

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.53/2023/EZ
(I.A. No.28/2023/EZ)

Satyabrata Sanjeev Kumar Mohanta

Applicant(s)

Versus

MoEF&CC & Ors.

Respondent(s)

Date of hearing: 18.07.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : Mr. Md. Akram, Advocate (in Virtual Mode)

For Respondent(s) : Ms. Anamika Pandey, Adv. for R-1 (in Virtual Mode),
Mr. Ashok Kumar Parija, Advocate General a/w
Mr. Tarun Patnaik, ASC for R-2 to 6,
Mr. Dipanjan Ghosh, Advocate for R-7,
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Dhananjaya Mishra, Mr. Biswaranjan Sahoo, and
Ms. Mansi Bachani, Advocates for R-8,

ORDER

1. Mr. Md. Akram, learned Counsel holding brief of Ms. Soumya Mishra, learned Counsel is present (in Virtual Mode) for the Applicant.
2. Affidavit dated 15.07.2023 has been filed by Respondent No.8, Private Respondent; the same is taken on record.
3. Counter-affidavit dated 15.07.2023 has been filed by the Divisional Forest Officer, Keonjhar; the same is taken on record.
4. Mr. Dipanjan Ghosh, learned Counsel files Vakalatnama on behalf of the Respondent No.7, Odisha Power Transmission Corporation Limited (OPTCL); the same is taken on record.

5. We have heard the learned Counsel for the parties and perused the documents on record.
6. Final order of the said case will be uploaded in the website by separate sheets of paper.

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B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

July 18, 2023,
Original Application No.53/2023/EZ
(I.A. No.28/2023/EZ)
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**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

**ORIGINAL APPLICATION NO.53/2023/EZ
(I.A. NO.28/2023/EZ)**

IN THE MATTER OF:

Satyabrata Sanjeev Kumar Mohanta,
Aged about 35 years,
S/o – Dambarudhara Mohanta,
At- Karadia, P.O. /P.S.- Karanjia,
Dist. –Mayurbhanj,

.... Applicant(s)

Versus

- 1. Ministry of Environment, Forest & Climate Change (MoEF&CC),**
Represented through its Secretary,
At- 2nd Floor, Agni Block,
Indira Paryavaran Bhawan,
Jorbagh Road,
New Delhi – 110003
- 2. Forest, Environment and Climate Change Department,**
Represented through its Secretary,
Government of Odisha,
Kharavel Bhavan,
Bhubaneswar,
Odisha
- 3. Divisional Forest Officer (D.F.O.), Keonjhar,**
At- Kamapala Street,
Keonjhar Town, Keonjhar,
Odisha – 758001
- 4. Collector & District Magistrate,**
At- Office of the Collector cum District Magistrate,
Collectorate, Keonjhar,
P.O./Dist. – Keonjhar,
Odisha
- 5. Divisional Forest Officer (D.F.O.), Bonai,**
At/P.O. - Bonaigarh,
Dist. – Sundergarh,
Odisha - 770038
- 6. Collector & District Magistrate, Sundergarh,**
At- District Collectorate, Sundergarh,
Office of the Collector-cum-District Magistrate,
Collectorate Sundergarh,
At/P.O. – Sundergarh,

Dist. – Sundergarh,
Odisha – 770001

7. Odisha Power Transmission Corporation Limited (OPTCL),

Represented through Managing Director,
At – Janpath Road, Gridco Colony,
Industrial Area, Satya Nagar, Bhubaneswar,
Odisha – 751022

8. M/s. Rungta Mines Ltd.

Represented through its Managing Director,
At- Rungta House, Chaibasa,
Dist. – West Singhbhum,
Jharkhand – 833201

And

At – Rungta Mines Ltd.
Main Road, Barbil HO,
Barbil, Dist. – Keonjhar,
Odisha – 758035

And

At- 8A Express Tower,
42A, Shakespeare Sarani,
Kolkata – 700017
West Bengal

.... Respondent(s)

Date of hearing: 18.07.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s) : Mr. Md. Akram, Advocate (in Virtual Mode)

For Respondent(s) : Ms. Anamika Pandey, Adv. for R-1 (in Virtual Mode),
Mr. Ashok Kumar Parija, Advocate General a/w
Mr. Tarun Patnaik, ASC for R-2 to 6,
Mr. Dipanjan Ghosh, Advocate for R-7,
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Dhananjaya Mishra, Mr. Biswaranjan Sahoo, and
Ms. Mansi Bachani, Advocates for R-8,

ORDER

1. The Applicant in the present Original Application is, *inter-alia*, seeking a direction to the Respondent No.8, M/s Rungta Mines Ltd., to comply with the conditions stipulated in Stage-I and Stage-II of the Forest Clearance granted to it and also to pay Environmental Compensation for causing damage to forest land to the Project of 132 KV Transmission Line.

