

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

ORIGINAL APPLICATION NO.142 OF 2022

IN THE MATTER OF:-

PRATAP CHANDRA MOHANTY & ORS. ...APPLICANT(S)

VERSUS

STATE OF ODISHA & ORS. ...RESPONDENT(S)

NDOH: 22.03.2023

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Filed by:



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New Delhi  
Dated: 23.02.2023

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

ORIGINAL APPLICATION NO.142 OF 2022

IN THE MATTER OF:-

PRATAP CHANDRA MOHANTY & ORS. ...APPLICANT(S)

VERSUS

STATE OF ODISHA & ORS. ...RESPONDENT(S)

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 10  
and 12 (NATIONAL HIGHWAYS AUTHORITY OF INDIA)**

I, Shri Sanjay Channa S/o. Shri Late K.B.Channa, aged about 59 years, at present working as Project Director, having its office at NHAI, Plot No.1768, Near Kalinga Eye Hospital, Dakkhinkali Road, Dhenkanal-759001, do hereby solemnly affirm and declare as under:-

1. That, I am the authorized representative on behalf of Respondent No. 10 and 12 in the present case. I have gone through the contents of the Original Application and have understood the contents of the same. I have gone through all the documents and records being maintained at the office of the Answering Respondent regarding the present matter and have made myself conversant with the facts and circumstances of the present case. Thus, I am



*See*

competent to swear this affidavit on behalf of Respondent No. 10 and 12.

2. That at the outset the deponent on behalf of Answering Respondent specifically denies all the averments made in the instant Original Application, except those which are specifically admitted to by the answering Respondent.
3. That the Deponent craves the liberty of this Hon'ble Tribunal to submit the following brief facts before submitting the para-wise reply to the Original Application under reply which may kindly be taken on record as part and parcel of the present Counter Affidavit.

**BRIEF FACTS:**

4. That, it is humbly submitted that seeing the emergent necessity, the Deponent invited applications from the interested bidders for the work of Rehabilitation and up-gradation of existing two-lane to four-lane standards from Duburi to Chandikhole section of (Km.388.000 to Km.427.400) of NH-200 (New NH-53) in the district of Jajpur, Odisha. The said work was awarded to M/s. Gammon Engineers and Contractors Pvt. Ltd./Respondent



*[Handwritten signature]*

No.13 in JV with M/s. Gammon Infrastructure Projects Ltd./Respondent No.11. The instant project is the crucial stretch for the entire region.

5. That upon following the due process, Agreement was signed with the Contractor, M/s. Gammon Engineers and Contractors Pvt. Ltd. in JV with M/s. Gammon Infrastructure Projects Ltd. on 03.01.2019 with date of commencement decided to be 11.02.2020.

6. That as per provision of Contract Agreement as stipulated in Schedule-F of the Agreement, it is the sole responsibility of the Contractor to obtain, as required under the Applicable Laws, the following Applicable permits.

- a) Permission of the State Government for extraction of boulders from quarry,
- b) Permission of village Panchayat and pollution control board for installation of crushers.
- c) License for use of explosives.
- d) Permission of the State Government for drawing water from river/reservoir



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- e) License from inspector of factories or other Competent Authority for setting up batching plants.
- f) Clearance of Pollution Control Board for setting up batching plant.
- g) Clearance of Village Panchayats and Pollution Control Board for setting up asphalt plant.
- h) Permission of Village Panchayats and State Government for borrow earth.
- i) Any other permits or clearance required under Applicable Laws

A true copy of Schedule-F of the Contract Agreement is being annexed herewith and is marked as **Annexure-1**.

7. That upon the receipt of request, State/District Administration is empowered to allow the Contractor for extraction of boulders from quarry, use of explosive etc. as mentioned in Schedule-F of the Contract Agreement.

9. That as far as need for getting environmental clearance for the ongoing project is concerned, it is humbly submitted that as per the EIA notification, in case length of the road is less than 100 Km no environmental clearance is needed.



*[Handwritten signature]*

The said facts have already been affirmed by the Hon'ble National Green Tribunal in various cases in the past.

10. That akin issue was also raised in OA No 03/2017/EZ wherein vide order dated 21.02.2022 certain directions were passed against the answering respondent. Subsequent thereto, Civil Appeal was preferred vide Civil Appeal Diary No (S) 25275/2022 before the Hon'ble Supreme Court wherein vide order dated 14.10.2022 notice was issued and stay was given upon the operation of order dated 21.02.2022. It is further to add that in the instant case answering respondent has already withheld the considerable amount worth of Rs. 3,32,17,772/- toward non payment of the royalty to the government as per the direction of District Collector, Jajpur letter dated 24.05.2022. It is worth to mention here that contractor M/s Gammon Infrastructure Project Limited-GECPL(JV) i.e., Respondent no 11 herein has challenged the answering respondent's letter dated 08.06.2022 before the Hon'ble High Court of Orissa at Cuttack by filing a WP(C) no 29310 of 2022 where vide order dated 09.11.2022, stayed the



*[Handwritten signature]*

operation of respondent's letter dated 08.06.2022. The case W.P.(C) no 29310 of 2022 is still pending as on date.

A copy of Order dated 21.02.2022 passed in OA No 03/2017/EZ passed by Hon'ble Tribunal is being annexed herewith and is marked as **Annexure-2**.

A copy of Order dated. 14.10.2022 passed by Hon'ble Supreme Court of India in Civil Appeal Diary No. 25275/2022 is being annexed herewith and is marked as **Annexure-3**.

A copy of answering respondent's letter dated 08.06.2022 is being annexed herewith and is marked as **Annexure-4**.

