

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
O.A. NO. 74/2017/EZ
MR. TAI MAYA
VS
UNION OF INDIA & ORS

Affidavit on behalf of Respondent No. 4 (ARUNACHAL PRADESH STATE POLLUTION CONTROL BOARD) in compliance of order dated 26.11.2021.

1. I, Smty Koj Rinya, IFS, daughter Shri Koj Tajang aged about 40 years working as Member Secretary, Arunachal Pradesh State Pollution Control Board, and am duly authorized by competent authority to make this reply on behalf of the Respondent No-4, Arunachal Pradesh State Pollution Control Board, and here by solemnly state and affirm as follows :-
2. That I have gone through the order dated 26/11/2021 passed by Honble NGT and have understood the contents there in. I have been duly authorized by the competent authority to swear this affidavit on behalf of Respondent No-4. Further, it is stated that I have gone through the relevant files and records.
3. That, this Hon'ble Tribunal vide order dated 26.11.2021 observed in 6th paragraph which is reproduced as under:
"In this affidavit, it is stated that show cause notices were issued to polluters on the principle of "Polluters Pays" dated 06.09.2021 returnable within seven days and thereafter by another order dated 21.09.2021 a penalty of Rs.50,00,000/- (Rupees fifty Lakhs) has been imposed against M/s Puna Hinda Construction Private Limited, Itanagar under section 5 of Environment (Protection) Act, 1986, which is to be deposited within 30 days and on failure to do so an interest @ 12% on the Environmental Compensation amount shall accrue". A similar order dated 20.09.2021


Executive Magistrate
Papum Pare District
Yupia (A.P)

1 of 6


MEMBER SECRETARY
State Pollution Control Board
Department of Environment & Forest
Naharlungun, A.P.

has also been issued to M/s KNR Constructions Limited-JM (JV), KNR House, 3rd & 4th Floor, Jubilee Hills, Road No.38, Phase-1, Kavuri Hill, Hyderabad, Telanganam, imposing a penalty of Rs.50,00,000/- (Rupees Fifty Lakhs) under section 5 of Environment (Protection) Act, 1986, which is to be deposited within 30 days and on failure to do so an interest @ 12% on the Environmental Compensation amount shall accure".

4. That the answering respondent humbly submits that the Board had Imposed a penalty of Rs.50,00,000/- (Rupees Fifty Lakhs) under section 5 of Environment (Protection) Act, 1986, vide No.APSPCB-150/2017/MCK/DSPSL/NGT/3810-14 dated 21.09.2021 which is to be deposited within 30 days and on failure to do so an interest @ 12% on the Environmental Compensation amount shall accure. Again vide letter No. APSPCB-150/2017/MCK/DSPSL/NGT/4620 dated 05.01.2022 he Board directed the user agency/contractor to deposit the Environmental Compensation amount of Rs.56,00,000/- (Rupees Fifty Six Lakhs) which is inclusive of Rs.6,00,000/- (Rupees Six Lakhs) as interest @ 12% computed thereon. But, M/s Puna Hinda Construction Private Limited has vide letter No.PH/P-SR/0to 19.887/21-22/01 dated 11th January, 2022 addressed to the Member Secretary, Arunachal Pradesh State Pollution Control Board has stated that the road construction work was awarded to M/s JKM Infra Projects Limited, C-84, Greater Kailsah, Part-I, New Delhi-110048 and that the work was commenced by the contracting Agency (M/s JKM Infra Projects Limited) from 28th October,2010 and was physically completed in the month of October,2017. M/s Puna Hinda Construction Private Limited has further stated that the company was engaged as a sub-contractor only to complete the balance structural and surfacing works such as construction of culverts, retaining breast walls, drains left over bituminous works. Therefore, to ascertain the claims made by M/s Puna Hinda Construction Private Limited as letter vide No.APSPCB-

150/2017/MUCK/DSPSL/NGT/4803 dated 02.02.2022 has been written to the Chief Engineer, Public Work Department (Highway), Government of Arunachal Pradesh, the reply of which is still awaited.

True copies of the order imposing environmental compensation to M/s Puna Hinda Construction Private Limited twice is enclosed herewith as **ANNEXURE-A**.

The letter written to the Chief Engineer, Public Work Department (Highway), Government of Arunachal Pradesh to ascertain the claims made by M/s Puna Hinda Construction Private Limited is enclosed herewith as **ANNEXURE-B**.

5. That, this Hon'ble Tribunal vide order dated 26.11.2021 observed in 8th paragraph which is reproduced as under:

"The affidavit also does not state on what date proceedings for recovery of the compensation amount plus interest has been initiated against M/s Puna Hinda Construction Private Limited and M/s KNR Construction Limited-JM (JV)".

