BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

MEMORANDUM OF APPLICATION

(Under Sec. 14 r/w Se. 15 of the National Green Tribunal Act, 2010)

O.A. NO. 44 OF 2024

Jot Singh Bist .... Applicant

Versus

State Of Uttarakhand and Ors .... Respondents

INDEX

Dated: 11 February, 2025

THROUGH

ALPHA LEGAL ADVOCATES

C-53, BLOCK C, JANGPURA EXTENSION,

NEW DELHI – 110014

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SHORT NOTE OF SUBMISSIONS
ON BEHALF OF THE RESPONDENT NO. 5

1. The captioned OA has been registered pursuant to a letter petition dated 10.08.2023, concerning a railroad project from Rishikesh to Karnprayag, being undertaken by the Respondent No. 4 i.e., Rail Vikas Nigam Ltd. (RVNL) (the "**Project**"), alleging that the said project is being undertaken without the necessary statutory approvals and permissions.

2. A contract dated 02.09.2020 was entered into between the Respondent No. 4 and the Respondent No. 5 (the "**Answering Respondent**"), wherein the Answering Respondent was engaged as the contractor to execute the said project (the "**Agreement**"). The Agreement along with its accompanying documents including the bid documents clearly stipulate the obligations of the Answering Respondent as the "Contractor" and that of the Respondent No. 4 as the "Employer".

3. Broadly, the Answering Respondent submits that:
   i. The instant OA is not maintainable being evidently actuated by vested interests and hence, is contrary to Sec. 14 read with Sec. 2(1)(m) of the National Green Tribunal

Act, 2010 (**NGT Act**), which disqualify issues which only concern an individual or a small group of individuals, as opposed to the public.

ii. In view of Sec. 11 of the RAILWAYS ACT, 1989 (the "**Railways Act**"), the Project is exempt from all statutory stipulations barring those relating to land acquisition.

iii. The Joint Committee's Report (**JCR**) dated 13.05.2024 confirms that no environmental damage has occasioned owing to the Project.

iv. Assuming without admitting, that statutory permissions were necessary, the responsibility to obtain them lay with the Respondent No. 4, which has, in fact, admitted that there was no default on the part of the Answering Respondent.

OA MOTIVATED BY VESTED INTERESTS

4. Sec. 14 of the NGT Act enjoins on the Hon'ble NGT, jurisdiction over all civil cases, where a substantial question relating to environment is involved. Sec. 2(1)(m) of the NGT Act, defines a "*substantial question relating to environment*", to be one where there is either:

   i. A direct **violation of a specific statutory environmental obligation** by a person by which:

      i. Affects the community at large **other than an individual or group of individuals** or

      ii. the **gravity of damage to the environment or property is substantial** or

      iii. the damage to public health is broadly measurable; or

   ii. The environmental consequences relate to a specific activity or a point source of pollution.

5. A reading of Sec. 2(1)(m) evinces that grievances that are individualistic in nature or that pertain to a small group of individuals, are expressly barred.

6. The instant OA appears to have been instituted on individualistic grievances of the Applicant as is evident from the letter petition dated 10.08.2023. The Applicant, in the said letter petition, threatens to invoke the jurisdiction of this Hon'ble Tribunal if certain

demands essentially for the convenience of the villagers of the village of which the Applicant is a resident, are not met.

7. The Applicant, on 14.06.2023, addressed a letter to the District Magistrate, Rudraprayag, wherein he reiterated two demands i.e., filling up of a river called *Chopda Gadera* upto the ground level to make a playground; and also building a road from Saruli, Phalinda to *Gama Gadera*. The Applicant also stated that he would be constrained to invoke the jurisdiction of this Hon'ble Tribunal if the aforesaid demands were not met by 07.07.2023.

8. Therefore, had the abovementioned demands been met, the Applicant would not have filed the letter petition, which is proof that the Applicant was never really concerned about the restoration of any alleged environmental damage.