A copy of order dated 09.11.2022 passed in WP(C) no 29310 of 2022 by Hon'ble. High Court of Orissa is being annexed herewith and is marked as **Annexure-5**.

11. That answering respondent submit that as per the Schedule F of the Agreement, it is the responsibility of the contractor to get all the necessary permission from various authorities.



**PARA-WISE REPLY:**

1. In reply to the submissions made by the Petitioner in Para 1 of the Original Application, it is humbly submitted that the Agreement was signed with the Contractor, M/s. Gammon Engineers and Contractors Pvt. Ltd. in JV with M/s. Gammon Infrastructure Projects Ltd. on 03.01.2019 with date of commencement decided to be 11.02.2020. As per provision of Contract Agreement as stipulated at Schedule-F of the Agreement, it is the sole responsibility of the Contractor to obtain, as required under the Applicable Laws, the following Applicable permits:

- a) Permission of the State Government for extraction of boulders from quarry,
- b) Permission of village Panchayat and pollution control board for installation of crushers.
- c) License for use of explosives.
- d) Permission of the State Government for drawing water from river/reservoir
- e) License from inspector of factories or other Competent Authority for setting up batching plants.



*See*

- f) Clearance of Pollution Control Board for setting up batching plant.
- g) Clearance of Village Panchayats and Pollution Control Board for setting up asphalt plant.
- h) Permission of Village Panchayats and State Government for borrow earth.
- i) Any other permits or clearance required under Applicable Laws.

It is the obligation of the State/District Administration to allow the Contractor for extraction of boulders from quarry, use of explosive etc. as mentioned above after issuance of the Applicable Permits as mentioned at Schedule-F of the Contract Agreements. Answering respondent/NHAI has no role for obtaining the Applicable permits. These permits are neither prerequisite for disallowing the Contractor for execution of work which is in national interest nor for releasing the payments to the Contractor against the work done.

2. That the contents of Para 2 of the Original Application are a matter of record and need not be replied by the answering Respondent.



*[Handwritten signature]*

3. In reply to the submissions made by the Petitioner in Para 3 of the Original Application, it is humbly submitted and reiterated that as per provision of Contract Agreement as stipulated at Schedule-F of the Agreement, it is the sole responsibility of the Contractor to obtain the applicable permits as required under the Applicable Laws which are already stated at reply to para-1 above.
4. That the contents of Para 4 of the Original Application does not pertain to answering respondent and hence need not be replied by the same.
5. In reply to the submissions made by the Petitioner in Para 5 of the Original Application, it is humbly submitted that the referred matter has no relevance with the present NGT case. The final order dated 21.04.2022 passed by Hon'ble NGT, EZB, Kolkata Bench in OA 03/2017/EZ titled Sasee Bhoosan Pattanayak vs. State of Odisha & Ors. was challenged before the Hon'ble Supreme Court of India in Civil Appeal Diary No. 25275/2022. In this connection, Hon'ble Supreme Court of India in its order dated 14.10.2022 has stayed the impugned order dated 21.04.2022 of National Green Tribunal.



6. That the contents of Para 6 of the Original Application are a matter of record and need not be replied by the answering Respondent.
7. That the contents of Para 7 of the Original Application are a matter of record and need not be replied by the answering Respondent.
8. That the contents of Para 8 of the Original Application are a matter of record and need not be replied by the answering Respondent.
9. That the contents of Para 9 of the Original Application are a matter of record and need not be replied by the answering Respondent.
10. That the contents of Para 10 need not be replied by the answering respondent as the matter relates to Contractor. However, as per the Notification published in the Gazette of India vide SO No.2559 (E), dt.22.08.2013 wherein it is stated at para-4 as under:

*"...And whereas the Committee has submitted its report to the Ministry and on this ToR, the Committee has recommended exempting highway expansion projects from the requirement of scoping and that Environmental Impact Assessment or Environment Management Plan for highway*



*[Handwritten signature]*

*expansion projects may be prepared on the basis of model ToRs to be posted on Ministry's website and in respect of requirement of environmental clearance, the committee has recommended that expansion of National Highway projects up to 100 kms involving additional right of way or land acquisition up to 40 mts. On existing alignments and 60 mts on re-alignments or bypasses may be exempted from the preview of the notification..."*

It is humbly submitted that in view of the extract of Gazette Notification reproduced above, the Environmental Clearance is not required in this project since the length of the NH is 39.400 k.m. which is less than 100 Km. Further, no additional land acquisition was made for existing alignment of the road and the ROW for 60 meter has been acquired at realignment portion of length 2 k.m.

A true copy of the Gazette Notification S.O. No.2559 (E), dated 22.08.2013 is being annexed herewith and is marked as **Annexure-6**.

11. In reply to the submissions made by the Petitioner in Para 11 of the Original Application, it is humbly submitted that the answering respondent's office is in receipt of letter dated 19.05.2022, 14.06.2022 and 21.06.2022 from the Applicants



*[Handwritten signature]*

Sasee Bhoosan Pattnaik, Akshaya Kumar Pattnaik Pratap and Pratap Chandra Mohanty respectively with similar texts and intentions. These Applicants have time and again asked the information through RTI about the Action Taken Report over their complaints. The petitions earlier filed with the Hon'ble NGT bearing case nos. OA 03/2017/EZ and OA 12/2022/EZ are similar in nature by the petitioner Sasee Bhoosan Pattnaik and Srinath Mishra respectively. Though it is evident that the Hon'ble NGT, Kolkata in OA 03/2017/EZ has given its final order on 21.04.2022 which has been challenged by NHA before Hon'ble Supreme Court of India. In this connection, the Hon'ble Supreme Court of India in its order dated 14.10.2022 has stayed the impugned order dated 21.04.2022 of National Green Tribunal.

