

**A.F.R.**



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.18697 of 2025**

(In the matter of a petition under Articles 226 and 227 of the Constitution of India, 1950).

*M/S. Shanti Construction* .... *Petitioner(s)*  
*Sambalpur Pvt. Ltd., Sambalpur*  
-versus-  
*State of Odisha and Ors.* .... *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

*For Petitioner(s)* : *Mr. S.S. Padhy, Adv.*  
*For Opposite Party (s)* : *Mr. Sonak Mishra, ASC*  
*Mr. Shanti Prapaksh Mohanty, Adv.*

**CORAM:**

**DR. JUSTICE SANJEEB K PANIGRAHI**

**DATE OF HEARING:-09.01.2026**

**DATE OF JUDGMENT:-22.01.2026**

**Dr. Sanjeeb K Panigrahi, J.**

1. In this Writ Petition, the petitioner seeks a direction from this Court to quash the order dated 02.05.2025 passed by the National Green Tribunal, Eastern Zone, Kolkata in O.A. No. 167/2023/EZ, and to restrain the respondents from taking any coercive steps for recovery of environmental compensation pursuant thereto.

**I. FACTUAL MATRIX OF THE CASE:**

2. The brief facts of the case are as follows:

(i) The petitioner is a company incorporated under the Companies Act and is represented through its deponent, claiming residence within the



territorial jurisdiction of the Orissa High Court and asserting that the cause of action arose within such jurisdiction.

- (ii) East Coast Railway, as Opposite Party No. 8, awarded the petitioner a railway track laying work along with bridge work through Letter of Acceptance dated 01.06.2022 followed by a formal contract agreement dated 25.10.2022.
- (iii) An Original Application being O.A. No. 167/2023/EZ was filed before the National Green Tribunal, Eastern Zone Bench, Kolkata by certain persons describing themselves as social workers and local villagers, alleging illegal extraction of minor minerals such as earth and morrum by the petitioner from Government land in Tangi-Choudwar Tahasil, District Cuttack, for the railway work.
- (iv) In the NGT proceedings, several public authorities including the State Pollution Control Board, Collector Cuttack, Revenue Department and Forest Department were arrayed as respondents on allegations of inaction despite complaints.
- (v) The NGT, by order dated 23.11.2023, constituted a Joint Committee comprising senior scientist or officer of the State Pollution Control Board, District Mining Officer Cuttack, Collector Cuttack or representative not below ADM, and Divisional Forest Officer Cuttack, with the Board as the nodal body for logistics and for filing the inspection report on affidavit, and directions to recommend penalty, environmental compensation, and remedial measures if violations were found.
- (vi) Pursuant to the NGT order, the Committee visited the site on 18.12.2023 and noted excavation of morrum or laterite from alleged plots and



surrounding areas, and also recorded that pits were water-filled, which affected ascertainment of depth and quantification at that time.

- (vii) The Committee requested the Mining Officer, being a member and competent authority, to conduct a detailed scientific survey to assess the actual quantity excavated from specified plots and surrounding areas, and a report was thereafter prepared and filed before the NGT through the Board's affidavit.
- (viii) The Joint Committee report recommended environmental compensation and also compensation as per the Odisha Minor and Minerals Compensation Rules, 2016, and the petitioner filed objections before the NGT.
- (ix) The NGT disposed of the Original Application by order dated 02.05.2025 directing the State respondents and the State Pollution Control Board, Odisha to take action against the petitioner for recovery of environmental compensation in accordance with law after giving full opportunity of hearing, while stating it did not express any opinion on the merits of the computation so as not to prejudice the petitioner's defence before the competent forum.
- (x) After the NGT order dated 02.05.2025, the petitioner filed the present writ petition before the High Court challenging that NGT order, while the Pollution Control Board states that it had not yet taken steps to recover the environmental compensation pursuant to the NGT directions.

## **II. SUBMISSIONS ON BEHALF OF THE PETITIONER:**

- 3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:



