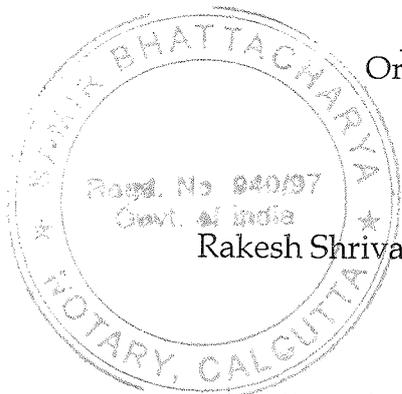


1/6

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

Original Application No. 44 of 2023/EZ



BETWEEN

Rakesh Shrivastava

...Petitioner

AND

Bihar Foundry and Castings Limited & Ors.

... Respondents

EXCEPTIONS ON BEHALF OF THE APPLICANT TO THE REPORT
DATED MAY 27, 2023 SUBMITTED ALONG WITH THE AFFIDAVIT
DATED JULY 25, 2023 FILED BY THE RESPONDENT NO. 4
(JHARKHAND STATE POLLUTION CONTROL BOARD)

Filed by:

ANUBHAV KHASTAGIR

Advocate

C/O Mr. Sarathi Dasgupta, Advocate

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Enrolment No. F/200/367/2023

27 FEB 2024

BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH

Original Application No. 44 of 2023/EZ

Between:

Rakesh Shrivastava

...Petitioner

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Bihar Foundry and Castings Limited & Ors.

... Respondents

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BEFORE THE LEARNED NATIONAL GREEN TRIBUNAL,EASTERN ZONE BENCH

Original Application No. 44 of 2023

Between:

Rakesh Shrivastava..... Applicant

And

Bihar Foundry and Castings Ltd. & Ors. Respondents

EXCEPTIONS ON BEHALF OF THE APPLICANT TO THE REPORT
DATED MAY 27, 2023 SUBMITTED ALONG WITH THE AFFIDAVIT
DATED JULY 25, 2023 FILED BY THE RESPONDENT NO. 4 (JHARKHAND
STATE POLLUTION CONTROL BOARD)

I, Rakesh Shrivastava, son of late Brijraj Shrivastava, aged about 49 years, by faith - Hindu, residing at H No. 308, near Durga Mandir Tilli, Sagar. (M.P.), Pin Code: 470009, do hereby solemnly state and affirm as follows

1. That I am the applicant in the Original Application No. 44/2023/EZ and I am acquainted with the facts and circumstances of this instant case.

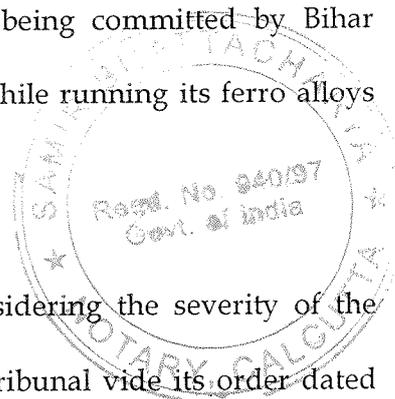


2. That it is humbly submitted that the instant case is filed by the Applicant raising series of violations of environment laws being committed by Bihar Foundry & Castings Limited (Ferro Alloys Unit) while running its ferro alloys plant.

3. That it is humbly submitted that by considering the severity of the allegations raised in the complaint, the Learned Tribunal vide its order dated April 28, 2023 had directed for a formation of special committee to conduct investigation in the premises of M/s. Bihar Foundry & Castings Ltd. (Ferro Alloys Unit) and to submit a detailed report on the issues raised in the original application. A server copy of the order dated April 28, 2023 passed by this Learned Tribunal is annexed hereto and marked as ANNEXURE - A1.

4. That it is further submitted that even after passing of specific directions by this Learned Tribunal, the Respondent Authorities have failed in conducting proper inspection of the M/s. Bihar Foundry & Castings Ltd. (Ferro Alloys Unit) plant and preparing a report on the issues raised in the Original Application being O.A. No. 44/2023/EZ.

5. That it is humbly submitted that the affidavit submitted by the Jharkhand State Pollution Control Board merely consists of a document which is labelled as "M/s. Bihar Foundry & Castings Ltd Statement in line of NGT order



dated 28.04.2023" and it is a table which contains the reply given by M/s. Bihar Foundry & Castings Ltd. with respect to the issues and contentions raised in the original application. However, there is no independent finding of the facts pertaining to issues raised in the Original Application.

6. That the affidavit submitted by the officials of Jharkhand State Pollution Control Board does not contain details of any inspection or the findings of expert committee with respect to the issues raised in the Original Application. The applicant, in its Original Application had raised specific issues relating to operations of M/s. Bihar Foundry & Castings Ltd. (Ferro Alloys Unit) like continuing operations without obtaining environment clearance, discrepancies in the area of the ferro alloy plant, non-installment of appropriate emission monitoring system, non-availability of area for plantation, non-availability of appropriate permissions for water usage etc. However, the committee has failed to give any findings with respect to these issues raised in the said Original Application in spite of the fact that these issues were specifically included by the Learned Tribunal in its order dated April 28, 2023 and a specific direction was issued to provide a detailed report on these issues.

7. Thus, considering that the expert committee formed in accordance with the directions of the Learned Tribunal has not conducted proper inspection of M/s. Bihar Foundry & Castings Ltd. and has failed to submit a detailed report

on the issues raised in the Original Application, it is humbly requested that the report submitted by the expert committee may not be accepted and a direction maybe issued to Respondent Public Authorities to conduct fresh independent inspection of the premises of the M/s. Bihar Foundry & Castings Ltd. and submit a detailed report on the issues raised in the original application.

