

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**ORIGINAL APPLICATION NO.40 OF 2024**

**IN THE MATTER OF:**

Balwinder Kaur

.... Applicant

Versus

State of Punjab & Ors..

....Respondents

**INDEX**

<b>S. NO.</b>	<b>PARTICULARS</b>	<b>PAGE NOS.</b>
1.	Written Submissions on behalf of Respondent No.3/ NHAI.	1-12

**RESPONDENT NO.3**

**THROUGH**

*Madhu Sweta*

**Madhu Sweta**

**Singhania & Partners LLP**

**Solicitors & Advocates**

**P-24, Green Park Extn.**

**New Delhi – 110016**

**Mob. 9871650888**

**Email: [madhu@singhania.in](mailto:madhu@singhania.in)**

**Place: New Delhi**

**Date: 11.09.2024**

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
ORIGINAL APPLICATION NO.40 OF 2024**

**IN THE MATTER OF:**

Balwinder Kaur

...Applicant

Versus

State of Punjab & Ors.

...Respondents

**WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO.3/NHAI**

**BRIEF FACTUAL BACKGROUND**

**A. Filing of the Application and violations by Ceigall**

1. That the captioned application has arisen consequent to the submission of letter petition of the Applicant wherein the Applicant stated that due to illegal mining being carried out in the agricultural land adjacent to the trees of the forest department, there is a risk thousands of trees falling due to likelihood of land sliding.
2. This Hon'ble Tribunal registered the said application on 09.04.2024 and directed constitution of Joint Committee comprising of representatives of Punjab Pollution Control Board, and the District Magistrate, Ropar to verify the factual position and suggest appropriate remedial action.
3. Pursuant to the above orders, report dated 20.05.2024 was filed by the Joint Committee, salient observations of which are summarized below:
  - a. Joint Committee was informed by the Executive Engineer, Mining, vide letter no. 5186 dated 23.04.2024 that the construction of Jammu- Katra Expressway is under construction by M/s Ceigall India Limited Company ("Ceigall") in District Rupnagar. In this connection, K-1 permits have been issued to Ceigall after payment of royalty to the government. (Refer Para 5 on Page no. 8 and 9 and Page nos. 15 to 18 of the file).

- b. For 03 number, K-1 Permits issued to the company in village Pathreri Rangran, Ceigall has extracted more material @1063562 cu ft. above the permissible quantity of 1816115 cu. Ft. pursuant to which 03 number demand notices had been issued to Ceigall for excess quantity extracted demanding royalty of Rs.62,75, 016/- (Refer Para 5 on Page no. 8 and 9 and Page nos. 15 to 18 of the file). The said amount was deposited by Ceigall.
- c. The Divisional Forest Officer, Rupnagar vide letter no. 868 dated 23.04.2024 informed that during the visit of the joint committee on 23.04.2024, it was found that the mining had been carried out on the land owned by Rajinder Singh, Satpal Singh, etc. **Along with this area, comes the forest department area, which is in perfect condition. There has been no damage to the forest property/ trees** (Refer Para 9 on Page no. 10 and Page nos. 46 and 47 of the file).
- d. The report concluded that Ceigall has grossly violated the permission given by the Mining Department by extracting more material against the permissible quantity for which 03 demand notices had been issued to Ceigall for deposit of Rs. 62.75 lacs which had been deposited by it (Refer Page no. 10 and 11 of the file).
- e. The Joint Committee recommended that considering the gross violations of aforesaid mining permission, the Mining Department is required to take exemplary / legal action against the company as well as the owners of lands (Refer Page no. 10 and 11 of the file).

B. **Impleadement of NHAI in the present proceedings and its reply**

4. This Hon'ble Tribunal took note of the aforesaid observations contained in the Joint Committee's report dated 20.05.2024 and impleaded NHAI as Respondent No.3 vide its order dated 22.05.2024.

5. Thereafter, NHAI has filed its reply dated 13.08.2024 to the Joint Committee Report along with an application for condonation of delay in filing the reply. NHAI reiterates the contents of its reply dated 13.08.2024 which may be read as part of these submissions.

