilty of such offence shall be liable to be punished under the other act and not under this Act.”

42. We may note that Section 24 of the Environment (Protection) Act, 1986, was subsequently amended by Act 18 of 2023 and sub-section (2) thereof as it stood under the unamended Act of 1986 has since been deleted. Sub-section (2) of the unamended Act of 1986 provided that where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other act and not under the Act of 1986.

43. Mr. Ankur Upadhyay, learned Counsel for the Project Proponent, however, submitted that the amendment to Section 24 of the Environment (Protection) Act, 1986, was introduced only in 2023 whereas the Project Works under the contract with the South East Central Railway were commenced with the issuance of the Letter of Acceptance dated 03.11.2022. Learned Counsel further submitted that, if at all, without admitting so, the Project Proponent would be liable for penalty and prosecution under Section 51 of the Odisha Minor Mineral Concession Rules, 2016, this Court cannot adjudicate the said issue, since the Odisha Minor Mineral Concession Rules, 2016, do not fall within Schedule-I of the National Green Tribunal Act, 2010, and the jurisdiction of the National Green Tribunal under Section 14 of the National Green Tribunal Act, 2010, is only applicable with reference to substantial questions relating to environment including enforcement of any legal right relating to environment and such question arises out of

implementation of the enactments specified in Schedule-I to the Act, 2010, and the Odisha Minor Mineral Concession Rules, 2016, is not one of the enactments in Schedule-I of the National Green Tribunal Act, 2010.

44. However, coming to the main legal objection with regard to the non-applicability of the Environment (Protection) Act, 1986, to Railway Projects in view of the non-obstante clause in Section 11 of The Railways Act, 1989. We may observe that issue arose before the Hon'ble Bombay High Court and was answered by the Hon'ble High Court in W.P. No.170 of 1992 (*Goa Foundation and Ors. Vs. Konkan Railway Corporation & Ors.*) decided on 29.04.1992. The relevant extract in para 8 of the judgment reads as under:-

“8.x.....x.....x.....x.....

The Corporation is also right in the contention that the provisions of the Environment Act have no application in respect of work undertaken in exercise of powers conferred under section 11 of the Railways Act, 1989. Section 11, inter alia, provides that notwithstanding anything contained in any other law, the Railway Administration may, for the purposes of constructing or maintaining a railway, make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, streams, or other waters, rivers as it thinks proper. The wide ambit of the provisions of section 31, and the non-obstante Clause makes it extremely clear that the provisions of the Environment Act do not bind the construction or maintenance of a railway line. The Railways Act is a legislation enacted subsequent to the Environment Act and the Corporation is right in claiming that for the purpose of providing railway line, clearance is not required even though the line passes over the railways, rivers, creeks, etc. in view of the specific provisions of section 11 of the Railways Act.

A faint attempt was made by Mr. Grover to suggest that the Ministry of Environment has issued a draft Notification inviting objections and the draft Notification intends to prescribe that environment clearance from the Central Government is required for providing railway lines. It is not possible to take any notice of such draft Notification because it has no legal existence till the objections are examined and final Notification is issued. Mr. Kakodkar pointed out that the Railways have raised serious objections to the proposed Notification apart from the fact that even the draft Notification requires clearance from the Central Government and which has already been given long before.”

45. We may, however, hasten to add that the said Writ Petition before the Hon'ble Bombay High Court was filed by the Goa Foundation & others, alleging that the Konkan Railway Corporation Limited should be compelled to procure environment clearance for the alignment passing through the State of Goa from the Ministry of Environment and Forests, Government of India, and until such clearance is secured all the work in respect of providing railway line should be withheld.

46. In the present case, the Project Proponent on his own showing is a contractor and has entered into a contract with the South East Central Railway vide letter of Acceptance dated 03.11.2022 in pursuance of a tender notice of 25.08.2022.

47. The contention of the learned Counsel for the Project Proponent is that the relationship between the Project Proponent and the South East Central Railway is one of 'Principal' and 'Agent' where the South East Central Railway is the 'Principal' and the Project Proponent is the 'Agent' and, therefore, in view of the

provisions of Section 11 of The Railways Act, 1989, all acts of the Project Proponent being synonymous with the acts of the Railways and the acts of the Railways in the matter of Project Works being outside the purview of the Environment (Protection) Act, 1986, no fault can be found with the Project Proponent, since the Project Proponent is required to execute the Project Works of the Railways in consonance with the specific terms and conditions of the agreement between the South East Central Railway and the Project Proponent.