6. That the answering respondent humbly submits that Arunachal Pradesh State Pollution Control Board has initiated prosecution proceedings for recovery of the environmental compensation from the agencies/contractors like M/s TK Engineering Consortium Private Limited, Itanagar, M/s KNR Construction Limited-JM (V) in the Court of Hon'ble CJM, Yupia, District Papum Pare, Arunachal Pradesh under Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986.


MEMBER SECRETARY
State Pollution Control Board
Department of Environment & Forest
Naharlung, A.P.


Executive Magistrate
Papum
Yupia District

7. Complaint application has been filed against the user agencies/contractors in the Court of Hon'ble CJM, Yupia, District Papum Pare, Arunachal Pradesh.

True copy of the prosecution proceedings initiated against the user agencies/contractors is enclosed herewith as **ANNEXURE-C**.

8. That, this Hon'ble Tribunal vide order dated 26.11.2021 observed in 9th paragraph which is reproduced as under:

" We also find from the documents filed with affidavit that notices have also been issued to M/s T.K Engineering Consortium Private Limited, District Papum Pare on 06.08.2021 for causing air and water pollution in Pangin-Pasighat Road Project, M/s Bhartia Infra Project Limited, Guwahati on 06.09.2021 for causing air and water pollution in Pasighat-Maryang-Yingkiong Road Project, Ms/ Jugal Kishore Mahanta (JKM) on 06.09.2020 for causing air and water pollution in Akajan-Bame Road Project, M/s TK Engineering Consortium Private Limited on 06.09.2021 for causing air and water pollution in Akajan-Bame Road Project".

9. That the answering respondent humbly submits that notices for deposition of environmental compensation were issued to M/s T.K Engineering Consortium Private Limited, M/s Bhartia Infra Project Limited, M/s Jugal Kishore Mahanta. But, M/s Bhartia Infra Project Limited appealed against the environmental compensation imposed on them before the State Appellate Authority, Itanagar and M/s Jugal Kishore Mahanta (JKM) has appealed against the environmental compensation imposed on them before the Hon'ble Supreme Court of India, New Delhi.

The documents pertaining to appeal made by the user agencies against imposition of environmental compensation is enclosed herewith as **Annexure-D**.

MEMBER SECRETARY
State Pollution Control Board
Ministry of Environment & Forest
Dispur, A.P.

Executive Magistrate
Papum Pare District
Yupia (A.P.)

10. That, this Hon'ble Tribunal vide order dated 26.11.2021 observed in 10th paragraph which is reproduced as under:

"There is nothing on record to show as to what action has been taken with regard to the imposition of penalty and /or what recovery of the environmental compensation from M/s T.K Engineering Consortium Private Limited, M/s Bhartia Infra Project Limited, M/s Jugal Kishore Mahanta (JKM), M/s TK Engineering Consortium Private Limited".

11. That the answering respondent humbly submits that the reply is same as Serial No. 6, 7 & 9.

12. That, this Hon'ble Tribunal vide order dated 26.11.2021 observed in 11th paragraph which is reproduced as under:

"The affidavit also does not mention as to what action has been taken by the Arunachal Pradesh State Pollution Control Board for removal of the muck which has been illegally dumped on the road side and in the valley"

13. That the answering respondent humbly submits that this instant case is very old one pertaining to the year 2017. Now the areas where the muck was dumped earlier is stabilized with natural vegetation.

14. That, this Hon'ble Tribunal vide order dated 26.11.2021 observed in 13th paragraph which is reproduced as under:

" We, therefore, direct the Member Secretary, Arunachal Pradesh State Pollution Control Board to file a fresh affidavit indicating what action has been taken for recovery of the amount of Rs,50,00,000/- (Rupees Fifty lakhs) towards environmental compensation from M/s Puna Hinda Construction Private Limited, Itanagar, M/s KNR Constructions Limited-JM(JV), M/sTK Engineering Consortium Private Limited, M/s Nhartia

Infra Project Limited, M/s Jugal Kishore Mahanta (JKM) on the basis of show cause notice issued to them before the next date of listing".

15. That the answering respondent humbly submits that the reply is same as Serial No.6, 7 & 9.



Member Secretary

Arunachal Pradesh State Pollution Control Board

MEMBER SECRETARY
State Pollution Control Board
Department of Environment & Forest
Naharlagun, A.P.

VERIFICATION

I, the deponent above named, do hereby verified at Naharlagun on this^{6th}..... day of February, 2022 that the contents of my reply affidavit are true and correct to the best of my knowledge and belief. No part of the same is false and nothing material has been concealed therefrom.



DEPONENT

Member Secretary

Arunachal Pradesh State Pollution Control Board

MEMBER SECRETARY
State Pollution Control Board
Department of Environment & Forest
Naharlagun, A.P.

Sworn in before me:

cls.