8. That without prejudice to above, it is further submitted that the report submitted by the expert committee is completely meritless and does not address the issues raised in the Original Application and the directions of this Learned Tribunal which were issued on April 28, 2023. Some of the fallacies in the expert committee's report are produced below for reference-

I) Appointment of Committee Persons -

That the Learned Tribunal vide its order dated 28.04.2023 passed in OA No. 44/2023 (EZ) had directed for the constitution of a special committee comprising of the following members:

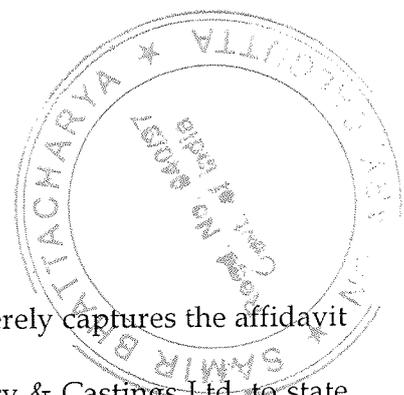
- a. Senior Scientist/Environmental Engineer, Jharkhand State Pollution Control Board,
- b. Senior Scientist/ Environmental Engineer, Integrated Regional Office, Ranchi, Ministry of Environment Forest and Climate Change, and
- c. Senior Scientist/ Environmental Engineer, Central pollution Control Board,



for inspecting the premises of M/s. Bihar Foundry and Castings Limited and submitting its report. The Learned Tribunal had directed constitution of committee consisting of senior members to ensure that the report is made properly to effectively determine the crucial instances of violations raised in the Original Application. However, a bare perusal of the report submitted by the Jharkhand State Pollution Control Board shows that the committee formed for the inspection of the Bihar Foundry's plant consisted of "C" grade scientists which are much lower in rank and expertise to the Senior Scientists. This shows that the order passed by the Learned Tribunal on April 28, 2023 is not effectively complied by the Jharkhand State Pollution Control Board.

Further, this non-compliance by Jharkhand State Pollution Control Board is done even when Senior Scientist as directed by the Learned Tribunal is posted in the Ministry of Environment, Forest & Climate Change and Central Pollution Control Board. Thus, the instant report submitted by the Jharkhand State Pollution Control Board is liable to be quashed and it is requested that a fresh direction maybe issued to form a committee consisting of senior scientist, retired judges with the direction to inspect the premises of M/s. Bihar Foundry & Castings Limited, in accordance with the order dated April 28, 2023 passed by the Learned Tribunal.

II) Objections to the merits of the Committee Report -



A. Regarding the name of the Ferro Alloy Unit:

It is humbly submitted that the committee report merely captures the affidavit submitted by the Director of the M/s. Bihar Foundry & Castings Ltd. to state that the name "Gautam Ferro Alloys" is merely a calling name for the ferro alloy unit of M/s. Bihar Foundry & Castings Ltd and is not a separate legal entity. However, it may be noted that the Director of M/s. Bihar Foundry & Castings Ltd. in its affidavit has submitted before the Learned High Court at Calcutta that "Gautam Ferro Alloy" is a proprietorship firm which by definition itself is a separate legal entity.

Further, the data entered for its Stacks by M/s. Bihar Foundry & Castings Ltd. in Online Emission Monitoring system shows the name of ferro alloy unit as "Gautam Ferro Alloys Private Limited" which further shows that M/s. Gautam Ferro Alloys being a separate private limited entity has its own legal entity and the permissions issued by M/s. Bihar Foundry & Castings Ltd cannot be inter alia used for Gautam ferro alloys and vice versa.

It is further submitted that the affidavit submitted by the Director of M/s. Bihar Foundry & Castings Ltd regarding status of M/s. Gautam Ferro Alloys is incorrect as in the affidavit dated April 11, 2023 annexed as Enclosure 1 of the committee report states that M/s. Gautam Ferro Alloys is not a legal entity and is merely a calling name of Bihar Foundry & Castings Ltd. It is, however,

submitted that there is no provision for calling name of company under the Companies Act, 2013. Further, in its affidavit dated September 24, 2020 submitted by Mr. Gaurav Budhia for renewal of consent to operate, it is submitted that Mr. Gaurav Budhia is the Director of M/s. Gautam Ferro Alloys which shows that M/s. Gautam Ferro Alloys is a separate legal entity having its own directors.

This fact is not reflected in the status report prepared by the expert committee and on the other hand, the expert committee by merely accepting the submissions of the key persons of M/s. Bihar Foundry & Castings Ltd. have prepared a report which is filed before the Learned Tribunal.

Photocopies of contradictory affidavits submitted by M/s. Bihar Foundry & Castings Ltd. are annexed herein as ANNEXURE - A2 (Colly.)

B. Ignoring the incorrect information regarding the area of the ferro alloy plant (Para 4 of report):

The environment clearance dated October 31, 2011 issued to M/s. Bihar Foundry & Castings Ltd. shows that the area of the plot bearing No. 1405 (wherein, the ferro alloy unit is situated) is 14 acres. This fact was brought out in the Original Application. However, the report fails to acknowledge the area of the plot bearing No. 1405 in the environment clearance dated October 31,

2011 and has recorded a submission that the area of the ferro alloy plant is merely 7.18 acres. This shows that the report is not made after conducting proper inspection of the submitted documents and the survey of the premises of the M/s. Bihar Foundry & Castings Ltd., and the said purported report is merely based on the answers to the queries submitted by M/s. Bihar Foundry & Castings Ltd.

The total area of M/s. Bihar Foundry & Castings Ltd. plant and the area between the Ferro alloy unit and the sponge iron unit are varying in all the approvals issued to M/s. Bihar Foundry & Castings Ltd. It is evident from the environment clearance dated October 31, 2011 that the area of the plot bearing No. 1405 is 14 acres wherein, the ferro alloy unit is situated. Further, the area of the plot bearing no. 1364 is also 14 acres which is evident from the environment clearance dated January 28, 2010 issued to sponge iron plant of M/s. Bihar Foundry & Castings Ltd. Photocopies of the relevant approvals showing the areas of the plot bearing No. 1364 and No. 1405 are already annexed as ANNEXURE - P/8 in the Original Application.

The above facts relating to varying plot details of M/s. Bihar Foundry & Castings Ltd. in several approvals issued to it are completely ignored in the committee report which shows that the report is not made with due care to address the valid issues raised in the Original Application and is merely made

to further recommendations of the EAC regarding issuance of environment clearance to the ferro alloy plant of M/s. Bihar Foundry & Castings Ltd.

