

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

I.A No. 75 /2024

(Arising Out of O.A NO. 167/2023)

IN THE MATTER OF –

SRIKANT KUMAR PAKAL AND OTHERS

... APPLICANTS

VERSUS

STATE OF ODISHA AND OTHERS

... RESPONDENTS

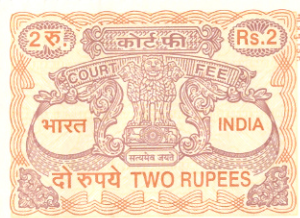
INDEX

Sl.No	Annexure	Description	Pages
1		Interim Application	1-9
2	C/13	A copy of the Joint Enquiry Report dated 05.07.2023	10
3	D/13	A copy of the order dated 11.09.2024 passed by the Hon'ble High Court of Orissa vide W.P. (C) No.16106/2024	11-15

Place-Cuttack By the Respondent No. 13 through

Date: 24.9.2024


ADVOCATE



1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

I.A No. _____/2024

(Arising Out of O.A NO. 167/2023)

IN THE MATTER OF –

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

IN THE MATTER OF –

An application for appropriate order.

AND

IN THE MATTER OF:

An application for fresh enquiry.

IN THE MATTER OF:

An application challenging the joint enquiry report dated 05.07.2023 prepared by officials of Respondent no. 2 and 3, as it was prepared unilaterally without involving the Respondent no. 13 in any manner whatsoever, which is not only illegal but also arbitrary in nature and violation of Natural Justice.

IN THE MATTER OF –

SRIKANT KUMAR PAKAL AND OTHERS

... APPLICANTS

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

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.

Managing Director

Pradipta

VERSUS

STATE OF ODISHA AND OTHERS

... RESPONDENTS*(The humble petition of
the Respondent No.13)***MOST RESPECTFULLY SHEWETH: -**

1. That the present Original Application have been filed by the applicant by challenging the illegal lifting of Moorum/Murum (Weathered Laterite), Stone, Sand and Soil (Minor Minerals) in Mania, Uchapada village under Tangi- Choudwar under Cuttack district from government land by the Respondent No. 13 without having any Environment Clearance.
2. That it is most humbly submitted that, this Hon'ble Tribunal while adjudicating the Original Application, was pleased to issue notices to the respondents. The respondents have appeared and filed their counter affidavit.
3. That while the matter stood thus, this Hon'ble Tribunal on 23.11.2023 was pleased to constitute a committee to visit the site and submit its report. The operative part of the order dated 23.11.2023 is quoted here under-

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

Pradipta Kumar Mohanty

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.

[Signature]
Managing Director

[Signature]
PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd.No-ON-04/1995

- i) *Senior Scientist, Odisha State Pollution Control Board;*
 - ii) *District Mining Officer, Cuttack;*
 - iii) *District Collector, Cuttack or his representative officer not below the rank of Additional District Magistrate (A.D.M); and*
 - iv) *Divisional Forest Officer, Cuttack***”*
4. That it is important to mention here that, the said committee has not yet been visited to the site and has not prepared any report further have not served/supplied to the Respondent No. 13. Further, it may be stated here that, the Respondent No. 13 has never been issued with any notice nor any information with regard to the inquiry of the committee as per the direction of this Hon'ble Tribunal.
5. That it is noteworthy to mention here that, from the counter affidavit filed by the state Respondent no. 1 in the present Original Application, the Respondent No. 13 came to know that, some petitions were filed before the Respondent No. 7 as against the present respondent by alleging unauthorised excavation of morrum/ordinary earth from Government land in village Mania.

Therefore, the Opp. Party no. 7 directed to the officials of the Opp. No.2 and 3 to conduct an enquiry jointly. Accordingly, on 05.07.2023 an enquiry was made and as per the enquiry report it was

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.
Managing Director

Pradipta

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

found that, the Respondent No. 13 excavated morrum/ordinary earth from various plots including leased out plots. The said enquiry report has been annexed as Annexure 6 /C Series to the counter affidavit filed by the Opp. No. 1.

6. That it is humbly submitted that, the Government Officials involved in the joint enquiry dated 05.07.2023 displayed biasness against the Respondent No.13, as because they have not conducted enquiry properly. They have also not involved the Respondent No. 13 in the joint enquiry which is a clear case of violation of Natural Justice. A copy of the Joint Enquiry Report dated 05.07.2023 is annexed herewith as ANNEXURE-C/13.

7. That it is humbly submitted that, the work order which has been awarded by the East Coast Railway in favour of the Respondent No.13 vide letter of acceptance dated 01.06.2022 does not include any such work which requires morrum in any manner whatsoever. Thus, there was no such requirement nor any such occasion for the Respondent no. 13 to excavate the morrum.