Executive Magistrate
Papum Pare District
Yupia (A.P)



GOVERNMENT OF ARUNACHAL PRADESH
ARUNACHAL PRADESH STATE POLLUTION CONTROL BOARD
PARYAVARAN BHAWAN, PAPU HILL, YUPIA ROAD
NAHARLAGUN



No. APSPCB-150/2017/MUCK/DSPSL/NGT/4620

Dated 5/01/2022

ORDER

Sub: Levying environmental compensation on M/s Puna Hinda Construction Private Limited for violation of environmental norms while executing the 2-laning of Pasighat-Maryang-Yingkiang Road Project, Arunachal Pradesh-reg

WHEREAS, M/s Puna Hinda Construction Private Limited was imposed environmental compensation of Rs.50,00,000/- (rupees fifty lakhs) only vide letter No.APSPCB-150/2017/MCK/DSPSL/NGT/3810-14 dated 21.09.2021 payable within 30 days from the date of issue without fail and on lapse of the above said period, an interest @ 12% on environmental compensation amount shall be accrued, at the risk and responsibility of M/s Puna Hinda Construction Private Limited.

WHEREAS, M/s Puna Hinda Construction Private Limited has wilfully failed to comply with the direction of the State Pollution Control Board and has not deposited the above mentioned amount till date.

NOW THEREFORE, in exercise of power conferred under Section 33(A) of Water (Prevention and Control of Pollution) Act, 1974, Section 37 of Air (Prevention and Control of Pollution) Act, 1981 and Section 5 of the Environment (Protection) Act, 1986 respectively, read with the direction of Hon'ble NGT in Original Application No.74 of 2017, M/s Puna Hinda Construction Private Limited is hereby directed to deposit an amount of Rs.56,00,000/- (environmental compensation charge of Rs.50,00,000/- + 12% interest accrued on environmental compensation charge) within a period of 10 (Ten) days from the date of issue of this letter, failing which will invite punitive action against the contractor. The environmental compensation charge may be deposited by way of demand draft in favour of Member Secretary, APSPCB or by RTGS in the given account details:

(a)	Name of the payee(As approved in passbook)	Arunachal Pradesh State Pollution Control Board
(b)	Bank Account Number	38919510543
(c)	Bank	State bank of India
(d)	Branch	Naharlagun
(e)	IFSC Code	SBIN0003232
(f)	Email ID	arunachalspcb@gmail.com

To,
✓ The Managing Director
M/s Puna Hinda Construction Private Limited
Add: Times Library, Ganga, Akashdeep
Email:punahinda@gmail.com
Itanagar

MEMBER SECRETARY
State Pollution Control Board
Department of Environment & Forest
Naharlagun, A.P.

(Koj Rinda, IFS)
Member Secretary

Member Secretary
APSPCB
Naharlagun

EXECUTIVE MAGISTRATE
Papum Pare District
Yupia (A.P)

ParyavaranBhawan, Papu Hill, Yupia Road, Naharlagun
E-mail: arunachalspcb@gmail.com



GOVERNMENT OF ARUNACHAL PRADESH
ARUNACHAL PRADESH STATE POLLUTION CONTROL BOARD
PARYAVARAN BHAWAN, PAPU HILL, YUPIA ROAD
NAHARLAGUN



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Sub: Levying Environmental Compensation on M/s Puna Hinda Construction Private Limited for violation of Environmental norms while executing the two-lanning of Pasighat-Maryang-Yingkiong Road Project under Section 33 (A), 31 (A) and Section 5 of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 respectively.

Ref: Hon'ble NGT direction dated 17/08/2021 in OA No. 74/2017/EZ

SHOW CAUSE NOTICE No.: APSPCB-150/2017/MCK/DSPSL/NGT/3608 DATED 06-09-2021

Whereas, reports about illegal and unscientific dumping and disposal of muck in the course of two-lanning of Pasighat-Maryang-Yingkiong Road Project by M/s Puna Hinda Construction Private Limited was filed before the Hon'ble National Green Tribunal, Eastern Zone, Kolkata in O.A No 74 of 2017.

Whereas, on the directions of Hon'ble NGT, Eastern Zone Bench, Kolkata vide order dated 16th October, 2017 on O.A No.74/2017 in the matter between Sri Tai Maya-vs- The Union of India & Ors, a site inspection was carried out by the team of Arunachal Pradesh State Pollution Control Board (APSPCB) w.e.f 01.12.2017 to 06.12.2017. During the inspection, it was found that M/s Puna Hinda Construction Private Limited was dumping the muck in designated and non designated site while constructing road.

MEMBER SECRETARY
State Pollution Control Board
Paryavaran Bhawan, Papu Hill, Yupia Road
Naharlagun, Arunachal Pradesh
Date: 06/09/2021

Whereas, the inspection report of the APSPCB shows the Company has failed to take adequate measures which resulted in muck rolling down the slope and eventually slipped into the streams at many sites and damaged the biological environment in utter and blatant violation of the Environmental norms and laid down rules.