It is humbly submitted that in 2 different approvals dated October 31, 2011 (for environment clearance) and Consent to Operate dated January 06, 2016, the area of the plot bearing No. 1405 is reduced from 14 acres to 7.26 acres. Further, the committee report states that the area of the plot bearing No. 1405 is merely 7.18 acres and fails to acknowledge that this area is in deviation of the area of the land mentioned in the prior approvals issued to M/s. Bihar Foundry & Castings Ltd.

The Applicant in its application has specifically made submission that M/s. Bihar Foundry & Castings Ltd. is hiding the actual plot area of its ferro alloy plant to deliberately avoid the compliance of making 33% green belt area. However, even after such specific allegation and documents showing clearly misleading information, the committee report has accepted the submissions of M/s. Bihar Foundry & Castings Ltd. and stated that the plot area of the ferro alloys plant is just 7.18 acre.

It is further submitted that a bare perusal of the details of land provided in page 10 of the committee report would show that for Unit -II i.e. the ferro alloy unit of M/s. Bihar Foundry & Castings Ltd, 3.51 acres land was granted by State Govt. in 1985 for period of 99 years on lease. However, the environment clearance was issued to M/s. Bihar Foundry & Castings Ltd. for its ferro alloy

unit provides that the same is granted for 14 acres of land. This, discrepancy of issuing prior environment clearance to M/s. Bihar Foundry & Castings Ltd. when it did not even have the mentioned area of land is glaring and was completely neglected in the committee report.

It is further to been seen that M/s. Bihar Foundry & Castings Ltd. had obtained another 3.67 acres of land for its ferro alloy unit only in the year 2020. This would mean that all the environment clearances and Consent to Operate issued to M/s. Bihar Foundry & Castings Ltd. prior to 2020 were in complete abeyance of the applicable laws as the same were granted to M/s. Bihar Foundry & Castings Ltd when M/s. Bihar Foundry & Castings Ltd. was not even in possession of such parcels of land.

This shows that the competent authorities had not perused the documents submitted by M/s. Bihar Foundry & Castings Ltd. while issuing the various approvals to it and similarly the expert committee formed after the directions of the Learned Tribunal has also failed to take notice of these issues showing discrepancies in the area of land of M/s. Bihar Foundry & Castings Ltd. Thus, it is evident that the committee has failed to conduct proper inspection and therefore, the report prepared by committee is liable to be set aside.

It is also pertinent to note that M/s. Bihar Foundry Castings Limited is showing varying details of land for its ferro alloy plant in different approvals obtained by it however, the satellite image of the M/s. Bihar Foundry & Castings Limited

as obtained from Google Earth shows that the area of its ferro alloy plant is 9.64 acre. This fact is not reflected in committee report and therefore, it is necessary that a fresh investigation is carried out in BFCL's plant.

C. Land taken for Sponge iron plant without obtaining environment clearance
(para 5 of report)

The committee report in its para 5 (page 5 of 19) mentions that M/s. Bihar Foundry & Castings Ltd. has taken additional 5.5 acres of land. Further, the committee report also takes into account that M/s. Bihar Foundry & Castings Ltd. has obtained Consent to operate for 19.5 acres of land in 2020.

However, the committee report fails to address the point that the said additional land is purchased by M/s. Bihar Foundry & Castings Ltd. and the company has further obtained Consent to Operate for its sponge iron plant in the additional land admeasuring 5.5 acres issued to M/s. Bihar Foundry & Castings Ltd. even when M/s. Bihar Foundry & Castings Ltd. does not have environment clearance to setup sponge iron plant in 19 acres.

These, lacunas in the process of granting approvals to M/s. Bihar Foundry & Castings Ltd. and further ignoring the same in the report shows that the committee report is not made diligently and relevant facts of the case showing the major environmental violation being done by M/s. Bihar Foundry &

Castings Ltd. are not addressed in the committee report and therefore, the instant committee report is liable to be set aside.

D. Non availability of green belt area (para 6 of report)

That the report in its para 6 at page 5 states the steps taken by the M/s. Bihar Foundry & Castings Ltd. to ensure compliance of 33% green belt area. However, the report merely records the submissions made by M/s. Bihar Foundry & Castings Ltd. relating to the compliance of mandatory 33% green belt area and fails to acknowledge that even when the Environment clearance for the ferro alloy unit of M/s. Bihar Foundry & Castings Ltd. was issued in 2011 for 14 acres land, M/s. Bihar Foundry & Castings Ltd has till date avoided compliance of setting-up 33% green area. Further, the report does not even provide the area in which M/s. Bihar Foundry & Castings Ltd is required to setup its green belt area.

The report notes that M/s. Bihar Foundry & Castings Ltd. does not have sufficient green belt area and is planning to acquire more land to set up green belt in compliance of the environment norms, however, the fact that this violation is being committed for more than 10 years and series of approvals were granted in spite of continuous violations is not even mentioned in the committee report. These facts are not reflected in the report prepared by the committee and therefore, in order to ensure compliance of all norms of

environment, it is requested that the Learned Tribunal may direct formation of committee and preparation of fresh independent report properly addressing the issues raised in the petition.

E. Regarding lack of availability of water to run ferro alloy plant (Committee has failed to provide any finding on the issue that the available permission with M/s. Bihar Foundry & Castings Ltd is not sufficient to run its ferro alloy plant)

It is humbly submitted that the applicant had raised issues regarding lack of availability of water to run the ferro alloy plant set up by M/s. Bihar Foundry & Castings Ltd. Further, the committee has completely left this point unaddressed and has merely provided the available permissions with M/s. Bihar Foundry & Castings Ltd. to utilise the ground water. The issue regarding whether the permissions available with M/s. Bihar Foundry & Castings Ltd. are sufficient to run its ferro alloy plant in its current stage and after its expansion is completely ignored in the committee report which shows that the report is prepared without application of mind and in a routine manner and therefore, it is necessary that a fresh investigation is conducted and a report is prepared to address the issues raised in the Original Application.

