BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

ORIGINAL APPLICATION NO. 453 OF 2013

IN THE MATTER OF:

SHRI KALYAN BANSINGH & OTHERS **...APPLICANTS**

VERSUS

HIL LIMITED & OTHERS **...RESPONDENTS**

INDEX

Vanita Bhargava

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NEW DELHI
DATED: 29 SEPTEMBER 2020

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

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ORIGINAL APPLICATION NO. 453 OF 2013

IN THE MATTER OF:

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OBJECTIONS TO THE COMPLIANCE REPORT DATED 09 AUGUST 2020 ON BEHALF OF HIL LIMITED, THE RESPONDENT NO.1

1. That the Department of Mines and Geology, Government of Jharkhand has filed a compliance report dated 9 August 2020 in compliance of this Hon'ble Tribunal's order dated 7 January 2020 in O.A. No. 453/2013, O.A. No. 111 of 2014 and O.A. No. 113 of 2014.

2. That at the outset, it is submitted that the Department of Mines and Geology in its compliance report has proceeded on an incorrect and baseless assumption that safety measures for restitution of the erstwhile asbestos mines to mitigate environmental and health impact were not taken and that asbestos dust based pollution continued to be emitted resulting in health hazards and contamination of ponds and streams. The Compliance Report also assumes that there is environmental damage and the Respondent No. 1 can be held liable for the environmental damage as well as the supposed claim of asbestosis to the individual applicants.

That it is submitted that the erstwhile asbestos mines of the Respondent No.1 were closed in 1983. Further, the Respondent No.1 had surrendered the mines in 1984 and the same was accepted by the Government of Bihar in 1985. The Government of Bihar thereafter renotified the said mine for granting fresh lease to the prospective lessees during the relevant time. It is submitted that acceptance of the duly surrendered mine by the Government of Bihar (now Jharkhand) and renotification thereafter establishes that the surrender of the mines by the Respondent No.1 was proper and fully compliant with the then prevalent laws. Admittedly, post surrender of the mines i.e., after 1985, the possession of the subject mine was solely and exclusively with the State of Bihar (now with State of Jharkhand) till date. Therefore, at any cost, the Respondent No.1 ought not to be termed as `polluter'.

3. It is submitted that in the order dated 14 August 2018 passed in the present case, there was no finding that the Respondent No.1 was the polluter or that it had not taken the safety measures for restitution of the mines as per the then prevalent norms to mitigate the adverse environmental and health impact in the area. It is also submitted that there was nothing on record to show that the asbestos dust based pollution continued to be emitted resulting in health hazard and contamination of ponds and streams since the analysis reports of the soil and water clearly showed that there was no asbestos contamination.

4. In fact, Director General of Mines Safety, Chaibasa submitted an inspection report dated 8 May 2014 and 9 May 2014 in which it was inter-alia stated that the mine was closed in the year 1983. Further, a Joint Inspection was carried out of the erstwhile asbestos mine of the Respondent No.1 in pursuance to an order dated 29 October 2015 passed by the NGT and a report dated 15 January 2016 was submitted which inter

alia stated that the mine had been closed as far as back 1983; no violation of the Metallurgical Rules, 1961 prevalent at the relevant time were found; there were vegetation seen all along the area; river water was found clear; crops were found growing; analysis of water sample and soil sample showed that parameters were within prescribed limit and that fugitive dust emissions were not found from the asbestos mixed waste dump.