9. The Hon'ble Supreme Court, in ***State of U.P. v. Uday Education & Welfare Trust***, 2022 SCC OnLine SC 1469 (*para 99*), has emphasized that objections as to *locus* must be considered by the NGT and the credentials and *bona fides* of the applicants must be tested, before they can be allowed to knock the doors of justice.

JCR CONFIRMS NO ENVIRONMENTAL DAMAGE OWING TO THE PROJECT

10. The Joint Committee, in its report dated 13.05.2024, categorically held that it had found no damage to the private lands or the Alaknanda River due to the disposal of debris during its site visit. The relevant portion of the JCR (as translated in the order dated 17.05.2024) is reproduced below for ease of reference:

> "*... 8. According to the report of Assistant Inspector General of Forests, Ministry of Environment, Forest and Climate Change, Regional Office, Dehradun:-*
>
> *...*
>
> *3) The proposal has been submitted mentioning the number of 05 affected trees. However, during inspection,* ***it was seen that no trees had been cut and the debris was also not going into the Alaknanda River****.*
>
> *Based on the investigation done by the committee and the data given by the Forest Department, Geology and Mining Department, Revenue Department, the following facts were observed –*
>
> *...*
>
> *2. Among the above Khasras, Khasra No. 5363 Rauli is in its previous form and* ***there has been no damage to the private land due to dumping of debris****.*

3. The trunks of 05 trees are buried due to debris dumping at the said place and ***the branches of the said trees are green, due to which there is no damage to the said trees****."* [Emphasis added]

11. Therefore, when the Joint Committee itself has recorded that there has been no environmental damage by any action of the Answering Respondent, the requirement of Sec. 2(1)(m) is clearly not met, which contemplates "substantial" damage to the environment or property.

NO STATUTORY STIPULATIONS (OTHER THAN THOSE RELATING TO LAND ACQUISITION) APPLICABLE TO RAILWAY ADMINISTRATIONS

12. Sec. 11 of the Railways Act exempts the railway administration, in carrying out work related to constructing or maintaining a railway, from all laws except those relating to land acquisition. Sec. 11 of the Railways Act is reproduced below for ease of reference:

> "*11.* ***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, ...* ***tunnels****, ... lines of railways, ...;*
> *...*
> *(h)* ***do all other acts necessary*** *for making, maintaining, altering or repairing and using the railway."* [Emphasis added]

13. There can be no doubt that the tunnelling work and the consequential muck disposal being undertaken by the Answering Respondent (in terms of the Agreement with the Respondent No. 4) squarely comes within the sweep of the aforesaid provision.

14. The implication of Sec. 11 of the Railways Act on environmental laws is no longer *res integra* since the same stands decided by a catena of decisions, some of which are as follows:

    a. A Division Bench of the Hon'ble Bombay High Court at Goa in ***Goa Foundation v. Konkan Railway Corporation***, 1992 SCC OnLine Bom 205 (*paras 7, 8*), held that neither the FOREST CONSERVATION ACT, 1980 (**FCA**) nor the ENVIRONMENT PROTECTION ACT, 1986 (**EPA**), which predate the Railways Act, are applicable to works done by railway administrations.

b. A Division Bench of the Kerala High Court in ***Geologist v. Sunil Kumar***, 2015 SCC OnLine Ker 13635 (*paras 14, 17*), reaffirmed the mandate of Sec. 11 of the Railways Act but clarified that the same cannot be used to enter private lands, which is a proposition following the express exception contained in Sec. 11 itself, with respect to the laws for land acquisition.

c. Another Division Bench of the Hon'ble Bombay High Court at Goa in ***Ganv Bhavancho Ekvott v. South Western Railways***, 2022 SCC OnLine Bom 7184 (*paras 55, 65, 86*), after relying on ***Goa Foundation*** (*supra*), held that building permissions from a Panchayat and so also permissions under the CRZ NOTIFICATION, 2011 (though framed subsequent to the Railways Act but under the EPA which predates the Railways Act) were not required to be obtained by the railway authorities. Importantly, this decision, at para 86, expressly disapproves the decision of this Hon'ble Tribunal in ***Saloni Singh & Anr. v. Union of India & Ors.***, (OA No. 141/2014) in its order dated 12.12.2019 (*para 20*).

