

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL CENTRAL
ZONAL BENCH BHOPAL (M.P.)

EXECUTION APPLICATION NO.06/2024

IN

ORIGINAL APPLICATION NO. 97/2022 (CZ)

APPLICANT : KAMAL TIWARI

VERSUS

RESPONDENTS : UNION OF INDIA & OTHERS

FILE 'A'


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PLACE: BHOPAL

DATED: 24/05/24

 Counsel for Applicant
(Krishan Sharma/ Vaibhav Pancholy)

Advocates

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PLACE: BHOPAL

DATED: 24/05/24

Dr Counsel for Applicant *Krishan*
(Krishan Sharma/ Vaibhav Pancholy)
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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL CENTRAL**ZONAL BENCH BHOPAL (M.P.)****EXECUTION APPLICATION NO. 06/2024****IN****ORIGINAL APPLICATION NO. 97/2022 (CZ)****APPLICANT : KAMAL TIWARI****VERSUS****RESPONDENTS : UNION OF INDIA & OTHERS****SYNOPSIS**


- That Applicant had filed an original application no. 97/2022(CZ) in the year 2022 before this hon'ble tribunal against illegal activities upon reserved forest land or within the Eco Sensitive Zone of Nahargarh Wildlife Sanctuary and this Hon'ble Tribunal was pleased to pass an interim order on 01/11/2022 and Respondents were directed to impose environmental compensation upon violators by finalizing the same and in said order this Hon'ble Tribunal has observed that RIICO is genesis of all the violations and thus action is warranted against the RIICO as per principle of polluter's pay.
- That RIICO is flouting the directions issued vide order dated 01/11/2023 and issued some letters contrary to order dated 01/11/2023 and mandatory provisions of Water Act and Air Act.
- That hence being aggrieved with the inaction of Respondents Applicant is preferring this execution



application for execution of order dated 01.11.2023 passed
by this Hon'ble Tribunal.

Place: Bhopal

Dated: 24/05/24

 **Counsel for Applicant** 
(Krishan Sharma/ Vaibhav Pancholy)

Advocates

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL CENTRAL
ZONAL BENCH BHOPAL (M.P.)**

EXECUTION APPLICATION NO. 06./2024

IN

ORIGINAL APPLICATION NO. 97/2022 (CZ)

APPLICANT : KAMAL TIWARI

VERSUS

RESPONDENTS : UNION OF INDIA & OTHERS

CHRONOLOGICAL EVENTS

S.No.	DATES	EVENTS
1	01.11.2023	This Hon'ble Tribunal was pleased to pass an interim order on 01/11/2022 and Respondents were directed to impose environmental compensation upon violators by finalizing the same and in said order this Hon'ble Tribunal has observed that RIICO is genesis of all the violations and thus action is warranted against the RIICO as per principle of polluter's pay.



2	20.12.2023	This Hon'ble Tribunal had issued categorical directions to Rajasthan State Pollution Control Board to proceed against the RIICO in accordance with law.
3	05/03/2024	That Advocate General had rendered opinion about the applicability of provisions of Water Act and Air Act upon RIICO.
4	13/03/2023	That Chairman, RIICO had wrote a letter to Chairman Rajasthan State Pollution Control Board and apprised him about opinion of advocate general.
5	09/04/2024	That RIICO had also issued a letter giving directions to competent authorities to act upon in view of legal opinion rendered by learned advocate general.
6.		Hence being aggrieved with the inaction on the part of respondents, this Execution Application is being filed by the Applicant without any delay.

Place: Bhopal

Dated: 29/05/24

 Counsel for Applicant
(Krishan Sharma/ Vaibhav Pancholy)

Advocates

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Rajasthan High Court, Bench Jaipur at
Jaipur (Raj)

E-mail: advocatekrishana@gmail.com

Mob.- 9982765049

(5)

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL CENTRAL
ZONAL BENCH BHOPAL (M.P.)

EXECUTION APPLICATION NO. ...06.../2024

IN

ORIGINAL APPLICATION NO. 97/2022 (CZ)

Between:

Kamal Tiwari son of Shri Shambhu Dayal Tiwari, aged about 45 years, resident of 29 Shankar Colony Heeda Ki Mori, Ramganj Bazar, Jaipur (Rajasthan). (Mobile No. 9352538268) (Email- kamalkanttiwari84@gmail.com)

...APPLICANT

VERSUS

1. Union of India through the Secretary, Ministry of Environment, Forest and Climate Change, Govt. of India, Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi- 110003 (email-secy-moef@nic.in).
2. The Principal Chief Conservator of Forests -cum- Chief Wildlife Warden, Forest Department, Government of Rajasthan, Aranya Bhawan, Jhalana Institutional Area, Jhalana Doongri, Jaipur-302004 (Rajasthan). (Email-pccf.cw/w.forest@rajasthan.gov.in)

Kamal Tiwari

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(6)

3. Deputy Conservator of Forests, Wildlife, Zoo Jaipur, Ramniwas Bagh, Jaipur-302004(Rajasthan). (Email- dcfwl.zoo.forest@rajasthan.gov.in)
4. Member Secretary, Rajasthan State pollution control Board, JhalanaDoongri, Jaipur-302002 (Rajasthan). (acp.rpcp@rajasthan.gov.in).
5. Managing Director, Rajasthan State Industrial Development and Investment Corporation Limited, Udhayog Bhawan, Tilak Marg, Jaipur, Rajasthan- 302005. (Email- riico@riico.co.in).
6. Senior Manager, Rajasthan State Industrial Development and Investment Corporation Limited, Vishwakarma Industrial Area, Jaipur- 302013 (Rajasthan) (Email- riico@riico.co.in).

....RESPONDENTS

AN APPLICATION UNDER SECTION 26, 27, 28 OF NATIONAL GREEN TRIBUNAL ACT 2010 FOR EXECUTION OF ORDER DATED 01.11.2023 PASSED BY THIS HON'BLE TRIBUNAL & IMPOSITION OF PENALTY AND INITIATION OF CRIMINAL PROCEEDINGS AGAINST THE RESPONDENTS, WHO ARE NOT COMPLYING THE DIRECTIONS ISSUED VIDE ORDER DATED 01.11.2023.

May Please Your Lordships.

1. The Address of the Applicant is given above for service of notice of these applications and that of the representatives.
2. The addresses of Respondents as given above for the service of notice of present application.
3. That Applicant had filed an original application no. 97/2022(CZ) in the year 2022 before this hon'ble tribunal against illegal activities upon reserved forest land or within the Eco Sensitive Zone of Nahargarh Wildlife Sanctuary and this



(7)

Hon'ble Tribunal was pleased to pass an interim order on 01/11/2022 and Respondents were directed to impose environmental compensation upon violators by finalizing the same and in said order this Hon'ble Tribunal has observed that RIICO is genesis of all the violations and thus action is warranted against the RIICO as per principle of polluter's pay. This Hon'ble Tribunal has passed following directions vide order dated 01/11/2023-

"8. Accordingly, we direct the same committee to calculate the environmental compensation of all the unit holders who are violating the environmental norms and also the RIICO which is genesis of these violations and to take action for recovery of environmental compensation, prosecution and to submit the report within two weeks.

It is further directed that Chief Wildlife Warden and Divisional Forest Officer of Wildlife Sanctuary, Nahargarh is directed to take necessary action to calculate their own method of calculation or damage to the forest, wildlife and to proceed in accordance with law for realisation of the damage caused to the wildlife sanctuary and the forest land. In addition to initiation of prosecution. The Member Secretary, State Pollution Control Board, Rajasthan to remain present through video conferencing on the next date of hearing. Further action taken report be filed before the next date of listing.

List it on 22nd November, 2023."

The Web-Copy of Order dated 01/11/2023 is annexed herewith and marked as **Annexure- A/1.**

4. That Member Secretary, Rajasthan State Pollution Control Board issued a letter on 14/05/2007 and apprised the concerned authorities about applicability of provisions of provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND



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CONTROL OF POLLUTION) ACT, 1981 upon developer of industrial area i.e. RIICO and by the way of this letter it was clarified that provisions of provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 would apply upon RIICO as being developer it is the duty of RIICO to ensure proper system like electrification, water supply, road and drainage etc. and thus RIICO would be under obligation of law to obtain requisite permissions under the provisions of provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981. The Photocopy of letter dated 14/05/2007 is annexed herewith and marked as **Annexure-A/2.**

5. That RIICO had obtained legal opinion from Advocate General in the year 2012 qua applicability of provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 and Learned Advocate General had vide letter dated 01/05/2012 apprised and advised the RIICO regarding applicability of provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT and it has been advised that RIICO is the developer of the industrial area and there would be strong chances of causing pollution during development of industrial area and thus advised to obtain Consent to Establish and Consent to operate under the provisions of provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT. The Photocopy of letter dated 01/05/2012 is annexed herewith and marked as **Annexure-A/3.**
6. That Chairman of Rajasthan State Pollution Control Board vide letter dated 23/01/2024 had made a request to Chairman, RIICO regarding obtainment of requisite permissions under the

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provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 and to ensure compliance of mandatory provisions of law. The Photocopy letter dated 23/01/2024 is annexed herewith and marked as **Annexure-A/4**.