8. That it is noteworthy to mention here that, after the letter of acceptance the East Coast Railway entered into an agreement with the present respondent. As per the work order and agreement are concerned, the only work which requires or which involves earth work in cutting and filling is mentioned in the

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.

Managing Director

Pradipta Kumar Mohanti

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

schedule of the agreement. The schedule A talks about execution of earth work in cutting and filling which can be verified from the agreement itself and also does not involve any requirement of morrum.

9. That the respondents have unilaterally prepared an enquiry report without involving the Respondent No. 13 or given any opportunity to take part in the said joint enquiry and the same has been done without following the principle of natural justice.
10. That it is also important to mention here that, the enquiry proceeding lacks transparency as because the Respondent no. 13 was never intimated about the enquiry nor given any information to remain present at the time of enquiry.
11. That it is pertinent to mention here that, the conclusion drawn in the said enquiry report lacks adequate reasoning and do not sufficiently correlate with the evidence presented. Hence, this failure raises concerns regarding the objectivity and thoroughness of the enquiry process.
12. That it is noteworthy to mention here that, as the consequence thereof the Respondent no.7 basing on such enquiry report, raised a demand against the Respondent no. 13 of Rs. 2,02,40,600/- which violates the Rights of the present respondent and hence liable to be quashed.
13. That the Respondent No. 13 when came to know about the enquiry report dtd. 05.07.2023, from the

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.
Managing Director

Pradipta

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

counter filed by the State Government, having no other alternative had approached the Hon'ble High Court of Orissa vide W.P. (C) No. 16106/2024, wherein vide order dated 11.09.2024, the Hon'ble High Court was pleased to dispose the writ petition with liberty to the Respondent No. 13 to raise all the grounds before this Hon'ble Tribunal for appropriate reliefs. A copy of the order dated 11.09.2024 passed by the Hon'ble High Court of Orissa vide W.P. (C) No.16106/2024 is annexed herewith as ANNEXURE-D/13.

14. Thus, from the above enquiry report submitted by the State Government under Annexure 6/C Series in the Counter filed before this tribunal is biased and arbitrary in nature.
15. That in view of the above, the state respondent may be directed to re-enquire this issue and this Hon'ble Tribunal may be gracious enough to set aside the Joint Enquiry Report dated 05.07.2023.
16. That it is most humbly submitted that, the contention of the enquiry report is itself illegal as because it states that, during previous field visit the Respondent No. 13 was asked to stop illegal excavation and to fill up the illegal excavated area and create plantation before monsoon. However, the Respondent No. 13 never ever intimated regarding the illegal excavation and also there were no earlier enquiry was made by anyone in any manner whatsoever.

SHANTI CONSTRUCTION SANGALPUR PVT.LTD.
Managing Director

Shahab
A.A.

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


17. That it is humbly submitted for the better appreciation of this Tribunal that, the joint enquiry was held on the issue against the Respondent no. 13 and it has been observed that Respondent No. 13 has encroached the forest land and illegally excavated the morrum from the forest land, but unfortunately the report does not contain the signature of the forest official. Hence the report is bad in law and liable to be set aside.

18. That at the cost of repetition it is submitted here that, the Respondent No. 13 has never excavated any such alleged material as per the allegation made in the Original Application. In fact, the specific case of the Respondent No. 13 is that, the work assigned to the Respondent No. 13 does not require excavation of morrum in any manner whatsoever. Hence, the entire allegation as made in the Original Application is false.

19. That it is submitted for the appreciation of this Hon'ble Tribunal that, the State Respondent No. 1, in order to save their skin has made such a false report behind the back of the Respondent No. 13. Hence, the said joint enquiry report dated 05.07.2023 may not be taken into consideration by this Hon'ble Tribunal.

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.

Managing Director


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


Pradipta
Mohanty

PRAYER

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

And may quash the enquiry report dated 05.07.2023 prepared by the Officials of the Respondent No 2 & 3 which was issued by the Respondent. No. 7 passed in Touzi Misc Case No. 35/2023 under Annexure- C/13 of this present application,

And may further be pleased to direct the experts to conduct another fresh enquiry in the presence of the Respondent No. 13,


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

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

Place-Cuttack By the Respondent No. 13 through

Date: 24.9.24


ADVOCATE


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

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.
Managing Director

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

I.A No. _____/2024

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

IN THE MATTER OF –

SRIKANT KUMAR PAKAL AND OTHERS

... APPLICANTS

VERSUS

STATE OF ODISHA AND OTHERS

... RESPONDENTS

AFFIDAVIT

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

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

Identified By

Biswajit Chandra Mohanty
Advocate

SHANTI CONSTRUCTION SAMBALPUR PVT.LTD.