C. **Concession Agreement and role of NHAI**

6. The Government of India had entrusted to NHAI the development, maintenance and management of National Highway No. 205K including the section from km 66+440 to 90+500 and Spur to Kharar from km 0+000 to km 19+200. NHAI had resolved to Construct Greenfield Ludhiana — Rupnagar National Highway no. NH-205K from junction with NE-5 village near to Manewal (Ludhiana) to junction with NH-205 near Bheora Village (Rupnagar) including spur to Kharar with Ludhiana bypass under Bharatmala Pariyojana: Package-3 (Design Ch. 66.440 to Design Ch. 90.500 and spur to kharar Design Ch. 0.000 to Design Ch. 19.200, total length 43.26 km) in the State of Punjab by Four/Six-Laning thereof (the "**Project**") on design, build, operate and transfer (the "DBOT Annuity" or "**Hybrid Annuity**") basis, which shall be partly financed by the Concessionaire who shall recover its investment and costs through payments to be made by NHAI, in accordance with the terms and conditions to be set forth in the concession agreement mentioned hereinafter.
7. Bids were invited, and after evaluation of the bids received, NHAI had technically qualified certain bidders including the selected bidder comprising IRCON International Limited and accepted its financial bid and issued Letter of Award dated 22.12.2021 ("LOA") to the selected bidder requiring the execution of Concession Agreement within 45 (forty five) days of the date of issue thereof.
8. The selected bidder, thereafter, promoted and incorporated M/s IRCON Ludhiana Rupnagar Highway Limited ("**the Concessionaire**") as a limited

liability company under the Companies Act 2013, and a Concession Agreement dated 25.03.2022 (“CA”) was executed between NHAI and the Concessionaire containing *inter alia* terms and conditions.

- a. Clause 4.1.3(d) of CA casts an obligation of the Concessionaire to procure all the Applicable Permits unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such applicable Permits have to be in full force and effect within 150 days from CA;
- b. As per the Clause 5.1.1 of CA, it is the responsibility of Concessionaire to procure all the raw material for construction of Project Highway by applying all the applicable permits.

*“5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.”*

- c. As per Clause 5.1.2, the Concessionaire has to comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under the CA, as extracted below:

*“5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.”*

- d. Clause 5.1.4 of CA also casts obligation on the Concessionaire as stated below-

*“5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:*

- a. *make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those*

*set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;*

- b. *procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;*

...

- f. *ensure and procure that **its Contractors** comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;*

- e. The role of Answering Respondent is limited upto the supervision of the work being done in acquired Right of Way (ROW) through the Independent Engineer i.e. M/s Upham International Corporation. It is the Concessionaire who approaches the mining department for obtaining the permits and thereafter the mining department oversees the excavation being carried out.
- f. Clause 41.11 of the CA provides that the CA is not to be considered as creating any relationship of association, partnership, joint venture or agency between NHAI and the Concessionaire.

*“41.11 No partnership This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.”*

**NHAI has no role/ involvement in excess extraction of material by violations by Ceigall, and cannot be subjected to any action**

In response to the notice issued to NHAI, the following submissions are addressed by NHAI, which are without prejudice to each other.

- (i) Joint Committee report dated 20.05.2024 has observed that demands under the notices issued to Ceigall have been complied and no damage has been caused to forest property/ trees**

9. It is submitted that after execution of the CA, the Concessionaire appointed Ceigall as its Subcontractor. It is pertinent to mention that NHAI is not a party to the agreement executed between the Concessionaire and the Ceigall. As such, no approval was sought from NHAI for appointment of Ceigall.
10. For the excess extraction of material by Ceigall, notices have been issued to it which have been complied by Ceigall. In addition, the Joint Committee report dated 20.05.2024 has observed that there has been no damage to the forest property/ trees (Refer Para 9 on Page no. 10 and Page nos. 46 and 47 of the file). Since the notices issued to Ceigall for excess extraction of material have been complied with and no damage has been reported to the forest property/trees, NHAI cannot be subjected to any action.
- (ii) Activity of excess extraction of material has not been carried out on the site of construction of the Project of NHAI**
11. The Joint Committee report dated 20.05.2024 refers to the letter by Divisional Forest Officer, Rupnagar and states that it has been found that the mining had been carried out on the land owned by Rajinder Singh, Satpal Singh, etc. (Refer Para 9 on Page no. 10 and Page nos. 46 and 47 of the file). Thus, no such activity of excess extraction of material has been carried out on the site of construction of the Project of NHAI, and hence, NHAI cannot be subjected to any action.
- (iii) Concessionaire and its Contractors have to comply with all Applicable Permits and Applicable Laws in performance of the obligations under the CA**
12. In terms of Clause 5.1.1 of CA, it is the responsibility of Concessionaire to procure all the raw material for construction of Project Highway by applying all the applicable permits.
13. As per Clause 5.1.2, the Concessionaire has to comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under the CA.