48. The submission of the learned Counsel for the Project Proponent does not find any merit with us for the reason that Section 11 of The Railways Act, 1989, relates to execution of all necessary works of the Railway Administration for the purpose of constructing or maintaining Railway. The Railways in furtherance of the power conferred upon it in Section 11 of The Railways Act, 1989, may undertake Projects as provided in Clauses a, b, c, d, da, e, f, g & h of Section 11 of the Act, 1989. While such Projects may not require Environmental Clearance from the Central Government or other statutory requirements under the EIA Notification, 2006, the same blanket exemption cannot be said to be extended to a contractor which undertakes to supply material for execution of Project Works by the Railways or for execution of Project Works by the contractor himself on behalf of the Railways. The contractor supplying material to the Railways for execution of Project Works may necessarily have to procure such material from outside meaning thereby not supplied by the Railways itself. In the present

case, it is the admitted case of the Project Proponent that he has excavated material i.e., soil of 4,55,000 cum from outside, and this soil/morrum was not supplied to him by the Railways. In the process of procuring material, the Project Proponent cannot claim exemption from the rigour of provisions of law providing for procurement of material etc. A Project Proponent, who seeks to excavate soil/morrum from outside, must possess an Environmental Clearance duly issued to him for the said purpose by the competent authority, namely, the State Environment Impact Assessment Authority (SEIAA), Odisha, in the present case. The Environmental Clearance itself provides the quantity of soil/morrum/minor mineral which the Project Proponent may be permitted to extract and the area from where the same is to be extracted and if the Project Proponent extracts soil/morrum/minor mineral in excess of what is stipulated in the Environmental Clearance or extracts the same from an area outside what is stipulated in the Environmental Clearance, he would certainly be liable for penal consequences for violation of the conditions laid down in the Environmental Clearance. In our opinion, the law relating to Principal and Agent with reference to exemption to Agent vis-à-vis Principal, will have no application to the facts of the present case. The Railway Respondent in its affidavit has taken a clear stand that wherefrom the contractor is taking out the earth/morrum for the project is not within the purview of the South East Central Railway and the Railways only takes a Royalty

Clearance Certificate from the contractor issued by the concerned civil authority as per contract conditions.

49. We may also refer to the Item No.30 of the Special Conditions of Contract Agreement dated 03.11.2022, which is on record filed by the Applicant as well as the Project Proponent and the Railway Respondent, which under the head “Royalty clearance certificate” mentions that *“Payment of final bills for materials supplied/or for works done with materials collected from outside Railway shall be subject to submission of a royalty clearance Certificate by the contractors from concerned Civil Authorities. However, Railway may ask for such royalty clearance certificates any time during the currency of the Agreement. If royalty clearance certificate is not submitted at the time of preparation of bills, the royalty shall be deducted at prevailing rates and shall be refunded after production of royalty clearance certificate in original from State Government”*.

50. Item No.12 under the head “Recovery of water charges” of the Special Conditions of Contract provides that *“The contractor shall be responsible for the arrangements to obtain supply of water necessary for the work. In case the Railway arrange supply of water, the cost will be recovered at the rate of Rs.2/- (Rupees Two only_ per 4546 liters (1000 gallons) subject to the conditions stipulated in Clause-31 of the Indian Railway Standard General Conditions of the Contract, April-2022. In the event of water being used from Railway well/other source either in use or abandoned recovery at the rate of Rs.2/- per 4546 litres (1000 gallons) will be made”*.

