



BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONAL BENCH, KOLKATA, WEST BENGAL

Original Application No. ~~153/23/EZ~~ 152/2023/EZ

Pritam Kumar

.....Applicant.

VS

State Of Jharkhand & Ors

.....Respondents

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PAUSHALI BANERJEE
ADVOCATE
7A, KIRON SHANKAR ROY ROAD,
KOLKATA-700001

(2)

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AFFIDAVIT ON BEHALF OF THE Jai Mata Di Stone Chrusher (Respondent no.5) .

I, Manoj Kumar , son of Parmeshwar Ram, aged about 49 years, by occupation business, Bhurkunda Ladi, Ramgarh, Jharkhand 829106, do hereby solemnly affirm and state as under:-

1. That I am the proprietor of Jai Matadi/ Stone Crusher that is respondent no.5 in this instant matter, I am well acquainted with the

facts and circumstances of the case and I have been duly authorized to affirm this affidavit, and I have been duly authorized to affirm this affidavit, I have gone through a copy of the Counter Affidavit of Pollution Control Board affirmed on 23/10/2024 placing the joint committee report before this Hon'ble Tribunal, (hereinafter referred to as the said report).

2. Save what are specifically admitted hereinafter I deny each and every allegation, statements, made in the said report and put the deponent to strict proof thereof.
3. I say that the said report states that "...JSPCB notification Ref.No. B-1966 dated 18/10/17 prescribes the minimum distance of stone crusher units from rivers should be 200 M..." . The said report also states that rivers in Jharkhand as per the State Pollution Control Board are " River Damodar, Swarn Rekha, Ajay, Sanjay, North Koel, South Koel, Kharkai, Barakar, Bokaro, Bhairvi or any other river of importance". "Water Bodies : Topchachi Dam, SivGanga, Dimna Lake, Patratu Dam or any other water body of importance. It is clearly stated no minimum distance criteria has been kept for sitting of crushers near the seasonal nallahs/seasonal streams, jore etc".
4. I say that in accordance with the JSPCB notification Ref.No. B-1966 dated 18/10/17 the distance of the stone crusher unit of the answering

respondent from the seasonal nallah is not relevant in this instant matter as it is clearly stated in the said report that no minimum distance criteria has been kept for sitting of crushers near the seasonal nallahs/seasonal streams, jore etc.

5. I say that according to the guidelines of the Central Pollution Control Board the stone crusher is a small scale stone crusher and are a complaint unit in accordance with the guidelines and directions of Jharkhand State Pollution Control Board . The said report do not allege any pollution by the answering respondent.

6. I say that I am in receipt of the Show cause letter of State Pollution Control Board being ref no. B-1029, dated 19/04/24. The memo dated 19/04/24 is a computation of Environment Compensation that is arbitrary as the State PCB have not taken into consideration the guidelines of CPCB, moreover the Compensation is calculated based on the committee report dated 24/07/23 which is contradictory and void ab initio as one of the members submitted a different report before this Tribunal on 3/05/24 and considering the nature of the contradiction this Hon'ble Tribunal directed a new inspection vide order dated 3/05/24. The said report was submitted by the State Board in compliance with order dated 3/05/24. Memo No.B-1029 dated 19/04/24 and my reply dated 2/05/24 are annexed herewith and marked as Annexure A.

7. I say that the report dated 24/07/23 cannot be considered by the State Board while calculating the Environmental Compensation moreover the State Board have failed to comply with process of natural Justice as the stone crushers units were not heard by the State Board before imposing the Compensation, nor was the reply dated 2/05/24 submitted by the answering respondent taken into account by the State Board. The rules of natural justice do not supplant the law of the land but only supplement it. It is well settled law of the land that in the absence of express provisions in any statute dispensing with the observance of the principles of natural justice, such principles will have to be observed in all judicial, quasi-judicial and administrative proceedings which involve civil consequences to the parties. (A.K Kraipak vs. Union of India (AIR 1970 S.C.150) & Maneka Gandhi (AIR 1978 S.C.597)