2. The allegation of the Applicant is that the Respondent No.8, M/s Rungta Mines Ltd. was granted Stage-I Approval letter from the Ministry of Environment, Forests and Climate Change, Eastern Regional Office, Bhubaneswar, on 25.06.2020 for diversion of 35.507 hectares of forest land (31.806 hectares of forest land under Keonjhar Division and 3.701 hectares of forest land under Bonai Division) for construction of 132 KV Transmission Line from 132/33KV OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd. at Village-Kamanda in Sundergarh, Odisha. It is stated that the route alignment for construction of 132 KV Transmission Line from 132/33 KV OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd. at Village-Kamanda in Sundergarh, Odisha, has been diverted without prior sanction of the Central Government.
3. It is alleged that the User Agency has also changed the layout plan of the proposal without prior approval of the MoEF&CC at Latitude: 22°5'18"N Longitude 85°22'38"E on 28.06.2021 and thus obstructing the elephant movement in violation of the conditions stipulated in Stage-I and Stage-II Forest Clearance. It is also stated that the Elephant Corridor, namely, Karmpada, is situated 7.5 KM from the proposed forest area but the site falls under Elephant Habitat Zone – 2.
4. It is further alleged that as per Condition No. viii of Stage-I Clearance dated 25.06.2020, the base of electric transmission towers in the forest area must be fenced with barbed wire, in addition to installation of spike on the legs of the towers in order to avoid elephant and other wildlife getting electrocuted but the

Project Proponent has not installed spikes and barbed wire on the electric towers in the forest area.

5. It is also alleged that the Project Proponent, Respondent No.8, has resorted to felling of trees, although they were only permitted felling to a minimum number in the diverted forest land and that too after depositing the cost of felling of the trees with the Forest Department.
6. It is also alleged that Condition No. xviii of the Stage-I Clearance also provides that the layout plan of the proposed forest land shall not be changed by the Project Proponent without the approval of the Central Government but the Respondent No.8 in gross defiance of the said conditions has diverted the sanctioned latitude plan without prior sanction of the Central Government for which the State Forest Department, Keonjhar Division, has also lodged an FIR being FIR No. 10 BL of 21/22 on 28.06.2021. The said FIR records that the incident occurred at Sunderabasti, Barbil near Jagada Sahi near Ward No.15 and one Bijay Kumar Pandey and Avimanyu Das have been arrayed as accused persons who happened to be the contractor of the Respondent No.8 and five felled Sal logs were also seized from their possession and also two quintals of fire wood, which have been kept in the custody of Forest Guard, Mr. Malaya Kumar Jena.
7. It is further alleged that though the Forest Department has not handed over its forest land to the Project Proponent, Respondent No.8, to execute its project work but unauthorisedly 133 KV electricity has been supplied by the OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd.,

Respondent No.8, at Village-Kamanda in Sundergarh, Odisha, on 01.12.2022.

8. The allegation further is that though Condition No.ii of the Stage-I Clearance provides that Compensatory Afforestation shall be raised over 37.281 hectares of non-forest land identified in Plot Nos. 232 (P), 233(P) and 234(P), Khata No. 67 (AAA), Kisam-Parbat of Village-Lungajhar under Banspal Tahasil of Keonjhar District, (32.261 hectare) and Plot No. 1263(P), Khata No. 77, Kissam-Patita of Village-Badabanga under Lephiapara Tahasil of Sundergarh District (5.02 hectares), but so far the User Agency, Respondent No.8, has only deposited the money for Compensatory Afforestation but the State Forest Department has failed to supply plant saplings to the User Agency.
9. It is also alleged that the User Agency, Respondent No.8, was allowed to fell 1359 trees (795 Sound and 564 unsound), 1230 Poles below 30 cm girth as per the letter of the Divisional Forest Officer, Keonjhar, 16.03.2021 but the Respondent No.8 has failed to execute the work process and before Government orders could be passed, the execution of the work has already been started by the Respondent No.8. It is also stated that despite non-compliances of the conditions of the Stage-I clearance, the MoEF&CC has illegally granted Stage-II Approval to the Respondent No.8 on 31.03.2021.
10. The Applicant has sought the following reliefs in the Original Application:-