51. Item No.15(a) under the head “Income Tax Deduction” of the Special Conditions of Contract stipulates that *“In respect of works, the contract value of which is more than Rs.10,000/- each, a deduction of 2% and cess if any at the extant rate on the gross payment from each of the Contractor’s bills shall be made in terms of Section 194(e) of the Income Tax Act of 1961 & 1991”.*

52. Item No.15(b) under the head “GST” of the Special Conditions of Contract provides that *“The contractor shall get himself registered with appropriate Authority for the purpose of Goods & Service Tax as the case may be and submit the proof of such registration for the information of Railway”.*

53. Item No.21 under the head “Statutory Certificate Etc.” of the Special Conditions of Contract provides that *“While the machine(s) is/are in the possession of the contractor(s), he/they shall be responsible for seeing that any inspection certificate or license required under any Government Act is obtained in due time. The contractor shall also be responsible for seeing that all required precautions are observed in using the plant as well, and he shall be responsible for any accident that may occur from the use of the plant”.*

54. The Item No.21 of the Special Conditions of Contract clearly establishes that a contractor working on a Railway Project is required to obtain any certificate or license as may be required under any Government Act. The provisions of the Special Conditions of Contract clearly point to an identity of the contractor

as wholly distinct from that of the Railways and the contractor, in the present case the Project Proponent, even if he is working on a Railway Project Work, will not be exempted from the applicability of the statutory provisions of law and cannot claim exemption from the rigour of the Environment (Protection) Act, 1986, and subordinate legislations made thereunder by taking recourse to Section 11 of The Railways Act, 1989.

55. The learned Counsel for the Project Proponent has also referred to the Railway Board's letters dated 10.12.2008 and 13.10.2023 and the Ministry of Environment, Forest and Climate Change Notification dated 27.01.1994, copies of which have been filed with the affidavit of the Project Proponent, Respondent No.9, dated 17.07.2024, which, in our opinion, have no application to the facts of the present case, since we have already held that the identity of the Project Proponent as a contractor is absolutely distinct from that of the Railways and that the Project Proponent would not be entitled to claim exemption from the rigour of the Environment (Protection) Act, 1986, by taking recourse of the provisions of Section 11 of The Railways Act, 1989.

56. So far as the contention of the Project Proponent that he is the 'Agent' and the South East Central Railway is the 'Principal' and, therefore, the exemption under Section 11 of The Railways Act, 1989, to Railway Projects, would extend to the Project Works of the Railways executed by the Project Proponent is concerned, we may refer to the provisions of Section 188 of The Indian Contract Act,

1872, which provides that “an agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act”. Section 211 of the Act, 1872, further provides that “an agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues, he must account for it”. Sections 188 and 211 of The Indian Contract Act, 1872, read as under:-

“.....X.....X.....X....

188. Extent of agent’s authority.-An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

An agent, having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose or usually done in the course, of conducting such business.

.....X.....X.....X.....

211. Agent’s duty in conducting principal’s business.-An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts

otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues, he must account for it”.

57. A perusal of Section 188 of the Act, 1872, would clearly show that the acts of the agent referred to are ‘lawful acts’. Likewise, Section 211 of the Act, 1872, enjoins the agent to conduct the business of his ‘principal’ according to the directions given by the principal. In the present case, the terms and conditions of execution of the contract between the Project Proponent and the South East Central Railway are enumerated in the Letter of Acceptance dated 03.11.2022 under the heading “Special Conditions of Contract” and as we have already noted hereinabove the Special Conditions of Contract clearly provide that all licenses and certificates required by the contractor, in this case the Project Proponent, must obtain all statutory licenses and certificates under any Government Acts as may be required.

58. Learned Counsel for the Project Proponent has further referred to the Ministry of Environment, Forest and Climate Change Office Memorandum dated 06.10.2023 which provides that Railway Projects shall be exempted from prior Environmental Clearance in terms of Section 11 of the Railways Act, 1989.

59. We find that in this Office Memorandum, the Ministry has referred to the judgment of the Hon’ble Bombay High Court in Konkan Railway (Supra). We have already held hereinabove that Section 11 of the Act, 1989, has no application to the present case and does not save the Project Proponent from the rigour of the

Environment (Protection) Act, 1986, and the rules and notifications made thereunder.

