

BEFORE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 174 OF 2020

IN THE MATTER OF:

BANOTHU NANDU NAYAK **...APPLICANT**

Versus

SINGARENI COLLIERIES COMPANY LTD & ORS **....RESPONDENTS**

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Filed by



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SUBMISSIONS ON BEHALF OF APPLICANT

1. That the Applicant filed the present Application with following prayers:

- (i) *“Appoint an independent experts Committee to verify the allegations raised by the Applicant in regard to environmental violations, damage caused by Respondent No.1 in the execution of Jalagam Vengal Rao Opencast Coal Mine at Sattupalli of Khammam District in Telangana State.*
- (ii) *Direct the MoEF, TSPCB to take appropriate action according to Environment Protection Act, 1986 for violations committed and loss caused by Respondent No.1.*
- (iii) *Direct the District Collector to enumerate and assess the loss caused by Respondent No.1 for restoring it to normalcy or providing housing scheme to the damaged houses as per the State Government Policy.*
- (iv) *Direct the Respondent No.1, State of Telangana and District Collector to setup health center under Corporate Social Responsibility at NTR Nagar Colony of Sattupalli of Khammam district to provide free health facilities*
- (v) *Direct the MoEF to file an action taken report on the violations recorded in the Minutes of 48th meeting of EAC dated 13th & 14th June, 2018 for passing appropriate orders.*
- (vi) *Pass any such order, as the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

2. Subsequent to the orders passed by this Hon’ble Tribunal the Joint Committee has submitted three reports including an interim report. The Committee has made several recommendations and sought directions from the Hon’ble Tribunal for implementation of Recommendation 1, i.e., providing relief to the damaged houses. Meanwhile, the District Collector of Khammam vide order No. Rc.No.

I/1725/2017/STPL-1870 dated 7.8.2021 directed the Tahasildar of Sattupalli to submit a report on the particulars of damaged houses due to Opencast mining.

The relevant extracts of the order are reproduced as under:

“I invite attention to the subject and references cited. Through the reference 1st cited, the Managing Director, TSHCL, Hyderabad has informed that the Joint Secretary to Government, Housing Department, while forwarding the letter from Chief Minister’s Office along with representation of Hon’ble MLA Sattupalli Assembly Constituency regarding sanction of houses under 2BHK housing programme at Vengal Rao Nagar, Virat Nagar, NTR Nagar of Sattupalli Municipality, in lieu of the houses damaged due to Singareni Collieries open cast blasting, requested to furnish report to the Government on the representation. You are requested to submit specific report on the above, for onward submission to Government.

In view of the above, it is directed to submit the detailed report on Vengal Rao Nagar (800 houses), Virat Nagar (300 houses), NTR Nagar (770 houses) of Sattupalli Municipality, in lieu of the houses damaged due to Singareni Collieries open cast blasting as soon as possible with complete details of houses and clear enquiry report.”

3. That in compliance of the direction of the Collector & District Magistrate, Khammam, the Tahasildar vide his letter No. Rc.No. B/663/2021 dated 30.8.2021 submitted a report to District Collector. The English translation of the letter are placed below:

“That the District Collector, Khammam has directed to furnish complete enquiry report on the formation of cracks, falling of construction material from the houses situated in Virat Nagar, Vengal Rao Nagar, NTR Colony in Sattupalli Municipality due to the blasting conducted by Singareni Collieries.

After conducting complete enquiry in Virat Nagar, Vengal Rao Nagar, NTR Colony, following number of houses were found partially damaged due to blasting .

Sl No.	Colony Name	Total Houses	Partly Damaged houses
1	Vengal Rao Nagar	448	445
2	Virat Nagar	128	121
3	NTR Colony	647	646

True copies of the Communications between District Collector, Khammam and Tahasildar of Sattupalli vice No. Rc.No. B/663/2021 dated 30.8.2021 and No. Rc.No.I/1725/2017/STPL-1870 dated 7.8.2021 are annexed as ANNEXURE A1.