MEMBER SECRETARY
State Pollution Control Board
Paryavaran Bhawan, Papu Hill, Yupia Road
Naharlagun, Arunachal Pradesh
Date: 06/09/2021

Whereas, the designed sites were not properly developed before hand to retain the muck excavated during the two lanning / construction works and the executing agencies kept on dumping the waste, which has caused serious damage to the Environment and Hydrological conditions causing blockade of water course of rivulets besides narrowing the water course and seasonal nalahs.

MEMBER SECRETARY
State Pollution Control Board
Paryavaran Bhawan, Papu Hill, Yupia Road
Naharlagun, Arunachal Pradesh
Date: 06/09/2021

Whereas, the damage caused to the bio-diversity, river course, aquatic life, natural forest cover, stability of slopes, geological disturbance and erosion of soil on slopes, is irreversible and has resulted in serious environmental concerns.

Whereas, the matter has also been examined by the Technical Advisory Committee (TAC) of the Board which vide report dt. 20-09-2021 has opined that the actual damage caused to the ecology and environment of the area by illegal and unscientific disposal of muck for levying of full compensation should be carried in depth scientific study by the Expert

Committee with representatives from Central Pollution Control Board and company itself. However, the interim data indicates the environmental damage has occurred and evaluated tentatively as far more than Rs.50,00,000/- (Rupees fifty Lakhs only). (133)

Now, therefore, in exercise of powers conferred under Section 33 (A), 31(A) and Section-5 of the Water (Prevention & Control of Pollution) Act 1974, the Air (Prevention & Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 respectively, read with the directions of Hon'ble NGT dt. 17/08/2021 in OA No. 74/2017, M/s Puna Hinda Construction Private Limited shall deposit a sum of Rs. 50,00,000/- (Rupees fifty lakhs only) as Environmental Compensation, as an interim measures.

Accordingly, Managing Director, M/s Puna Hinda Construction Private Limited, Itanagar is hereby directed under Section 5 of the Environment (Protection) Act 1986 to deposit a sum of Rs. 50, 00,000/- (Rupees fifty lakhs only) in the Environmental Compensation Fund of APSPCB within 30 days without fail and on lapse of above said period, an interest @ 12% on the Environmental Compensation amount shall accrued, at the risk and responsibility of the M/s Puna Hinda Construction Private Limited.

J. Kapali
21.09.2021
MEMBER SECRETARY
State Pollution Control Board
Department of Environment & Forest
Naharlagun, A.P.
Dt. 21-09-2021

No. APSPCB-150/2017/MCK/DSPSL/NGT 3810-14

Copy to :-

- 1) The Regional Director, CPCB, Lower Motinagar, TUMSIR, Shillong for kind information.
- 2) The Chief Engineer, PWDE (Highway), Govt. of A.P, Itanagar for kind information.
- 3) The Managing Director, M/s Puna Hinda Construction Private Limited for immediate compliance.
- 4) P.A. to Chairman, for information of Chairman, AP State Pollution Control Board, Naharlagun.
- 5) I/c website for uploading the order on APSPCB website.

[Signature]
MEMBER SECRETARY
State Pollution Control Board
Department of Environment & Forest
Naharlagun, A.P.

[Signature]
Member Secretary
MEMBER SECRETARY
State Pollution Control Board
Department of Environment & Forest
Naharlagun, A.P.

[Signature]
MEMBER SECRETARY
Papum Pare District
Yupia (A.P.)

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B



GOVERNMENT OF ARUNACHAL PRADESH
ARUNACHAL PRADESH STATE POLLUTION CONTROL BOARD
PARYAVARAN BHAWAN, PAPU HILL, YUPIA ROAD
NAHARLAGUN

No. APSPCB-150/2017/MUCK/DSPSL/NGT/ 4803

Dated 2/01/2022

To

The Chief Engineer
PWD (Highway)
Govt. of Arunachal Pradesh
Moub-II, Itanagar

Sub: Clarification on 2 Laning of Pasighat-Singer River from Km 0.00 (Pasighat) to Singer (Existing Km 22.00) (Net length=19.887 Km) in the State of Arunachal Pradesh-reg.

Sir,

With reference to the above cited subject, it is to inform you that a case is pending before the Hon'ble National Green Tribunal, Eastern Zone, Kolkata in Original Application No.74/2017EZ in the matter of Mr. Tai Maya -vs- Union of India & Ors, wherein contractors engaged in 2 Laning of road stretch from Pasighat-Maryang-Yingkiang Project, Pangin-Pasighat Project and Akajan-Likabali-Bame Project has been alleged of cutting hills and dumping soils/muck into the valley/rivers/nallahs/natural source of water etc.

On the directives of the Hon'ble National Green Tribunal, Eastern Zone, site inspection was conducted by a team of Arunachal Pradesh State Pollution Control Board (APSPCB) from 01.12.2017 to 06.12.2017 in the above mentioned road stretches. Consequently, the contractors were issued showcause notices and finally penalized.