Bipin Agrawal
Managing Director
Deponent (*BIPIN AGRAWAL*)

Solemnly sworn before me by..... *Bipin Agrawal*
being identified by..... *B.C. Mohanty Shrova*
at Cuttack Town Dated..... *24/09/2024*
24/09/2024
P.K. MOHANTY, Notary, Cuttack Town
Regd. No-ON-04/1995



INQUIRY REPORT ON ILLEGAL EXTRACTION OF MINOR MINERALS (ORDINARY EARTH / MORRUM) BY SHANTI CONSTRUCTION PVT LTD IN VILL-KADEI AND MANIA OF THIS TAHASIL

As per pre-scheduled programme, we the following signatories conducted spot visit today i.e. on 05.07.2023 at about 11.30 A.M. on illegal lifting and transporting of Minor Minerals (ordinary earth / morrum) by Shanti Construction Pvt Ltd. On enquiry, it is found that M/s Shanti Construction Pvt Ltd was allowed through temporary lease to lift 2000 cum ordinary earth from Plot No.541-Ac.0.93, 545-Ac.0.56, 549-Ac.0.64, 551-Ac.0.42, 552-Ac.0.82, Kisam-Patita under Abad Jogya Anabadi Khata No.529 of Vill-Mania, PS-Tangi for use the same in construction work of Bhadrak-Nirgundi 3rd line Rail Link Project. But the Company has excavated ordinary earth / morrum from Plot No.1 (P) Ac.0.70 of Vill-Kadei and Plot No.550 (P) Ac.0.87 of Vill-Mania including the leased out plots. On verification of R.O.R. of Vill-Kadei and Mania, it is revealed that Plot No.1, Area-Ac.20.41, Kisam-Jungle-II of Vill-Kadei stands recorded under Rakhita Khata No. 465 and Plot No.550, Area-Ac.16.37, Kisam-Jungle-II of Vill-Mania stands recorded under Rakhit Khata No.532. Though the kisam of the land is Jungle-II, there is no forest growths as such over the plots except small bushes and laying as pathar chatan. The Range Officer present also admitted the fact of field position. On measurement of the excavated area, it is seen that the company has illegally excavated approximately 2,60,580 cum of ordinary earth / morrum from the above two jungle kisam plots. During previous field visit, the company was asked to stop the illegal excavation henceforth and to fill up the illegal excavated area and create plantation over it much before the monsoon. But the company has not been carried out the instruction till date.

[Signature]
05.7.2023
Range Officer, Byree

[Signature]
05.07.23
Tahasildar, Tangi-Choudwar

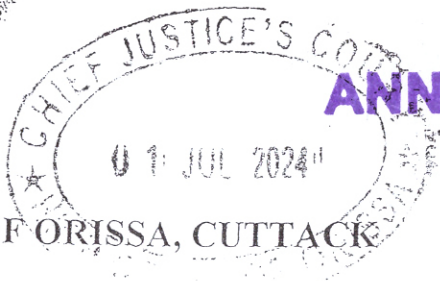
Forester
Safa Range

[Signature]
05.07.23
Revenue Supervisor
Tangi-Choudwar Tahasil

[Signature]
05.07.23
Revenue Inspector
Uchhapada

TRUE COPY
Tahasildar
Tangi-Choudwar 29

True Copy
attested by
[Signature]



IN THE HIGH COURT OF ORISSA, CUTTACK

(ORIGINAL JURISDICTION CASE)

W.P.(C). No. 16106 of 2024

Code No. 270000

22143

IN THE MATTER OF:

An Application under Article 226 and 227 of the Constitution of India;

AND

IN THE MATTER OF:

An Application under the Odisha Minor Mineral Concession Rules 2016 and the Amendment Rules, 2022;

represented in Court

Debarshi
03/07/24
B.O.

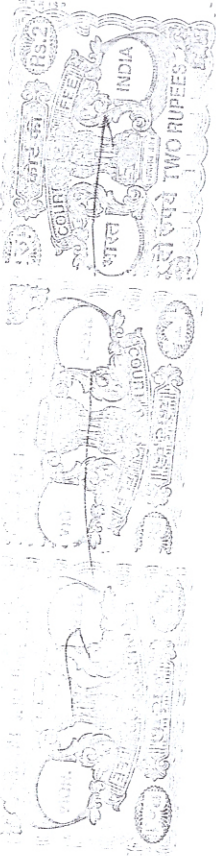
IN THE MATTER OF:

An application challenging the enquiry report prepared by the Opp. No. 7 and 8 jointly vide order dated 05.07.2023 as it was prepared unilaterally without informing the petitioner and without even intimating the petitioner in any manner whatsoever, which is not only illegal but also arbitrary in nature and further challenges the revised demand notice issued by the Opp. No. 4 passed in Touzi Misc Case No. 35/2023 as a consequence thereof.