4. It is clear from the enquiry report that the houses of Applicant and other large number of residents in the adjoining locality have damaged due to the blasts conducted for the open cast mining of Respondent No.1. Since the primary issue relating to damage caused to the houses has been under the consideration of the State government and the Housing Department sought the particulars for the construction of Double Bend room houses under the Scheme formulated by State of Telangana, appropriate directions may be issued to complete the process of construction of houses in time bound manner not beyond 9 months.

Anomaly in calculation of Environment Compensation and Penalty :

5. That the Joint Committee while stating that there is no need to impose Environment Compensation for the 11 years violation period as the PP was directed by MoEF to make a deposit of Rs. 26,67,00,000/- as bank guaranty towards implementation of remediation plan and natural and community resource augmentation plan which needs to be implemented within 3 years, based on the study undertaken and approved by the MoEF&CC. That the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. v. Rohit Prajapati and Ors, 2020 SCC OnLine SC 347***, felt that 'The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence'. The Court though allowed the industries, it has stated that **PENALTY** must be imposed on the violator for

their disobedience of law. The relevant extracts of the judgment are reproduced as under:

“27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.

*49. In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. **At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such noncompliance. Penalties must be imposed for the disobedience with a binding legal regime.** The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by the NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at Rs. 10 crores each. The amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate. Though we have come to the conclusion, for the reasons indicated, that the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued under Article 142 of the Constitution. Alembic Pharmaceuticals Limited, United Phosphorous Limited and Unique Chemicals Limited shall deposit the amount of compensation with GPCB within a period of four months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by the NGT. Subject to the deposit of the aforesaid amount and for the reasons indicated, we allow the appeals and set aside the impugned judgment of the NGT dated 8 January 2016 in so far as it directed the revocation of the ECs and closure of the industries as well as the order in review dated 17 May 2016.”*

6. It is further submitted that the Experts Appraisal Committee of MoEF in its 8th meeting held on 14.6.2018 observed on granting of Environment Clearance for the expansion of Opencast mining at JV OC-I held that **“(ix) The Project Proponent shall give an undertaking by way of affidavit to comply with all the statutory requirements and judgment of Hon’ble Supreme Court dated the 2 ndAugust 2017 in Writ Petition (Civil) No. 114 of 2014 in the matter of Common Cause versus Union of India and Ors. before grant of ToR/ EC. The undertaking inter alia include commitment of the PP not to repeat any such violation in future.**

7. That in Common Cause Vs Union of India (2017) 9 SCC 499, the Hon’ble Apex Court discussed about illegal mining and measures to be taken to the welfare of Tribals/Affected persons. The relevant extracts of the Judgment are reproduced as under:

“84. Briefly therefore, the overall purpose and objective of the MMDR Act as well as the Rules framed there under is to ensure that mining operations carried out in a scientific manner with a high degree of responsibility including responsibility in protecting and preserving the environment and the flora of the area. Through this process, the holder of a mining lease is obliged to adhere to the EPA as well as the laws pertaining to air and water pollution and also by necessary implication, the provisions of the “Forest (Conservation) Act, 1980 (for short “the FC Act”). Exploitation of the natural resources is ruled out. If the holder of a mining lease does not adhere to the provisions of the statutes or the rules or the terms and conditions of the mining lease, that person is liable to incur penalties under Section 21 of the MMDR Act. In addition thereto, Section 4-A of the MMRD Act which provides for the termination of a mining lease is applicable. This provides that where the Central Government, after consultation with the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, prevention of pollution, etc, then the Central Government request the State Government to prematurely terminate a mining lease.”