F. Regarding installation of CAAQMS (Continuous ambient air quality monitoring system)

The committee has in page 7 of its report has noted that the CAAQMS is installed with PM 10 analyser. However, the report has conveniently ignored that the CEPI guidelines provide that CAAQMS should be installed to analyse not just PM 10 but PM 2.5, SO_x, NO_x and CO in the industries situated in critically polluted area. Moreover, the compliance is also essential as M/s. Bihar Foundry & Castings Ltd. is a highly polluting "RED" category ferro alloy industry. This fact is not reflected in the report prepared by committee and it shows that the committee has not given proper finding in the report.

G. Non availability of green-belt outside project premises

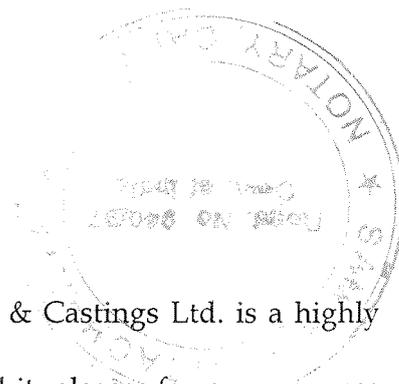
The committee report in page 9 mentions that the road side plantation is carried out by M/s. Bihar Foundry & Castings Ltd. However, KML file of the M/s. Bihar Foundry & Castings Ltd. plant shows that there is no plantation in the periphery of the M/s. Bihar Foundry & Castings Ltd plant. This shows that the report is not made properly as it contains factually incorrect findings which seem to have been incorporated by merely relying on the submissions made by M/s. Bihar Foundry & Castings Ltd. A copy of the map describing the land of M/s. Bihar Foundry and Castings Limited is annexed hereto and marked as ANNEXURE-A3.

H. Installation of STP

The issue of non-installation of STP is raised in the petition, however, the committee report in page 9 has merely taken submission of M/s. Bihar Foundry & Castings Ltd to state that since the domestic water generation of ferro alloy plant is less than 10 KLD, there is no need for STP. The committee report has not given finding on the issue that whether the statement made by M/s. Bihar Foundry & Castings Ltd. is correct in view of the fact that it is running a huge ferro alloy plant having production capacity of approx. 35000 TPA. Further, the details of existing employees of M/s. Bihar Foundry & Castings Ltd. to co-relate the usage of domestic water is also not provided in the report showing that it has been made without application of mind.

I. Dumping of waste

It is humbly submitted that M/s. Bihar Foundry & Castings Ltd. is a highly polluting "RED" category ferro alloy industry and it releases ferro manganese slag and silico manganese slag which as per the CEPI guidelines, 2019 is required to be dumped at permitted designated location with prior approval of State pollution Control Board. However, M/s. Bihar Foundry & Castings Ltd. has submitted before the committee that no such approval is required and the

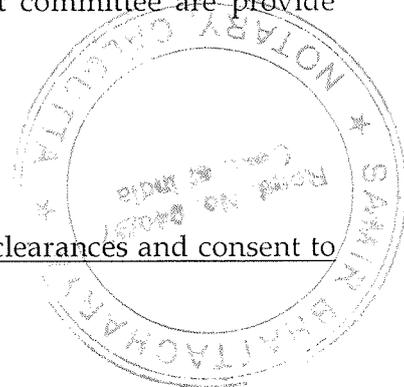


committee without considering the facts of the case and the applicable CEPI guidelines has accepted the statement made by M/s. Bihar Foundry & Castings Ltd. to state that no approval for dumping is required which shows that the report is not made properly and a fresh report is necessary to address the issues raised in the Original Application.

That apart from the objections raised above, the committee formed by the Respondent authorities have completely overlooked the major violations committed by M/s. Bihar Foundry & Castings Ltd. Some of the violations being committed by M/s. Bihar Foundry & Castings Ltd. in running its ferro alloy plant which are complete overlooked by the expert committee are provide below for reference-

- i. Plant is running without proper environment clearances and consent to operate

The plant is operating with expanded capacity without proper Consent to Operate and Consent to Establish. It is further submitted that even when environment clearance is not granted to M/s. Bihar Foundry & Castings Ltd. for its 1*7.5 MVA furnace (which was established in 2009), it has been issued a Consent to Operate and such Consent to Operate was even renewed in 2020. This serious violation of granting consent to operate a furnace even when M/s. Bihar Foundry & Castings Ltd. has not

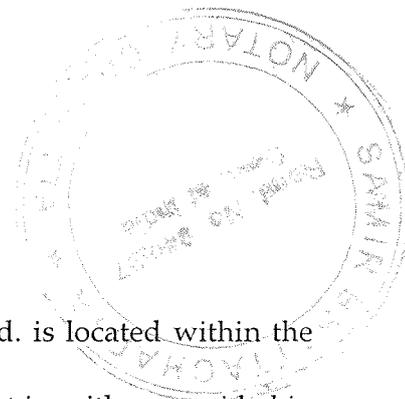


obtained environment clearance is completely ignored in the report prepared by expert committee.

It is further submitted that M/s. Bihar Foundry & Castings Ltd. has already constructed and carried out expansions and initiated operations from such expanded part of plant even when it has not obtained environment clearance yet. This illegal operation of the Ferro alloys plant and expansion without obtaining environment clearance and consent to operate is completely ignored in the committee report due to which it is extremely important that the instant committee report maybe set aside and a fresh report may be prepared to ensure the correct facts are brought before the Learned Tribunal.

ii. Cantonment & Forest area in the vicinity

The plant of M/s. Bihar Foundry & Castings Ltd. is located within the vicinity of the cantonment area. However, this fact is neither provided in the EIA report submitted by M/s. Bihar Foundry & Castings Ltd. nor is disclosed in the report prepared by the expert committee. Moreover, major expansion activities are allowed in the ferro alloy plant of M/s. Bihar Foundry & Castings Ltd. without the consent of the officials of the cantonment area. This issue is raised in the complaint but is completely



overlooked in the committee report and therefore, the report is liable to be set aside.