*“a. Admit this original application, Issue Notice; and
b. Direct the Opp. Party No.8 to immediately comply the non-complied conditions stipulated under Stage-I & II of the forest*

clearance granted to the user agency/project proponent i.e., M/s Rungta Mines Ltd.

c. Direct the Opp. Party No.8 to give environmental compensation for damaging the forest land due to the abovementioned project of 132 KV transmission line.

d. Direct the Opp. Party No.8 to give environmental compensation for damaging the forest land due to violation of the conditions stipulated under Stage-I & II of the forest clearance.

e. Direct the Opp. Party No.8 to restore the forest land degraded due to the aforesaid project.

f. Direct the Opp. Party No.1 to 7 to conduct a joint inspection in all respect to ensure the compliance of conditions stipulated under Stage-I & II of the forest clearance to avoid further damage to the environment.

g. To take action against the errant Opp. Party No.1 to 7 and to impose heavy penalty on the errant user agency/O.P. No.8 i.e., M/s Rungta Mines Ltd. for violation of Forest (Conservation) Act, and also for violation of para 1.21 of Chapter-1 of Handbook of Guidelines issued under F.C. Act, 1980 vide Ministry's letter No.5-2/2017-FC dated 28.03.2019."

11. The Applicant has also filed **I.A. No.28/2023/EZ**, *inter-alia*, seeking the following interim reliefs:-

"a) Stay/stoppage of the supply of Electricity from OPTCL Power grid Barbil to Kamanda Steel Plant of Rungta Mines Ltd. as the Forest Land has been handed over fraudulently during the pendency of a case for changing the lay out plan without prior sanction of Central Government."

b) Direct stay operation of Kamanda Steel Plant till environmental compensation is adequately paid by the Applicant would suffer irreparable loss and injury, which cannot be compensated otherwise.

c) And pass such any other order as this Hon'ble Court may deem fit and proper."

12. A preliminary objection has been raised by Mr. Sanjay Upadhyay, learned Counsel appearing for Respondent No.8, Project Proponent,

that the present Original Application is not maintainable in view of the provisions of Section 16(e) of the National Green Tribunal Act, 2010 (hereinafter referred to as ‘Act, 2010’)under which only an appeal could be filed if the Applicant was aggrieved by any order or decision made by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980.

13. Section 16(e) of the Act, 2010, reads as under:-

“16. Tribunal to have appellate jurisdiction.-

.....XXX.....XXX.....XXX.....XXX.....

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the Forest (Conservation) Act, 1980;”

14. We find that although the Applicant has not challenged any order as such or decision made by the State Government under Section 2 of the Forest (Conservation) Act, 1980, but the sum and substance of the reliefs claimed is a challenge to Stage-I Clearance granted by the Ministry of Environment, Forests and Climate Change, Regional Office, Bhubaneswar, on 25.06.2020 as would be clear from para 7 of the Original Application and also Stage-II Clearance approved by the Ministry of Environment, Forests and Climate Change on 31.03.2021 as stated in para 17 of the Original Application. Paras 7 and 17 of the Original Application read as under:-

“7. That, as per condition no. viii of the Stage - 1 approval letter of MOEF & CC, Eastern Regional Office, Bhubaneswar vide F.No.5 ORC418/2020-BHU, Dated 25.06.2020, the base of electric transmission towers in the forest area must be fenced with barbed wire in addition to installation of spike on the legs of the towers in order to avoid elephant and other wildlife electrocution. But, no electric tower of the said project of Rungta

Mines Ltd. has been installed with spikes and barbed wire in the said forest area and such gross irregularity and violation of the aforesaid condition no. viii of the Stage - 1 approval letter can be verified and inspected by appropriate authority.”

“17. That, on 31.03.2021, the user agency fraudulently managed to get the stage-2 approval of MOEF & CC even though the industry is non-compliant of stage-1 approval of forest clearance.”

15. Learned Counsel for the Applicant submitted that the Applicant was not challenging any order of the State Government under Section 2 of the Forest (Conservation) Act, 1980, and, therefore, the present Original Application is maintainable.
16. However, from the allegations made in the present Original Application, particularly in para 7 and para 17 thereof, we find that under the garb of the reliefs claimed in the Original Application without challenging the order dated 25.06.2020 granting Stage-I Clearance and the order dated 31.03.2021 granting Stage-II Clearance for the Project in question, the Applicant is, in fact, assailing the grant of Stage-I and Stage-II Clearances granted by the Ministry of Environment, Forests and Climate Change and, therefore, in our view, the present Original Application is not maintainable.
17. There is another aspect of the matter which needs to be examined by this Tribunal, particularly in view of the serious objections raised by Mr. Ashok Kumar Parija, learned Advocate General of Odisha assisted by Mr. Tarun Patnaik, learned Additional Standing Counsel appearing for State Respondents, Government of Odisha.
18. Mr. Parija has drawn attention of this Court to para 4 of the affidavit of the Divisional Forest Officer, Keonjhar, dated 15.07.2023, and submitted that the Applicant has not approached