8. Further the Hon’ble Court directed the State government to recover 100 percent of the price of mineral as penalty for conducting illegal mining and also directed to form a Special Purpose vehicle (SPV) and held that :

“50% of the additional amounts of Net Present Value (NPV) recovered by the State of Odisha from the mining lessees will be used by the State of Odisha through a Special Purpose Vehicle (SPV) for undertaking specific tribal welfare and area development works so as to ensure inclusive growth of the mineral bearing areas. The State of Odisha will accordingly file within four weeks from today, a comprehensive plan for the

development of tribals out of the aforesaid funds, taking into consideration their requirements of health, education, communication, recreation, livelihood and cultural lifestyle as indicated in this Court's judgment in T.N. Godavaraman Thirumulpad v. Union of India & Others (2008) 2 SCC 222."

188. Conclusions on the issues of mining without an EC or FC or both 186. To avoid any misunderstanding, confusion or ambiguity, we make the following very clear:

(1) A mining project that has commenced prior to 27th January, 1994 and has obtained a No Objection Certificate from the SPCB prior to that date is permitted to continue its mining operations without obtaining an EC from the Impact Assessment Agency. However, this is subject to any expansion (including an increase in the lease area) or modernization activity after 27th January, 1994 which would result in an increase in the pollution load. In that event, a prior EC is required. However, if the pollution load is not expected to increase despite the proposed expansion (including an increase in the lease area) or modernization activity, a certificate to this effect is absolutely necessary from the SPCB, which would be reviewed by the Impact Assessment Agency.

(2) The renewal of a mining lease after 27th January, 1994 will require an EC even if there is no expansion or modernization activity or any increase in the pollution load.

(3) For considering the pollution load the base year would be 1993-94, which is to say that if the annual production after 27th January, 1994 exceeds the annual production of 1993-94, it would be treated as an expansion requiring an EC.

(4) There is no doubt that a new mining project after 27th January, 1994 would require a prior EC.

(5) Any iron ore or manganese ore extracted contrary to EIA 1994 or EIA 2006 would constitute illegal or unlawful mining (as understood and interpreted by us) and compensation at 100% of the price of the mineral should be recovered from 2000-2001 onwards in terms of Section 21(5) of the MMDR Act, if the extracted mineral has been disposed of. In addition, any rent, royalty or tax for the period that such mining activity was carried out outside the mining lease area should be recovered.

(6) With effect from 14th September, 2006 all mining projects having a lease area of 5 hectares or more are required to have an EC. The extraction of any mineral in such a case without an EC would amount to illegal or unlawful mining attracting the provisions of Section 21(5) of the MMDR Act.

(7) For a mining lease of iron ore or manganese ore of less than 5 hectares area, the provisions of EIA 1994 will continue to apply subject to EIA 2006.

(8) Any mining activity carried on after 7th January, 1998 without an FC amounts to illegal or unlawful mining in terms of the provisions of Section

21(5) of MMDR Act attracting 100% recovery of the price of the extracted mineral that is disposed of.

(9) In the event of any overlap, that is, illegal or unlawful mining without an FC or without an EC or without both would attract only 100% compensation and not 200% compensation. In other words, only one set of compensation would be payable by the mining lease holder.

(10) No mining lease holder will be entitled to the benefit of any payments made towards NPV or additional NPV or penal compensatory afforestation.”

9. In the present case, the Project Proponent is an entity jointly owned by State and Central Government due to which the above judgment was not applied by the Joint Inspection Team consisting of State and Central Government Officials.

10. That the Project Proponent in its compliance report claimed that it has deposited Rs. 161.40 Crores with District Mineral Fund Trust. The PP claimed that it has further granted funds for the following purposes:

- i. Rs. 20 lakhs deposited with Forest Divisional Officer
- ii. Rs. 6 Lakhs cheque given to Municipal Commissioner, Sattupalli
- iii. Rs. 4.60 crores for repair of road from Sattupalli to V.M. Banjar
- iv. 4 Number of R.O Plants sanctioned and for Rejarla village and NTR Nagar, Vengal Rao Nagar and they will be commissioned within 2 mnths
- v. Rs. 62 Lakhs allotted for laying One Km road near Goutam Model School in NTR Nagar
- vi. Rs. 1.60 Crores allotted for purchasing land in favour of Sattupalli Municipality to use the land for dumping of solid waste
- vii. Rs. 55.50 lakhs earmarked for drilling of 30 deep borewells
- viii. Rs. 75 Lakhs for construction of Community hall in Rejarla village
- ix. Rs. 26.67 Crores allocated for Remediation plan and Natural Resource Augmentation plan and Community Resource Augmentation Plan.