60. So far as the Ministry of Environment, Forest and Climate Change Office Memorandum dated 08.08.2022 is concerned, we may observe that this Office Memorandum was issued in pursuance of the directions issued by the National Green Tribunal, Principal Bench, New Delhi, with reference to the Ministry's Notification S.O. 1224 dated 28.03.2020 which had amended the Appendix IX of EIA Notification to provide exemption from Environmental Clearance for "*extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines etc.*" The orders were passed by the Tribunal while considering the Original Application No.190/2020 (*Noble M. Paikada Vs. Union of India & Ors.*), wherein the Tribunal held that "*....the exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum...*". It is in this context that the Ministry had issued the Office Memorandum dated 08.08.2022 by way of a clarification and it was noted that the matter was referred to the Expert Appraisal Committee and after due deliberation the Expert Appraisal Committee was of the opinion that if such liner project has obtained Environmental Clearance based on EIA studies incorporating such sourcing of construction material or other activities, necessary safeguards are already incorporated in the Environmental Clearance appraisal process. However, if such sourcing of material is not considered in the EIA or such linear project does not attract

provisions of Environmental Clearance, then such individual activities will be subject to extant environmental regulations as per EIA Notification, 2006, as amended and/or applicable environmental safeguard related directions issued by the State Government/SPCB which need to be observed while sourcing construction material. Along with this Office Memorandum, Standard Operating Procedure (SOP) was also appended, which is already extracted hereinabove. Subsequently, the Ministry of Environment, Forest and Climate Change issued further Office Memorandum dated 21.08.2023 observing that the Ministry deems it necessary to ensure that aforementioned SOP/environmental safeguards are implemented in the letter and spirit at the field level, for which a monitoring and enforcement mechanism needs to be put in place and it was enjoined upon all the Project Proponents availing of the aforesaid provisions and carrying out activities related to entries 6 and 7 of the Appendix IX of the EIA Notification, 2006, to inform the concerned State Pollution Control Boards/Pollution Control Committees before starting of such activities.

61. We may also note that the judgment of the National Green Tribunal, Principal Bench, in Noble M. Paikada (Supra) was challenged in the Hon'ble Supreme Court in Civil Appeal No.1628-1629/2021, wherein the Ministry of Environment, Forest and Climate Change Office Memoranda dated 20.03.2020, 08.08.2022, and 30.08.2023 as well as SOP have been duly considered by the Hon'ble Supreme Court and item 6 of the substituted Appendix IX

forming part of the impugned Notification dated 28.03.2020 and item 6 of the amended impugned Notification dated 30.08.2023 have been struck down. Paragraphs 24 to 33 of the judgment dated 21.03.2024 read as under:-

“24. The impugned notification was issued two days after the nationwide lockdown was imposed due to the COVID-19 pandemic. At that time, the work of linear projects, such as roads, pipelines, etc., had come to a grinding halt. So, there was no tearing hurry to modify the EC notifications. Apart from the fact that no reasons have been assigned in the counter affidavit filed by the Central Government for coming to the conclusion that in the public interest, the requirement of prior publication of notice was required to be dispensed with, we fail to understand the undue haste shown by the Central Government in issuing the impugned notification during the nationwide lockdown. Therefore, the inclusion of item 6 of the substituted Appendix-IX will have to be held illegal. We have already given reasons for not dealing with the challenge to item 7 of the impugned notification.

ARBITRARINESS

25. There is one more important ground for striking down item 6. But for item 6 in Appendix-IX to the impugned notification, for extraction, sourcing, or borrowing of ordinary earth for linear projects, prior EC would have been required in terms of the first EC notification. The very object of issuing the first EC notification incorporating the mandatory requirement of obtaining EC for projects was that the damage to the environment must be minimised while implementing projects. When an exception is sought to be carved out by incorporating Appendix-IX to the requirement of obtaining EC in the first EC notification, the exception must be specific. Item 6 grants exemption for “extraction or sourcing or borrowing of ordinary earth for linear projects, such as roads, pipelines, etc.” There is no specification about the quantum of ordinary earth, which can be extracted on the basis of the exemption. There is no

specification of the area which can be used to extract ordinary earth. It is also not provided that only that quantity of ordinary earth, which is required to implement the linear projects, is exempted. Importantly, “linear projects” have not been defined. Without the definition, it is difficult to imagine which projects will be termed linear projects. The term “linear projects” is very vague. The process to be adopted for excavation has not been set out. Thus, item 6 is a case of completely unguided and blanket exemption, which is, per se, arbitrary and violative of Article 14 of the Constitution of India. There is no provision for setting up an authority which will decide whether a particular linear project is covered by item 6.

