

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
IN O.A. NO. 44 OF 2024

IN THE MATTER OF:

JOT SINGH BIST

... APPLICANT

versus


STATE OF UTTARAKHAND AND ORS.

... RESPONDENTS

INDEX

S. No.	Particulars	Page No.
1.	Supplementary Reply on behalf of Respondent No. 5.	1-8
2.	Affidavit	9

THROUGH


ALPHA LEGAL CONSULTANTS
C-53, BLOCK-C, JANGPURA
EXTENTION,
NEW DELHI-110014
EMAIL:INFO@ALCADVOCATES.COM

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
IN O.A. NO. 44 OF 2024**

IN THE MATTER OF:

JOT SINGH BIST

... **APPLICANT**

versus

STATE OF UTTARAKHAND AND ORS.

... **RESPONDENTS**

**SUPPLEMENTARY REPLY ON BEHALF OF RESPONDENT No. 5
SUBMITTED IN COMPLIANCE BY ORDER DATED 23.09.2024
PASSED BY THE HON'BLE NGT.**

1. The present supplementary reply is being filed by the Respondent No. 5 (the “**Answering Respondent**”) in terms of this Hon’ble Tribunal’s order dated 23.09.2024.
2. The captioned Original Application has been registered pursuant to a letter petition dated 10.08.2023 filed by the Applicant. The said letter petition was filed concerning a New Broad-Gauge Line Between Rishikesh and Karanprayag (the “**Proposed Project**”), being undertaken by the Respondent No. 4 i.e., Rail Vikas Nigam Limited (RVNL). The allegations in the said letter petition are that the Proposed Project is being undertaken without the necessary statutory approvals and permissions.
3. This Hon’ble Tribunal constituted a Joint Committee to undertake a site inspection by its order dated 07.03.2024. Consequently, the Committee submitted its report on 13.05.2024 through the District Magistrate, Rudraprayag. This Hon’ble Tribunal noted the findings of the Joint

Committee Report in its order dated 17.05.2024 and it is on this basis that the Answering Respondent was impleaded as the Respondent No. 5 in the captioned OA.

- 4 With respect to the Proposed Project, a contract was entered into between RVNL and the Answering Respondent on 02.09.2020 (the “**Agreement**”). Under the Agreement, the Answering Respondent, whose bid was accepted by RVNL, was engaged for the construction of Tunnels, Bridges and Formation Works from Chainage 91+228 to 101+339 (FLS) under Package – 7B in connection with New Broad-Gauge Line Between Rishikesh and Karanprayag (125Km) in the State of Uttarakhand. Pertinently, the Agreement is one between RVNL as the “Employer” and the Answering Respondent as the “Contractor”, and sets out the obligations of the respective parties accordingly.
5. The Answering Respondent cannot be held liable in the instant OA on broadly three (3) grounds:
 - a. That RVNL represented to the Answering Respondent that it has obtained the necessary forest clearances for the construction of permanent works and muck dumping zones. The Answering Respondent carried out the works only on the assurance under Clause 2.18.1 of the General Information and Scope of work in the Agreement that the said clearances had already been obtained by RVNL;
 - b. That additional muck dumping sites utilized subsequent to their allocation by RVNL to the answering respondent were employed with the requisite authorization from RVNL. The Answering Respondent has only deposited muck generated from the construction works in

areas designated by RVNL, in strict accordance with the Agreement and the Bid Document. Furthermore, the site in question, which served as an additional muck dumping site, was also provided by RVNL itself through its letter no. 1276 dated 28.12.2021 (annexed as Annexure R-2) in the Response filed by the Answering Respondent on 26.08.2024.

- c. That the Answering Respondent cannot be held joint and severally liable for any alleged inaction on the part of RVNL, as the Agreement itself records that the necessary forest clearances have been obtained.

CLAUSE 2.18.1 OF THE GENERAL INFORMATION AND SCOPE OF WORK IN THE AGREEMENT STATES THAT NECESSARY CLEARANCES HAVE ALREADY BEEN OBTAINED

6. It is submitted that Clause 2.18.1 of the General Information and Scope of work in the Agreement clearly states that all necessary clearances with respect to the possession of the forest land have been obtained by RVNL. It reads as follows:

*“a) Employer has acquired land required for construction of permanent works and Muck dumping zones. Necessary forest clearances and possession of entire land (Government, forest and Private) **has been obtained**. Contractor will be made available entire acquired land for construction of permanent works. All acquired area are shown in drawings included Vol. III.”
[Emphasis added]*

7. The abovementioned Clause makes it clear that it was not only the responsibility of RVNL to obtain the necessary clearances but also that the said clearances had already been obtained by it. It is submitted that it is on this basis that the Answering Respondent carried out the works in the

designated areas under the Agreement. It is nobody's case that the Answering Respondent has dumped in areas beyond the designated sites.