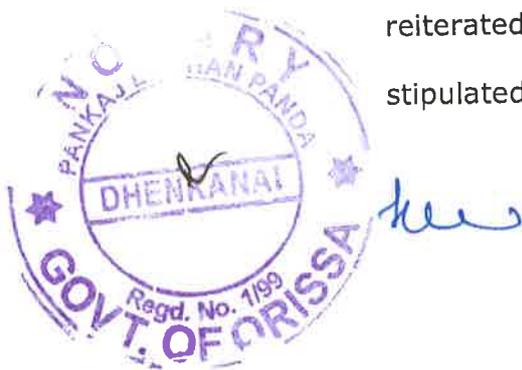
Despite the above facts, these applicants are filing one after other petition in the Hon'ble NGT and affecting the progress of 4-lane work in Duburi-Chandikhole section of NH-53 which is in National Interest. It is submitted that as and when such complaints are received, the same are forwarded to the Contractor for necessary action as stipulated at Schedule-F of the Contract Agreement.



*[Handwritten signature]*

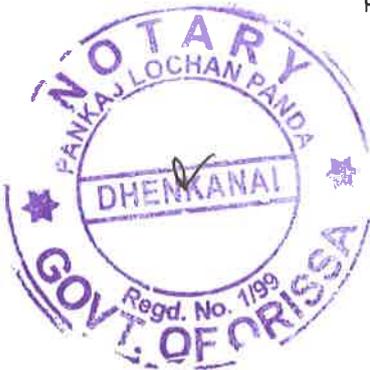
# 13

12. That the contents of para 12 needs no comment as it pertains to concerned Tahasildars in Jajpur.
13. That the contents of para 13 needs no comment as it pertains to concerned Tahasildars in Jajpur.
14. That the contents of para 14 needs no comment as it relates to payment of royalty. Also it pertains to concerned Tahasildars and Contractor, hence need not be replied by the answering respondent.
15. In reply to the submissions made by the Petitioner in Para 15 of the Original Application, it is humbly submitted and reiterated that as per provision of Contract Agreement as stipulated at Schedule-F of the Agreement, it is the sole responsibility of the Contractor to obtain the applicable permits as required under the Applicable Laws which are already stated at reply to para-1 above.
16. That the contents of para 16 needs no comment as it pertains to District Collector, Jajpur and concerned Tahasildars in Jajpur.
17. In reply to the submissions made by the Petitioner in Para 17 of the Original Application, it is humbly submitted and reiterated that as per provision of Contract Agreement as stipulated at Schedule-F of the Agreement, it is the sole



responsibility of the Contractor to obtain the applicable permits as required under the Applicable Laws which are already stated at reply to para-1 above.

18. That the contents of para 18 needs no comment as it pertains to District Collector, Jajpur and concerned Tahasildars in Jajpur.
19. That the contents of para 19 needs no comment as it pertains to District Collector, Jajpur and concerned Tahasildars in Jajpur.
20. That the contents of para 20 needs no comment as it pertains to District Collector, Jajpur and concerned Tahasildars in Jajpur.
21. That the contents of Para 21 of the Original Application are a matter of record and need not be replied by the answering Respondent.
22. That the contents of Para 22 of the Original Application are a matter of record and need not be replied by the answering Respondent.
23. That the contents of para 23 needs no comment as it pertains to District Collector, Jajpur.



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24. That the contents of Para 24 of the Original Application are a matter of record and need not be replied by the answering Respondent.
25. That the contents of Para 25 of the Original Application are a matter of record and need not be replied by the answering Respondent.
26. That the contents of para 26 needs no comment as it pertains to District Collector, Jajpur and concerned Tahasildar in Jajpur.
27. That the contents of Para 27 of the Original Application are a matter of record and need not be replied by the answering Respondent.
28. That the contents of para 28 needs no comment as it pertains to District Collector, Jajpur.
29. That the contents of Para 29 of the Original Application are a matter of record and need not be replied by the answering Respondent.
30. That the contents of para 30 needs no comment as it pertains to District Collector, Jajpur and Tahasildar, Dharmasala, Jajpur.



31. That the contents of Para 31 of the Original Application are a matter of record and need not be replied by the answering Respondent.

32. That the contents of Para 32 of the Original Application are a matter of record and need not be replied by the answering Respondent.



DEPONENT  
परियोजना निदेशक  
PROJECT DIRECTOR  
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
National Highways Authority of India  
प.का.इ.,डेंकानाल/P.I.U.,Dhenkanal

## VERIFICATION

I, the above named deponent, do hereby verify that the facts stated in the above affidavit are true and correct to the best of my knowledge which is based on records being maintained by the Answering Respondent and nothing material has been concealed therefrom.

Verified at Dhenkanal on this 20th th day of February, 2023.

Identified by  
M.P. Nanda  
20.02.23.

(M.P. Nanda Advocate)  
0-956/1993.