14. Under Clause 5.1.4(f) of the CA, the Concessionaire has to ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement.
15. Further, the permits for mining were granted by the Mining Department and it was the role of the Mining Department to check with the irregularities as per State Mining Regulations, if any, being done by the sub-contractor.
16. Neither did NHAI authorize Ceigall to carry out any extraction of material beyond what was permitted to it under permits obtained by it, nor was NHAI party to such acts of Ceigall. Hence, NHAI cannot be subjected to any action for the acts of Ceigall.

**(iv) The relationship between NHAI and Ceigall cannot be presumed to be that of principal and agent**

**Ceigall has not acted and obtained the permits or extracted the said material as an agent of NHAI**

17. Sections 4 and 5 of the National Highways Act, 1956 (reproduced below) provide that all national highways shall vest in the Union and it is the responsibility of the Central Government to develop and maintain in proper repair all national highways.

*“4. National highways to vest in the Union.—All national highways shall vest in the Union, and for the purposes of this Act “highways” include--*

*(i) all lands appurtenant thereto, whether demarcated or not;*

*(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and*

*(iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways.*

*5. Responsibility for development and maintenance of national highways.—It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the*

*Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.”*

18. NHAI has been entrusted the task of development, maintenance and management for the Project by the Government of India. After following the process of bidding, the said work has been awarded to the Concessionaire on Hybrid Annuity basis, which is to be partly financed by the Concessionaire who shall recover its investment and costs through payments to be made by NHAI, in accordance with the terms and conditions to be set forth in the CA. In terms of Clause 23.1, the payment to the Concessionaire is inclusive of the cost of construction, interest during construction, working capital, physical contingencies and all other costs, expenses and charges for and in respect of construction of the Project, save and except any additional costs arising on account of variation in Price Index, Change of Scope, Change in Law, Force Majeure or breach of this Agreement, which costs are to be due and payable to the Concessionaire in accordance with the provisions of the Agreement. Thus, the relationship between NHAI and the Concessionaire cannot be regarded as that of a principal and agent.
19. The CA sets forth the obligations of the Parties. The CA also categorically mentions in Clause 41.11 that the CA is not to be considered as creating any relationship of association, partnership, joint venture or agency between NHAI and the Concessionaire.
20. During the course of arguments on 10.09.2024, the Hon'ble Tribunal has referred to Section 182 of the Indian Contract Act, 1872 (“Contract Act”) and sought an explanation as to why the relationship between NHAI and the Concessionaire be not regarded as that of a principal and agent, since NHAI

has employed the Concessionaire to do the work of road construction. For ready reference, Section 182 of the Contract Act is reproduced below:

*“182. “Agent” and “principal” defined.—An “agent” is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the “principal”.”*

21. Testing the above proposition by way of an example, if Mr. X needs conveyance from his residence to airport, he employs a taxi. Under this proposition, since the taxi driver has been employed by X to do the work of conveyance, he becomes the agent of X. So if any accident occurs on road, only X will be responsible as he is the principal. This is not the intent of legislature. What has to be read in Section 182 is that person so employed is to not merely to do any work but do any act for X in dealings with third persons. Hence, dealings with third parties is the crux of Section 182 of the Contract Act.
22. If ‘*dealing with third parties*’ is not considered in interpreting Section 182 of the Contract Act, every agreement would involve the relationship of principal and agent, eg. taking ticket in a flight for conveyance, employing an electrician for repair of an appliance, actor being employed a producer to act in a film.
23. NHAI has entered into CA with the Concessionaire for construction of road and not for:
  - a. acting in dealings with third parties or
  - b. representing it in dealing with third parties.
24. From the terms of CA, and also the conduct/ acts of the Parties and the documents on record and the applicable law, it can be established beyond

doubt that the relationship between NHAI and the Concessionaire cannot be regarded as that of a principal and agent.