- (i) The impugned NGT order dated 02.05.2025 is alleged to violate principles of natural justice because the petitioner claims it was not issued notice of the Joint Committee site visit dated 18.12.2023 and the inquiry was conducted behind its back, resulting in reliance on a report procured without participation by the petitioner.
- (ii) The NGT is alleged to have abdicated and outsourced its adjudicatory function by mechanically following the Joint Committee report and issuing directions based on committee findings rather than undertaking independent adjudication on the objections and materials placed by the petitioner.
- (iii) The constitution of the Joint Committee is alleged to be vitiated by bias because it comprised State authorities and regulatory bodies against whom allegations of inaction were made in the Original Application, attracting the principle *nemo judex in causa sua* and creating a conflict of interest that undermines fairness and appearance of justice.
- (iv) The petitioner challenges the NGT's jurisdiction on the ground that disputes relating to illegal extraction of minor minerals are governed by the Mines and Minerals legal framework and the Odisha Minor Mineral Concession Rules, 2016, and do not fall within the NGT's statutory jurisdiction confined to substantial questions relating to environment arising out of enactments in Schedule I of the NGT Act, 2010.
- (v) The petitioner contends the Joint Committee itself recorded that the site was water-filled and quantification was not possible during the joint visit, yet the inquiry was sub-delegated to the Mining Officer whose independent report became the basis of the committee report, which is



alleged to be improper and hit by the principle *delegatus non potest delegare*, and also raises transparency concerns.

- (vi) The petitioner relies on MoEF and CC Notification S.O. 1224(E) dated 28.03.2020 inserting Item 6 of Appendix IX to the EIA Notification, 2006 to contend that prior environmental clearance is not required for extraction or borrowing of ordinary earth for linear projects such as roads, pipelines, and laying of railway lines, and asserts its activity falls within this exemption.
- (vii) The petitioner asserts it obtained necessary permissions from competent authorities for execution of the railway project including utilisation of earth, and claims it acted bona fide in reliance on statutory permissions and railway authorisation for sourcing borrow material from specified locations.
- (viii) The petitioner contends the impugned order records no specific finding of environmental damage, such as deforestation, pollution, or harm to wildlife or habitats, and argues environmental compensation under the Polluter Pays principle cannot be imposed merely for technical non-compliance without demonstrated environmental harm or jurisdictional facts.
- (ix) The petitioner challenges the environmental compensation of Rs. 1,20,10,000 as arbitrary, disproportionate, and violative of Article 14, and further argues that the CPCB methodology relied upon for assessing environmental compensation does not cover the alleged acts in the present case.



### **III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:**

4. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

- (i) The State Pollution Control Board contends the writ petition is premature because, although the NGT directed recovery of environmental compensation after giving the petitioner full opportunity of hearing, the Board had not yet initiated any recovery steps when the petitioner approached the High Court.
- (ii) The Board contends the writ petition is not maintainable because the NGT order is appealable under Section 22 of the NGT Act, 2010, and the petitioner has an alternative statutory remedy which should be pursued instead of invoking writ jurisdiction.
- (iii) The Board contends the NGT passed the impugned order after considering the expert committee report and after giving opportunity of hearing to the petitioner, and the NGT expressly directed that recovery be undertaken in accordance with law after giving full opportunity of hearing, which safeguards due process at the stage of implementation.
- (iv) The Board contends the MoEF and CC notification dated 28.03.2020 regarding exemption for ordinary earth is inapplicable because, on inspection, the committee observed excavation of morrum or laterite, and not merely ordinary earth, and the alleged activity involved extraction without environmental clearance and without consent to establish and consent to operate from the Board, which are stated to be mandatory statutory requirements.



- (v) The Tahasildar, Tangi-Choudwar contends the writ petition is misconceived and not maintainable and asserts that the NGT constituted the committee by order dated 23.11.2023, the committee submitted its report on 18.12.2023, and the report was filed before the NGT through an affidavit of the Member Secretary of the Pollution Control Board on 09.02.2024.
- (vi) The Tahasildar contends that during the committee visit, pits were found and were water-filled, and therefore the Mining Officer was tasked to conduct a detailed scientific survey to quantify extraction from specified plots, and the allegation that this was improper is baseless.
- (vii) The Tahasildar contends temporary permission had been granted to the petitioner to lift and transport 2000 cum of ordinary earth or morrum from specified plots subject to conditions, but during joint enquiry it was found that the petitioner illegally lifted 1,00,000 cum from the scheduled plots leading to imposition of penalty and royalty of Rs. 75,00,000, with part deposit made and balance demanded.
- (viii) The Tahasildar further contends that on subsequent inspection upon public complaints, the petitioner was found to have illegally excavated approximately 2,60,580 cum of ordinary earth or morrum from certain plots recorded as jungle category land, and penalty and royalty amounting to Rs. 1,60,71,320 was imposed on the petitioner's firm through a letter dated 10.07.2023, which remains unpaid.
- (ix) The opposite parties contend, overall, that the petitioner engaged in illegal mining or excavation beyond permissions and in violation of



terms and conditions, and therefore the writ petition does not merit consideration and is liable to be dismissed.