iii. Illegal expansion and construction of CLU Converter

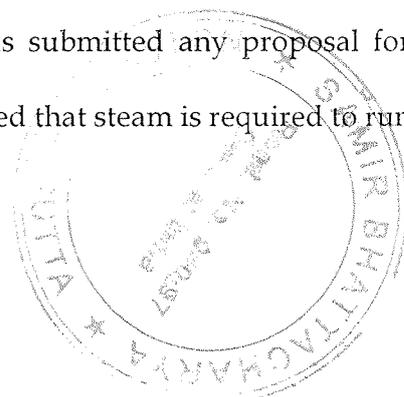
The CLU converter is constructed and is being run even when an order was issued by the Ministry of Environment, Forest & Climate Change to stop the construction of converter. This aspect is not addressed in the committee report and nothing is reported regarding the illegal expansion and the operation being carried out in ferro alloy plant of M/s. Bihar Foundry & Castings Ltd. Further, the fact that the exports are being made from the expanded part of the Ferro alloys plant without obtaining environment clearance till date shows that the appointed committee has not submitted a proper report depicting the true facts of the case.

iv. No provision for steam to be supplied to CLU converter

That it is humbly submitted that in Chapter 2 of page no. 2.21- 2.22 of revalidated EIA (Environment Impact assessment) report submitted by M/s. Bihar Foundry & Castings Ltd, it is shown that CLU converter which was proposed to be installed in ferro alloy plant required steam for its functioning. However, M/s. Bihar Foundry & Castings Ltd. has not

submitted consent for setting up of any boiler for production of such steam to be used in CLU converter. It is to be noted that M/s. Bihar Foundry & Castings Ltd. has already started functioning of its modified/upgraded ferro alloy plant without obtaining environment clearance. However, this operation can only work if the CLU converter is being supplied with steam. This would mean that M/s. Bihar Foundry & Castings Ltd. has setup a separate mechanism for production of steam to be supplied to its CLU converter which is not reflected in its EIA report and even then EAC has recommended granting of environment clearance to M/s. Bihar Foundry & Castings Ltd. This fact is not reflected in the status report prepared by the expert committee and therefore, the report being improper and incomplete in various aspects for failing to give the factual situation of M/s. Bihar Foundry & Castings Ltd. plant is liable to be set aside.

It is to be noted that *arguendo*, if it is considered that the M/s. Bihar Foundry & Castings Ltd. has not started functioning of its modified ferro alloy plant, even then the recommendations for grant of environment clearance issued in favour of M/s. Bihar Foundry & Castings Ltd. are questionable as the same are granted without considering the fact that M/s. Bihar Foundry & Castings Ltd. has submitted any proposal for production of steam even when it has stated that steam is required to run



its CLU converter. Since, the committee report also fails to acknowledge this technical aspect, the report is prima facie incomplete and liable to be set aside.

- v. Committee report has failed to address the non-provision for slag in the EIA submitted by M/s. Bihar Foundry & Castings Limited

The expert committee's report is silent with respect to the issue of non-provision of generation/disposal of slag that would form from the proposed expanded units of M/s. Bihar Foundry & Castings Limited.

9. That it is evident from the issues raised above that the report submitted by the expert committee is incomplete and made without application of mind by relying merely on the submissions of M/s. Bihar Foundry & Castings Ltd. Further, the expert committee appointed by the Learned Tribunal has failed to address the issues raised in the complaint and have not even conducted a proper inspection of the ferro alloy plant of M/s. Bihar Foundry & Castings Ltd and therefore, it is requested that this committee report may be quashed by the Learned Tribunal and directions maybe issued for initiating fresh investigation and for submitting detailed report on the issues raised in the complaint and the instant objections pertaining the violations of environment laws being done in the ferro alloy plant of M/s. Bihar Foundries & Castings Limited.

10. That the statements made in paragraphs 1 to 9 hereinabove are ~~are~~ true to my knowledge and belief.

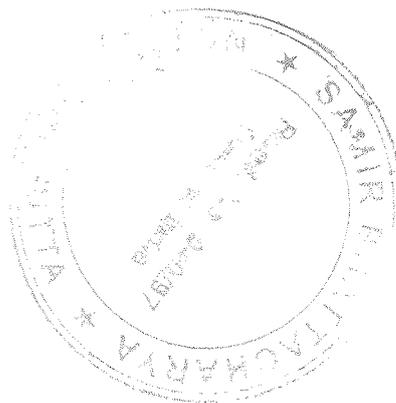
Rekesh

Deponent

Prepared in my office,

Identified by me,

Anubhauk Kestogin
Advocate
F/200/367/2023



Solemnly Affirm and
Declared before me U/S 12,
CPC / U / 297 (C) CrPc

Notary

27.2.24

Samir Bhatnagar
Notary, Govt. of India
27 FEB 2024 Regd. No.-940/97
City Civil Court, Calcutta

Item No.01

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.44/2023/EZ

Rakesh Shrivastava

Versus

Applicant(s)

Bihar Foundry and Casting Limited &Ors.

Respondent(s)

Date of hearing: 28.04.2023

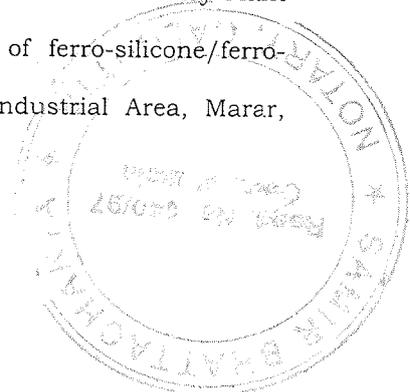
**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Mr. Nilanjan Pal, Advocate (in Virtual Mode)

ORDER

1. In pursuance of our previous order dated 27.04.2023, Mr. Nilanjan Pal, learned Counsel, on instructions received from the Applicant, states that the Applicant has not filed any Original Application before the National Green Tribunal, Principal Bench and, in fact, only a letter dated 03.11.2022, copy of which has been filed as Annexure-P/12 to the Original Application, was sent by him to the Principal Bench.
2. We find that the National Green Tribunal, Principal Bench took cognizance of that letter and registered an Original Application as Original Application No. 172/2023 (*Rakesh Shrivastava Vs. State of Jharkhand*) and has also constituted a Joint Committee comprising of; State PCB, CPCB, Regional Officer, MoEF&CC, Ranchi and District Magistrate, Hazaribagh, with a direction to the said Committee to visit the site, collect relevant information and submit its factual report as also action taken, if any, within two months.
3. We also find that the Principal Bench has not issued any notices to the Respondents.