25. Firstly, Ceigall has not been employed by NHAI. He is a sub-sub-contractor employed by a sub-contractor. As such, no approval was sought from NHAI for appointment of Ceigall.
26. Reference at this stage may be invited to the Joint Committee's report dated 20.05.2024 wherein the Joint Committee was informed by the Executive Engineer, Mining, vide letter no. 5186 dated 23.04.2024 that K-1 permits have been obtained by Ceigall after payment of royalty to the government. The report further mentioned that for 03 number, K-1 Permits issued to Ceigall in village Pathreri Rangran, Ceigall has extracted more material @1063562 cu ft. above the permissible quantity of 1816115 cu. Ft. pursuant to which 03 number demand notices had been issued to Ceigall for excess quantity extracted demanding additional royalty of Rs.62,75, 016/- (Refer Para 5 on Page no. 8 and 9 and Page nos. 15 to 18 of the file). The said amount was deposited by Ceigall.
27. Thus, the record no where suggests that Ceigall has acted and obtained the permits or extracted the said material as an agent of NHAI. Ceigall has only acted in its individual capacity. Thus, any act of the Concessionaire or its sub-contractors, much so any illegal acts, cannot bind NHAI.
- (v) **Ceigall was not authorized by NHAI to extract the said material and violate the permits**
28. As per the Clause 5.1.1 of CA, it is the responsibility of Concessionaire to procure all the raw material for construction of Project Highway by applying all the applicable permits.

29. As per Clause 5.1.2, the Concessionaire has to comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under the CA.
30. Under Clause 5.1.4(f) of the CA, the Concessionaire has to ensure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement.
31. Under the CA, the Concessionaire or its Contractors are not, and cannot be authorized to violate any law or act in violation of any Permit.
32. Assuming though not admitting that Ceigall acted as an agent for NHAI in obtaining permits and extracting the material, by extracting excess material beyond the quantity allowed under the Permits, Ceigall has exceeded the authority vested in it by NHAI. In terms of Section 227 of the Contract Act, the agent cannot be held responsible for the acts of the agent performed without authority of the principal.
33. In terms of Section 188 of the Contract Act, the agent only has the authority to do the lawful thing which is necessary in order to do that act. Even otherwise, under Section 200 of the Contract Act, an authorized act of the agent which has the effect of subjecting a third person to damages cannot be affirmed by ratification. Further, under Section 238 of the Contract Act, acts of misrepresentations and frauds by agents in matters which do not fall within their authority do not affect the principal.
34. Reference in this context is invited to the decision of Patna High Court titled as B. Stocking Vs Tata Iron and Steel Co. and another reported in 1917 SCC Online Pat 70- at para 12, and Madras High Court titled as Malaipermal Chettiar Vs Arunachala Chettiar in Appeal No. 139 and 275 of 1916- second para at page no. 420.

35. Thus, NHAI cannot be responsible for the illegal acts of Ceigall since NHAI did not authorize the Concessionaire or its Contractors to violate any law or to extract more quantity than what was allowed as per the Permits.
- (vi) Any action against for the alleged acts shall be violative of Article 20(2) of the Constitution of India.**
36. As has been recorded by this Hon'ble Tribunal in the order dated 22.05.2024, the counsel for Punjab Pollution Control Board (at Page No.5) has stated that for the said violation appropriate action including imposition of environmental compensation upon violators shall be taken in course of time.
37. Without prejudice, any additional action apart from the above stated action mentioned by Punjab Pollution Control Board would result in a party being punished twice for the same offence, and thus, would be violative of Article 20(2) of the Constitution of India.
38. NHAI, is thus, neither a proper nor a necessary party in the present proceedings.
39. Therefore, it is the humble submission of NHAI/ Respondent No.3 herein that considering the aforesaid submissions, NHAI may be deleted from the array of parties in the present original application.

**RESPONDENT NO.3**

**THROUGH**



**Singhania & Partners LLP  
Solicitors & Advocates  
P-24, Green Park Extension  
New Delhi-110016**

**Dated: 11.09.2024  
Place: New Delhi**