#### **IV. JUDGMENT AND ANALYSIS:**

5. Heard Learned Counsel for the parties and perused the documents placed before this Court.
6. The writ petition challenges the NGT's order of 02.05.2025 directing recovery of environmental compensation without a hearing and on the basis of a joint committee report. The main issues are the petition's maintainability despite the statutory right of appeal, and whether the NGT committed jurisdictional error or violation of natural justice by outsourcing adjudication to a committee and failing to hear the petitioner.
7. The opposite parties contend that the petitioner must first appeal to the Supreme Court under Section 22 of the NGT Act and that the writ is premature. However, the availability of an alternate remedy does not render a writ petition automatically non-maintainable. The Supreme Court has consistently held that an alternative remedy is not an absolute bar to relief under Article 226, especially where fundamental rights or principles of natural justice are at stake or the order is wholly without jurisdiction.
8. In fact, in the case of *Whirlpool Corporation v. Registrar Trademarks, Mumbai*<sup>1</sup>, the Court emphasized that the High Court has discretion to entertain a writ petition notwithstanding an alternate remedy, in at least three contingencies: enforcement of fundamental rights, violation of

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<sup>1</sup>(1998) 8 SCC 1



natural justice, or where the order is wholly without jurisdiction. The Court held as follows:

*"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

9. These exceptions apply here. The petitioner raises serious allegations of breach of natural justice and procedural infirmity by the NGT. In such circumstances the High Court may exercise its writ jurisdiction even though an appeal to the Supreme Court is theoretically available. Accordingly, the writ petition is held maintainable and will be examined on merits.
10. Although extraction of minor minerals is primarily governed by mining laws, the environmental impact of such extraction falls squarely within the NGT's remit. The NGT is an expert tribunal vested with broad powers to adjudicate substantial questions of environment law arising under the statutes listed in Schedule I of the NGT Act. Here, the



complaints allege large-scale illegal excavation from government land causing environmental degradation. Such extraction can lead to pollution of land and water and damage to the ecosystem, engaging the Environment (Protection) Act and related statutes under Schedule I.

11. The judicial precedents have reaffirmed that NGT's jurisdiction cannot be unduly narrowed and it is to be treated as an expert adjudicatory body on environmental issues. The Supreme Court in *Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat*<sup>2</sup> noted that the NGT's powers include providing relief, restitution and compensation in environmental matters. The relevant excerpts are produced below:

*"16. Section 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment..."*

12. There is no merit in the contention that the NGT had no jurisdiction simply because the extraction involved minor minerals. By causing soil erosion and water pollution, illegal mining raises "substantial questions relating to environment" within the meaning of Section 14(1) of the NGT Act. Hence the NGT was competent to entertain the original application and constitute the joint committee. Even so, the manner in which it discharged that function is subject to review as discussed below.
13. The core grievance is that the petitioner was never given notice of the joint committee's site inspection (18.12.2023) or an opportunity to be

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<sup>2</sup>2022 SCC OnLine SC 120



heard on the committee's report, which led to directions for recovery of compensation. This is a fundamental breach of natural justice. The Supreme Court in the case of *Grasim Industries Limited v. State of Madhya Pradesh*<sup>3</sup> in this regard, has held as follows:

*"A tribunal is required to arrive at its decision by fully considering the facts and circumstances of the case before it. It cannot outsource an opinion and base its decision on such an opinion. A reliance in this respect should be placed on the judgment of this Court in Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others v. State of Gujarat and Others."*

14. The Court in the abovementioned case condemned an NGT order passed entirely on a committee's findings without hearing the concerned party. It noted that the NGT's procedure was totally unknown to the settled principles of natural justice, observing that "*neither was any notice given by the Joint Committee before giving an adverse report against the appellant nor the NGT permitted impleadment*" of the appellant. The Court held that such an approach "*smacks of condemning a person unheard*". This decision was set aside and remanded because the NGT erred in proceeding *ex parte*.
15. In this case, exactly the same error is made. The Joint Committee's report was relied on to recommend heavy compensation, yet the petitioner had no opportunity to contest its findings. The petitioner was not impleaded in the NGT proceedings, nor was it given notice of the joint inspection. The NGT Order itself even notes that the pits were water-filled and the committee could not ascertain the full extent at the time. Instead of permitting the petitioner to be heard on these findings, the NGT

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<sup>3</sup>2024 INSC 926



mechanically issued directions to recover compensation. This procedure violates the rule of *audi alteram partem*. An adjudicatory tribunal **must** give the affected person a chance to be heard before reaching a decision.