During the time of inspection, M/s Puna Hinda Construction Limited was found to be executing the 2 Laning of Pasighat-Singer River from Km 0.00 (Pasighat) to Singer (Existing Km 22.00) (Net length=19.887 Km) , But, now M/s Puna Hinda has written to this office and informed that the said project was awarded to M/s JKM Infra Project Limited and not to M/s Puna Hinda Construction Limited.

Therefore, you are requested to provide clarification whether the said project was awarded to JKM or M/s Puna Hinda Construction Limited at the earliest by return mail.

Yours sincerely


MEMBER SECRETARY
State Pollution Control Board
Department of Environment & Forest
Naharlagun, A.P.


Executive Member
Papu Pare District
Yupia (A.P)


(Koj Rinya, IFS)
Member Secretary
APSPCB
Naharlagun

Paryavaran Bhawan, Papu Hill, Yupia Road, Naharlagun- 791110
E mail: arunachalpcb@gmail.com. Website: www.apspcn.org.in

C

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
CAPITAL COMPLEX, AT YUPIA DISTRICT-
PAPUMPARE, A.P

Filed by the complainant
through
Jaym Dey (Adv)



Complaint case No. 13./2022

IN THE MATTER OF:

An application under section 49 of water prevention and control of pollution Act 1974, section 43 of Air prevention and control Act. 1981 read with 200 of Criminal Procedure Code, 1973 Act

-And-

IN THE MATTER OF:

The Arunachal Pradesh State Pollution Control Board, Paryavaran Bhawan, Papu Hill, Yupia Raod Naharlagun. Govt of Arunachal Pradesh, represented by Shri Jumli Kato, Son of Lt. G. Kato, Scientist-B, Arunachal Pradesh State Pollution Control Board.

....Complainant

-Versus-

MEMBER SECRETARY
State Pollution Control Board
Environment & Forest
A.P.

Executive Magistrate
Yupa District
Papumpare (A.P.)

The Managing Director
M/S KNR Construction Ltd-
JKM(JV)
KNR house, 3rd & 4th Floor, Jubli
Hills, Road No. 36 Phase-1, Kavuri
Hills, Hyderabad, Telengana-
5000033.

.... Accused/Respondent

The Humble complaint petition of the above named

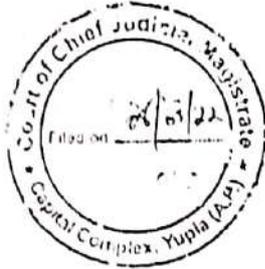
Most Respectfully Sheweth:

1. That the above named complainant is a bonafide citizen of India and working as Scientist-B, under Arunachal Pradesh State Pollution Control Board, Paryavaran Bhawan, Papu Hill, Yupia Road Naharlagun. Govt. of Arunachal Pradesh and has been duly authorized by the competent authority to file this application.

A copy of Authorization letter
is annexed as ANNEXURE-1.

2. That the complainant begs to state that ~~one~~ one Shri Tai Maya Resident of G Extension Naharlagun Arunachal Pradesh has filed a Original Application Vide registered as O.A No. 74/17/EZ (Tai Maya Vs Union of India & Ors) before Hon'ble the National Green Tribunal Eastern Zone Bench, Kolkata (hereafter refer as to NGT) against the Union of India & 12 Others, wherein, the Complainant has been

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
CAPITAL COMPLEX, AT YUPIA, DISTRICT-
PAPUMPARE, A.P



Complaint case No.....¹⁴/2022

*Filed by the complainant
through
Jaya Devi (Adv)*

IN THE MATTER OF:

An application under section 49 of water prevention and control of pollution Act 1974, section 43 of Air prevention and control Act 1981 read with 200 of Criminal Procedure Code, 1973 Act

-AND-

IN THE MATTER OF:

The Arunachal Pradesh State Pollution Control Board, Paryavaran Bhawan, Papu Hill, Yupia Raod Naharlagun. Govt of Arunachal Pradesh, represented by Shri Jumli Kato, Son of Lt. G. Kato Scientist-B, Arunachal Pradesh State Pollution Control Board, Paryavaran Bhawan, Papu Hill, Yupia Raod Naharlagun. Govt of Arunachal Pradesh.

....Complainant

-Versus-

[Signature]
MEMBER SECRETARY
State Pollution Control Board
Department of Environment & Forest
Naharlagun, A.P.

[Signature]
District

The Managing Director
M/S T.K Engg. Consortium Pvt.
Ltd. Modal Village, Naharlagun.
PO/PS Naharlagun District
Papumpare Arunachal Pradesh.
....Accused/Respondent

The Humble complaint petition of the above named

Most Respectfully Sheweth:

1. That the above named complainant is a bonafide citizen of India and working as Scientist-B, under Arunachal Pradesh State Pollution Control Board, Paryavaran Bhawan, Papu Hill, Yupia Road Naharlagun. Govt. of Arunachal Pradesh and has been duly authorized by the competent authority to file this application.