7. That Applicability of provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 upon RIICO is no more res-integra and since RIICO is developer of industrial area and Industrial area and all industries would remain under the occupation of RIICO even after development of said area and this Hon'ble vide order dated 01/11/2023 has held that RIICO is genesis of all the violations as mandatory provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 are being continuously violated by the RIICO and even after verdict of this Hon'ble Tribunal RIICO is adamant to make non-compliance of order dated 01/11/2023. It is stated that RIICO had filed an application before this Hon'ble Tribunal for modification of order dated 01/11/2023 qua the extent that RIICO is genesis of all the violations and after hearing at length the application was dismissed by this Hon'ble Tribunal vide order dated 20/12/2023. The Web-copy of order dated 20/12/2023 is annexed herewith and marked as **Annexure-A/5**.
8. That when order was passed by this Hon'ble Tribunal qua payment of environmental compensation then no option was left with the RIICO except to make compliance of order dated 01/11/2023 and orders passed subsequently and RIICO is taking constant stand before this Hon'ble Tribunal that they had filed appeal before competent authority constituted under the provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 and no stay has been



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granted upon the order of environmental compensation passed by Rajasthan State Pollution Control Board and thus pendency of appeal would not create any ground in favour of RIICO qua payment of environmental compensation. It is submitted that after passing of directions vide order dated 01/11/2023 RIICO had sought guidance from Advocate General of Rajasthan qua the applicability of provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 and Advocate General had opined that developer of industrial area i.e. RIICO is not required to obtain requisite permissions under the provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981. It is further submitted that when it is statutorily provided about obtainment of requisite permissions under the provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 prior to establishment of any industries and opinion qua same issue was sought from Advocate General in the year 2012 then what was the requirement to sought fresh opinion as the issue is no more res-integra and statutory provisions are very much clear qua said issue. The Photocopy of letter dated 05/03/2024 is annexed herewith and marked as **Annexure-A/6**.

9. That Chairman, RIICO vide letter dated 13/03/2024 had apprised the Chairman, Rajasthan State Pollution Control Board about the opinion of advocate general and request was made to issue directions to competent authorities to withdraw their notices given to respective RIICO unit officers for not obtaining CTE/CTO and this letter is contemptuous as this Hon'ble Tribunal vide order dated 01/11/2023 had specifically directed the Rajasthan State Pollution Control Board to proceed in accordance with against the RIICO and at another hand RIICO is flouting the verdict of this Hon'ble Tribunal on



the basis of so called opinion received from advocate general. The Photocopy of letter dated 13/03/2024 is annexed herewith and marked as **Annexure-A/7**.

10. That Advisor (EM) RIICO vide circular dated 09/04/2024 had directed all the units of RIICO for not making any application before Rajasthan State Pollution Control Board for obtainment of requisite permissions under the provisions of THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 and THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 and it has also been directed to withdraw pending applications in this regard. The Photocopy of letter dated 09/04/2024 is annexed herewith and marked as **Annexure-A/8**.
11. That the humble Applicant has submitted requisite Court Fees for filling the present application as prescribed under the NGT Rules 2010.
12. That substantial cause of action is important and very urgent in nature and arose due to Non-Compliance of order dated 01.11.2023 passed by this Hon'ble Tribunal.

PRAYER

It is most respectfully prayed that this application may kindly be allowed and this Hon'ble Tribunal be pleased to pass following directions and orders: -

- (i) That the order dated 01.11.2023 passed by this Hon'ble Tribunal may kindly be executed in terms of Section 25, 26, 27 and 28 of National Green Tribunal Act 2010 and Respondents be directed to comply with the directions came to be passed vide order dated 01.11.2023 forthwith.
- (ii) This Hon'ble is further pleased to deprecate letter dated 13/03/2024 and 09/04/2024 in order to ensure compliance of order dated 01/11/2023 and mandatory provisions of Water Act and Air Act.





12.

- (iii) Respondents be also punished for willful non-compliance and disobedience of order dated 01/11/2023 in accordance with NGT Act, 2010.
- (iv) That Respondents be punished with imprisonment for a term of 3 years and penalty of Rs. 10 crores may also be imposed upon the Respondents in terms of Section 26 of National Green Tribunal Act 2010.
- (v) That heavy cost may kindly be imposed upon the Respondents and be awarded to Applicant.
- (vi) That any other or further order or direction as this Hon'ble Tribunal deem just & proper may kindly be passed in the interest of Justice.

Place: Bhopal

Dated: 24/05/24

K. P. Singh
K. P. Singh

1. Counsel for Applicant
(Krishan Sharma/ Vaibhav Pancholy)

Advocates

Add- Chamber No. 178, Old Bldg.,
Rajasthan High Court, Bench Jaipur at
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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL CENTRAL
ZONAL BENCH BHOPAL (M.P.)**

EXECUTION APPLICATION NO. **06**./2024

IN

ORIGINAL APPLICATION NO. 97/2022 (CZ)

APPLICANT : KAMAL TIWARI

VERSUS

RESPONDENTS : UNION OF INDIA & OTHERS

AFFIDAVIT

I Kamal Tiwari son of Shri Shambhu Dayal Tiwari, aged about 45 years, resident of 29 Shankar Colony Heeda Ki Mori, Ramganj Bazar, Jaipur (Rajasthan) do hereby solemnly affirm on oath as under:-

1. That, applicant is well acquainted with the facts of present case and the application is drafted by counsel for Applicant on my instructions and contents thereof, have also been explained to me.
2. That Applicant has read and understood the same and the application is true further nothing has been concealed by Applicant.
3. That averments stated in this application and material thereof had suppressed there from.
4. That, affidavit is executed in support of this execution application.

Identified by
1 Dr

Kamal Tiwari
Deponent

VERIFICATION

I, above Deponent do hereby verify that the contents from paragraph 1 to 4 are true to best of my knowledge.

Signed & verified on 21/05/24 at Bhopal.

21/5/24

Sworn & Signed before me

Arun
21-5-2024

OATH COMMISSIONER
JAIPUR METROPOLITAN COURTS, JAIPUR

Kamal Tiwari
Deponent

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL CENTRAL**ZONAL BENCH BHOPAL (M.P.)****EXECUTION APPLICATION NO. 06./2024****IN****ORIGINAL APPLICATION NO. 97/2022 (CZ)****APPLICANT : KAMAL TIWARI****VERSUS****RESPONDENTS : UNION OF INDIA & OTHERS****COMPILATION-2****LIST OF DOCUMENTS**

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4	Photocopy letter dated 23/01/2024.	Annexure- A/4	32
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PLACE: BHOPAL

DATED: 24/05/24


Counsel for Applicant
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Item No. 01

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL**
(Through Video Conferencing)

Original Application No. 97/2022(CZ)

Kamal Tiwari

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of Hearing : 01.11.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

For Applicant(s): Mr. Vaibhav Pancholy, Adv.

For Respondent(s):
Mr. Dharamvir Sharma, Adv.
Mr. Shoeb Hasan Khan, Adv.
Mr. Shiv Narayan Bohra, Adv.
Mr. Arvind Soni, Adv.
Mr. Mohit Pareek, Adv.
Mr. Om Shankar Shrivastava, Adv.
Mr. Gajendra Singh, Adv.
Mr. Vijay Sharma, R.O. RSPCB
Ms. Alka Bishnoi, ADM, Jaipur
(for DM, Jaipur)

ORDER

1. The issue raised in this application is serious violation of the Forest (Conservation) Act, 1980 and rules with regard to the Wildlife (Protection) Act, 1972 and the notification of Nahargarh Wildlife Sanctuary.
2. Considering the facts as narrated and reported by the joint committee this Tribunal on 31.08.2023 observed as follows :-

"1. Admittedly, in light of the report submitted by the Forest Department the land khasra no. 10 is forest land and there are encroachments by way of pacca drains and discharge of

untreated water in violation of the Forest Conservation Act, 1980.

2. We direct the Collector, Jaipur to immediately remove the encroachment and ensure that no industrial untreated water is discharged into the Nahargarh Wildlife Sanctuary and adversely affecting the wildlife & the environment. If there is any matter with regard to the demarcation of the land, the District Magistrate is further directed to immediately demarcate the land within 15 days by way of deputing revenue officials and ensure to remove the encroachment immediately.

3. Admittedly, there are drains, in which industries are discharging their untreated sewage/water. The State PCB, Rajasthan is directed to take necessary actions against the industries, which are discharging their untreated water into the drains, and to assess and realize the environmental compensation according to the rules and submit the report within fortnight. Further action taken report by Collector, Rajasthan and State PCB be filed before the next date of hearing."

3. Vide order dated 25.09.2023, the joint committee was constituted to submit the report and to ensure that remedial action must be taken against the violators of the rules and to assess the environmental compensation and to take necessary action according to the rules.

4. In view of the above order the Govt. of Rajasthan vide order dated 26.10.2023 directed authorities concerned to visit the site and take remedial actions and also to assess the environmental compensation and to realise it according to the rules.