11. It is humbly submitted that the status of the works may be submitted to the Hon'ble Tribunal and a monitoring committee consisting of Community representatives may be appointed for the effective implementation of the conditions mandated in Environment Clearance.

12. It is humbly prayed that the Hon'ble Tribunal may direct the Respondents to set up Special Purpose Vehicle (SPV) as directed in Common Cause case by the Hon'ble Supreme Court in the present case also for ensuring inclusive growth and taking up activities such as establishment of Hospitals in affected villages, providing employment to the land losers, project affected persons, providing amenities etc. It is further prayed that the regulating agencies such as MoEF/CPCB/PCB may be directed to conduct regular verifications/monitoring the compliance of the conditions mandated in EC and FC and implementation of directions passed by this Hon'ble Tribunal to submit a compliance report.

Filed on behalf of Applicant



Sravan Kumar

Advocate

GOVERNMENT OF TELANGANA
OFFICE OF THE COLLECTOR & DISTRICT MAGISTRATE : KHAMMAM

Re.No.I/ 1725/2017/STPL-1870

Dated: 07.08.2021.

From

Sri V.P.Gautham. I.A.S.,
Collector & Dist. Magistrate
Khammam.

To

The Tahsildar,
Sathupalli.

Sub: WSHP - 2BHK Programme- Representation for Sanction of 2BHK houses at Vengal Rao Nagar, Virat nagar, NTR Nagar of Sathupally Municipality, Khammam District by Hon'ble MLA Sathupalli - Detailed Report called for - Reg.

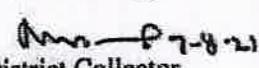
- Ref:-1. MD, TSHCL, Hyd Lr. No. 2316/TSHCL/2BHK/REP/KMM/2021, Dated 31.07.2021 -
2. Lr No.831/RH&C.A1/2021-1,dt.30.07.2021 of Joint Secretary to Government Housing Department
3. Note No.194/CMP/2021,DL.17.07.2021 of Secretary to Chief Minister, along with letter of Hon'ble MLA Sathupalli constituency addressed to Hon'ble CM.

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I invite attention to the subject and references cited. Through the reference 1st cited, the Managing Director, TSHCL, Hyderabad has informed that the Joint Secretary to Government, Housing Department, while forwarding the letter from Chief Minister's Office along with representation of Hon'ble MLA Sathupalli Assembly Constituency regarding sanction of houses under 2BHK housing programme at Vengal Rao Nagar, Virat Nagar, NTR Nagar of Sathupalli Municipality, in lieu of the houses damaged due to Singareni Collieries open cast blasting, requested to furnish report to the Government on the representation. You are requested to submit specific report on the above, for onward submission to Government.

In view of the above, it is directed to submit the detailed report on Vengal Rao Nagar (800 houses), Virat Nagar (300 houses), NTR Nagar (770 houses) of Sathupalli municipality, in lieu of the houses damaged due to Singareni Collieries open cast blasting as soon as possible with complete details of houses and clear enquiry report.

Yours faithfully,


for District Collector
Khammam

Copy to the Revenue Divisional Officer, Kalluru to supervise the issue.

31/8/21

సమాచార హక్కు చట్టం-2005
ద్వారా జారీ చేయబడినది
నాయువు తహశీల్దార్
సత్తుపల్లి మం., భమ్మం జిల్లా.

Scanned with CamScanner

తహశీల్దార్ కార్యాలయం,
10 సత్తుపల్లి మండలం,
తేది: 30/08/2021.

Rc.No.B/ 663 /2021.

కె.వి.యం.ఎ. మీనన్ ,
తహశీల్దార్, సత్తుపల్లి.