8. I say that the Environment Protection (Manner of Holding Inquiry and Imposition of Penalty) Rules, 2024. Published in notification S.O. 4790(E) dated 4th November 2024, mandates “adjudicating officer” means an officer appointed under section 15C of the Act to adjudicate imposition of penalty under the law, therefore the Board must in the event of any imposition of penalty shall transfer the matter to the adjudicating officer. Copy of the Environment Protection (Manner of Holding Inquiry and Imposition of Penalty) Rules, 2024 are annexed herewith and marked as annexure B

VERIFICATION

I, Manoj Kumar , son of Parmeshwar Ram, aged about 49 years, by occupation business, Bhurkunda Ladi, Ramgarh, Jharkhand 829106, I am the deponent above named do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge which are derived from the relevant office records. No part of it is false and nothing material has been concealed there from.

Verified at Kolkata on this 13th January, 2025

Manoj Kumar

Identified by me
Pauskali Banerjee
Advocate

Signature of the Executant/s
are Attested on the Identification
of the Advocate

Banerjee
Notary
Govt. of West Bengal
Regd. No. 008/2022

13.01.2025

SUBHENDU BANERJEE
Notary, Govt. of W.B.
Regd. No. 008/2022
Advocate High Court, Calcutta

13 JAN 2025

To,

The Member secretary,

The Jharkhand State Pollution Control Board

Dhurwa, Ranchi-834004

RE: Ref No.B-1028, dated-19/04/24

Sir,

I Manoj Kumar proprietor of Jai Mata Di Stone Crusher is respondent no.5 in the matter of OA 152/2023 before the Hon'ble NGT . I have received your show cause notice dated 19/04/24 through registered post on 29/04/24, in reply to the show cause notice I say as follows:

1. That earlier in compliance of the show cause letter no.B-2772 dated 20/12/23 I have submitted reply which contains the details of compliance 17/01/24 .
2. The aforesaid show cause letter dated 19/04/24 did not consider the reply dated 17/01/24. I am annexing the copy of the reply dated 17/01/24 again for your perusal- Annexure A. The reply clarifies that sprinklers are installed and pucca boundary constructed.



I say that I have also filed my reply in OA 152/23 wherein the State Board is a respondent and my reply have been served on the respondent authority. The reply was affirmed by me on 17/01/24 The reply also contains the pictures of natural plantation, boundary wall and water sprinklers. Copy of the Reply Affidavit in OA 152/23 is attached herewith for your reference- Annexure B.

4. I am operating the Stone Crusher after obtaining consent to establish and consent to operate from the concerned State Pollution control Board. I am a law abiding citizen and there have all the requisite licensed required to operate a stone crusher. The contention in your show cause letter dated 19/04/24 are as

(a)- Majority of natural plantations are there- I say that I have not destroyed the greenery therefore the natural plants exists and the dense plantation do not require any further plantation to be made.

(b) Water Sprinklers- I say that water sprinklers are adequate in number, I have also constructed overhead tank. photographs of the water sprinklers are annexed in the reply Affidavit attached here also.

(C) Siltation Pond- siltation pond and rain water harvesting exists. The photographs of water sprinklers, rain water harvesting, dust siltation water storage tank are annexed with the reply Affidavit annexed here.

(d) Nallah- I say that the unit is 45 meters away from the nallah and no distance criteria of stone crusher unit from nallah is prescribed by either by CPCB or by the State PCB, the dust siltation ponds and water sprinklers are working in the unit therefore there is effective system of dust pollution control in the unit.

5. I say that the inspection report is not signed by the Deputy Commissioner and therefore the inspection report is not a report of the three members committee constituted by this tribunal and therefore this report is null and void.
6. I say that this report should not be considered by the respondent authority.
7. I say that the report is void and cannot be considered, even considering the report also the Environmental compensation calculated is wrong. That is on 19/07/23 when the inspection was held the Scientist of regional office of MOEF instructed me to complete the boundary and siltation pond, thereafter within one month that is by 20/08/23 the work was complete but no inspection was held by you at my stone crusher unit. I have received the inspection report only during the proceedings before the Hon'ble tribunal which was on 16/01/24.