this Tribunal with clean hands. He submitted that in 2021 a PIL being W.P. (C) No.33158 of 2021 had been filed before the Hon'ble High Court of Orissa at Cuttack with the cause title "*Ashirbad Pattnaik & Ors. Vs. State of Odisha & Ors.*", wherein the State Government and certain other private respondents were impleaded as parties. The allegations raised in the said PIL were similar to those raised in another petition, namely, "*Ranjan Panda & Ors. Vs. State of Odisha & Ors.*". Para 7 of that petition has been quoted in para 4 of the affidavit of the Divisional Forest Officer, Keonjhar, to show that what was alleged in the said Writ Petition, which is also extracted herein below:-

"4.XXX.....XXX.....XXX.....XXX.....

"7. That it is also pertinent to mention here that, as per the news reported by the Indian Express dated 03.07.2021 and Oriya Weekly Newspaper, Bartta corroborating their statements with certain live photographs stated therein, that the Rungta Mining Company has cut down numerous amount of trees of the reserve forest area for its personal gain without obtaining the prior permission from the forest department near Jagadasahi Village under Joda Block of Keonjhar district. The aforesaid firm needs power supply of 132 KB electricity line for its proposed project at Kamanda Village under Bonai tehsil of Sundergarh district by utilizing 31 Hectares of forest land and such deforestation is largely affecting the environment of the said mining areas for which the presence of trees is utmost essential. Further, the forest range officer of Barbil enquired about the said activity of the said mining firm, lodged a case against the said mining firm for blatant violation of the forest laws. The above said violation is against the provision of Sec. 2 of the Forest Conservation Act, 1980 which clearly states that for any non-forest activity within forest land, needs prior approval from the Ministry of Environment and Forest and Climate Change (MOEF & CC). But at the instant case the said erring mining

firm not felt necessary to obtain the said permission before the illegal deforestation activity.”

19. It is further stated that the W.P. (C) No. 33158 of 2021 was duly considered by a Division Bench of the Hon’ble High Court and the same was dismissed by the Hon’ble High Court vide judgment and order dated 02.12.2021 with a cost of Rs. 5,000/- (Rupees Five Thousand only) against each of the petitioners (10 in number) totaling Rs. 50,000/- (Rupees Fifty Thousand only). Paras 9, 10 and 11 of the judgment read as under:-

“9. With the above observations, the present writ petition stands dismissed.

10. We would have ordinarily observed something against the counsel appearing in the case. However, keeping in view the early stages of his career, we refrain from commenting upon his conduct except to advise him to be careful in future and not be a party to such a litigation initiated by unscrupulous litigants.

The Registry is also directed to stringently comply with the rules as indicated hereinabove while dealing with Public Interest Litigations so as to prevent valuable judicial time from being wasted and prevent certain unscrupulous elements from weaponizing petitions in courts of law.

11. We feel constrained to direct the petitioners (10 in number) to deposit cost of Rs. 5,000/- each (totalling Rs.50,000/-) before the Orissa High Court Bar Association Advocates Welfare positively within four weeks from today, failing which Collector, Keonjhar shall proceed to recover the same as arrears of land revenue and ensure the deposit of the recovered amount as stated hereinabove.”

20. Thereafter, I.As. were filed by the petitioners therein (in the High Court) seeking expunging of certain portions of the judgment of the Hon’ble High Court dated 02.12.2021 wherein negative connotation had been made against Mr. Sambit Samal, Counsel who was

appearing on behalf of the petitioners in W.P. (C) No. 33158 of 2021 and the said I.As. were also dismissed by a Division Bench of the Hon'ble High Court vide order dated 10.03.2021. Paras 13, 14, 15 & 16 of the order read as under:-

***“13.** The observations made in Paragraph 3 and 10 of the judgment dated 02.12.2021 in no way affects the image of the arguing counsel. It was only a note of caution sounded to the counsel so that he may not get involved with unscrupulous litigants. It was merely a reminder on the duty of the counsel to the court and to his profession. The court has, in fact, restrained itself from passing any adverse order considering the petitioner's lesser length of practice at the Bar.*