16. Linked to the above, it is impermissible for the NGT to abdicate its judicial role by simply rubber-stamping the committee's report. The Supreme Court has repeatedly held that the core adjudicatory function of the NGT is non-delegable. In *Kantha Vibhag (Supra)*, the Court declared that while expert committees may assist by fact-finding, the NGT itself must adjudicate the issues. It set aside an NGT order that required parties to approach technical committees for relief, noting that the tribunal had abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee, which is unsustainable as adjudication is not a delegable function.
17. The same principle was reiterated in *Grasim (Supra)* the NGT "cannot outsource" the decision by basing its order solely on a committee report. Here too, by directing recovery based on the joint committee without an independent evaluation of the petitioner's case, the NGT has effectively delegated its judgment to the committee. This is contrary to *Kantha* and *Grasim*. The NGT must review objections, apply its judicial mind and render an order; it cannot abdicate that responsibility.
18. The petitioner also points out that the Joint Committee was constituted of officials (State Pollution Control Board, District Mining Officer, Collector/ADM, Divisional Forest Officer) who were themselves respondents or alleged defaulting authorities in the original application. This raises a potential conflict under the maxim *nemo judex in causa sua*.



While no specific precedent is cited for committee composition, the combined effect of no notice plus possible bias underscores the unfairness. In any event, the Supreme Court's rulings in *Grasim (Supra)* and *Kantha (Supra)* render this moot: the NGT should not have relied on such a committee's findings without hearing the petitioner, regardless of membership.

19. The petitioner invokes the MoEF&CC notification of 28.03.2020 (Item 6, Appendix IX of the EIA Notification, 2006), which exempts extraction of ordinary earth for linear projects (roads, railways, pipelines) from prior environmental clearance. It is contended that its excavations fall within this exemption and that it also obtained local permissions to source earth. The respondents counter that the material excavated was laterite/morrum (not mere "ordinary earth") and that no valid consents or clearances (CTE/CTO) were in place.
20. On this record, no environmental clearance was obtained for the mining activity. Whether or not the exemption technically applies (which would require scrutiny of the material and purpose), the petitioners' failure to obtain any clearances or consents is a statutory breach under the EPA and Water Acts. However, the question of permits and exemptions is primarily one of facts and merits for the competent forum. Crucially, the NGT did not finally adjudicate those points, it merely directed compensation. If this Court were to reach the exemption issue, it would note that even if the MoEF notification excused prior EC, the absence of prescribed consents would still render the extraction unauthorized. That



said, given the NGT's quashing on procedural grounds, these factual and regulatory aspects need not be fully resolved here.

21. The petitioner argues that the compensation of ₹1,20,10,000 (as computed by the State Board) is arbitrary and disproportionate, and that the CPCB guidelines do not cover excavation of earth. Even if the petitioners had illegally excavated, compensation under the "polluter pays" principle must have a basis in law and a nexus to actual harm. The Supreme Court has warned against using turnover or arbitrary formulas.
22. In *Benzo Chem Industrial (P) Ltd. v. Arvind Mahajan*<sup>4</sup>, the Court invalidated an NGT penalty that bore no relation to the pollution, holding that generation of revenue has no nexus with the amount of penalty, and that the rule of law does not permit the State to extract a pound of flesh. The relevant excerpt:

*"In any case, the generation of revenue would have no nexus with the amount of penalty to be ascertained for environmental damages. It is further to be noted that the learned NGT found the appellant to be guilty of violations, the least that was expected from the NGT is to give a notice to the appellant before imposing such a heavy penalty."*

23. The CPCB's compensation guidelines are not binding law unless enacted by Parliament. Here the NGT expressly refrained from endorsing the computation, leaving details for "competent authority". In short, any calculation of damages must await an adversarial hearing.

#### **V. CONCLUSION AND DIRECTION:**

24. In sum, the Writ Petition discloses a clear case of procedural illegality. The NGT's order of 02.05.2025 is vitiated by breach of natural justice and

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<sup>4</sup>2024 SCC OnLine SC 3543



by unlawful delegation of its judicial function to the joint committee without affording the petitioner a hearing. The alternative remedy of appeal does not preclude relief, since the order is tainted by fundamental unfairness.

25. For the abovementioned reasons, the Writ Petition is allowed and the impugned NGT order is quashed and set aside. The parties are left to pursue their rights before the appropriate authority or forum consistent with law, and the petitioner shall not be prejudiced in any manner pending such proceedings.
26. Interim order, if any, passed earlier stands vacated.

*(Dr. Sanjeeb K Panigrahi)  
Judge*

*Orissa High Court, Cuttack,  
Dated 22<sup>nd</sup> Jan., 2026/*