(11)

I say that as the inspection report was never served on me and I did not know the violations or the violations as mentioned by you in the show cause notice dated 19/04/24 was never conveyed to me, moreover considering the fact that the report is not valid because it is not the report of the three member committee of the Hon'ble Tribunal (one member never signed the report) you can not calculate the number of days of violation as 231 days and the Environmental Compensation in your notice dated 19/04/24 is wrong.

9. I request before your good office to consider my submissions and withdraw the Environmental Compensation as stated in the show cause letter.

Your's Faithfully

Chanoj Kumar

Tai mata di stone crusher



JHARKHAND STATE POLLUTION CONTROL BOARD

TOWNSHIP ADMINISTRATION BUILDING, HEC COMPLEX, DHURWA, RANCHI 834004
Telephone: 0651-2400850 (Fax)/ 2400851/2400852/2401847/2400979/2400139

By Email

Hon'ble NGT Matter
Time Bound (Urgent)

Date... 13.10.2024

Ref. No.... B-1028...

From.
Y. K. Das
Member Secretary

To,
M/s Jai Mata Di Stone Crusher
Mauza- Pali, Khata No.- 89,
Plot No.- 168
Ramgarh

Sub: 2nd show-cause notice under Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981-reg.

Ref.: Board's letter vide ref. no. B-2772, dated 20.12.2023.
Letter received from project proponent dated 26.12.2023.

With reference to the above noted subject, this is to inform you that as per the direction of Hon'ble NGT, Principal Bench, New Delhi in OA no.- 153 of 2023 order dated 24.05.2023 (Pritam Kumar Vs. State of Jharkhand), a committee was constituted consists of following members:

- 1) Ms. Madhvi Mishra, Deputy Commissioner, Ramgarh
- 2) Mr. Rajeev Ranjan, Scientist 'E' from Ministry of Environment, Forest and Climate Change, Regional Office, Ranchi;
- 3) Mr. Ashok Kumar Yadav, Regional Officer, Hazaribagh, JSPCB

The above-mentioned committee visited the site on 19.07.2023 and found following observations:

- a) The crusher owner/operator informed that the crusher was in running conditions. However, during site inspection crusher was not made operational by the crusher operator. So, dust control effectiveness and noise pollution could not be ascertained;
- b) Partial plantation was made; it appeared that majority of the plants was grown naturally;
- c) Partial sheet/green cloth cover boundary has been made; no pucca boundry wall has been made;
- d) Few water sprinklers were found working; no water storage facility was found;
- e) Shortest distance of crusher boundary from the nearest Jor/nallah/water body was approx 45 meters; it was found that there was water flow in the nearby nallah/Jor;
- f) There was no catch drain, siltation ponds or other arrangements for the settling/siltation of stone dust in the crusher unit. There is high possibility that stone dust may flow to nearest water body/Jor/nallah.

Whereas, earlier show-cause was issued to the Unit vide Board's Ref. no. B- 2772 dated 20/12/2023 but the same was not attended by you. However, a letter was submitted to the Borad requesting for another date of show cause.

Whereas, in light of the above the Interim Environmental Compensation for the violations / non-compliance observed against the Unit is computed as per the "Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund". The details of which is as below: -

(13)

CALCULATION OF ENVIRONMENTAL COMPENSATION OF
M/S JAI MATA DI STONE CRUSHER,
AT - PALLI, DISTRICT - RAMGARH.

Nature of violation – Non compliance of provisions of Air Act & Water Act

Basis to levy the Environmental Compensation – Pollution Index

The environmental compensation is based on the following formula:

$$\underline{EC = PI \times N \times R \times S \times LF}$$

Where,

- EC- Environmental compensation
- PI- Pollution Index of Industrial Sector
- N – Number of days of violation took place
- R – A factor in rupees for EC
- S- Factor of scale of operation
- LF – Location Factor

Now in this case,

PI is to be taken as 50 as the industry belongs to Orange category (Stone Crushers) (as per CPCB's guidelines).

N is to be taken as 231 days from 19/07/2023 to 05/03/2024.

R is to be taken as 250 (as per CPCB's guidelines).

S is to be taken as 0.5 as the Unit belongs to Small Scale as per Notification No. - S.O. 1702(E) – dated 01/06/2020 of Ministry of Micro, Small and Medium Enterprises (S could be 0.5 for micro or small, 1.0 for medium and 1.5 for large units as per CPCB Guidelines).