d. A Division Bench of the Hon'ble Bombay High Court at Goa in ***Village Panchayat of Velsao, Pale, Issorcim v. Ministry of Railways***, 2022 SCC OnLine Bom 3526 (*paras 4,11*), followed the decision in ***Ganv Bhavancho*** (*supra*), and held that building permissions under the GOA PANCHAYAT RAJ ACT, 1994 were not necessary to be obtained by railway authorities.

e. A Division Bench of the Hon'ble Bombay High Court at Bombay in ***National High Speed Rail Corpn. Ltd. v. State of Maharashtra***, 2022 SCC OnLine Bom 6701 (*paras 64, 75*), after again relying on ***Goa Foundation*** (*supra*), held the EPA to be inapplicable to works undertaken by Railway authorities. Importantly, this judgment at para 64 also expressly rejected the argument that Sec. 11 of the Railways Act leads to "*absurd consequences*", and adopted the views of the Division Bench in ***Ganv Bhavancho*** (*supra*).

f. Pertinently, challenges to the decisions in ***Ganv Bhavancho*** (*supra*) and ***Village Panchayat*** (*supra*) came to be dismissed by the Hon'ble Supreme Court in SLP (C) No. 17001/2024 by an order dated 02.08.2024; and in SLP (C) Diary No. 19439/2023 by an order dated 16.05.2023, respectively.

SUBORDINATE LEGISLATION CANNOT PREVAIL OVER A PLENARY LEGISLATION

15. The CONSTRUCTION AND DEMOLITION WASTE MANAGEMENT RULES, 2022 (**C&D Rules**) is a subordinate legislation enacted under the EPA, and consequently, it cannot prevail over the provisions of a parliamentary legislation, such as the Railways Act, in view of the settled law that a subordinate legislation must not only conform to the parent Act, but also to any other statute *vide* ***Kerala Samsthana Chethu Thozhilali Union v. State of Kerala & Ors.***, (2006) 4 SCC 327 (*para 17*); and ***Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India***, (1985) 1 SCC 641 (*para 75*).

16. Therefore, if the C&D Rules are held to be applicable, it would lead to an absurd consequence inasmuch as a Parliamentary legislation would be subject to a subordinate legislation, which is untenable.

17. Further, the Hon'ble Supreme Court in ***Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.,*** (2001) 3 SCC 71 (*para 9*), has held that in case of *non-obstante* clauses contained in two enactments, it is the latter enactment which prevails. Therefore, since the C&D Rules have been notified by the Central Government in exercise of powers under the EPA, which predates the Railways Act, the said Rules, being a subordinate legislation, cannot prevail over the *non-obstante* clause in Sec. 11 of the Railways Act.

NO DEFAULT ON THE PART OF THE ANSWERING RESPONDENT

18. Even assuming without admitting, that statutory permissions were necessary, the responsibility to obtain them lay with the Respondent No. 4, as had been clearly stipulated in Cl. 2.18.1 of the Agreement (***Pg. 443, R5's Reply dated 27.08.2024***), and has, in fact, been admitted by the Respondent No. 4 at para L(ii) of its Reply dated 21.08.2024 (***Pg. 1068, R4's Reply dated 28.08.2024***).

19. While the Project does not attract the C&D Rules, the Answering Respondent has scrupulously followed the detailed stipulations in the Agreement, which it is humbly submitted, assuages any concerns of environmental degradation. Therefore, adherence to the C&D Rules, effectively becomes a matter of formality. Particularly, the following Clauses in the Agreement deal with waste and garbage disposal:

	RELEVANT CLAUSE	PAGE
1.	Cl. 1.3.20: (i) Waste to be transported to an area approved by the Engineer and to be incinerated, buried or disposed of as approved by the Engineer. (ii) **No waste of any kind shall be deposited in any watercourses**.	***484, R5's Reply dated 27.08.2024***
2.	Cl. 7.7.2: Excavated material not suited for construction shall be disposed of in the waste disposal area. Disposal of such material shall not interfere with natural drainage and will be as per regulations for environmental protection.	***551, R5's Reply dated 27.08.2024***
3.	Cl. 7.7.3: No excavated materials **to be disposed of in the streams** or at locations, where these may be washed away by the floods or may block the water way of streams.	***552, R5's Reply dated 27.08.2024***
4.	Cl. 8.2.3: To prevent spillage of muck, R.R. Masonry/ Gabion **retaining walls** with adequate arrangement shall be provided in the disposal area.	***556, R5's Reply dated 27.08.2024***

20. There is no suggestion in the JCR that these have not been followed.

21. In any case, the Answering Respondent has been penalised under the INDIAN FOREST ACT, 1927 for damage caused due to debris disposal and has paid an amount of Rs. 4,61,291/- for the same. The same has been acknowledged by the Respondent No. 4 at para L(ii) of its Reply dated 28.08.2024 (***Pg. 1068***), wherein the Respondent No. 4 has, in fact, admitted that even though the Answering Respondent has paid the amount, there was no default on its part.

22. Hence, imposition of any penalty over and above this, by this Hon'ble Tribunal would amount to double jeopardy.

REGULARISATION OF FOREST CLEARANCE ALREADY UNDER CONSIDERATION

23. Even assuming without admitting that forest clearance was required to be obtained by the Respondent No. 4, the said requirement has been fulfilled. The Respondent No. 4 on 19.04.2022 had submitted its proposal u/s 2 of the FCA, seeking diversion of an additional area of 0.8511ha of forest land before commencing operations. The said proposal for Stage-I approval was forwarded to the MoEFCC for consideration on 13.06.2024, and is being considered in accordance with Rule 10(2)(v) of the VAN

(SANRAKSHAN EVAM SAMVARDHAN) RULES, 2023 (**FCA Rules**), which deals with cases of regularization.

24. In respect of cases of regularization, Cl. 1.16, Chapter 1 of the MoEFCC Consolidated Guidelines and Clarifications under the FCA states that where land is diverted while awaiting FC approval, penal NPV will be imposed which can be up to five (5) times the NPV and 12% interest. Therefore, imposition of penalty is already contemplated under the FCA and will be imposed on the Respondent No. 4 in the course of its proposal being considered for regularisation by the MoEFCC. Hence, imposition of any penalty over and above this, by this Hon'ble Tribunal would amount to double jeopardy.

SUMMARY OF ARGUMENTS

25. Hence, in summary, it is submitted that:

i. The instant OA is not maintainable, since it is motivated by vested interests of the Applicant and hence barred u/s 14 r/w 2(1)(m) of the NGT Act.

ii. The implication of Sec. 11 of the Railways Act on environmental laws is no longer *res integra* and stands decided by a catena of decisions. It is now settled law that in view of the said Sec. 11, no statutory stipulations, including those under environmental laws, are applicable to works done by the railway authorities.

iii. Joint Committee's Report dated 13.05.2024 has confirmed that there has been no environmental damage, hence the letter petition's grievance is rendered academic.

iv. The Answering Respondent has scrupulously followed the detailed stipulations in the Agreement, which assuages any concerns of environmental degradation.

v. Even assuming without admitting, that statutory permissions were necessary, the responsibility to obtain the same lay with the Respondent No. 4.

vi. The Respondent No. 4's proposal for Stage-I approval is being considered under Rule 10(2)(v) of the FCA Rules, 2023, which deals with *ex-post facto* approval involving cases of violations, and contemplates the imposition of a penalty for the same. Therefore, the imposition of any penalty over and above this, by this Hon'ble Tribunal, either on the Respondent No. 4 or the Answering Respondent, would amount to double jeopardy.

26. In the above conspectus, it is submitted that the OA deserves to be dismissed.

(RESPONDENT NO. 5)

THROUGH

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