8. Pertinently, the findings in the Joint Committee Report with respect to the forest clearances are against the "user agency" i.e., RVNL and not the Answering Respondent. The Joint Committee Report records as follows:

"The inspection report is as follows –

*2... Mineral stones/muck/debris have been **illegally dumped on the land by Rail Vikas Nigam Ltd. without permission ...**".
[Emphasis added]*

9. According to the report of the Dy. Forest Conservator, Rudraprayag Forest Division, inquiries with respect to the permissions and approvals for the said construction work, were also made to RVNL. It records as follows:

"2. Inquiries were made to the user agency regarding the records/permission letter related to permission/approval from the competent level for the said construction work, in relation to which it was informed by them that the said proposal has been sent to the Government of India for sanction/approval." [Emphasis added]

10. Further, the Joint Committee Report records that an inspection of the site revealed an additional area of 0.4589Ha of forest land (in addition to the proposed 0.8511Ha of forest land), where debris disposal was found.
11. Based on this finding, the Forest Officer, South Jakholi Range was directed to assess the damage caused to the forest wealth due to the debris disposal in the said additional area. Subsequently, action was taken under the INDIAN FOREST ACT, 1927 against the concerned proposing department and an amount of Rs. 4,61,291/- was recovered and deposited in the Forest Revenue. The said amount was paid in fact by the Answering Respondent.

12. Furthermore, the Joint Committee Report relying on the report of the Assistant Inspector General of Forests, records that the site inspection revealed that no trees had been cut and the debris was not going into the Alaknanda River. This, it is submitted, also shows that the Answering Respondent has been cognizant of its responsibilities under the Contract Chapter 1, Clause 1.8.3 of the Safety and Security in the Agreement underscores the responsibility of the Answering Respondent as the Contractor to organize its work in such a way that the ecology of the area is not affected as the work area is located mostly in forest land.

DISPOSAL OF MUCK ONLY IN AREAS DESIGNATED BY RVNL

13. It is pertinent to note that the Answering Respondent is legally authorised to utilize muck generated from the construction work in accordance with the approval dated 21.08.2021 given by the Government of Uttarakhand by its Order No. 910/VII-A-I/2021/03(46)/2021.
14. With respect to the disposal of muck, it is submitted that the Answering Respondent has disposed of muck generated from the construction work in the designated sites, which have been earmarked by RVNL in the Bid Document. Chapter 2 (General Information and Scope of work) of the Agreement Clause 2.3 (E) (Muck Dumping Locations) clearly states that the Employer (RVNL) has already acquired land required for dumping of muck to be generated from tunnel excavation at suitable locations. Site maps for all muck dumping grounds are given in the bid Drawings itself (Vol. III - Muck Dumping Area of the Bid Document). Even the additional muck dumping site (the site in question) which was required for dumping was provided by RVNL as Employer, as annexed as Annexure R-2 in the Reply filed by the Answering Respondent on 26.08.2024.

15. Further, Clause 7.2, Chapter 7 of the Bid Drawing in the Agreement makes it incumbent on the Answering Respondent to execute the works as per the approved construction drawings and specifications. Therefore, it is clear that the sites for muck dumping have already been identified by RVNL. Even the additional muck dumping sites utilised subsequent to their allocation by RVNL to the Answering Respondent were employed with the requisite authorization from RVNL (through its letter no. 1276 dated 28.12.2021, annexed as Annexure R-2). Upon reading the same with Clause 2.18.1 of the General Information and Scope of work in the Agreement, the extent of liability of the Answering Respondent becomes clear. Simply put, the responsibility of the Answering Respondent was restricted to carrying out the muck dumping in the designated areas as acquired by RVNL and the same was done under the impression that necessary clearances had already been obtained.

**ANSWERING RESPONDENT CANNOT
BE HELD JOINTLY AND SEVERALLY LIABLE**


16. The Answering Respondent cannot be held jointly and severally liable as it was the responsibility of RVNL to obtain the necessary clearances as contemplated under the Agreement. The Answering Respondent executed the work in terms of the Agreement and the Bid Document and only upon an assurance that the said clearances had been obtained by RVNL (as is evident from Clause 2.18.1 of the General Information and Scope of work in the Agreement). Therefore, the Answering Respondent cannot be held liable for not having obtained the necessary clearances as the same was the responsibility of RVNL.