LF is to be taken as 1.00 as the population of Ramgarh is < 1 million. (District Census Handbook, Ramgarh of 2011).

Therefore,

$$\begin{aligned} \text{EC (Per day)} &= PI \times R \times S \times LF \\ &= 50 \times 250 \times 0.5 \times 1.00 \\ &= ₹ 6,250.00/- \end{aligned}$$

Henceforth, the Environmental Compensation for one day comes out to be ₹ 6,250.00/-. So, the total Environmental Compensation for 194 days comes out to be ₹ 14,43,750.00/- (i.e. Fourteen Lakhs Forty-Three Thousand Seven Hundred and Fifty Rupees Only).

Now, therefore, in view of the above the competent authority in exercise of the powers vested under Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 has been pleased to give you a 2nd opportunity to attend the show-cause on ..02/05/2024.. at 11.00 AM in the office chamber of the Member Secretary to explain the above with proper documents and why the above said amount of Interim Environmental Compensation should not be imposed upon the Unit, failing which Consent to Operate (CTO) issued to the Unit may be revoked and environmental compensation may be levied as per applicable norms and action may be initiated as per law.

(Y. K. Das)
Member Secretary

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 4th November, 2024

S.O. 4790(E).—In exercise of the powers conferred by section 6 and 25 of the Environment (Protection) Act, 1986(29 of 1986), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. —(1) These rules may be called the Environment Protection (Manner of Holding Inquiry and Imposition of Penalty) Rules, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. —(1) In these rules, unless the context otherwise requires, —

- (a) “Act” means the Environment (Protection) Act, 1986 (29 of 1986);
 (b) “adjudicating officer” means an officer appointed under section 15C of the Act;
 (c) “form” means a form appended to these rules.

(2) The words and expressions used in these rules and not defined, but defined in the Act, shall have the same meanings respectively assigned to them in the Act

3. Complaint. —The Central Pollution Board, State Pollution Control Boards, Pollution Control Committees, Commission for Air Quality Management and Integrated Regional Offices of the Ministry of Environment, Forest and Climate Change, in their respective jurisdictions, through their authorized Officers, or any other persons, may file a complaint in Form-I through electronic means or speed post or by hand to the adjudicating officer regarding any contravention committed under sections 7, 8, 9, 10 and 11 of the Act.

4. Holding of Inquiry. — (1) For the purpose of adjudication under section 15C of the Act whether any person has committed any contravention as specified in that section, the adjudicating officer within thirty days from the date of receipt of the complaint shall, issue a notice in Form-II to such person requiring him to show cause within such period as may be specified in the notice (being not less than fifteen days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) shall indicate the nature of contravention alleged to have been committed.

(3) After considering the cause, if any, shown by such person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice requiring the appearance of that person personally or through a legal representative duly authorised by him on such date as may be fixed in the notice.

(4) On the date fixed, the adjudicating officer shall explain to the person proceeded against or his authorised legal representative, the contravention, committed by such person and the provision of the Act, in respect of which contravention is alleged to have been committed.

(5) The adjudicating officer shall, then, give an opportunity to such person to produce such documents or evidence under Form-III as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to a future date and in taking such evidence the adjudicating officer shall not be bound to observe the provisions of the Bhartiya Sakshya Adhinyam, 2023 (47 of 2023).

(6) While holding an inquiry under this rule, the adjudicating officer may require and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer may be useful for or relevant to the subject matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required under sub-rule (3) before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

(8) If, upon consideration of the evidence produced before the adjudicating officer, the adjudicating officer is satisfied that the person has committed the contravention, he may by order in writing, impose such penalty under the Act as he considers reasonable.

(9) Every order made under sub-rule (8) shall specify the provision of the Act in respect of which contravention has been committed and shall contain the reasons for imposing the penalty.

(10) A copy of the order made under this rule and all other copies of proceedings shall be supplied free of cost to the complainant and the person against whom the inquiry was held.

(11) The adjudicating officer shall complete the proceeding within six months from the issuance of the notice to the opposite party.