4. Mr. Nilanjan Pal, learned Counsel then states that he has no notice of such Original Application, since the Original Application No. 172/2023 was never filed by the Applicant.
5. We specifically asked the learned Counsel for the Applicant as to whether he wants to prosecute the Original Application No.172/2023 pending before the National Green Tribunal, Principal Bench, or he wants to prosecute the present Original Application No. 44/2023/EZ in the National Green Tribunal, Eastern Zone Bench. Learned Counsel states that since the matter falls within the jurisdiction of the National Green Tribunal, Eastern Zone Bench, he would like to prosecute the Original Application No. 44/2023/EZ.
6. We have heard Mr. Nilanjan Pal, learned Counsel appearing (in Virtual Mode) for the Applicant.
7. The allegation of the Applicant in this Original Application is that the Respondent No.1, Bihar Foundry and Casting Limited, is a registered company engaged in the business of ferrous products, ferro alloys, ferro silico-manganese etc. and it was granted Environmental Clearance on 28.01.2010 by the Ministry of Environment, Forests and Climate Change, (Respondent No.3 herein), for expansion of its Steel Plant situated at Plot No. 1364, Ramgarh Industrial Area, Marar, Hazari Park, Jharkhand.
8. It is stated that on 31.10.2021, a further Environmental Clearance was issued to the Respondent No.1 by the Ministry of Environment, Forests and Climate Change, for expansion of its Ferro Alloy Plant by installing S.E.A.F. for manufacturing of ferro-silicone/ferro-manganese at Plot No. 1405, Ramgarh Industrial Area, Marar, Hazari Park, Jharkhand.



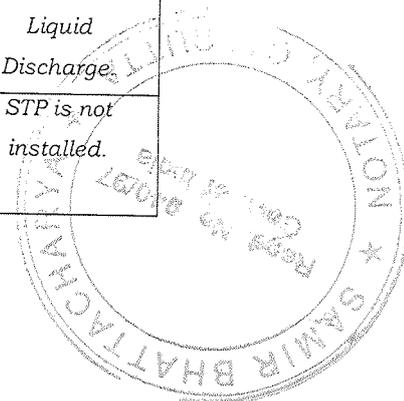
9. It is alleged that that the Respondent No.1 company obtained clearances in its own name but thereafter used these clearances to obtain permission for Consent to Operate in favour of M/s Gautam Ferro Alloys, (Respondent No.2 herein), which is a proprietorship firm and the Consent to Operate was granted in favour of M/s Gautam Ferro Alloys on 10.11.2020.
10. It is also stated in para 8 of the Original Application that the Respondent No.1 company has described the Respondent No.2 as 'its own Unit', although the Respondent No.2, M/s Gautam Ferro Alloys, in an affidavit filed before the High Court of Jharkhand, has claimed itself to be a 'Proprietorship Firm'.
11. It is further alleged that the Respondent No.2 filed an application for purposes of 'Online Continuous Emission Monitoring System' maintained by the Jharkhand State Pollution Control Board, describing itself as a 'Company'.
12. Further allegation of the Applicant is that the Respondent No.1 Company is engaged in illegal expansion of its Ferro Alloy Unit on 08.01.2010 for 'Sponge Iron Plant' located at Plot No. 1364, measuring 14 acres and obtained Environmental Clearance for Ferro Alloys Plant located at Plot No. 1405, measuring 14 acres on 31.10.2010. Thus, the Respondent No.1 has total 28 acres of area for its two Plants of Ferro Alloys and Sponge Iron each measuring 14 acres, though the Consent to Operate is in favour of Respondent No.2 firm which is situated on Plot No.1405, measuring area 7.26 acres whereas the area of Sponge Iron Plant in Consent to Operate dated 28.11.2019 shows its area as 19 hectares/47.5 acres.
13. There are other allegations that the Respondent No.1 has not fulfilled 33% of land as 'green belt' as required under the

Environmental Clearance. It is also stated that the said Plant of the Respondent Nos. 1 & 2 falls within the area notified as 'Severely Polluted Area' with clusters of 'Comprehensive Environmental Pollution Index (CEPI) ranging from 60-70.'

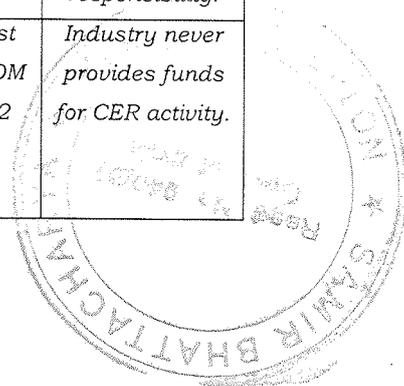
14. Further allegation of the Applicant is that the Respondent No.2 Plant is having production capacity of 34,000 tonnes, requiring at least 68 Kilo Litres (KL) of water for industrial use excluding domestic and office consumption of Plant but it has taken permission for drawl of only 33 KL water which is insufficient for production of 34,000 tonnes of ferro alloys.
15. Certain other breaches of stipulated conditions have been alleged in para 26 of the Original Application which are extracted herein below:-