5. The committee visited the site and observations which is filed are as follows :-

- (i) *"The impugned drains (Two Pacca Drains) near road no. 9- F-1 and 9-F-2 respectively of approximate dimensions 6 meters width and 3 meters depth have been constructed by RIICO in Vishwakarma Industrial Area on the land belonging to the RIICO in which untreated domestic and industrial waste water is being discharged in Nahargarh Wildlife Sanctuary.*
- (ii) *It is pertinent to mention that quantity of the waste water being discharged was very less, however there are possibilities of enhancement of flow and quantity of untreated effluents considering the industrial operations in VKIA.*
- (iii) *Ponding of waste water was also observed in khasra No. 10 belonging to the Nahargarh Wildlife Sanctuary.*
- (iv) *Representative of Forest Department informed as under: -*
 - a) *That the said Khasra no. 3 was part of reserved forest as per reserved forest notification of 1961 (Annexure-4). In 1971, Khasra No. 3 of forest land was released to RIICO for industrial purpose (Annexure-5). The boundaries of Nahargarh Wild Life Sanctury were notified in 1980 (Annexure-6). In year 1998, an order regarding Nahargarh Sanctuary issued by the District Collector in which two areas were decided namely "Reserved Forest" and "Described Area". In Described Area, many rights and concessions have been given to local residents and other government agencies. (Annexure-7).*

- b) That the parts of drains have been constructed upon Khasra No.10 and Khasra No.3. The Khasra No. 10 is forest land and Khasra No. 3 belongs to RIICO (Annexure-5), Khasra No.3 falls in the described area and Khasra No. 10 falls in Reserved Forest (As per District Collector order of 1998) of Nahargarh Wildlife Sanctuary. It is further to submit that as per KML file of Nahargarh Wildlife Sanctuary uploaded on the website of Department of Forest (Annexure-8) also, it appears that both these khasras are falling in Nahargarh Wildlife Sanctuary.
- c) It has also been transpired from report of surveyor belonging to forest department (Annexure-9) that RIICO has levelled the land of Khasra No.10 and Khasra No.3.
- d) FIR No. 34/2060 dated 22.01.2022 has been registered by the Range Forest Officer, Nahargarh Wild Life Sanctuary (Annexure-10) against contractor of RIICO and a penalty of Rs. 2 Lakh INR has been imposed in forest offence making nallah and draining waste water in sanctuary area.
- (v) Representative of RSPCB informed that catchment area of both the drains was discussed with RIICO in Sept, 2023 and as per the identification of the area, copy of the map provided by the RIICO enclosed (Annexure-11), RSPCB conducted survey of 267 units in the catchment area. RSPCB has initiated action of imposition of Environmental Compensation against the units found discharging industrial waste water outside the premises.

Conclusion

- (i) Two impugned drains (Two Pacca Drains) near road no. 9-

F-1 and 9-F-2 respectively of approximate dimensions 6 meters width and 3 meters depth have been constructed by RIICO in Vishwakarma Industrial Area on the land belonging to the RIICO in Khasra No. 3 and a part in Khasra no. 10 of the Forest land through which untreated waste water is being discharged in Nahargarh Wildlife Sanctuary.

(ii) It is pertinent to mention Khasra No.3 land belongs to RIICO, and, as per the official KML file uploaded on the website of Forest Department, this khasra is falling under the Nahargarh Wildlife Sanctuary. Further Khasra No. 10 is forest land.

(iii) Forest Department has already imposed penalty on contractor of RIICO on activity of construction of drains carried out by RIICO on Khasra No. 10 and the case is compounded.

(iv) Discharge of waste water through the drains constructed by the RIICO still continues in a very low quantity and finally it is getting accumulated on the adjacent forest land.

(v) In order to identify the sources and quantum of waste water generated, RSPCB conducted survey of 267 units in the catchment area of impugned drains and action has also been initiated for imposing Environmental Compensation against the units found discharging industrial waste water outside the premises.

(vi) That the RIICO is not having any plan for treatment and final disposal of trade effluent as well as sewage generated from the Vishwakarma Industrial Area (VKIA).

Further the RIICO has not obtained Consent to Establish and Consent to Operate for VKIA. In this regard a letter has also been issued on dated 25.08.2023 from the Member Secretary, RSPCB to MD, RIICO to obtain Consent to Establish and Consent to Operate for all the RIICO Industrial Areas. Copy of letter dated 25.08.2023 enclosed (Annexure-12).

Recommendation

The committee is of the opinion that any activity proposed on any parcel of land of RIICO which falls under the Nahargarh Wildlife Sanctuary, a prior intimation and necessary approvals under the prevailing rules must be obtained from the State Forest Department.

- (i) State Forest department shall ensure that no construction, levelling or any other non-forest activity is done on the forest land of Khasra No.10 and the existing construction of drains upon this Khasra No.10 be demolished being in violation of Forest Conservation Act, 1980 and Wildlife Protection Act, 1972.
- (ii) Waste water reaching to the forest land through the drains constructed by RIICO needs to be treated and diverted to gainful purposes ensuring no discharge on forest land.
- (iii) The RIICO must immediately prepare a detailed plan incorporating treatment of industrial and domestic effluent being generated from the industrial area along with plan for re-use of the treated waste water in industrial units or for other gainful

purposes.

(iv) *That RIICO should ensure that no treated or untreated effluent be allowed to reach the forest land."*

6. Perusal of the report reveals that there are serious violation and no action has been taken or initiated by the State Pollution Control Board and the units are operating in violation without any consent to establish and consent to operate in this Vishvkarma Industrial area.
7. It is reported that there are approximately 267 units. It is further reported that the area under Nahargarh Wildlife Sanctuary is being violated and constructions or drains are being constructed without any authority in violation of environmental rules. Though the order of this Tribunal and the order dated 26.10.2023 issued by the State of Rajasthan directed the authorities to calculate the environmental compensation but the same has not been done by the authorities concerned. It shows that the Rajasthan Pollution Control Board failed to exercise their duties sincerely, fairly and honestly and directly or indirectly permitted the industrial unit to be operated without any authority and without any consent order. There are serious violations against which no action has been initiated by the State Pollution Control Board.
8. Accordingly, we direct the same committee to calculate the environmental compensation of all the unit holders who are violating the environmental norms and also the RIICO which is genesis of these violations and to take action for recovery of environmental compensation, prosecution and to submit the report within two weeks.
9. It is further directed that Chief Wildlife Warden and Divisional Forest Officer of Wildlife Sanctuary, Nahargarh is directed to take necessary action to calculate their own method of calculation or damage to the forest, wildlife

and to proceed in accordance with law for realisation of the damage caused to the wildlife sanctuary and the forest land. In addition to initiation of prosecution. The Member Secretary, State Pollution Control Board, Rajasthan to remain present through video conferencing on the next date of hearing. Further action taken report be filed before the next date of listing.

List it on **22nd November, 2023.**

Sheo Kumar Singh, JM

Dr. A. Senthil Vel, EM

01st November, 2023
O.A No. 97/2022(CZ)
PN

RAJASTHAN STATE POLLUTION CONTROL BOARD,
4, PARYAVARAN MARG, INSTITUTIONAL AREA, JHALANA DOONGARI,
JAIPUR.

No F.14(17)RPCB/Meeting/Plg./ 477-91

Dated: 14-5-07

(i) Group Incharge, I, II, III, 477-91
Rajasthan State Pollution Control Board,
JAIPUR.

14.5.07

(ii) Regional Officer,
Regional Office,
Rajasthan State Pollution Control Board,
ALWAR, BHIWADI, BHILWARA, BIKANER, JODHPUR, JAIPUR
(NORTH), JAIPUR (SOUTH), KOTA, PALI, UDAIPUR.

Subject:- Applicability of the provisions of the Water (Prevention & Control of Pollution) Act, 1974, on the Industrial Areas developed by Rajasthan Industrial and Investment Corporation Limited (RIICO).

Sir,

The State Government constituted the Rajasthan State Pollution Control Board, under the provisions of Section 4 of the Water (Prevention & Control of Pollution) Act, 1974; for maintaining and restoring the wholesomeness of water and for carrying out the purposes of the aforesaid Act. The other State Governments/Union Territories, in the country, have also constituted similar State Pollution Control Board in their respective States/Union Territories.

The RIICO Limited is the prime agency in the State which is responsible for the development of industrial areas or estates for establishment of industries and for providing basic infrastructure facilities like : roads, electrification, water supply and drainage etc. for their smooth operation as also for taking measures for facilitating proper and adequate treatment and disposal of trade effluent and hazardous wastes generated by the industrial units located in RIICO industrial areas. Presently, there are about 310 industrial areas in the State and development of about 10-15 industrial areas is also under consideration of RIICO Limited. The trade effluent generated in the industrial units located in the industrial areas developed by RIICO is discharged into the drains. The waste water then travels and reaches a common point for final disposal. Proper and adequate maintenance of the drains provided by RIICO for taking trade effluent to a common point for final disposal is essential for the purpose of prevention and control of water pollution. Improper transportation of waste water through these drains may lead to pollution of water. The RIICO is covered by the provisions of the Water Act and is, therefore, required to be governed and regulated by its provisions in order to control pollution of water due to waste water arising in the industries located in the areas developed by RIICO. This becomes clear from the provisions of Section 25 of the Water Act, which read as follows:-



48 49
वि. के. श्रीवास्तव (वी.के.एस.)
वरिष्ठ क्षेत्रीय प्रबन्धक (पीएण्डडी)

23

175

"25:- Subject to the provisions of this section, no person shall, without the previous consent of the State Board:-

- (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer, or on land (such discharge being hereafter in this section referred to as discharge of sewage); or
- (b) bring into use any new or altered outlets for the discharge of sewage; or
- (c) begin to make any new discharge of sewage;

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention & Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such applications.

(2) An application for consent of the State Board under subsection (1) shall be made in such form, containing such particulars and shall be accompanied by such fees as may be prescribed."

The State Board, however, in order to have a clear view in the matter and to proceed in accordance with law, sought legal opinion from the counsel of the State Board Shri Akhil Simla. He was asked to render legal opinion on whether the provisions of the Water (Prevention & Control of Pollution) Act, 1974, apply to and should govern and regulate the Rajasthan Industrial and Investment Corporation Limited (RIICO). The Counsel of the State Board in his letter dated 21.4.2007 has opined that the RIICO is covered by the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and is required to obtain consent from the State Board under the said provisions.

Therefore, in view of the above, you are directed to proceed in the matter and Act, so as to secure compliance of the provision of the Water (Prevention & Control of Pollution) Act, 1974 by the RIICO for the industrial areas developed by it in your jurisdiction.