AND

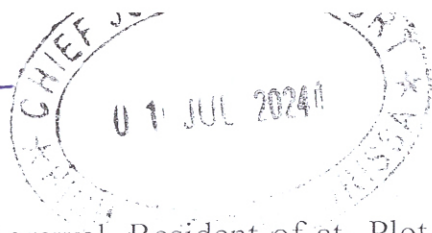
IN THE MATTER OF:

SHANTI CONSTUCTION PVT. LTD, represented through its Proprietor Mr. Bipin Agrawal, aged about 62



18

-12-



2

years, S/o- Late Hariram Agrawal, Resident of at- Plot No. 1104/2707, Bangalipara, Badabazar, Sambalpur-768006

.....PETITIONER

-Versus-

1. **STATE OF ODISHA**, represented by Addl. Chief Secretary to Govt. Steel and Mines Department Lokseva Bhawan, Bhubaneswar, Dist- Khurda.
2. **DIRECTOR (MINOR MINERALS STEEL AND MINES DEPARTMENT)** Lokseva Bhawan, Bhubaneswar, Dist- Khurda.
3. **THE COLLECTOR CUM DISTRICT MAGISTRATE**, At/P.O./Dis- Cuttack.
4. **THE TAHASILDAR**, At/P.O./Dist- Cuttack
5. **DEPUTY DIRECTOR OF MINES**, Cuttack Circle, Cuttack.
6. **MINING OFFICER** , Cuttack Circle, Cuttack, Dist- Cuttack.
7. **ADDITIONAL CHIEF SECRETARY**, Revenue and Disaster Management Department, Lokseva Bhawan, Bhubaneswar, Dist- Khurda.
8. **ADDITIONAL CHIEF SECRETARY**, Department of Forest, Enviroment and Climate Change, Government of Odisha, Kharvel Nagar, Bhubaneswar-751001.
9. **STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY (SEIAA)**, SRF-2/1, Acharya Vihar,



18

Unit-IX, OPTCL Colony, Anand Bazar, Bhoi Nagar,
751022. Bhubaneswar, Odisha.

10.EAST COAST RAILWAY, represented through its
General Manager, Chandrasekharpur Bhubaneswar.

.....OPP.PARTIES



B



- 14 -

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 16106 of 2024

Shanti Construction Pvt. Ltd., *Petitioner*
Sambalpur

Mr. Jaydeep Pal, Advocate

-versus-

State of Odisha & Others *Opposite Parties*

Mr. P. P. Mohanty, A.G.A.

Mr. Dipti Ranjan Bhokta, C.G.C.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MISS JUSTICE SAVITRI RATHO

ORDER
11.09.2024

Order No.

02.

This matter is taken up through Hybrid mode.

2. The petitioner has filed the writ petition seeking the following reliefs:-

"In view of the aforesaid facts and circumstances, the Petitioner humbly prays that this Hon'ble Court may graciously please to admit this application,

And may be pleased to quash the said enquiry report under Annexure-3,

And may also quash the demand notices issued by the Opp. No. 4 passed in Touzi Misc. Case No. 35/2023 dated 10.07.2023 and 16.08.2023 under Annexure-4 Series,





And may further be pleased to direct the Opp. No.4 to conduct another fresh enquiry involving the petitioner."

3. Learned counsel appearing on behalf of the petitioner after some argument submits that he may be allowed to withdraw this writ petition with a liberty to raise all the grounds taken in the present writ petition to question the demand of penalty by order dated 16.08.2023 passed in Touzi Misc. case No. 35 of 2023 based on an enquiry conducted behind his back, before the National Green Tribunal in Original Application No. 167/2023/EZ.

4. This application is disposed of accordingly as withdrawn with the liberty aforesaid.

SAI- C. S. Singh, C.J

SAI- S. Ratho, J

Subhalaxmi

True copy attested by

Compare by, R. Sahoo
17.9.24





IA arising out of O.A No
167/2023



me 4:18 PM
to Sankar ▾



Dear Sir,
I'm attaching an IA application along with
annexures arising out of O.A. No. 167/2023 on
behalf of the Respondent No. 13.

IA NGT by
RES13.pdf



PDF

← Reply

→ Forward