<i>"Environment</i>		<i>Status</i>
Air	<i>Stipulation of conditions such as:</i>	
	i. <i>Stack emission levels should be stringent than the existing standards in terms of the identified critical pollutants.</i>	<i>Not followed by the industry.</i>
	ii. <i>CAAQMS may be installed in all large/medium red category industries (air polluting).</i>	<i>Not followed by the industry.</i>
	iii. <i>Effective fugitive emission control measures should be imposed in the process, transportation, packing etc.</i>	<i>Not followed by the industry.</i>
	iv. <i>Transportation of materials by rail/conveyor belt wherever feasible.</i>	<i>Not followed by the industry.</i>
	v. <i>Encourage use of cleaner fuels (pet coke/furnace Oil/LSHS may be avoided).</i>	<i>Not followed by the industry.</i>
	vi. <i>Best Available Technology may be used for dust collection.</i>	<i>No Dust collection System.</i>

	vii.	Increase of green belt cover by 40% of the total land area beyond the permissible requirement of 33%, wherever feasible.	Not even 20% of the total land is covered with greenbelt.
	viii.	Stipulation of greenbelt outside the project premises such as avenue plantation, plantation in vacant areas, social forestry, etc.	No outside plantation carried out by the industry.
	ix.	Assessment of carrying capacity of transportation load on roads inside the industrial premises. If the roads required to be widened, shall be prescribed as a condition.	Carrying capacity of the roads has not been assessed by the company. Roads are not maintained properly.
Water	Stipulation of conditions such as:		
	i.	Reuse/recycle of treated wastewater, wherever feasible.	ZLD is not maintained in the plant so no scope of recycling and reuse.
	ii.	Continuous monitoring of effluent quality/quantity in large and medium Red Category Industries (water polluting).	No STP & ETP installed by the industry therefore monitoring cannot be carried out.
	iii.	A detailed water harvesting plan may be submitted by the project proponent.	Not submitted by the industry.
	iv.	Zero liquid discharge wherever techno-economically feasible.	Industry doesn't maintain Zero Liquid Discharge.
	v.	In case, domestic waste water generation is more than 10 KLD, the industry may install STP.	STP is not installed.



Land	Stipulation of conditions such as:		
	i.	Increase of greenbelt cover by 40% of the total land area beyond the permissible requirement of 33%, wherever, feasible for new projects.	Not even 20% of the total land is covered with greenbelt.
	ii.	Stipulation of greenbelt outside the project premises such as avenue plantation, plantation in vacant areas, social forestry, etc.	No outside plantation carried out by the industry.
	iii.	Dumping of waste (fly ash, slag, red mud, etc.) may be permitted only at designated locations approved by SPCBs/PCCs.	No such approval from Jharkhand pollution control board.
	iv.	More stringent norms for management of hazardous waste. The waste generated should be preferably utilized in co-processing.	No such authorization taken for Gautam ferro alloy.
Other conditions (Additional)			
	i.	Monitoring of compliance of EC Conditions may be submitted with third party audit every year.	It is observed that all the EC Conditions submitted are false and fabricated and EC Compliance is not complied by Regional director of MoEF&CC.
	ii.	Corporate social responsibility.	No work under Corporate social responsibility.
	iii.	The % of the CER may be at least 1.5 times the slabs given in the OM dated 01.05.2018 for SPA and 2 times for CPA in case of Environment Clearance.	Industry never provides funds for CER activity.



16. It is further alleged that the Respondent No.1 Plant has set-up 1*75 MVA Unit which is being run since 2009 without Environmental Clearance.
17. In our opinion, matter requires consideration.
18. Issue notice to the Respondents, returnable within four weeks.
19. Mr. Sandip Agarwal, Mr. Tanay Agarwal, Mr. Shivam Bhimsaria and Ms. Nayantara Bhattacharya, learned Counsel file Vakalatnama on behalf of the Respondent No.1, Bihar Foundry and Casting Limited; the same is taken on record.
20. Ms. Anamika Pandey, learned Counsel appearing (in Virtual Mode), accepts notice on behalf of the Respondent No.3, Ministry of Environment, Forests and Climate Change.
21. Mr. Surendra Kumar, learned Counsel appearing (in Virtual Mode), accepts notice on behalf of the Respondent No.4, Jharkhand State Pollution Control Board.
22. Mr. Ashok Prasad, learned Counsel who is present in Court, accepts notice on behalf of the Respondent No.5, Central Pollution Control Board.
23. Issue notice to the Respondent No.2, Goutam Ferro Alloys, returnable within four weeks.
24. All the Respondents shall file their counter-affidavits within four weeks.
25. Considering the allegations made, we deem it appropriate to constitute a Committee comprising of the following Members:-
 - i) *Senior Scientist/Environmental Engineer, Jharkhand State Pollution Control Board;*



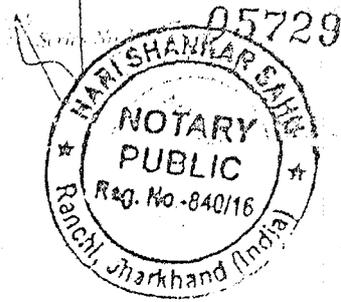
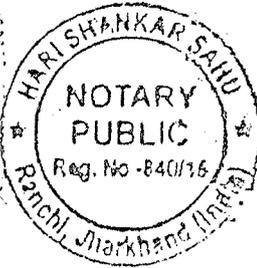
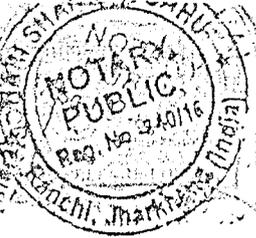
- ii) *Senior Scientist/Environmental Engineer, Integrated Regional Office, Ranchi, Ministry of Environment, Forests and Climate Change; and*
- iii) *Senior Scientist/Environmental Engineer, Central Pollution Control Board;*
26. The Committee shall visit the site in question and submit its report on affidavit with regard to the allegations made in the Original Application within four weeks.
27. The Jharkhand State Pollution Control Board, Respondent No.4, shall be the Nodal Body for all logistic purposes and for filing the affidavit bringing on record the Inspection Report of the Committee.
28. **List on 29.05.2023.**

.....
B. Amit Sthalekar, JM

.....
Dr.Afroz Ahmad, EM

April 28, 2023,
Original Application No.44/2023/EZ
AK





Authorised Under Notaries Act-1952 & Notaries Rules 1956 by Govt. of Jharkhand, Ranchi (India)

Before,
The Notary Public, Ranchi

AFFIDAVIT

12 SEP 2020

1891

Ref. No. Date.