Yours faithfully,

Member Secretary

Copy to following for information

1. PS to Chairman, RPCB, Jaipur
2. L.O.(A)/RPCB, Jaipur

Sr. Environment Engineer (Plg)



(विनोद कुमार)
वरि. क्षेत्रीय प्रबन्धक (गैण्डहरी)

49

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**RAJASTHAN STATE POLLUTION CONTROL BOARD,
4 PARYAVARAN MARG, INSTITUTIONAL AREA, JHALANA DOONGARI,
JAIPUR.**

No.F.14(17)RPCB/Meeting/Plg./477-91
Dated: 14.05.07

- (i) Group Incharge, I, II, III,
Rajasthan State Pollution Control Board,
JAIPUR.
- (ii) Regional Officer,
Regional Office,
Rajasthan State Pollution Control Board,
ALWAR, BHIWADI, BHILWARA, BIKANER, JODHPUR, JAIPUR
(NORTH) JAIPUR (SOUTH) KOTA, PALI, UDAIPUR.

**Subject- Applicability of the provisions of the Water. Prevention &
Control of Pollution) Act, 1974, on the Industrial Areas
developed by Rajasthan Industrial and Investment
Corporation Limited (RIICO)**

Sir.

The State Government constituted the Rajasthan State Pollution Control Board, under the provisions of Section 4 of the Water (Prevention & Control of Pollution) Act, 1974, for maintaining and restoring the wholesomeness of water and for carrying out the purposes of the aforesaid Act. The other State Governments/Union Territories, in the country have also constituted similar State Pollution Control Board in their respective States/Union Territories.

The RIICO Limited is the prime agency in the State which is responsible for the development of industrial areas or estates for establishment of industries and for providing basic infrastructure facilities like roads, electrification, water supply and drainage etc. for their smooth operation as also for taking measures for facilitating proper and adequate treatment and disposal of trade effluent and hazardous wastes generated by the industrial units located in RIICO industrial areas. Presently, there are about 310 industrial areas in the State and development of about 10-15 industrial areas is also under consideration of RIICO Limited. The trade effluent generated in the industrial units located in the industrial areas developed by RIICO is discharged into the drains. The waste water then travels and reaches a common point for final disposal. Proper and adequate maintenance of the drains provided by RIICO for taking trade effluent to a common point for final disposal is essential for the purpose of prevention and control of water pollution. Improper transportation of waste water through these drains may lead to pollution of water. The RIICO is covered by the provisions of the Water Act and is, therefore, required to be governed and regulated by its provisions in order to control pollution of water due to waste water arising in the industries located in the areas developed by RIICO This becomes clear from the provisions of Section 25 of the Water Act, which read as follows:-



Sd/-
(विनोद कुमार)
वरि. क्षेत्रीय प्रबन्धक (पीएण्डडी)

Issued Under R.T.I. Act, 2005

"25:- Subject to the provisions of this section, no person shall, without the previous consent of the State Board:-

- (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer, or on land (such discharge being hereafter in this section referred to as discharge of sewage); or
- (b) bring into use any new or altered outlets for the discharge of sewage; or
- (c) begin to make any new discharge of sewage;

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention & Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such applications.

(2) An application for consent of the State Board under subsection (1) shall be made in such form, containing such particulars and shall be accompanied by such fees as may be prescribed."

The State Board, however, in order to have a clear view in the matter and to proceed in accordance with law, sought legal opinion from the counsel of the State Board Shri Akhil Simlet. He was asked to render legal opinion on whether the provisions of the Water (Prevention & Control of Pollution) Act, 1974; apply to and should govern and regulate the Rajasthan Industrial and Investment Corporation Limited (RIICO). The Counsel of the State Board in his letter dated 21.4.2007 has stated that the RIICO is covered by the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and is required to obtain consent from the State Board under the said provisions.

Therefore, in view of the above, you are directed to proceed in the matter and Act, so as to secure compliance of the provision of the Water (Prevention & Control of Pollution) Act, 1974 by the RIICO for the Industrial areas developed by it in your jurisdiction.

Yours faithfully
Sd/-
Member Secretary



Copy of following for information:

1. PS to Chairman, RPCB, Jaipur
 2. L.O.(A) RPCB, Jaipur
- Sr. Environment Engineer (Plg)

Sd/-
(विनोद कुमार)
वरि. क्षेत्रीय प्रबन्धक (पीएण्डडी)

G. S. Bapna

Advocate General
Rajasthan, Jaipur

सत्यमेव जयते

Issued Under P.T.I. Act 2005

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Bhagwan Das Raod, Jaipur-302 005
Phone : 2227540 (O), 2575219 (R)
E-Mail : ag.ago@rajasthan.gov.in

No.O/AG/PS/15/2012

Dated 1st May, 2012.

To

The Chief General Manager,
Rajasthan State Industrial Development & Investment
Corporation Ltd,
Udyog Bhawan, Tilak Marg,
Jaipur.

Sub: Legal opinion regarding applicability of Section 25/26 of The Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and Section 21 of The Air (Prevention and Control of Pollution) Act, 1981 (Air Act) for obtaining Consent to Establish and Consent to Operate from Rajasthan State Pollution Control Board for development of an industrial area.

Ref: Your letter No.ACE/Bik/209 dated 12th April, 2012.

Dear Sir,

I have been called upon to give opinion in this matter.

The following provisions have been examined by me.

- (i) The Water (Prevention and Control of Pollution) Act, 1974. (Water Act, 1974).
- (ii) The Water (Prevention and Control of Pollution) Rules, 1975.
- (iii) The Rajasthan Water (Prevention and Control of Pollution) Rules, 1975.
- (iv) Order of Rajasthan State Pollution Control Board dated 3.4.2008 and 21.12.2010.
- (v) Amendment in Schedule IV of The Rajasthan Water (Prevention & Control of Pollution) Rules, 1975 vide Gazette Notification dated 10.12.2010.

Section 25 of the Water Act, 1974 reads as under:-

(Tarun P. Gupta)
Regional Manager



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“ 25. *Restriction on new outlets and new discharge –*

- (1) *Subject to the provisions of this section, no person shall, without the previous consent of the State Board –*
- (a) *Establish or take any steps to establish any industry operation or process or any treatment or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream well or sewer or on land (such discharge being hereinafter in this section referred to as discharge of sewage) or*
- (b) *bring into use any new or altered outlet for the discharge of sewage; or*
- (c) *begin to make any new discharge of sewage.*

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988 for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

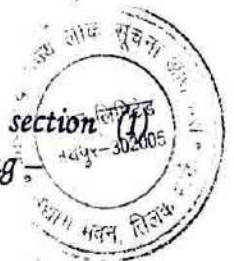
(2) *An application for consent of the State Board under sub section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.*

(3) *The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub section (1) and in making any such inquiry shall follow such procedure as may be prescribed.*

(4) *The State Board may –*

- (a) *grant its consent referred to in sub section (1) subject to such conditions as it may impose, being –*

(Tarun P. Gupta)
Regional Manager



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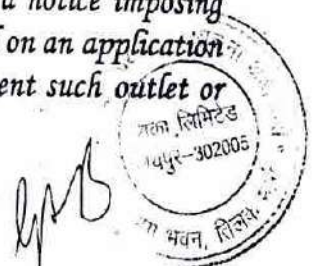
- (i) in cases referred to in clauses (a) and (b) of sub section (1) of Section 25 conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage.
- (ii) In the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and
- (iii) That the consent will be valid only for such period as may be specified in the order

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

5. Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge as the case may be a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment such outlet or discharge.

(Tarun P. Gupta)
Regional Manager



G. S. Bapna
Advocate General
Rajasthan, Jaipur



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Office of Advocate General
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6. Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.
7. The consent referred to in sub section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.
8. For the purposes of this section and sections 27 and 30 -

the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement.

The expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge made within the preceding twelve months (whether by the same or a different outlet) so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge. "

Under the Central Water Rules, 1975 an application for consent is required to be made under Rule 32, which reads as under:-

21
(Tarun P. Gupta)
Regional Manager

g.s.b.



G. S. Bapna
Advocate General
Rajasthan, Jaipur



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“ 32 Application for consent –

An application for obtaining the consent of the Central Board for establishing or taking any steps to establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereinafter in this rule referred to as discharge of sewage) or for bringing into use any new or altered outlet for the discharge of sewage or beginning to make any new discharge of sewage under Section 25 or for continuing an existing discharge of sewage under section 25 shall be made to the Central Board in form XIII.”

Form XIII has been prescribed under Rule 32.

Under the Rajasthan Rules of 1975, as amended on 25th June, 2010 the application for consent has to be made under Rule 29. Rule 29 of the Rajasthan Rules, 1975 is reproduced below for ready reference:-

“ 29. (1) Application of Consent - An application for obtaining the consent of the State Board (a) for bringing into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or sewer or on land or (b) to begin making use of any new discharge of sewage or trade effluent into a stream or well or sewer or on land under Section 25 or (c) for continuing an existing discharge of sewage or trade effluent into a stream or well or sewer or on land under Section 26 of the Act shall be made to State Board in Form XIII and Form No.XIII-A as the case may be.

(2)

The Rajasthan State Pollution Control Board vide its letter dated 14.5.2007 has taken the view that RIICO has to comply with the provisions of Section 25(1) (a) to obtain previous consent for establishment of treatment and disposal system which is likely to discharge sewage or trade effluent into a stream, well or sewer or on land.

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(Tarun P. Gupta)
Regional Manager

Handwritten signature/initials.



G. S. Bapna
Advocate General
Rajasthan, Jaipur



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The word "sewage" has not been defined in the Act and the Rules. However, the word has been considered in - Wikipedia, the free encyclopaedia and "it would include run off also known as storm flow or overland flow of water." However, sewage effluent has been defined in Section 2(g).

According to Schedule IV of the Rajasthan Water (Prevention & Control of Pollution) Rules, 1975, as amended by Notification dated 10th December, 2010 in Appendix at item No.30 Industrial estate / park etc has been mentioned. Item 30 is reproduced below for ready reference:-

" 30. Industrial estate / park / complex / area, Export processing Zones (EPZ) Special Economic Zones (SEZ) Biotech Park, Leather Complex."