17. The Answering Respondent has not caused any environmental damage and the same has also been recorded in the report of the Assistant Inspector General of Forests, whose findings have been relied upon in the Joint Committee Report.
18. Further, the Answering Respondent is a mere contractor and acted in terms of the Agreement to execute the work as directed by RVNL. Notably, RVNL is individually and solely responsible for obtaining Forest Clearance for the Dumping Site. Answering Respondent has no contractual obligation regarding any clearances related to the dumping sites. There is no clause for joint and several liability in the Bid Document between RVNL and the Answering Respondent and the Answering Respondent has acted in good faith and completely under the scope of its work as per the Agreement. GCC Clause 1.14 of the Agreement provides for joint and several liability only in case where the Contractor constitutes a joint venture of two or more persons/ firms, in such cases, these JV entities would be jointly and severally liable to the Employer for the performance of the Contract.
19. In the absence of a clause for joint and several liability under the Agreement, the Answering Respondent cannot be personally held liable as it was acting on behalf of RVNL in executing the work contemplated under the Agreement.
20. Hence, to summarise:
 - A. Clause 2.18.1 of the General Information and Scope of work in the Agreement makes it clear that the necessary clearances had already

been obtained by RVNL and it is on this basis that work was carried out by the Answering Respondent;

- B. The Answering Respondent has dumped the muck generated from the construction works only in the areas designated by RVNL. The Bid Documents also make it clear that all muck dumping sites have been identified and specified by RVNL and the Answering Respondent has no role to play in identifying such sites, even in the case of additional muck dumping sites provided by RVNL; and
 - C. The Answering Respondent cannot be held jointly and severally liable because the terms of the Agreement are clear as to the extent of liability of the Answering Respondent. Therefore, the Answering Respondent cannot be held accountable for any alleged misrepresentation on the part of RVNL as to obtaining forest clearance.
21. In the above conspectus, it is submitted that the Answering Respondent be not made liable for any of the alleged violations of environmental law.

THROUGH


ALPHA LEGAL CONSULTANTS
C-53, BLOCK-C, JANGPURA
EXTENTION,
NEW DELHI-110014
EMAIL:INFO@ALCADVOCATES.COM

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
IN O.A No. 44 OF 2024

Jot Singh Bist

....Applicant

Versus

State Of Uttarakhand and Ors.

...Respondents

AFFIDAVIT

I, T. Ashok Reddy, S/o T. Pratap Reddy, aged about 66 years, the Authorised Representative of M/s Megha Engineering & Infrastructures Ltd., S-2, Technocrat Industrial Estate, Balanagar, Hyderabad – 500037, Telengana, do hereby solemnly affirm and declare as under:

- i. That I am the Authorised Representative of the Respondent No.5 in the Original Application and being well conversant with the facts of the case, am competent to swear to this affidavit.
- ii. That the deponent has gone through the contents mentioned in the accompanying reply which are true and correct to the best of my knowledge and belief. No part of it is wrong and nothing material has been concealed and misstated.
- iii. That the annexures to the accompanying reply/objection are true/certified copies of their respective originals.



T. Ashok Reddy
Deponent

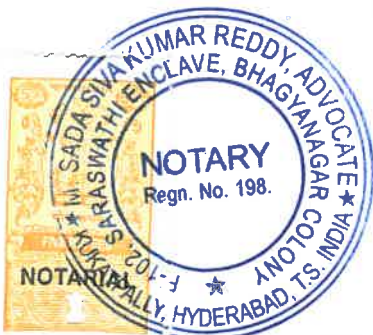
Verification:

Verified that the contents of above affidavit are true and correct to my knowledge and belief. Nothing material has been concealed or misstated therein.

Verified at Hyderabad on this ^{14th} day of October of 2024.



T. Ashok Reddy
Deponent



ATTESTED
M. Sada Siva Kumar Reddy
14.10.2024
M. SADA SIVA KUMAR REDDY, B.Com., B.L.,
ADVOCATE & NOTARY
Appointed by Govt. of A.P., India
G.O.Ms.No.198, Rev (Regn-II), dt. 11.04.2000
102, Saraswathi Enclave, Bhagyanagar Colony,
Kukatpally, Hyderabad, A.P., India (Ph: 98480 44395)