DEPONENT निदेशक  
PROJECT DIRECTOR  
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
National Highways Authority of India  
प.का.इ.,डेंकानाल/P.I.U.,Dhenkanal

Solemnly Affirmed  
P.M. or this 10-05 AM  
20th day  
Feb. 2023 identified  
by M.P. Nanda Advocate  
before me

10-05  
20.2.23  
NOTARY

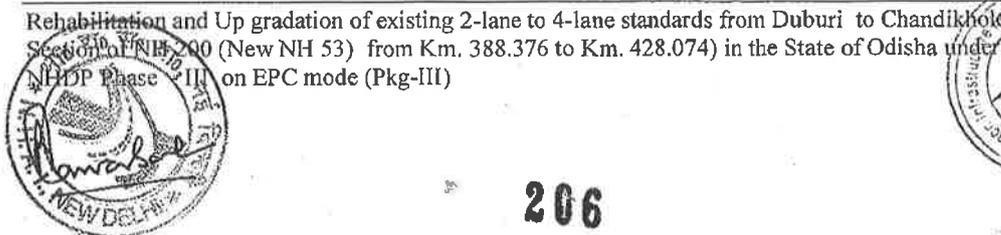


SCHEDULE - F  
(See Clause 3.1.7(a))

**APPLICABLE PERMITS**

**1 Applicable Permits**

- 1.1 The Contractor shall obtain, as required under the Applicable Laws, the following Applicable Permits:
- (a) Permission of the State Government for extraction of boulders from quarry;
  - (b)  Permission of Village Panchayats and Pollution Control Board for installation of crushers;
  - (c) Licence for use of explosives;
  - (d) Permission of the State Government for drawing water from river/reservoir;
  - (e) Licence from inspector of factories or other competent Authority for setting up batching plant;
  - (f) Clearance of Pollution Control Board for setting up batching plant;
  - (g) Clearance of Village Panchayats and Pollution Control Board for setting up asphalt plant;
  - (h)  Permission of Village Panchayats and State Government for borrow earth; and
  - (i) Any other permits or clearances required under Applicable Laws.
- 1.2 Applicable Permits, as required, relating to environmental protection and conservation shall have been procured by the Authority in accordance with the provisions of this Agreement.



Item No. 01

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 03/2017/EZ

Sasee Bhoosan Pattanayak

Applicant

Versus

State of Odisha &amp; Ors.

Respondent(s)

Date of hearing: 21.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE B. AMIT STHALEKAR JUDICIAL MEMBER  
HON'BLE MR. SAIBAL DASGUPTA EXPERT MEMBER  
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant(s): Mr. Sankar Prasad Pani, Advocate

Respondent(s): Mr. Deepak Kumar Pani, Addl. Standing Counsel for R-2 to 4,  
Mr. Dipankar Das, Advocate a/w Mr. Aryak Dutt, Advocate for R-5&6,  
Mr. Gora Chand Roy Choudhury, Advocate for R-8,  
Mr. Dipanjan Ghosh, Advocate for R-9**ORDER**

1. Grievance in this application is against violation of environmental norms in the nature of illegal mining in the course of widening of NH-23/200 from Chandi Khole to Talcher, a stretch of 133 km of which 25km is from Chandikhole to Brahmani bridge with width of around 15 metre and height of 3 metre. In such construction, unauthorized extraction of earth for the highway expansion project has been made from villages such as Kantapada, Kusumpur, Chakradharpur, Baghua, Balisahi, Chadehidhara, Barada, Jhatiapada, Mandia, Aarua,

Kabatbandha, Pakhara, Osora, Purunabahala and Ramchandrapur in Dharmasal Tehsil.

2. The application was filed on 03.01.2017 and came up for first hearing on 04.01.2017. The Tribunal issued notice to the respondents including NHAI, State of Odisha, State PCB and SEIAA Odisha who have filed their respective replies.

3. We may make a brief reference to the stand of the concerned respondents. The stand of the State PCB is that construction work was awarded by the NHAI to M/s Corsan Corviam Construction S.A. with regard to two/four laning of Talcher-Duburi-Chandikhol section of NH-200 from Km 301.890 to Km. 427.885, including Km. 8.5 to Km. 14.886 of NH-23, in the State of Odisha under NHDP III on EPC mode. The said contractor used the mineral from private lands and paid royalty of Rs. 41,79,393/- against 1,14,162 m<sup>3</sup> of Earth/Morrum extracted. Para 4 of Additional affidavit filed later on 05.10.2021 mentions the calculation of Environmental Compensation at Rs. 30,80,000/- for illegal mining for 308 days. The earth excavated is 1,72,162 m<sup>3</sup> Earth/Morrum. In a further affidavit of the State PCB filed on 25.11.2021, it is stated that NHAI has agreement with M/s Ayesa Vashnavi (JV) for certification of minor mineral quantity, according to whom, 5,60,376 m<sup>3</sup> of earth/morrum has been consumed. Rs. 58,38,070/- has been deposited towards royalty which has been accounted only for 1,72,162 m<sup>3</sup> of said material against 3,44,324 m<sup>3</sup> due to higher rate of royalty considered for these materials i.e. Rs.28/- instead of Rs.14/-. Apart from that, Corsan Corviam Construction SA had also paid excess royalty to State Revenue Authority for adjoining project of the Company in the State (i.e. Bhadrak-Anandapur-Chandwali) for an amount of Rs. 85,10,067/- which is still

under reconciliation and covers entire royalty payment for entire quantity.