A Copy of authorization
letter is annexed as

ANNEXURE-1

2. That the complainant begs to state that on one Shri Tai Maya Resident of G Extension Naharlagun Arunachal Pradesh has filed a Original Application Vide No. 74/17/EZ (Tai Maya Vs Union of India & Ors) before Hon'ble the National Green Tribunal Eastern Zone Bench, Kolkata (In short NGT) against Union of India, the Complainant and the Respondent and 10 others for the destruction and degradation of environment and ecology by dumping the muck into the river, nallah by the construction agencies etc.

JKM-KCL JV

JKM-KCL (JV) A-I -B APSPCB/20-21/731

Dated: 28th January 2022

To
 The Member Secretary
 Arunachal Pradesh State
 Pollution Control Board
 Paryavaran Bhawan, Papu Hill
 Yupia Road, Naharlagun.

Sub:- Levy of Environmental compensation for alleged violation of environmental norms.

Ref:- Your Letter under reference No. APSPCB-150/2017 MUCK DSPSL NGI 4621 dated 05.01.2022

Sir,

Most respectfully and in the matter under reference we would like to inform you that being aggrieved by the Order dated 26.11.2021 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in *Original Application No. 74 of 2017 (Tai Maya vs. Union of India & Ors.)* and the consequential Order dated 05.01.2022 passed by your Goodself, we have filed an Appeal before the Hon'ble Supreme Court on 20.01.2022 challenging both the orders referred above by seeking appropriate reliefs. Presently it is pending before the Hon'ble Supreme Court and yet to be listed for consideration.

Therefore we sincerely request you kindly not to initiate any recovery proceeding as the levy and imposition of the very penalty itself is under challenge before the Highest Court of the Country.

This is for your information and record

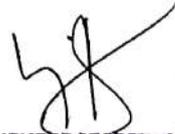
We are also enclosing herewith a copy of the electronic acknowledgement issued by the Registry of the Supreme Court as a proof of filing the appeal.

Thanking You.
 Yours faithfully,
 For JKM -KCL. (JV)



(M.H. Saikia)
 Authorised Signatory

Encl: a/w


 MEMBER SECRETARY
 State Pollution Control Board
 Ministry of Environment & Forest
 Naharlagun, A.P.

ds.


Executive Magistrate
 Papum Pare District
 Yupia (A.P)

amp : Maduri Pathar, Near MES Gate, Likebali, P.O. Maduri Pathar, Dist- Dhemaji, Pin- 787058, Assam, E-mail add: jkmjhahabali@gmail.com

Head Office: Ivory Enclave, 1st Floor, R.G. Baruah Road, Guwahati-781021, Assam
 Tel: 0361-2207323 Fax: 0361-2418751 Email add: jkmbud@ikmintra.net

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JUGAL KISHORE MAHANTA vs. UNION OF INDIA

Case Details

Diary No. 2375/2022 Filed on 23/01/2022 04:01 PM PENDING

Case No. A No. 1 JUGAL KISHORE MAHANTA IVORY ENCLAVE RGB ROAD GUWAHATI KAMRUP ASSAM

Petitioner(s) UNION OF INDIA THE PRINCIPAL SECRETARY MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

Respondent(s) THE PRINCIPAL SECRETARY MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

MEMBER SECRETARY State Pollution Control Board Department of Environment & Forest Guwahati, Assam, A.P.

Pet. Advocate(s)

KAUSHIK CHAUDHURY

Executive Magistrate Papum Pare District Yupia (A.P)

Case Details

Diary No.	2375/2022 Filed on 20-01-2022 04:01 PM PENDING
Case No.	C.A. No.
Petitioner(s)	1 JUGAL KISHORE MAHANTA IVORY ENCLAVE, RGB ROAD, GUWAHATI ,KAMRUP , ASSAM
Respondent(s)	1 UNION OF INDIA THE PRINCIPAL SECRETARY MINISTRY OF ENVIRONEMNT, FOREST AND CLIMATE CHANGE, 3RD FLOOR, PRITHVI WING, INDIRA PARYAVARAN BHAWAN, JOR BAGH, ,NEW DELHI , DELHI
Pet. Advocate(s)	KAUSHIK CHOUDHURY

BEFORE THE APPELLATE AUTHORITY
GOVERNMENT OF ARUNACHAL PRADEH
(Constituted under Section 28 of the Water Act,
1974 and Section 31 of the Air Act, 1981)

Appeal No. /2022

In the matter of:

M/s ABL-BIPL (JV) ... Appellant

Vs

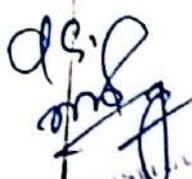
Arunachal Pradesh State Pollution Control Board
Through its Member Secretary ... Respondent

APPEAL UNDER THE WATER (PREVENTION AND CONTROL
OF POLLUTION) ACT, 1974 AND THE AIR (PREVENTION AND
CONTROL OF POLLUTION) ACT, 1981 AGAINST THE ORDER
DATED 05.01.2022 PASSED BY THE ARUNACHAL PRADESH
STATE POLLUTION CONTROL BOARD