I, Gaurav Budhia, aged about 32 years, son of Dr. Hari Krishna Budhia, by occupation Director of M/s Gautam Ferro Alloy (Unit: Bihar Foundry & Castings Ltd.), Ramgarh Industrial Area, Ramgarh, P.O. Marar, P.S. Ramgarh Cantt. District Ramgarh (Jharkhand) do hereby solemnly affirm and declare as follows:-

1. That I am the Director of M/s Gautam Ferro Alloys (Unit Bihar Foundry & Castings Ltd.), having Registered Office at Main Road, Ranchi-834001 (Jharkhand).
2. That we will purchase raw material from valid sources either through import or domestic to manufacture ferro alloys. If the purchase is illegal it will be punishable as per norms.
3. That, this affidavit is required to be produced before the Jharkhand State Pollution Control Board, Ranchi for renewal of existing Consent to Operate (CTO) for further five years.
4. That, the facts stated above are true to the best of my knowledge.

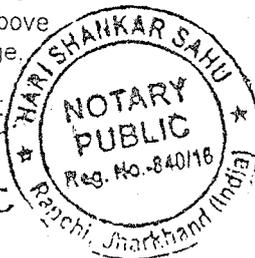
Sworn and signed this affidavit and verification on this the 21st day of the month of September, 2020 at Ranchi.

For Gautam Ferro Alloys
Unit of Bihar Foundry & Castings Ltd.

Gaurav Budhia
Deponent Director

The deponent who is identified by
B. C. L. N. Adv., Ranchi
do hereby solemnly affirmed and declared that the statements made above are true to the best of his knowledge information and belief.

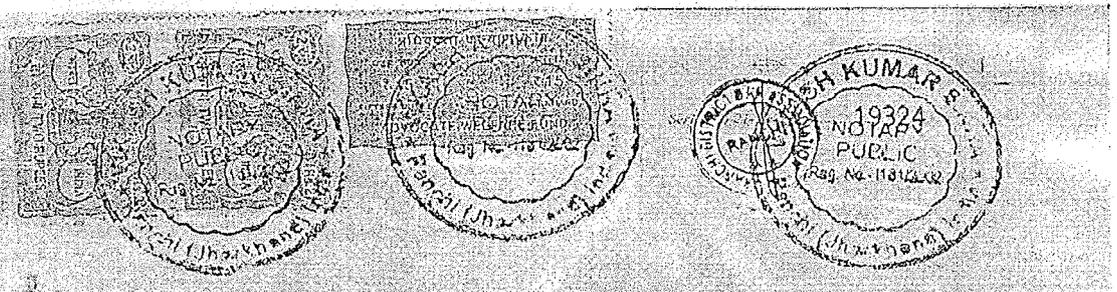
21/09/2020
NOTARY PUBLIC
RANCHI



Identified by me
Advocate, Ranchi
24/9/20
Signature attested on
Identification of lawyer.

319

Enclosure-1



AFFIDAVIT

I, Hari Krishna Budhia, son of late R.K. Budhia, aged about 78 years, resident of Near Surendra Nath Centenary School, Dipatoli, P.O. Bariatu, P.S. Sadar, District Ranchi do hereby solemnly affirm and declare as follows:-

1. That I am the Managing Director of the M/s Bihar Foundry & Castings Ltd. having its registered office at Main Road, Ranchi-834001 (Jharkhand) and I am fully conversant with the activities and operation of the company.
2. That Bihar Foundry & Castings Ltd. is a company having Registration No./CIN No. U27100JH1971PLC000912, PAN No. AAECB1852D, GST No. AAECB1852D1ZI, IEC No. 2193000298 under this company we have two units (1) Sponge Iron unit including Captive Power Plant and Induction Furnace and (2) Ferro Alloys unit having Submerged Arc Furnaces.
3. That Gautam Ferro Alloys is not a legal entity and is only a calling name for the ferro alloy unit of the Bihar Foundry & Castings Ltd.

Sworn and signed on this the 11th day of the month of April, 2023 at Ranchi.

FOR BIHAR FOUNDRY & CASTINGS LTD.

Hari Krishna Budhia

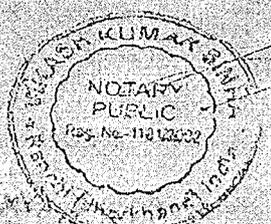
MANAGING DIRECTOR
Deponent

The deponent who is identified by Sri Adv., Ranchi by me do hereby solemnly affirm and declare that the statement made above are true to best of their knowledge and belief.

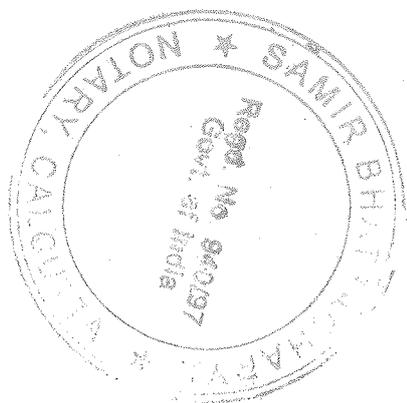
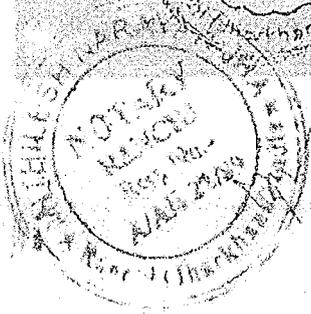
Identified

Advocate, Ranchi

[Signature]
Signature of the
Identified by Lawyer



[Signature]
11 April 23
NOTARY PUBLIC, RANCHI



11 APR 2023

Date

Ref. No. 467



BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

Original Application No. 44 of 2023/EZ

BETWEEN

Rakesh Shrivastava

...Petitioner

AND

Bihar Foundry and Castings Limited & Ors.

... Respondents

EXCEPTIONS ON BEHALF OF THE APPLICANT TO THE REPORT
DATED MAY 27, 2023 SUBMITTED ALONG WITH THE AFFIDAVIT
DATED JULY 25, 2023 FILED BY THE RESPONDENT NO. 4
(JHARKHAND STATE POLLUTION CONTROL BOARD)

Filed by:

ANUBHAV KHASTAGIR

Advocate

C/O Mr. Sarathi Dasgupta, Advocate

Room No. 3A, 3rd floor, "The Lords"

8, Strand Road, Kolkata - 700001

Mob.: 9748838188 / 8240431066

Email Id: anubhavkhastagir.kol@gmail.com

Enrolment No. F/200/367/2023