4. Affidavit filed by the Collector, Jaipur on 20.04.2022 is as follows:-

“

- A. *It is Submitted that, it has been ascertained from the confirmation report submitted by the office of the project Director Dhenkanal, (NHAI) and verification of the Revenue Receipts from the office of **Tahasilder, Bhuban, Dhenkanal & office of Tahasildar, Dharmasala, Jajpur, a total amount of Rs.16,58,677.00 for a quantity of 58000 cum of Morrum/ Earth and Rs.41,79,393.00 for a quantity of 114162 cum of Morrum/ earth respectively** has been realized. This amount sum of to a total Revenue of Rs.58,38,070.00 for a total quantity of 1,72,162 cum which is inclusive of Royalty, penalty and other charges like dead rent, surface rent, income tax, District Mineral funds etc. On through verification of the Revenue Receipts, it has been confirmed that a rate of royalty of Rs.39/cum was charged for 31,025 cum and Rs.28/per cum for 1,41,136 cum of Morum/earth.*
- B. *It is submitted that the total quantity material consumed is 5,60,376 cum and the royalty that has been realized in the account of the State Exchequer for a net quantity of 1,72,162 cum only. Therefore, the quantity of material for which the royalty amount is due to be realized for 3,88,214 cum of Morrum/earth for the four laning of Talchar-Duburi-Chandikhole Section of NH 200 from Km. 301.89 to km.427.885 including km 8.5 to km.14.866 of NH 23 in the State of Odisha under NHDP-III on EPC Mode.*
- C. *It is submitted that the office of the Project Director Dhenkanal, (NHAI) could not produce any factual data with regards to the correspondence mentioning about the conciliation of an amount of Rs.85,18,067.00 towards Royalty for another project. Further, it must also be noted that the office of the Project Director Dhenkanal, (NHAI) has confirmed that the defaulting contractor (Ms/ Corsan Corvium Constructions) has no on-going projects in the State of Odisha, hence, the proposal for conciliation from another project is not acceptable and either the contractor (M/s Corsan Corvium Construction) or the principal employer (NHAI) is entitled to pay the pending dues at the prevailing rate, as decided by the Joint Environmental Impact Assessment Committee, Jajpur.*
- D. *It is submitted that, an amount of Rs.58,38,070.00 has been paid for a quantity of 1,72,162 cum of Morrum earth as royalty and other charges. However, **for the remaining balance quantity of 3,88,214 cum of materials used, the final rate of royalty and penalty has been recommended on the basis of rates prescribed under Odisha Minor Mineral Concession Rules, 2016 which came into force on 14.12.2016 while the contract of the defaulting contractor- M/s Corsan Corvium Constructions SA was only terminated on 15.03.2017***

**due to non-performance on contractual obligations. In this regard, an assessment of Rs 1,35,87,490.00 (at the rate of Rs 335 per cum towards royalty), Rs 1,74,96,630.00 penalty and Rs 30,80,000.00 (towards Environmental Compensation) was agreed upon for final recovery from NHAI amounting to a total recovery amount of Rs. 3,41,64,120.00. In this regard, a demand letter has immediately been communicated to NHAI directing an update on the status of recovery and subsequent transfer of the pending demand amount.”**

5. Vide order dated 25.01.2022, considering the matter the Tribunal observed:-

**“8. In our opinion, if the amount of Environmental Compensation, which is money due to the public exchequer, cannot be recovered from the violator, it shall be recovered by the Respondent Nos. 2 & 3, from the NHAI who had engaged the contractor as its agent to execute the works of NHAI and is, therefore, liable for all the rights and liability of the Respondent No.7.”**

6. We have heard learned Counsel for the parties and considered the matter for passing final order.

7. It is undisputed that illegal mining has taken place and extent of illegal mining is as mentioned in the latest affidavit of the Collector, quoted above. On that basis, royalty, penalty etc. may be recovered as proposed. We may add that under Section 21 (5) of the Mines and Minerals (Development and Regulation) Act, 1957, value of the entire mined material is liable to be paid, as held in (2017) 9 SCC 499 *Common Cause v. UoI & Ors.*<sup>1</sup>

8. Apart from dues as per MMDR Act, compensation for damage to environment for loss of environmental services due to mining, with deterrent element has to be over and above the value of the mined material and utilised for restoration of environment and not on any *ad hoc* formulae, as has been done in the present case, without reference to

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<sup>1</sup>(2017) 9 SCC 499

the cost of remediation and financial capacity of the violators. Reference is made to MC Mehta, (2004) 12 SCC 118, pr 47 and Goa Foundation (2014) 6 SCC 590, prs 68,71 and 77.

9. Accordingly, the State PCB may revisit the amount of compensation. As already held, liability to pay compensation will be not only of the person who did the illegal mining but also the NHAI, who enabled such illegality. It will be on joint and several liability principle. The amount recovered may be utilized for restoration of environment by preparing a restoration plan, to be executed in a time bound manner.

The Application is disposed of.

A copy of this order be forwarded to the State PCB, Collector & District Magistrate, Jajpur and NHAI by email for compliance.

Adarsh Kumar Goel, CP

B. Amit Sthalekar, JM

Saibal Dasgupta, EM

Prof. A. Senthil Vel, EM

April 21, 2022  
Original Application No. 03/2017/EZ  
AB

ITEM NO.17

COURT NO.4

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G SCIVIL APPEAL Diary No(s). 25275/2022

(Arising out of impugned final judgment and order dated 21-04-2022 in OA No. 3/2017 passed by the National Green Tribunal)

REGIONAL OFFICER, NATIONAL HIGHWAYS  
AUTHORITY OF INDIA & ANR.

PETITIONER(S)

VERSUS

SASEE BHOOSAN PATTANAYAK &amp; ORS.

RESPONDENT(S)

( IA No.145899/2022-CONDONATION OF DELAY IN FILING and IA No.145902/2022-EX-PARTE AD-INTERIM RELIEF and IA No.145901/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.145900/2022-CONDONATION OF DELAY IN REILING / CURING THE DEFECTS )

Date : 14-10-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER  
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s)

Mr. Braj Kishore Mishra, AOR  
Mr. Abhishek Yadav, Adv.

For Respondent(s)

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

Delay condoned.

Issue notice.

Until further orders, there shall be stay of impugned order

21.04.2022 in so far as the appellants are concerned.