MOST RESPECTFULLY SHOWETH:

1. The present appeal is being filed against the Order dated 05.01.2022 passed by the Arunachal Pradesh Pollution Control Board (herein after referred as to 'Board') where by it directed the appellant to deposit an amount of


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Rs.50,00,000/- (Rupees Fifty Lakhs only) in the Environmental Compensation Fund of the Board within 7 days from the date of order. **Firstly**, the impugned order does not mention about the any illegality / violation committed by the appellant. **Secondly**, impugned order has been passed referring only Show Cause Notice dated 06.09.2021 issued on the basis of alleged inspection carried out about two years back i.e. from 01.12.2017 to 06.12.2021. **Thirdly**, impugned order or Show Cause Notice does not mention about any spot inspection report in respect of site inspection alleging non-disposal of muck in scientific way. **Fourthly**, no spot inspection report has ever been served to the appellant as alleged in the Show Cause Notice. **Fifthly**, project carried out by the appellant unit and referred in Show Cause Notice is even remotely not concerned with the subject matter of OA No.74/2017/EZ and order dated 16.10.2017 passed therein. **Sixthly**, the impugned order does not speak about yard stick adopted to impose the penalty of Rs.50,00,000/- (Rupees Fifty Lacs). **Seventhly**, the impugned order is in violation of 'principal of Natural Justice' as no material against the appellant unit has been made available to counter the same. **Eighthly**, contentions made in Reply submitted by the appellant to show cause notice has not been considered and impugned order has been passed without dealing them. **Ninthly**, No opportunity of hearing has been provided to explain the


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case of the appellant before passing the impugned order in violation of principal of Natural Justice.

Copy of impugned order No. APSPCB-150/2017/MUCK/DSPSL/NGT/4623 dated 05.01.2022 is being annexed herewith as Annexure-A/1.

2. The present appeal is being filed through Sh. Sanjay Kumar Agarwalla who is authorized and competent to file the present appeal on behalf of appellant by virtue of Power of Attorney dated 2nd day of January 2016. Copy of the same is annexed herewith as Annexure-A/2.

Facts:

The appellant wishes to place on record the facts relevant to present case which are as under:

(i) That the appellant unit is joint venture of M/s Ashoka Buildcon Ltd and M/s Bhartia Infra Project limited. The appellant is engaged in civil construction of National Highways and has executed all the projects successfully adhering to all the environmental norms etc. It takes due diligence about compliance of Environmental norms while executing the projects assigned to it.

(ii) The appellant was assigned with the project of construction of Highway within state of Arunachal Pradesh


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i.e. construction of Highway from Singer river to Sijon Nallah (hereinafter referred as to 'said project') under National Highways and Infrastructure Development Corporation (NHIDCL), Government of India. While executing the said project from 21st January 2016 to 7th July, 2019, the appellant took due care of Environmental Norms and no complaint against the appellant w.r.t. any violation received from any corner. Said project was completed under the supervision of NHIDCL.

(iii) That it is worthwhile to mention here that appellant unit had 26 Nos of approved designated dump sites. The approved muck disposal location chart was provided to appellant unit by the Range Forest Officer, Yingkiong Forest Range, Yingkiong, Arunachal Pradesh bearing numbers from 20250 to 42780. The approved chart provided to appellant by the Forest Range Officer as well as the Lay Out Plan of those Muck Disposal Locations is annexed herewith as Annexure-A/3 (Colly).

It is noteworthy that Arunachal Pradesh is a hilly terrain and there are natural and frequent landslides due to heavy rains. Considering such geographical position, the appellant also constructed breast walls and retention walls as required to stop the muck from rolling down to the river from the slopes in heavy rain and utilized all available


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resources to stop the rolling down of debris/Muck into river from the designated disposal site. Photographs of the area and river where the appellant had executed the work are annexed herewith as **Annexure-A/4**. (colly)

(iv) That it is worthwhile to mention here that water quality in the stream and the river had never been compromised in any manner whatsoever by the appellant units and its employees. In fact, company's workers who were deployed at the construction site were also consuming same water for cooking food as well as for other purposes, during the course of construction work.

(v) That to the utter shock of appellant, it received a Show Cause Notice dated 06.09.2021 from the Board stating about an inspection purported to be done almost two years back i.e. 01.12.2017 to 06.12.2017 and alleging that at Padu village muck was found to be rolling down into the rivulet and appellant's personnel were asked to avoid dumping of muck in the valleys. By said notice, the appellant was to show cause as to why no action should not be taken against appellant for not disposing the muck in a scientific way failing which Environmental Compensation was proposed to be levied. Copy of Show Cause Notice No.APSPCB-150/2017/MCK/DSPSL/NGT/3607 dated 06.09.2021 is being annexed herewith as **Annexure-A/5**.