***14.** This court makes it clear that in the absence of any disparaging remark made against the counsel for the petitioners, he should take the observations of this Court in the manner in which it was intended, i.e. as a fillip to mould his legal career in a better way in future.*

***15.** In view of the above, this Court is not inclined to accept the prayer of the petitioners made in the I.As. to effect any change in the judgment dated 02.12.2021 passed by this Court in W.P.(C) No.33158 of 2021.*

***16.** Accordingly, both the I.As. are dismissed.”*

21. Learned Advocate General also submitted that the judgment of the Hon'ble High Court was challenged by the petitioners before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.8637/2022 and the said SLP was dismissed by the Hon'ble Supreme Court vide its order dated 09.09.2022 and the judgment of the Hon'ble High Court was upheld and the Hon'ble Supreme Court observed that the Special Leave Petitions are an abuse of process of Court and the said Special Leave Petitions were

dismissed with cost of Rs. 25,000/- (Rupees Twenty Five Thousand only). The order of the Hon'ble Supreme Court reads as under:-

“UPON hearing the counsel the court made the following

ORDER

Permission to file the Special Leave Petition granted.

- 2. Delay in refiling the Special Leave Petition is condoned.*
- 3. Application for permission to implead the High Court of Orissa is dismissed.*
- 4. Having heard senior counsel appearing on behalf of the petitioners, we see no reason to entertain the Special Leave Petitions. The High Court was entirely justified in coming to the conclusion that the petition was filed after suppressing the fact that an earlier petition filed by the same advocate had been dismissed as withdrawn. The subsequent petition contains substantially the same averments. The Special Leave Petitions are an abuse of process. We accordingly dismiss the Special Leave Petitions with costs quantified at Rs.25,000, which shall be paid to the Supreme Court Bar Association within four weeks.*
- 5. Pending application, if any, stands disposed of.”*

22. Learned Advocate General further submitted that the address given by the Counsel for the present Applicant Ms. Soumya Mishra, has upon verification been found to be the same as that of Mr. Sambit Samal, the Counsel who had filed the PIL being W.P. (C) No. 33158 of 2021 before the Hon'ble High Court of Orissa, as being 552/t/13, Friends Colony, B.K. Road, P.O.-Buxi Bazar, P.S.-Mangalabag, District-Cuttack, Odisha, Pin – 753001, as stated in the affidavit of the Divisional Forest Officer, Keonjhar, dated 15.07.2023.

23. This fact has not been disputed by Mr. Md. Akram, Counsel holding brief of Ms. Soumya Mishra. Even the photocopy of the

registered post on record, filed with the affidavit of service, mentions the address of Ms. Soumya Mishra as 'Friends Colony.'

24. In this view of the matter, the submission of Ashok Kumar Parija, learned Advocate General as well as Mr. Sanjay Upadhyay, learned Counsel appearing for Respondent No.8, is that the present Original Application has been originated in the same chamber as that of Mr. Sambit Sambal, though under the name of different parties and in the name of a different Counsel which amounts to a fraud upon the Court and also amounts to abuse of process of Court.
25. Ms. Soumya Mishra, learned Counsel who has filed the present Original Application is not present today. Mr. Md. Akram's Vakalatnama is on record and he is present today and has been heard. As we have already noted hereinabove Mr. Akram could not dispute either the legal position as to the non-maintainability of the present Original Application or the fact of dismissal of the PIL WP (C) No.33158 of 2021 and allied cases by the Hon'ble High Court of Orissa as well as dismissal of SLP (C) No. 8637 of 2022 by the Hon'ble Supreme Court.
26. We are, therefore, satisfied that not only is the Original Application not maintainable but the same is an abuse of process of Court in view of the order passed by the Hon'ble High Court of Orissa at Cuttack and the Hon'ble Supreme Court.
27. In view of above, the Original Application No.53/2023/EZ is accordingly dismissed with a cost of Rs. 10,000/- (Rupees Ten Thousand only) against the Applicant, Satyabrata Sanjeeb Kumar. The amount of cost shall be deposited by the Applicant with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata,

within one week from the date of this order. In case the Applicant fails to deposit the amount of cost with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata, the same shall be recovered from him by the Collector & District Magistrate, Keonjhar, in accordance with law and the same shall be deposited with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata.

28. Let a copy of this order be also forwarded to the Collector & District Magistrate, Keonjhar, for due compliance.
29. I.As. if any, stand disposed of accordingly.

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

July 18, 2023,
Original Application No.53/2023/EZ
(I.A. No.28/2023/EZ)
AK