Signature Not Verified  
Digital Signature of  
POOJA SHARMA  
Date: 2022.10.17  
18:04:40 IST  
Reason: [ ]

(POOJA SHARMA)  
COURT MASTER (SH)(KAMLESH RAWAT)  
COURT MASTER (NSH)



24 ANNEXURE -4  
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)  
National Highways Authority of India  
(Ministry of Road Transport & Highways, Govt. of India)

परियोजना क्रियान्वयन इकाई - डेंकानाल / Project Implementation Unit - Dhenkanal  
प्लॉट नं - 1768, कलिंग आंखों के अस्पताल के समीप, दक्षिणकाली मार्ग, डेंकानाल- 759001 (ओडिशा)  
Plot No: 1768, Near Kalinga Eye Hospital, Dakkhinkali Road, Dhenkanal- 759001 (Odisha)  
दुरभाष / Ph.: 06762 -226850 / 830 (का/0),  
ई-मेल/ E-mail : piudhenkanal@nhai.org, nhaidhenkanal@gmail.com



No: 11024/01/DC/NH-53/Pkg-3/Contract/PIU-DKL/2022/854

Dt:08.06.2022

Authorized Signatory,  
M/s.Gammon Engineers and Contractors Pvt. Ltd. in JV with  
M/s.Gammon Infrastructure Projects Ltd.,  
C/O Gammon House, Veer Savarkar Marg,  
Prabhadevi Mumbai - 400025

Sub: - Rehabilitation & Upgradation of existing two lane to four lane standards from Duburi to Chandikhole section (Km.388.000 - Km.427.400) of NH-200 (New NH-53) in the state of Odisha under NHDP-III- **Demand notice for deposit of royalty, penalty and Environment Compensation Assessment for unauthorized lifting of minor mineral from the unidentified places under Dharmasal Tahsil in the district of Jajpur - Reg.**

Ref: Collector & District Magistrate, Jajpur letter no.7062 dt.24.05.2022

Sir,

Please refer to the above cited subject & reference. In this context, it is to mention that Mr. Sasee Bhoosan Pattnayak vide his representation raised the issue regarding illegal & unlawful procurement of Minor Minerals violation of Orissa Minor Minerals Concession Rule-2016 & Environment Protection Act - 1986 in procurement of Minor Minerals by M/s. Gammon Engineer & Contractors Pvt. Ltd. JV with M/s Gammon Infra Projects Ltd.

2. The case has been filed in the Hon'ble NGT, Kolkata bearing No.O.A. No.12/2022/EZ, Kolkata Branch by Srinath Mishra Vs. State of Odisha and others for unauthorized extraction of minor minerals from Village-Arua, Mandia, Gada, Sukti Jhara without Environmental Clearance.

3. The Collector & District Magistrate, Jajpur vide letter under reference has requested to this office to held up the bill of the Contractor and direct the Contractor to deposit the balance towards extraction of Minor minerals. The Collector & DM, Jajpur has mentioned that Rs.10,46,40,101/- is required to be deposited by Contractor for Royalty & penalty for unauthorized extraction and Environment Compensation.

4. In view of above, it is requested to submit a report on the above penalties etc. levied by the Collector Jajpur, *at the earliest.*

Encl: As above

*Srinivas*  
(A.S.Rao)  
GM (T.) & Project Director

Copy to: Team Leader, Authority's Engineer for information and necessary action please.

# 25

## COLLECTORATE, JAJPUR

Ph 06728-222001(O) 222330 (R) Fax -222087  
E-mail: dm-jajpur@nic.in. Web site: [www.jajpur.nic.in](http://www.jajpur.nic.in)  
[Revenue Section]

Letter No 7062 Date 21.5.2022

From,

Sri Chakravarti Singh Rathore, IAS,  
Collector & District Magistrate, Jajpur

To

The Project Director, NHAI,  
Dhenkanal..

Sub: - Demand notice for deposit of royalty, penalty and Environment Compensation Assessment for unauthorized lifting of minor mineral from the unidentified places under Dharmasala Tahasil in the District of Jajpur

Sir,

With reference to the subject cited above, I am to say that quarry permit was issued in favour of M/s. Infra Engineers Pvt. Ltd, a contractor of NHAI for extraction of 25608 cum. of ordinary earth and morrum from the Lunibar Morrum and Earth quarry with a condition to obtain all necessary clearances from Competent Authorities. But during joint field enquiry by the Tahasildar, Dharmasala and Regional Officer, State Pollution Control Board, it is found that the M/s. Infra Engineers Pvt. Ltd, has lifted earth and morrum unauthorizedly from an unidentified place outside the quarry lease area. In this connection it has been decided in the Environment Loss/impact assessment Committee meeting held on 24.5.2022 at 10.00 a.m to impose royalty of Rs. 1,72,17,117.00 and penalty of Rs. 1,72,17,117.00 with environmental compensation assessment of Rs. 7,07,71,126.00 for unauthorized extraction and consumption of 260833 cum of Soil, 189166 cum of Stone, 112851 cum of Dust & 19481 cum of sand as per your letter No. 388 dt. 22.3.2022 and assessment submitted by R.O.SPCB, Kalinga Nagar vide his letter No. 1544 dt, 21.5.2022. Further, for the unauthorized extraction and consumption of 25,608 cum ordinary earth & morrum from an unidentified place, royalty of Rs. 20,48,640.00 and penalty of Rs. 20,48,640.00 with environmental compensation assessment of Rs. 21,51,274.00 making total amount of Rs. 11,14,53,914.00. Out of the above amount, the Contractor has deposited Rs. 68,13,813.00 with the Tahasildar, Dharmasala and balance amount of Rs. 10,46,40,101.00 is required to be deposited by the Contractor before the BDO, Dharmasala Rs. 7,29,22,400.0 towards Environment Compensation and Rs. 3,17,17,701.00 before the Tahasildar, Dharmasala towards royalty, penalty for unauthorized extraction and consumption of earth and morrum etc.