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It is further respectfully submitted that the order imposing the environmental compensation is passed merely to demonstrate to the NGT that the respondent has taken action against some contractors. In this process without any application of mind the unfair, arbitrary and illegal impugned order has been passed by the respondent.

It is further submitted that no document or contemporary records have been mentioned or placed on record in support of the allegations made in the Show Cause notice has ever been provided.

(vi) That said Show Cause notice was duly replied by the appellant. However, neither any opportunity of personal hearing was provided ensuring the adherence to Principal of Natural Justice nor contentions of the reply were dealt with while passing the impugned order.

(vii) That in complete defiance of the principal of natural Justice, the respondent Board passed the impugned order directing the appellant to deposit an amount of Rs.50,00,000/- (Rupees Fifty Lacs). It is noteworthy that impugned order does not mention about any illegality or violation committed by the appellant. Moreover, it does not specify the formula or basis to arrive at the penalty figure of Rupees Fifty Lacs.


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(viii) That after receiving the impugned order, the appellant unit submitted a representation dated 11.01.2022 with the Member Secretary, APSPCB explaining all facts and due diligences taken by the appellant during execution of project referred in Show Cause Notice. It was prayed to waive the penalty of Rs.50 lakhs may kindly be waived. However, representation has not been considered and impugned order is still in force. Hence, present appeal is being filed.

Grounds:-

The present appeal is being filed on the following amongst other grounds but not limited to them and reserves liberty to raise further grounds during course of hearing:

- a) Because impugned order has been passed without providing an opportunity of personal hearing which is inherent part of the principal of Natural Justice.
- b) Because the impugned order itself without mentioning any illegality / violation committed by the appellant. Hence, the impugned order is nullity in the eyes of law.
- c) Because impugned order has been passed referring only Show Cause Notice dated 06.09.2021 that too has been


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issued on the basis of alleged inspection carried out about two years back i.e. from 01.12.2017 to 06.12.20217. Thus, the action taken by the respondent Board is at very belated stage and hopelessly barred by limitation.

- d) Because impugned order has been passed on the basis of Show Cause Notice dated 06.09.2021 referring OA No.74/2017/EZ and order dated 16.10.2017 passed therein. However, Respondent Board failed to appreciate that project carried out by the appellant unit and referred in Show Cause Notice is even remotely not concerned with the subject matter of OA No.74/2017/EZ and order dated 16.10.2017 passed therein.
- e) Because impugned order or Show Cause Notice does not mention about any spot inspection report in respect of site inspection alleged non-disposal of muck in scientific way.
- f) Because no spot inspection report has ever been served to the appellant as alleged in the Show Cause Notice.
- g) Because the impugned order has been passed is in violation of 'principal of Natural Justice' as no material against the appellant unit has been made available to counter the same.


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- h) Because the impugned order has been passed without any basic formula or any guiding principle adopted for imposing the penalty of Rs.50,00,000/- (Rupees Fifty Lacs) No calculation sheet or any supporting material has ever been served or mentioned in the impugned order.
- i) Because impugned order has been passed mechanically even without considering the reply to show Cause Notice submitted by the appellant unit the Board. No contention of the reply has been dealt with while passing the impugned order.
- j) Because the impugned directions have been issued in the exercise of powers vulnerable to the invalidation of the grounds of arbitrariness and unreasonableness.
- k) Because in the matter of Tai Maya vs Union of India and ors the appellant is not in the array of parties and the name of the appellant is not mentioned as a violator and neither has there been any complaint against the appellant company or its employees regarding air pollution, illegal muck disposal in any manner by the local villagers, NGO's, Elite Society, Students organisations during or after completion of the work.
- l) Because the impugned directions are even otherwise illegal and liable to be set aside.


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m) Because impugned order issued by the Respondent No.1 is in violation of the power to give directions set out under Section 33 A of the Water Act, 1974. In *Splendor Landbase Limited Vs Delhi Pollution Control Committee* confirmed by the Division Bench of Hon'ble Court of Delhi it was held:

"The power under the said provision includes the power of the DPCC to issue "any directions in writing to any person". The 'explanation' to the provision clarifies that the power to issue directions includes the power to direct "closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service". Yet, this power has to be one coupled with a duty to act reasonably and fairly. It cannot be stretched to include a power to levy a penalty."

Limitation

The present appeal is being filed within period of limitation.

PRAYER:-

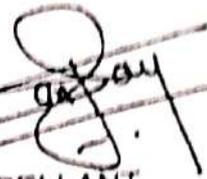
In view of the facts and circumstances stated above and in the interests of justice, it is most respectfully prayed that this Hon'ble Authority may graciously be pleased to:

- (a) Set aside the impugned Order dated 05.01.2022 passed by the Respondent Pollution Control Board,

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(b) Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in favour of the Petitioner


APPELLANT

Through

Date: 20.01.2022
Place: TINSUKIA.



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