Therefore, previous consent under Section 25 of the Water Act, 1974 will be required for establishment of industrial Estate/Park etc., if there is discharge of sewage on land.

Four Points of reference are as under:-

- (1) Whether Consent to establish (CTE) and/or Consent to Operate (CTO) is required to be obtained from RSPCB for development of Industrial Areas by RIICO ?
- (2) At what stage RIICO should file application for obtaining CTE/CTO for development of industrial area ?
- (3) In case CTE/CTO is/are required, is it required to be obtained under the provisions of Water Act alone or in both Air Act & Water Act ?

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(Tarun P. Gupta)
Regional Manager



G. S. Bapna

Advocate General
Rajasthan, Jaipur



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- (4) In cases such as Industrial Area Karni (Extn), Bikaner, where development works such as construction of road has been initiated by the Corporation prior to 10.12.2010 (without obtaining CTE) and other development works are still under progress. Whether consent to establish or consent to operate or consent to establish and consent to operate both is required before starting the disposal on land.

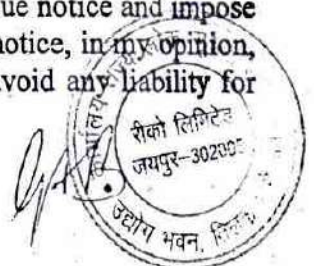
Regarding Point of Reference No.1, so far as establishment of Industrial Estate/Park is concerned, it would be necessary to obtain previous consent before any physical steps are taken for establishment of any treatment and disposal of effluents. Since the provision for previous consent before establishment there does not appear to be requirement of further consent at the time of operation of the treatment of disposal system.

Regarding Point of Reference No.2, the stage at which application is required to be filed would be the stage when actual physical work starts. However, to expedite the matter it is open to RIICO to apply earlier also so that there is no time loss.

Regarding Point of Reference No.3, as already stated above, in view of Section 25 of the Water Act, 1974, previous consent is required. So far as applicability of Air Act 1981 is concerned, Section 21 of the Act of 1981 is relevant. However, no notification of the State has been brought to my notice.

Regarding Point of Reference No.4 is concerned, since development work has already started, but it has not become operational provisions of Section 25(5) shall come into play empowering the State Board to issue notice and impose conditions. To avoid issuance of such notice, in my opinion, application can now also be made to avoid any liability for violating Section 25.

21
(Tarun P. Gupta)
Regional Manager



G. S. Bapna
Advocate General
Rajasthan, Jaipur



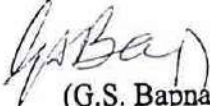
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It may be noted that the provision of Section 25 and 26 make it clear that it is applicable in respect of existing industrial estate/parks also.

Opined accordingly.

I am enclosing herewith my fee bill for the aforesaid legal opinion, the payment of which may kindly be made at the earliest.

Yours faithfully,


(G.S. Bapna)

Advocate General, Rajasthan, Jaipur.

Encl: As above.




(Tarun P. Gupta)
Regional Manager

Amnd. A/A ~~Amnd. A~~ 32
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Shikhar Agrawal
IAS

Chairman
Rajasthan State Pollution Control Board

D.O. No. F.14 (Gen-184)/RSPCB/B&I/1280
Date: 23-01-2024

Dear Ajitabh,

MD
25/01/2024

I would like to invite your attention towards the issues related to compliances of environmental norms in Industrial Estates/Park/Complexes/Building Construction/Area development projects developed by RIICO Ltd. and requests made to MD, RIICO vide State Board's letter dated 25/08/2023, 08/11/2023 and 29/11/2023.

put up on file with details

As you are aware, Consent to Establish (CTE) and Consent to Operate (CTO) under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 & Air (Prevention and Control of Pollution) Act, 1981 is required to be obtained for all such projects.

However, only a few RIICO Industrial Areas have so far obtained Consent to Establish (CTE) and remaining are operational without any valid CTE. Also Industrial Areas, which have earlier obtained CTE, have not applied for Consent to Operate (CTO).



I accordingly request you to personally look into the matter and direct the concerned officials to apply for and obtain CTE/CTO under the provisions of Water Act, 1974 and Air Act, 1981 for all the RIICO Industrial Areas at the earliest.

With regards

(Signature)
29/1
(Shikhar Agrawal)

Shri Ajitabh Sharma, IAS
Chairman,
RIICO Ltd.,
Udhyog Bhawan,
Jaipur.

29/1
ADW (EM)



AM/CM2
R. BS
29/01/2024

राजस्थान प्रदूषण नियंत्रण बोर्ड

4, Institutional Area, Jhalana Dungri, Jaipur-302004 (Rajasthan)
Tel. : +91-141-2711329 • e-mail : shikhar.agrawal@nic.in

Item No. 06

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

**Original Application No. 97/2022(CZ)
(I.A.No.141/2023)
(I.A.No.143/2023)
(I.A.No.144/2023)**

Kamal Tiwari

Applicant(s)

Vs.

Union of India & Ors.

Respondent(s)

Date of Hearing: **20.12.2023**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s):

Mr. Vaibhav Pancholy, Adv.

For Respondent(s):

Mr. Nishant Kesharwani, Adv.
(for Mr. Shoeb H. Khan, Adv.)
Mr. Arvind Soni, Adv.
Mr. Shiv Narayan Bohra, Adv.
Mr. Om Shankar Shrivastava, Adv.

ORDER

1. The grievance of the applicant is encroachment on the forest land in the Nahargarh Village, which has been notified with the forest land and necessary notification has been issued. Under Section 18 of the Wildlife Protection Act, 1972 on 21.11.1961, the site has been declared as Nahargarh Wildlife Sanctuary as Eco-Sensitive Zone. Khasra No. 10 situated at Village Bir Papad/Papad, Jaipur is recorded in the name of forest department- Gair Mumkin. Respondents are illegally and in violation of environmental rules making certain constructions in the form of pucca nallah in order to discharge untreated effluent and industrial waste.
2. The notices were issued to the respondents and in view of the reply submitted by the respondent, following information were called :-

- a. Status of environmental clearance, its applicability and the validity of the respondents, project proponents.
 - b. Status of consent condition and other required permissions from the competent authority with regard to the project proponent.
 - c. Compliance of Solid Management Rules, 2016, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, Hazardous Wastes (Management & Handling) Rules, 1989, its applicability and validity of the project proponents/respondents.
 - d. Discharge of untreated water the details of project proponent.
 - e. Status of CTP, STP, ETP being used and operated in the area, generation, capacity to treat and gap analysis.
 - f. Measures which has been taken for treatment of untreated water and their re-use by the project proponents/ Municipal Corporation.
 - g. Whether any permission has been taken from the forest department for construction of the drain or making any construction in the sanctuary.
 - h. Whether the action taken by the respondent/municipal corporation is permissible in regulated or in private category and due compliance of the rules have been followed or not.
3. A joint committee was constituted to submit the factual and action taken report. The joint committee visited the site and submitted the report, which was discussed vide order dated 01.09.2023 as follows :-

- (i) *"The impugned drains (Two Pacca Drains) near road no. 9- F-1 and 9-F-2 respectively of approximate dimensions 6 meters width and 3 meters depth have been constructed by RIICO in*

Vishwakarma Industrial Area on the land belonging to the RIICO in which untreated domestic and industrial waste water is being discharged in Nahargarh Wildlife Sanctuary.

(ii) It is pertinent to mention that quantity of the waste water being discharged was very less, however there are possibilities of enhancement of flow and quantity of untreated effluents considering the industrial operations in VKIA.

(iii) Ponding of waste water was also observed in khasra No. 10 belonging to the Nahargarh Wildlife Sanctuary.

(iv) Representative of Forest Department informed as under: -

a) That the said Khasra no. 3 was part of reserved forest as per reserved forest notification of 1961 (Annexure-4). In 1971, Khasra No. 3 of forest land was released to RIICO for industrial purpose (Annexure-5). The boundaries of Nahargarh Wild Life Sanctuary were notified in 1980 (Annexure-6). In year 1998, an order regarding Nahargarh Sanctuary issued by the District Collector in which two areas were decided namely "Reserved Forest" and "Described Area". In Described Area, many rights and concessions have been given to local residents and other government agencies. (Annexure-7).

b) That the parts of drains have been constructed upon Khasra No.10 and Khasra No.3. The Khasra No. 10 is forest land and Khasra No. 3 belongs to RIICO (Annexure-5), Khasra No.3 falls in the described area and Khasra No. 10 falls in Reserved Forest (As per District Collector order of 1998) of Nahargarh Wildlife Sanctuary. It is further to submit that as per KML file of Nahargarh Wildlife Sanctuary uploaded on the website of Department of Forest (Annexure-8) also, it appears that both these khasras are falling in Nahargarh Wildlife Sanctuary.

- c) It has also been transpired from report of surveyor belonging to forest department (Annexure-9) that RIICO has levelled the land of Khasra No.10 and Khasra No.3.
- d) FIR No. 34/2060 dated 22.01.2022 has been registered by the Range Forest Officer, Nahargarh Wild Life Sanctuary (Annexure-10) against contractor of RIICO and a penalty of Rs. 2 Lakh INR has been imposed in forest offence making nallah and draining waste water in sanctuary area.
- (v) Representative of RSPCB informed that catchment area of both the drains was discussed with RIICO in Sept, 2023 and as per the identification of the area, copy of the map provided by the RIICO enclosed (Annexure-11), RSPCB conducted survey of 267 units in the catchment area. RSPCB has initiated action of imposition of Environmental Compensation against the units found discharging industrial waste water outside the premises.