శ్రీయుత రాజస్వ మండలాధికారి,
కల్లూరు గారికి.

ఆర్య,

విషయం: బాంబ్ బ్లాస్టింగ్ - కల్లూరు డివిజన్ - సత్తుపల్లి మండలం - సింగరేణి వారు జరిపే బాంబ్ బ్లాస్టింగ్ వల్ల సత్తుపల్లి మునిసిపాలిటీ పరిధిలో గల విరాట్ నగర్, వెంగళరావు నగర్, NTR కాలనీలో గల ఇండ్ల స్థాబుల పెచ్చులు మరియు గోడల చీలికలు ఏర్పడుతున్న విషయమై - నివేదిక సమర్పించుట - గురించి.

సూచన: శ్రీయుత జిల్లా కలెక్టర్, ఖమ్మం గారి లేఖ నెంబర్ RC:NO.1/1725/2017/STPL-1870, తేది: 07/08/2021.

దయతో పై విషయమును పరిశీలించగలరు. పై సూచన ద్వారా శ్రీయుత జిల్లా కలెక్టర్, ఖమ్మం గారు సత్తుపల్లి మండలంలో సింగరేణి వారు జరిపే బాంబ్ బ్లాస్టింగ్ వల్ల సత్తుపల్లి మునిసిపాలిటీ పరిధిలో గల విరాట్ నగర్, వెంగళరావు నగర్, NTR కాలనీలో గల ఇండ్ల స్థాబుల పెచ్చులు మరియు గోడల చీలికలు ఏర్పడుతున్న విషయమై పూర్తి నివేదికను సమర్పించవలసినదిగా ఆదేశించినారు.

ఇట్టి విషయంలో పూర్తి విచారణ చేయగా సత్తుపల్లి మునిసిపాలిటీ పరిధిలో గల విరాట్ నగర్, వెంగళరావు నగర్, NTR కాలనీ లలో బాంబ్ బ్లాస్టింగ్ వల్ల పాక్షికంగా దెబ్బతిన్న ఇండ్ల వివరములు ఈ క్రింది చూపిన విధంగా కలవు

క్రమ సంఖ్య	కాలనీ పేరు	మొత్తం ఇళ్ళు	పాక్షికంగా పగుళ్ళు వచ్చిన ఇళ్ళు
1	వెంగళరావు నగర్	448	445
2	విరాట్ నగర్	128	121
3	NTR కాలనీ	647	646

కావున ఇట్టి విషయము తమరికి తదుపరి చర్యల నిమిత్తం తెలియపరచనైనది.

సమాచార హక్కు చట్టం-2005
ద్వారా జారీ చేయబడినది

నాయబ్ తహశీల్దార్

సత్తుపల్లి మం||, ఖమ్మం జిల్లా.

o/c తమ విశ్వాస పాత్రుడు,

తహశీల్దార్,

సత్తుపల్లి మండలం



sravan kumar <advsravan@gmail.com>

Submissions in OA No. 174 of 2020, Nandu Naik Vs Singareni Collieries & Ors

1 message

sravan kumar <advsravan@gmail.com>

Sat, Jan 22, 2022 at 2:20 PM

To: yasmeen ali <hyasmeenali@gmail.com>, Andapalli Sanjeev Kumar <andapallivakeel@gmail.com>, Sarashwathy Meyappan <advocatesarashwathy@gmail.com>, Sai Krishnan <lawsbi@gmail.com>
Cc: judicial-ngtsh@gov.in

Madam and Sir

Kindly find the submissions on behalf of the Applicant filed in OA No. 174 of 2020.

Please acknowledge the receipt of the same.

With regards

Sravan Kumar
Advocate for the Applicant
9811237009

3 attachments**Submissions on behalf of Applicant 22.1.2022.pdf**

1159K

**2017_9_scc_499_578_Common Cause Odisha Iron Mining without EC.pdf**

8580K

**N_2019_8_SCC_177 Meghalaya Coal Mines Judgment analysis.pdf**

3054K