In view of the above fact, you are hereby directed to held up the bill of the Contractor and direct the contractor to deposit the balance amount before the authority concerned. After receipt of the clearance from the Tahasildar, Dharmasala and BDO, Dharmasala, the payment should be made to the Contractor towards his bill.

Matter is most urgent.

Yours faithfully,

  
Collector & District Magistrate,  
Jajpur



रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



# भारत का राजपत्र

## The Gazette of India

EXTRAORDINARY  
भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)  
प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

सं. 1960] नई दिल्ली, बृहस्पतिवार, अगस्त 22, 2013/श्रावण 31, 1935  
No. 1960] NEW DELHI, THURSDAY, AUGUST 22, 2013/SHRAVANA 31, 1935

पर्यावरण और वन मंत्रालय

अधिसूचना

नई दिल्ली, 22 अगस्त 2013

का.आ.2559(अ).-केन्द्रीय सरकार ने, भारत सरकार की पर्यावरण और वन मंत्रालय में पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (2) के खंड (5) और उप-धारा (1) के अधीन जारी अधिसूचना संख्या का.आ. 1533 (अ) तारीख 14 सितंबर, 2006 द्वारा निदेश दिया है कि इस अधिसूचना के प्रकाशन की तारीख से ही नई परियोजनाओं या उक्त अधिसूचना की अनुसूची में सूचीबद्ध विद्यमान परियोजनाओं या कार्यकलापों के विस्तार या आधुनिकीकरण के लिए अपरिहार्य क्षमतावर्धन के लिए प्रक्रिया या प्रौद्योगिकी में परिवर्तन और या उत्पाद मिश्रण, भारत के किसी भी भाग में यथास्थिति केन्द्रीय सरकार या उक्त अधिनियम की धारा 3 की उप-धारा (3) के अधीन केन्द्रीय सरकार द्वारा सम्यक् रूप से गठित राज्य स्तरीय पर्यावरण संघात निर्धारण प्राधिकरण की उसमें विनिर्दिष्ट प्रक्रिया के अनुसरण में पूर्व पर्यावरण निकासी के पश्चात् ही हाथ में लिया जाएगा;

और भारत सरकार ने पर्यावरण और वन मंत्रालय में राजमार्गों, भवनों और विशेष आर्थिक क्षेत्र परियोजनाओं के लिए पर्यावरणीय निकासी प्रदान करने से संबंधित पर्यावरण संघात निर्धारण अधिसूचना, 2006 के उपबंधों का पुनर्विलोकन करने के लिए कार्यालय जापन सं. 21-270/2008-आईए.III, तारीख 11 दिसंबर, 2012 और पर्यावरण और वन मंत्रालय के गगनचुंबी भवनों के संबंध में कार्यालय जापन तारीख 7 फरवरी, 2011 द्वारा सदस्य, (पर्यावरण और वन तथा विज्ञान और प्रौद्योगिकी), योजना आयोग की अध्यक्षता में एक उच्च स्तरीय समिति का गठन किया था ;

3649 GI/2013

(1)



(i) अनुसूची के मद 8 में प्रवर्ग ख के रूप में सूचीबद्ध सही परियोजनाएं और कार्यकलाप (नगरों या वाणिज्यिक परिसरों या आवासन का संनिर्माण) ;

(ii) अनुसूची के मद 7 की उपमद (च) के अधीन स्तंभ (3) और स्तंभ (4) की प्रविष्टि (ii) के अधीन आने वाली राजमार्ग विस्तार परियोजनाएं ;

परंतु यह और कि -

अ. खंड (i) में निर्दिष्ट परियोजनाएं और कार्यकलापों का अंकन प्ररूप 1 या प्ररूप 1क और अवधारणा योजना के आधार पर किया जाएगा ;

आ. खंड (ii) में निर्दिष्ट परियोजनाएं पर्यावरण और वन मंत्रालय द्वारा विनिर्दिष्ट माडल टीओआर के आधार पर ईआईए और ईएमपी रिपोर्ट तैयार करेंगी ;

(ख) अनुसूची में मद 7 की उप मद (च) के सामने स्तंभ (3) में प्रविष्टि (ii) के स्थान पर निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:-

"(ii) राष्ट्रीय राजमार्गों का 100 किलोमीटर से अधिक विस्तार जिनमें अतिरिक्त 40 मीटर से अधिक विद्यमान संरेखणों पर और पुनः संरेखणों या उपमार्गों पर 60 मीटर क्षेत्राधिकार या भूमि अर्जन अंतर्बलित है ।"

[फा.सं.21-270/2008-आईए.।।।]

अजय त्यागी, संयुक्त सचिव

टिप्पण : मूल नियम भारत के राजपत्र असाधारण, भाग II, खंड 3, उपखंड (ii) में अधिसूचना सं. का.आ. 1533(अ), तारीख 14 सितंबर, 2006 द्वारा प्रकाशित किए गए थे और तत्पश्चात् निम्नानुसार संशोधित किए गए :

1. का.आ. 1733(अ), तारीख 11 अक्तूबर, 2007;
2. का.आ. 3067(अ), तारीख 1 दिसंबर, 2009;
3. का.आ. 695(अ), तारीख 4 अप्रैल, 2011;
4. का.आ. 2896 (अ), तारीख 13 दिसंबर, 2012; और
5. का.आ. 674(अ), तारीख 13 मार्च, 2013

#### MINISTRY OF ENVIRONMENT AND FORESTS NOTIFICATION

New Delhi, the 22nd August, 2013

S.O. 2559(E).- Whereas by notification of the Government of India in the Ministry of Environment and Forests vide number S.O.1533(E), dated the 14th September, 2006 issued under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government directed that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the said notification entailing the capacity addition with change in process or technology and or product mix shall be undertaken in any part of India only after prior environmental clearance from the Central Government or as the case may be, by the State level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified therein;