Conclusion

- (i) Two impugned drains (Two Paccā Drains) near road no. 9-F-1 and 9-F-2 respectively of approximate dimensions 6 meters width and 3 meters depth have been constructed by RIICO in Vishwakarma Industrial Area on the land belonging to the RIICO in Khasra No. 3 and a part in Khasra no. 10 of the Forest land through which untreated waste water is being discharged in Nahargarh Wildlife Sanctuary.
- (ii) It is pertinent to mention Khasra No.3 land belongs to RIICO, and, as per the official KML file uploaded on the website of Forest Department, this khasra is falling under the Nahargarh Wildlife Sanctuary. Further Khasra No. 10 is forest land.

- (iii) Forest Department has already imposed penalty on contractor of RIICO on activity of construction of drains carried out by RIICO on Khasra No. 10 and the case is compounded.
- (iv) Discharge of waste water through the drains constructed by the RIICO still continues in a very low quantity and finally it is getting accumulated on the adjacent forest land.
- (v) In order to identify the sources and quantum of waste water generated, RSPCB conducted survey of 267 units in the catchment area of impugned drains and action has also been initiated for imposing Environmental Compensation against the units found discharging industrial waste water outside the premises.
- (vi) That the RIICO is not having any plan for treatment and final disposal of trade effluent as well as sewage generated from the Vishwakarma Industrial Area (VKIA). Further the RIICO has not obtained Consent to Establish and Consent to Operate for VKIA. In this regard a letter has also been issued on dated 25.08.2023 from the Member Secretary, RSPCB to MD, RIICO to obtain Consent to Establish and Consent to Operate for all the RIICO Industrial Areas. Copy of letter dated 25.08.2023 enclosed (Annexure-12).

Recommendation

The committee is of the opinion that any activity proposed on any parcel of land of RIICO which falls under the Nahargarh Wildlife Sanctuary, a prior intimation and necessary approvals under the prevailing rules must be obtained from the State Forest Department.

- (i) State Forest department shall ensure that no construction, levelling or any other non-forest activity is done on the forest land of Khasra No.10 and the existing construction of drains upon this Khasra No.10 be demolished being in violation of Forest Conservation Act, 1980 and Wildlife

Protection Act, 1972.

- (ii) Waste water reaching to the forest land through the drains constructed by RIICO needs to be treated and diverted to gainful purposes ensuring no discharge on forest land.
- (iii) The RIICO must immediately prepare a detailed plan incorporating treatment of industrial and domestic effluent being generated from the industrial area along with plan for re-use of the treated waste water in industrial units or for other gainful purposes.
- (iv) That RIICO should ensure that no treated or untreated effluent be allowed to reach the forest land."

4. The matter was considered again on 01.09.2023 and this Tribunal after examining the report and hearing the parties observed as follows :-

1. "Perusal of the report reveals that there are serious violation and no action has been taken or initiated by the State Pollution Control Board and the units are operating in violation without any consent to establish and consent to operate in this Vishvkarma Industrial area.
2. It is reported that there are approximately 267 units. It is further reported that the area under Nahargarh Wildlife Sanctuary is being violated and constructions or drains are being constructed without any authority in violation of environmental rules. Though the order of this Tribunal and the order dated 26.10.2023 issued by the State of Rajasthan directed the authorities to calculate the environmental compensation but the same has not been done by the authorities concerned. It shows that the Rajasthan Pollution Control Board failed to exercise their duties sincerely, fairly and honestly and directly or indirectly permitted the industrial unit to be operated without any authority and without any consent order. There are serious violations against which no action has been initiated by the State Pollution Control Board.

3. Accordingly, we direct the same committee to calculate the environmental compensation of all the unit holders who are violating the environmental norms and also the RIICO which is genesis of these violations and to take action for recovery of environmental compensation, prosecution and to submit the report within two weeks.
4. It is further directed that Chief Wildlife Warden and Divisional Forest Officer of Wildlife Sanctuary, Nahargarh is directed to take necessary action to calculate their own method of calculation or damage to the forest, wildlife and to proceed in accordance with law for realisation of the damage caused to the wildlife sanctuary and the forest land. In addition to initiation of prosecution. The Member Secretary, State Pollution Control Board, Rajasthan to remain present through video conferencing on the next date of hearing. Further action taken report be filed before the next date of listing."
5. The Learned Counsel for the RIICO has filed the objection against the joint committee report and submitted that :-
- i. The State Pollution Control Board and the member of the committee has not discussed the documents and site in question and the methodology adopted is erroneous.
 - ii. The quantity of the waste water being discharged was very less, however, there are possibilities of enhancement of flow and quantity of untreated effluents.
 - iii. RIICO is engaged in only development of industrial zone and providing infrastructural development for industrial growth.
 - iv. The industries are required to treat the effluent as per prescribed norms.
 - v. The boundary of eco-sensitive zone of Nahargarh Wildlife Sanctuary has not been properly demarcated.

6. The State Pollution Control Board, Rajasthan is competent to monitor all the activities and violation of environmental rules.

I.A. No. 141/2023

7. On the basis of above an application I.A. No. 141/2023 has been moved to recall or review the order or modify the order dated 01.11.2023. We have heard the learned counsel and gone through the records. There are violation of environmental rules and discharge of untreated water for which the respondents are responsible for environmental compensation on the principle of polluters to pay.
8. The Forest Department has clearly submitted that the area falls within the eco-sensitive zone. The ground taken by the RIICO and the respondents are that the boundary is still to be demarcated, does not create any ground in favour of the respondent to cause mischief or pollute the environment or violate the environmental norms or violate the eco-sensitive zone guidelines. Accordingly, **I.A. No. 141/2023 stands dismissed and disposed of.**

I.A. No. 143/2023

9. In compliance of the order dated 01.11.2023 (quoted above) the learned counsel for the State has submitted the compliance report calculating the environmental compensation and cost according to the forest rules. The calculation as submitted by the Forest Department are as follows :-

1. "Construction of pucca nala 480 meter X 10 meter

2. JCB मशिन के द्वारा prosopis Juliflora हटकर समतली करण कार्य करवा गया

Total affected forest area 480 meter in length and 10 meter in width:
 480 meter x 10 meter = 4800 Sqmt. = 0.48 ha. As per forest Conservation Act, 1980, UA must deposit the following amount
 Net Present Value : $0.48 \times 670140 \times 5 = 1608336$ (Rates area taken Eco Class IV open forest in sanctuary area)

CA: 350000.00 (Planting of 100 Plant due to area below 1 Ha.



1. Total 1958336.00

2. Cost of 10 Trees which are felled : 5000/- (Prosopis Juliflora)

Penal Amount due to UA has already done the work inside the sanctuary area (calculation as per FC guideline 2019 para 1.21

Total amount (1+2) = 1963336/-."

10. During the course of hearing learned counsel for the respondent nos. 8 & 9 (RIICO) has moved an application I.A. No. 144/2023 with the facts that the terms and conditions of allotment letter, lease deed issued to the allottees are requirement of CTE and CTO from Rajasthan State Pollution Control Board before establishing the industrial units and if there is any violation, the violators should be taken into account.
11. Learned counsel for State Pollution Control Board has submitted that show-cause notices have been issued to the respondents who are found to be involved in violation of the environmental rules and after reply submitted by the respondents the State Pollution Control Board may proceed in accordance with rules.
12. State PCB is a statutory body and bound to proceed and act according to rules. It is neither desirable nor proper to intervene in the statutory function of the State PCB. Accordingly, we are not of the view to pass any order to restrain the public authorities not to do their legal duties. State authorities/SPCB are expected to do according to rules and to ensure the compliances of environmental rules. Since, in response to the notice issued by the SPCB the applicant, if aggrieved, has alternate remedy to file the reply before the State PCB, thus, at present no interim order is required to be passed against the authorities concerned. However, the State PCB is expected to provide an opportunity of hearing to the aggrieved person and after that to proceed in accordance with law.

13. The State PCB is further directed to act on the principle of polluter to pay and not to pollute and pay. **I.A. No. 143/2023 and I.A. No. 144/2023 stands disposed of** accordingly. State PCB is directed to submit the compliance report within two weeks. Since, the reply by the respondents have already been filed. List it on **12th January, 2024** for final hearing.

'Sheo Kumar Singh, JM

Dr. Afroz Ahmad, EM

20th December, 2023
O.A. No. 97/2023 (CZ)
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Rajendra Prasad

Senior Advocate


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 Advocate General,
 Rajasthan
O/AG/PS/02Dated:- 5th March, 2024

Querist:- Rajasthan State Industrial Development & Investment Corporation Ltd.

1. The querist - Rajasthan State Industrial Development & Investment Corporation Ltd. (RIICO) has approached the undersigned vide letter dated 9.2.2024 written by Executive Director seeking opinion on the following queries:-

1. In view of Section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974, whether RIICO is required to obtain Consent to Establish (CTE) prior to taking up infrastructure developmental works in industrial area.
2. In view of Section 21 of the Air (Prevention & Control of Pollution) Act, 1981, whether RIICO is required to obtain Consent to Establish (CTE) prior to taking up infrastructure developmental work in industrial area.
3. If RIICO is required to obtain Consent to Establish (CTE) under Section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974, and/or Section 21 of the Air (Prevention & Control of Pollution) Act, 1981, in that case, is RIICO also required to obtain CTE for industrial areas that have been developed without obtaining CTE. For such industrial areas, is CTE required for all industrial areas which were developed irrespective of date from which the Act came into force, or is there any cut-off date.
4. If RIICO is required to obtain Consent to Establish (CTE) under Section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974, should RIICO also obtain Consent to Operate once Consent to Establish (CTE) is issued to RIICO for development of an

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industrial area. If yes, then at what stage RIICO should file application for obtaining CTO for development of Industrial Area?