26. *As stated earlier, during the pendency of the appeals, an amendment was made to item 6 by the notification dated 30th August 2023. Even the amended impugned notification does not elaborate on the concept of linear projects. The only addition to item 6 is that the extraction, sourcing or borrowing shall be subject to compliance with SOP and environmental safeguards issued in this regard from time to time. The authority to issue the SOP and environmental safeguards has not been specified. No provision has been made to enforce the SOP and environmental safeguards. No restriction is imposed on the quantum of ordinary earth, which can be extracted for linear projects. Therefore, even the amended item 6 continues to suffer from the same vice of arbitrariness, which Article 14 of the Constitution of India prohibits.*

27. *The learned Additional Solicitor General placed reliance on the Office Memorandum dated 21st August 2023. It provides that before carrying on activities mentioned in entry 6, the project proponents must notify the State Pollution Control Board/Pollution Control Committees. The State Pollution Control Boards are required to monitor the compliance status of the SOP/environmental safeguards. As entry 6 is arbitrary, the Office Memorandum is of no consequence. Hence, on account of the violation of Article 14, item 6 in the impugned notification, as well as the amended impugned notification, will have to be struck down. As noted earlier, the object of the EP Act is to*

protect and improve the environment. Apart from the illegality committed by non-compliance with sub-rule (3) of Rule 5 of the EP Rules, the exemption granted without incorporating any safeguards is completely unguided and arbitrary. Grant of such blanket exemption completely defeats the very object of the EP Act.

NON-COMPLIANCE WITH THE DIRECTIONS OF THE NGT

28. *In paragraph 8 of the impugned order, which we have quoted earlier, the NGT observed that the blanket exemption needs to be hedged by appropriate safeguards, such as, the process of excavation and quantum. Therefore, in paragraph 9, a direction was issued to MoEF&CC to revisit the impugned notification in the light of the observations made in paragraph 8. Within the three months provided by the NGT to do so, no steps had been taken to revisit item 6 of the impugned notification.*

29. *The Ministry has filed an additional affidavit dated 18th July 2023, and reliance has been placed on the guidelines for sand mining. As far as item 6 is concerned, in the counter affidavit, reliance was placed on the Office Memorandum dated 8th August 2022, purportedly issued in terms of the directions issued in paragraph 9 of the impugned judgment. It records that item 6 shall be subject to the SOP attached to the said Office Memorandum. We have perused the said SOP. We find that the SOP creates no regulatory machinery to ensure the implementation of the terms of the SOP. The SOP does not refer to item 6 at all; it merely refers to the activities relating to the identification to borrow areas to obtain earth or soil materials. It does not refer to extracting ordinary earth for linear projects, such as roads, pipelines, etc. Therefore, the said SOP can hardly be said to be in terms of what the NGT ordered the Central Government to do in terms of paragraphs 8 and 9.*

30. *We are not entertaining a challenge to item 7 of the impugned notification. As none of the respondents have challenged the impugned notification, they will have to*

implement the directions issued in terms of paragraph 9 of the impugned judgment regarding item 7.

31. *Thus, notwithstanding the specific directions issued in paragraph 8 read with paragraph 9 of the impugned judgment, no safeguards have been provided, such as laying down processes, the mode and the manner of excavation and quantum.*

32. *Therefore, we have no hesitation in striking down item 6 of the substituted Appendix-IX forming part of the impugned notification dated 28th March 2020 and item 6 of the amended impugned notification dated 30th August 2023. Accordingly, we quash item 6 in the two notifications above.*

33. *The appeals are, accordingly, partly allowed on above terms. There will be no order as to costs.”*

62. The effect of striking down of item no.6 introduced through the Ministry's Notification dated 28.03.2020 and item no.6 of the amended Notification dated 30.08.2023, having already been struck down, the EIA Notification, 2006, unamended would be applicable in the case of the Project Proponent with full rigour and the Project Proponent cannot escape the liability of obtaining Environmental Clearance before entering into any project work for excavation of minor mineral under a misplaced premise that the EIA Notification, 2006, has been issued under Rule 5 of the Environment (Protection) Rules, 1986, and that the Environment (Protection) Act, 1986, has no application to him.