And whereas the Government of India in the Ministry of Environment and Forests had constituted a High Level Committee under the Chairmanship of Member (Environment and Forests and Science and Technology), Planning Commission, vide OM No.21-270/2008-IA.III dated the 11th December, 2012 to review the provisions of Environmental Impact Assessment Notification, 2006 relating to granting Environmental Clearances for Roads, Buildings and Special Economic Zone projects and provisions under the OM dated the 7th February, 2012 issued by the Ministry of Environment and Forests regarding guidelines for High Rise Buildings;

And whereas one of the terms of reference (ToR) of the Committee was to review the requirement of Environmental Clearance for highway expansion projects up to the right of way of 60 meters and length of 200 kms under Environmental Impact Assessment notification;

And whereas the Committee has submitted its report to the Ministry and on this ToR, the Committee has recommended exempting highway expansion projects from the requirement of scoping and that Environmental Impact Assessment or Environment Management Plan for highway expansion projects may be prepared on the basis of model ToRs to be posted on Ministry's website and in respect of requirement of environmental clearance, the Committee has recommended that expansion of National Highway projects up to 100 kms involving additional right of way or land acquisition up to 40 mts on existing alignments and 60 mts on re-alignments or by-passes may be exempted from the preview of the notification;

And whereas the report of the Committee has been examined in the Ministry of Environment and Forests. Earlier, vide notification S.O. 3067(E), dated the 1st December 2009 all State Highway expansion projects, except those in hilly terrain (above 1000 m AMSL) and ecologically sensitive areas, have already been exempted from the purview of the Environmental Impact Assessment notification, 2006.

And whereas, keeping inter-alia in view the foregoing, the Ministry of Environment and Forests has decided to accept the aforesaid recommendations of the High Level Committee constituted vide OM No.21-270/2008-IA.III, dated the 11th December 2012;

Now, therefore in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (4) of rule (5) of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendment to the notification of the Government of India, in the Ministry of Environment and Forests number S.O. 1533(E), dated the 14th September, 2006 after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of the said rule 5 in public interest, namely:—

2. In the said notification, —

(a) in paragraph 7, in sub-paragraph II, for item (i), the following item shall be substituted, namely:

(i) "Scoping" refers to the process by which the Expert Appraisal Committee in the case of Category A projects activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion or modernization or change in product mix of existing projects or activities, determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought and the Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the terms of reference on the basis of the information furnished in the prescribed application Form 1 or Form 1A including terms of reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned:

Provided that the following shall not require Scoping:—

- (i) all projects and activities listed as Category 'B' in item 8 of the Schedule (Construction or Township or Commercial Complexes or Housing);
- (ii) all Highway expansion projects covered under entry (ii) of column (3) and column (4) under sub-item (f) of item 7 of the Schedule:

Provided further that—

- A. the projects and activities referred to in clause (i) shall be appraised on the basis of Form I or Form 1A and the conceptual plan;
  - B. The projects referred to in clause (ii) shall prepare EIA and EMP report on the basis of model TOR specified by Ministry of Environment and Forests;
- (b) in the Schedule, against sub-item (f) of item 7, in column (3), for the entry (ii), the following entry shall be substituted, namely:—

"(ii) Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes."

[F. No. 21-270/2008-IA.III]

AJAY TYAGI, Jt. Secy.

**Note:** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide notification number S.O. 1533(E), dated the 14th September, 2006 and subsequently amended as follows:—

1. S.O. 1737 (E), dated the 11th October, 2007;
2. S.O. 3067 (E), dated the 1st December, 2009;
3. S.O. 695 (E), dated the 4th April, 2011;
4. S.O. 2896 (E), dated the 13th December, 2012; and
5. S.O.674(E), dated the 13th March, 2013



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Balendu Shekhar &lt;officeofbalendu@gmail.com&gt;

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**ADVANCE SERVICE COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 10 AND 12 (NATIONAL HIGHWAYS AUTHORITY OF INDIA) IN THE MATTER OF PRATAP CHANDRA MOHANTY & ORS. VERSUS STATE OF ODISHA & ORS. (ORIGINAL APPLICATION NO.142 OF 2022) PENDING THE HON'BLE NATIONAL GREEN TRIBUNAL, EASTERN ZONE BENCH, KOLKATA**

1 message

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**Balendu Shekhar** <officeofbalendu@gmail.com>

Thu, Feb 23, 2023 at 6:56 PM

To: sankarprasadpani@gmail.com, "adv.samapika@gmail.com" <adv.samapika@gmail.com>, roychoudhurygorachand@gmail.com, dpnjnghsh0@gmail.com, roez.bsr-moef@nic.in, info@gammoninfra.com

Cc: Balendu Shekhar <officeofbalendu@gmail.com>

**PROOF OF SERVICE**

To,  
Mr. Sankar Prasad Pani, Advocate for Applicant  
Ms. Samapika Mishra, ASC for R-1,2,5,6,7 & 8  
Mr. Dipanjan Ghosh, Adv. for R-3  
Mr. Gora Chand Roy Choudhury, Adv. for R-4  
Ms. Rashmi Singhee, Adv. for R-9  
Mr. Siddhant Dwibedi, Adv. for R-11

Sir,  
Please find the attached soft copy of Counter Affidavit on behalf of Respondent No. 10 and 12 for your kind information and record.

Thanks & Regards

Balendu Shekhar  
Advocate  
LB-17, 5 Gauri Sadan Hailey Road,  
New Delhi-110001  
Mob. No. 9999666769



**Counter Affidavit R 10 AND 12.pdf**

3354K