5. *If RIICO is required to obtain Consent to Establish (CTE) under Section 21 of the Air (Prevention & Control of Pollution) Act, 1981, should RIICO also obtain Consent to Operate once Consent to Establish (CTE) is issued to RIICO for development of an industrial area. If yes, then at what stage RIICO should file application for obtaining CTO for development of Industrial Area.*
6. *In case CTE/CTO is/are required for development of an industrial area, is it required to be obtained under the provision of Water Act alone or for both, Water Act and Air Act.*
7. *If any industry which has been allotted plots in RIICO industrial area, does not apply and obtain CTE from RSPCB, which agency i.e. RIICO or RSPCB is responsible for non-compliance by the said industrial unit. Is RIICO duty bound to inform RSPCB about all allotments/transfers etc. taking place in RIICO industrial areas.*
8. *Whether to deposit environmental compensation amounting to Rs. 6,54,02,000/- imposed by RSPCB in the matter of Kamal Tiwari V/s Union of India OA No. 97/2022 pending before Hon'ble NGT (CZ), Bhopal. "*

2. The facts and circumstances narrated in the background note are as under:-

(I) An Original Application No. 97/2022 titled as Kamal Tiwari v/s Union of India & Ors. is pending before Nation Green Tribunal (CZ), Bhopal. The applicant has alleged that RIICO has made encroachment by way of construction of Pucca Nallah on the Forest Land of Nahargarh Wildlife Sanctuary declared as Eco Sensitive Zone. It is also alleged that un-treated effluent and Industrial waste is

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being disposed through this Pucca Nallah to the Forest Areas from industrial area VKIA.

(ii) RIICO contested the aforesaid OA and filed reply stating that it has constructed drains and that too for storm water only on Khasra No. 3 of Village Beed Papad allotted to RIICO in the year 1971 and that too after demarcation by the Revenue Department in the year 2008.

(iii) The learned National Green Tribunal Bhopal passed order on 25.09.2023 and constituted a Joint Committee of the Officers of State Govt. and Central Govt. on the issue.

(iv) The Constituted Committee visited the site on 27.10.2023 & 29.10.2023 and submitted its report to NGT- Bhopal on 31.10.2023 wherein the committee at para 6 of the report specifically recommended to RIICO to seek Consent To Establish (CTE) and Consent To Operate (CTO) from Rajasthan State Pollution Control Board (hereinafter referred to as State Pollution Board).

(v) Based on the report of Joint Committee, NGT-Bhopal passed following directions vide its order dated 01.11.2023:-

- a. To calculate the Environmental Compensation of all the unit holders who are violating the environmental norms and also the RIICO which is the genesis of these violations.
- b. To take action for recovery of Environmental Compensation, Prosecution and to submit the report within 2 weeks.

(vi) In furtherance of the order dated 01.11.2023 and the report of the Joint Committee, the State Pollution Board issued show cause

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Advocate General,
Rajasthan

notice to RIICO on 17.11.2023 imposing Environmental Compensation of Rs. 6,54,02,000/- on the basis of Polluter Pays Principal in following grounds :

- a. Operating Industrial Area without Consent.
- b. RIICO failed to provide facility for treatment of Industrial & Domestic waste water which is being discharge into Forest Land from Industrial Area VKIA.

(vii) RIICO filed reply in the form of objection/appeal of Show Cause Notice on 15.12.2023 to Regional Officer, State Pollution Board, Jaipur (North) on following grounds:

a. Section 25 & 26 of the Water Act, 1974 has been made as the sole basis by the State Board for asking RIICO to obtain the Consent to Establish and Consent to Operate, whereas mere perusal of the said provisions makes obtaining of Consent to Establish and Consent to Operate mandatory for those who establish any industry, operation or process or any treatment and disposal system which is likely to discharge sewage or trade effluents into a stream or well or sewer or on land.

b. Similarly Section 21 of the Air Act, 1981 provides that no person shall without the previous consent of the Board establish or operate any industrial plant in an Air Pollution Control Area specified by the Board.

c. RIICO is a government undertaking whose primary function is to allot vacant industrial plots to needy entrepreneurs and to provide them all the infrastructural facilities in the Industrial Areas as per prescribed norms.

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d. RIICO is neither running any industry nor is involved in the operation, treatment, disposal or discharge of any trade effluent. RIICO has constructed drains for the outlet of rain water only and not for discharging of industrial effluents. Therefore, RIICO is not covered under the definitions and provisions of the Water Act, 1974 and Air Act, 1981 for obtaining the Consent to Establish and Consent to Operate.

e. RSPCB who issues Consent to Establish and Consent to Operate to all such allottees/entrepreneurs on their demand after completing all the formalities required as per law and in regard to the same, a condition is also incorporated in the allotment letter issued by RIICO that the allotment is subject to condition that the effluents and sludge will have to be pre-treated to the satisfaction of RSPCB/CPCPB and the allottee will obtain consent to establish and consent to operate from the board before starting the Unit. Further, no disposal of effluents is allowed in the Storm Water Drains constructed by RIICO in the industrial areas.

f. In view of the above, no Consent to Establish and Consent to Operate is required for RIICO under the Water Act, 1974 and Air Act, 1981. Hence, RSPCB has been requested vide letter dated 05.01.2024 to drop the referred letter, issued against RIICO.

viii) At the same time, RIICO also filed two applications before the Hon'ble NGT, one seeking modification of order dated 01.11.2023 of NGT (I.A.No.141/2023) and another for submitting objection against order dated 01.11.2023 of NGT (I.A.No.144/2023).

viii) The said applications were dismissed and disposed of by the Hon'ble NGT vide its order dated 20.12.2023 and directed the State



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Pollution Board to provide an opportunity of hearing to RIICO and to proceed in accordance with law.

ix) RIICO was accordingly given opportunity of personal hearing by the State Pollution Board on 05.01.2024 whereby the Board kept the compensation amount of Rs.6,54,02,000/- as intact by deciding the objection petition of RIICO vide its order dated 08.01.2024.

x) RIICO has adopted adequate enabling provisions in Lease Deed so as to do compliance of directions issued by State Pollution Board and to implement them. But it is very clear from the provisions of the Water Act and Air Act and the powers entrusted to RSPCB therein, only State Pollution Board is authorized to inspect, take samples, take action against defaulting industrial units and give directions (including that to RIICO) for taking necessary actions. Furthermore, it is ample clear that two agencies cannot be made responsible to take similar action. For control of Pollution, only State Pollution Board has been authorized by Law to take action.

3. In the aforesaid background, the queries raised by the querist are answered as under:-

QUERY NO.1 & 2:

4. Sections 25 & 26 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Act of 1974) are reproduced as under:-



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25. Restrictions on new outlets and new discharges.—(1)
Subject to the provisions of this section, no person shall, without the previous consent of the State Board, or person shall, without the previous consent of the State Board,—

- (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or
- (b) bring into use any new or altered outlet for the discharge of sewage; or
- (c) begin to make any new discharge of sewage:

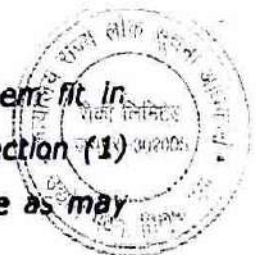
Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988 (53 of 1988), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

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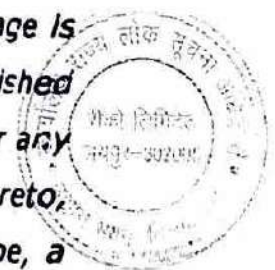


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application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.]

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,—

- (a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;
- (b) the expression "new discharge" means a discharge which is not, as respects to nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

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26. Provision regarding existing discharge of sewage or trade effluent.—Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a [stream or well or sewer or on land], the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section 2 [shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette].

5. Similarly, the provisions of section 21 of the Air (Prevention & Control of Pollution) Act 1981 (hereinafter referred to as the Act of 1981) are also reproduced as under:-

"21. Restrictions on use of certain industrial plants.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.]

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and

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shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, 1 [and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent]:

[Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned.]

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 Advocate General,
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(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:—

- (i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;
- (ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;
- (iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;
- (iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises; and
- (v) such other conditions as the State Board, may specify in this behalf; and
- (vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf;

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that—

- (a) after the installation of any control equipment in accordance with the specifications under clause (i), or

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(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally."

6. From the perusal of aforesaid provisions, it would be evidently clear that only a person who establish or take any steps to establish any industry, operation or process or any treatment and disposal system or any extension or addition there to which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land is required to submit an application for consent of the State Pollution Board. In my opinion the activities which the querist has narrated in the background

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establishment which does not take place without obtaining of consent. The querist as a Lessor had power to cancel the lease on breach of conditions of lease which may include the condition as to Preventive Laws also, but that does not ipso facto result in an obligation upon the querist to itself obtain a consent while establishing an industrial area.

8. The problem in interpreting the law in this manner would arise in seeing as to when the consent to operate should be taken. As would be clear even fullest development of the industrial area before an industrial unit is intending to establish is not likely to result in any discharge of sewage or effluent but still the industrial area on its fullest development can be treated to be operational. Therefore, in my opinion, a developer like RIICO is not required to obtain consent either under sections 25 & 26 of the Act of 1974 or under section 21 of the Act of 1981.