(12) A notice or an order issued under these rules shall be served on the person against whom an inquiry is held, in any of the following manner,-

- (i) by delivering or tendering it to that person or his authorised representative; or
- (ii) by sending it to the person through electronic means or by registered post or speed post to the address of his place of residence or his last known place of residence or the place where he carried on or last carried on, business or personally works or last worked for gain; or
- (iii) if it cannot be served in the manner specified under clauses (i) or (ii), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided or carried on business or personally works or has worked for gain.

5 . Transfer of complaint.- (1) If the adjudicating officer is of the view or it is made to appear that he does not have jurisdiction to entertain any complaint under these rules, he shall transfer the matter to the adjudicating officer concerned within fifteen days of the receipt of such complaint or information made to him after reasons to be recorded in writing.

(2)The adjudicating officer to whom such case is transferred shall proceed with the inquiry from the stage it is transferred to him.

6. Factors to be considered while determining quantum of penalty.- The adjudicating officer, while adjudicating the quantum of penalty shall have due regard to all or any the following factors in addition to factor stated in sub-section (4) of section 15 C of the Act, namely:

- (a) place of operation of project;
- (b) size of the project whether large, medium or Small;
- (c) category of industry;
- (d) type of contravention or violation such as,-
 - (i) working without prior environment clearance as required under the notification number S.O 1533(E) dated the 14th September, 2006 issued under the Act;
 - (ii) non-compliance of environmental safeguards and standards prescribed under the Act;
 - (iii) violation of conditions of environment clearances granted under the notification referred to in sub-section (iv) non- compliances of orders or directions;
- (e) quantum of deviation or contravention from the standard prescribed under the Act;
- (f) health impacts or loss likely to be caused;
- (g) undue gain or benefit derived out of contravention or non-compliance;
- (h) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the contravention or non-compliance;
- (i) the repetitive nature of the contravention or non-compliance;
- (j) any other factor as may be considered by the adjudicating officer to be relevant for the protection of environment.

7. Extension of time. —The adjudicating officer may, for reasons to be recorded in writing, where there is a reasonable cause for the delay or failure to act, extend any period specified in these rules till such period as he considers reasonable.

8. Order and penalties. —(1) Every order under these rules, shall be dated, signed and communicated to all the parties.

(2) All sums realised by way of penalties under these rules shall be credited to the Environment Protection Fund established under 16 of the Act.

FORM I
(see rule 3)

To,
The Adjudication Officer
.....

1. Particular of complainant: -

- (a) Name:
- (b) Address for service:
- (c) Contact No:
- (d) Email (for service):

2. Particulars of complaint: -

- (a) Date, time and instance of commission of the alleged contravention:
- (b) Statement of contravention setting out all relevant material particulars:
- (c) Evidence in support of the statement:
- (d) Tentative amount of damage (in pecuniary terms) with cost break-up.

I/We....., the complainant.....herein declare that the facts stated herein are correct to the best of my/our knowledge.

3. Name and Signature of the Complainant:

Note. – Strike out whichever is not applicable.

Form –II
[See sub- rule (1) of rule 4]

To

SHOW CAUSE NOTICE

Sub: Contravention of the Environment Protection Act, 1986.

Sir/Madam,

As per the complaint received in Form-I dated _____(copy enclosed), contravention has been committed under section _____ of the Environment(Protection) Act, 1986 in

2. The above contravention is liable for penalty. Therefore, you are required to show cause within a period of ----- days of service of this notice, why an inquiry should not be initiated against you under the Environment (Protection) Act, 1986 for imposition of penalty. In case, no reply is received within the given period, the further action shall be taken under the Act .

Adjudicating Officer

(Name and seal of the office)

FORM-III Furnishing of document or evidence by or on behalf of the contravener [See sub-rule (5) of rule 4]	
To Adjudication Officer	
1.	I/We, hereby give a counter statement to the complaint made in Form-I The grounds in which the counter statement is made are as follows: -
2.	Complete address including postal index number/code and state along with mobile number and e-mail.
3.	Signature of the contravener or his authorised representative:
4.	Name of the person along with mobile number who has signed.

[F. No. IA-Z-11013/20/2022-IA-II(IND-I)]

VED PRAKASH MISHRA, Jt. Secy.