63. So far as challenge of the Project Proponent to the computation of environmental compensation on the ground that the same has been computed for the last five years whereas the contract was executed between the Project Proponent and the

Railway Administration only in 2022, the submission, in our opinion, has force. The Letter of Acceptance between the Railways and the Project Proponent was executed on 03.11.2022 in view of the tender notice dated 25.08.2022, it is under this Letter of Acceptance that the Project Works have been undertaken by the Project Proponent. Therefore, in our opinion, the Project Proponent cannot be held to be liable for excavation of morrum/soil for a period prior to the said date unless it can be established by the State Respondents concerned that the Project Proponent was already illegally extracting morrum/soil from the site in question for use other than of Railway Project Works in question.

64. So far as the contention of the learned Counsel for the Project Proponent that the provisions of the Odisha Minor Mineral Concession Rules, 2016, are not applicable to him or in any case this Court cannot examine that issue, since the said Rules do not fall within Schedule-I of the National Green Tribunal Act, 2010, we may observe that the necessity of examining the issue as to whether the Odisha Minor Mineral Concession Rules, 2016, are applicable in the case of Respondent Nos.9&11, Project Proponent, is not required and in any case it will be open for the Respondents to take action as per law with regard to the violations of environmental norms.

65. We may also observe that on the own admission of the Respondent No.9 in para 'xxvii' of the affidavit dated 17.07.2024 that soil/morrum extracted was 4,55,000 cum by the Project

Proponent, therefore, environmental compensation would be computed on this figure.

66. We, therefore, dispose of the present Original Application with a direction to the Joint Committee to re-compute the environmental compensation in the light of the observations made hereinabove within a period of two months, giving an opportunity of being heard to the Project Proponent on the quantum of compensation. The computation of environmental compensation already made by the Joint Committee shall be subject to the any final order which may be passed by it.

67. I.As., if any, stand disposed of accordingly.

68. There shall be no order as to costs.

.....
B. AMIT STHALEKAR, JM

.....
DR. ARUN KUMAR VERMA, EM

Kolkata,
January 10th, 2025,
Original Application No.109/2023/EZ
AK

BEFORE THE NATIONAL GREEN TRIBUNAL, KOLKATA

E.A. No.- _____ of 2025

Original Application No. 109 of 2023.

Satrughan Mehe

Applicant

VERSUS

State of Odisha & Ors

Respondents

KNOW ALL to whom these present shall come
that Satrughan Meher, S/o- Late Lingaraj Meher, aged about 49 years, At- Saletikara, Po-Marakuta,
Dist- Jharsuguda, Pin- 768082.

..... The
above named APPLICANTS do hereby appoint (herein after called the advocate/s) to be my/our
Advocate in the above noted case authorized him :-**Sankar Prasad Pani, Ashutosh Padhy,**
Advocates, Address-Plot—2132/4814, Nageswartangi, Bhubaneswar, 751002, ENROLMENT
NO O-785/2007, Email-sankarprasadpani@gmail.com

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
objections or petitions for execution review, revision, withdrawal, compromise or other petitions or
affidavits or other documents as may be deemed necessary or proper for the prosecution of the said
case in all its stages. To file and take back documents to admit and/or deny the documents of
opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that
may arise touching or in any manner relating to the said case. And I/We the undersigned do 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 purposes.

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

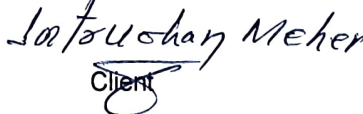
And I /we undersigned do hereby agree not to hold the advocate or his substitute responsible for the
result of the said case. The adjournment costs whenever ordered by the Court shall be of the
Advocate, which he shall receive and retain himself.

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 the fee is paid. I /we will not be entitled for the refund of
the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be
entitled for additional fee equivalent to half of the agreed fee for every addition three years or part
thereof.

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 25th day of August 2025.

Accepted subject to the terms of fees,


Advocate


Client

Client