9. However, it is apposite to mention here that in Appendix 'A' to the Rajasthan Water (Prevention and Control of Pollution) Rules, 1975 (hereinafter referred to as the Rules of 1975), the type of industries/processes/Projects/Activities have been categorized and item No.30 mentions industrial estate/park/complex/area, export processing Zones (EPZ), Special Economic Zones (SEZ), Biotech Park, Leather Complex. In my personal view the inclusion of industrial area in categorization cannot be read in isolation unless the developer of industrial area itself is likely to establish industries which may result in discharge of sewage/effluent. However, on the basis of the earlier opinion, the querist has applied and obtained consent in many cases without any challenge to such classification in Appendix-A as well as further categorization made in red, orange and green categories. Hence, RIICO may face difficulty when the appropriate occasion arises. Yet, the correct interpretation of law according to me is that the querist is not required to obtain consent from

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Signature

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 Amrit Mahotsav

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 Rajasthan

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the State Pollution Board for simply developing the industrial areas based on activities mentioned in the facts. However, if an area is developed in which querist itself proposes to establish any industry which is likely to discharge effluent and sewage as mentioned in the aforesaid provisions of law, it will be bound like any other industrial unit. This is also clear from the form prescribed for making an application under rule 29 of the Rules of 1975 which clearly titles the application as "**Application for consent for discharge or continuation of discharge under section 25/26 of the Act**". Thus, it is only one who is likely to discharge is required to seek the permission.

10. On stressful reading of the provisions also, it does not contemplate duality of application for obtaining of consent for the same very purpose.

QUERY NO. 3 TO 6:

11. In view of my aforesaid opinion, the issues raised in the queries Nos. 3 to 6 are automatically answered.

QUERY NO. 7:

12. As to query No.7, the Rajasthan State Pollution Control Board would be responsible for ensuring compliance of the provisions of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and other environmental laws. However, as the querist incorporates the condition for compliance of these laws in the lease deed, it may take appropriate steps for breach of the conditions of lease deed including for termination of the lease deed.



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 क्षेत्रीय प्रबन्धक

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Rajendra Prasad
Senior Advocate



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ॐ नमो भगवते वासुदेवाय

(58) Advocate General,
Rajasthan

QUERY NO.8:

13. In view of my opinion as mentioned above, the finding of the National Green Tribunal to the effect that RiCO is the genesis for breaches of these laws is far-fetched and, therefore, appeal ought to be filed in time against the order of the National Green Tribunal. So far as the order of the Board is concerned, the appeal seems to have already been filed as informed to me.

Opined accordingly.

Rajendra Prasad
(Rajendra Prasad)

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अजिताभ शर्मा, आई.ए.एस.

Ajitabh Sharma, I.A.S.

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Issued Under P.S. Act, 2005

RIICO

Rajasthan State Industrial Development & Investment Corporation Limited

अध्यक्ष

राजस्थान स्टेट इण्डस्ट्रियल डवलपमेन्ट
एण्ड इन्वेस्टमेन्ट कॉर्पोरेशन लिमिटेड (रीको)

(राजस्थान सरकार का उपक्रम)

Chairman

Rajasthan State Industrial Development
& Investment Corporation Limited (RIICO)
(Government of Rajasthan Enterprises)

D.O. No.: RIICO/EM/198

Dated: 13, March, 2024

Respected Sir,

I would like to draw your kind attention towards D.O. letter No. 1280 dated 23.01.2024 vide which RIICO was asked to apply for and obtain Consent to Establish (CTE)/Consent to Operate (CTO) for all industrial areas under Water Act, 1974 and Air Act, 1981.

In this regard, vide letter dated 05.03.2024 (copy enclosed), RIICO is in receipt of the opinion sought from Sh. Rajendra Prasad, Advocate General, Rajasthan. As per the referred opinion, it has been made clear that, RIICO is not required to obtain CTE/CTO for its industrial areas.

In view of the opinion of Advocate General, it is kindly requested to direct the concerned Regional Officers of RSPCB to withdraw notices given to respective RIICO Unit Offices for not obtaining CTE/CTO.

with warm regards,

Shikhar Agrawal
(Ajitabh Sharma)
13.3.24

Shri Shikhar Agrawal, IAS
Chairman,
Rajasthan State Pollution Control Board
4, Institutional Area, Jhalana Dungri
Jaipur 302004

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**RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT
CORPORATION LIMITED JAIPUR - 302005**

No.: EM/212MR/257
Dated: 09 April, 2024

CIRCULAR

In the matter of obtaining CTE/CTO for industrial areas, opinion of Advocate General, Rajasthan has been obtained. According to the opinion received from the Advocate General vide letter dated 05.03.2024 "a developer like RIICO is not required to obtain consent either under sections 25 or 26 of the Water (Prevention & Control of Pollution) Act of 1974 or under section 21 of the Air (Prevention & Control of Pollution) Act of 1981."

In view of the guidance of Advocate General, all Unit Heads are hereby directed not to submit any new application to RSPCB for obtaining CTE/CTO for the industrial areas to be developed/ developed by RIICO. Furthermore, all applications of CTE/CTO under process with RSPCB to be withdrawn with immediate effect.

This bears approval of the Managing Director.

(Subhash Maharia)
Advisor (EM)

Copy to:

1. All controlling officer/ Cell Incharge
2. All Unit Heads, RIICO
- ✓ 3. GM (IT) for uploading on RIICO website

Copy also to:

1. Sr. PS to Chairman for kind information of Chairman
2. Sr. PS to MD for kind information of Managing Director
3. Sr. PS to ED for kind information of Executive Director

RajKaj Ref
6542605



Signature valid

Digitally signed by Subhash Maharia
Designation: Advisor
Date: 2024.04.08 22:58:21 IST
Reason: Approved

(6)

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL CENTRAL
ZONAL BENCH BHOPAL (M.P.)**

EXECUTION APPLICATION NO. /2024

IN

ORIGINAL APPLICATION NO. 97/2022 (CZ)

APPLICANT : KAMAL TIWARI

VERSUS

RESPONDENTS : UNION OF INDIA & OTHERS

AFFIDAVIT IN SUPPORT OF DOCUMENTS

I Kamal Tiwari son of Shri Shambhu Dayal Tiwari, aged about 45 years, resident of 29 Shankar Colony Heeda Ki Mori, Ramganj Bazar, Jaipur (Rajasthan) do hereby solemnly affirm on oath as under:-

1. That, applicant is well acquainted with the facts of present case and the application is drafted by counsel for Applicant on my instructions and contents thereof, have also been explained to me.
2. That Annexure 1 and 5 are web-copies of orders dated 01.11.2023 & 20/12/2023 respectively and Annexure 2,3,4 and 6 to 8 are correct Photocopies of originals & they are correct and true to best of my knowledge.
3. That, affidavit is executed in support of documents annexed with present execution application.

I identified by
1 & 2

Kamal Tiwari
Deponent

VERIFICATION

I, above Deponent do hereby verify that the contents from paragraph 1 to 3 are true to best of my knowledge.

Signed & verified on 21/05/24 at Bhopal.

Kamal Tiwari
Deponent

21/5/24

Sworn & Signed before me
Arun
21-5-2024
OATH COMMISSIONER
JAIPUR METROPOLITAN COURTS, JAIPUR

(62)

अभिभाषक-पत्र

(ऑर्डर 3 रूल 4 जाब्ता दीवानी)

न्यायालय National Green Tribunal C-2, Bhuhel (M.P.) (राजस्थान)
 संख्या बाद Execution App. No. /2024 तारीख प्रस्तुती
 O.A. No. 97/2022 (C-2) वादी/अभियोगी
 Kamal Tiwari आवेदक/अपीलाण्ट
 विरुद्ध
 Union of Farmers प्रतिवादी/अभियुक्त
 प्रतिपक्षी/रेस्पोंडेन्ट

वाद/अपील

मैं/हम Kamal Tiwari, s/o Sh. Shambhu Dayal Tiwari, R/O-
 29 Shankar Colony Heeda ki Mori Ramgang,
 Bazaar Jaipur

इस वाद ने अभिभाषक द्वारा समर्थन करना स्वीकार है। मैं/हम Krishan Sharma, s/o J.N.
 Sharmar, Udaibhav Panchayat, Adu, Prabhara Case शुल्क पर

अभिभाषक नियुक्त कर प्रतिज्ञा करता हूँ/करते हैं कि उक्त अभिभाषक वाद-वादोत्तर अपील आवेदन-पत्र पुनरावलोकन, पुनः विचार पुनः स्थापना संशोधन व अभियोग पत्रिका पर हस्ताक्षर करें और पेश करें। प्रमाणित प्रतिलिपि लें, उत्तराधिकारी होने का प्रमाण-पत्र प्रस्तुत कर समर्थन करें, संयुक्त व्यापार समिति की राय पुस्तांकन करावें, शपथ-पत्र प्रस्तुत करें, समझौते प्रतिभूति देकर प्रमाणीकरण करावें। कोष न्यायालय व अन्य विभाग से रूपया लेकर प्रमाणित करावें व पंच निश्चय कर और पंचायती निर्णय प्रमाणीकरण करावें। किसी डिग्री का परिवर्तन करावें और प्रमाण-पत्र घोष विक्रय लें निरीक्षण पत्र संग्रह करें अन्य अभिभाषक प्रतिनिधि निश्चित शुल्क पर पक्ष समर्थन के लिए नियत करें व अन्य कार्यवाही अभिभाषकजी जो करें वह अपने स्वयं के द्वारा की गई कार्यवाही के समान स्वीकार होगा।

दिनांक 24/05/24

टिप्पणी : वाद के बीच में हानि व व्यय जो प्रतिपक्ष से मिले वह अभिभाषक जी का होगा।

निश्चित तिथि तक पूरा शुल्क न मिलने पर अभिभाषकजी को अधिकार होगा कि पक्ष का समर्थन करें न करें व न्यायालय शुल्क अभिभाषक पत्र के साथ है, हस्ताक्षर सुन व समझ कर किये

साक्षी:-

(1) R/895/2000 हस्ताक्षर
 (2) Jaipur
 (3) R/67/1967
 (3) R/15/23

अभिभाषकता स्वीकार