5. The Respondent No.1 had only raised objection to the following statement made in the joint inspection report:

> *"During rainy season, there is "possibility" of carrying out fine particles of asbestos into nearby land, Nallah and Roro river from the waste asbestos dump lying over a period of 30 years.*
>
> *During inspection fugitive dust emission was not found from the asbestos mixed waste dump, however there is a "possibility" of air borne fine particles in summer season."*

The Respondent No.1 in its written objections tendered to this Hon'ble Tribunal contended that the aforesaid statement was based on assumptions. The water sample analysis furnished by the Joint Inspection Team subsequently on 15 March 2016 show that all parameters were within the prescribed limit. There were no fugitive dust emission. Therefore, if for the past 30 years no adverse effects have occurred, there is no basis for assuming that in future there is a possibility of water and air getting contaminated. It was further contended by the Respondent No.1 in its affidavit dated 26 April 2016 that the tailings (asbestos waste) are left over rock with small amount of fibres locked in and cannot be removed even by powerful suction. Their release into the environment will be like any release of fibres from serpentine rock i.e., asbestos surface rock deposits. No significant asbestos dust can be generated from tailings as is evident from the Joint inspection report itself. Further, WHO while formulating Guidelines for drinking water observed that there is no consistent evidence that ingested asbestos is hazardous to health and thus concluded that there is no need to establish a health based guideline value for asbestos in drinking water.

6. Without taking note of the above, it is submitted that this Hon'ble Tribunal only relied upon the finding that the dump was lying even after 30 years and that there was a "possibility" of particles of asbestos flowing into the land or the river after such a long time and simply rejected the objections of the Respondent No.1 to the said findings without any plausible reason. The said objections were rejected even when the water sample and the soil sample clearly showed that even after a gap of 30 years there was no asbestos found in the nearby land, nalla and Roro river and therefore, the finding that there is a possibility of carrying of fine particles was not correct. Further, since the report found that there was no fugitive dust emission, a contradictory finding that there was a possibility of air borne fine particles in summer season is also incorrect.

7. It is pertinent to note here that there was no finding in the said order as to who was the polluter. Since the Hon'ble Tribunal had accepted the report, it had also accepted that the Respondent No.1 had surrendered the mines in 1984 and the same was accepted by the Government of Bihar in 1985.

8. The Compliance Report further states that Jharkhand State Pollution Control Board has been instructed to assess environmental damage and resultant environmental compensation so that the Respondent No. 1 shall be served notice for the payment of the said environmental damage cost **[Pg.3 of Compliance Report]**. However, it is pertinent to note that that the Joint Inspection Team appointed by this Hon'ble Tribunal itself found all

parameters to be within limits as already stated earlier. Further, there is no finding that the pollution caused is on account of the Respondent No.1's activities which were admittedly stopped in 1983. It is submitted that when no causal link has been established between the supposed pollution/environmental damage and the erstwhile asbestos mines of the Respondent No.1, the Jharkhand State Pollution Control Board will not be within its authority to recover the cost of such supposed environmental damage from the Respondent No.1.

9. In any event, it is pertinent to note that the aforesaid issues are sub-judice before the Hon'ble Supreme Court. The Respondent No. 1 filed a Civil Appeal bearing Diary No. 39475/2019 before the Hon'ble Supreme Court of India against the orders dated 14 August 2018 and 22 July 2019 passed by this Hon'ble Tribunal in OA No.453/2013. The Respondent also challenged the order dated 11 October 2019 in MA No.210/2019.

10. The aforesaid civil appeal was listed before the Hon'ble Supreme Court on 29 November 2019. The Hon'ble Supreme Court was pleased to issue notice in the aforesaid appeal and directed that status quo as on date is to be maintained in the meantime. Copy of the order dated 29 November 2019 is annexed herewith and marked as **ANNEXURE-A**.

11. It is submitted that the Ministry of Environment and Forests; Secretary, Jharkhand State Pollution Control Board; the Controller General, Indian Bureau of Mines and the Director General of Mines Safety were arrayed as respondents in the said civil appeal. Further, the order dated 17 September 2020 recorded that service of notice is complete on all respondents in the said civil appeal. Copy of the order dated 17 September 2020 is annexed hereto and marked as **ANNEXURE-B**. It is submitted that despite being aware of the order passed by the Hon'ble Supreme Court,

the Department of Mines and Geology has failed to even mention the said pertinent fact in its Compliance Report. In view of the order passed by the Hon'ble Supreme Court, it is submitted that status quo is to be maintained in the matter and no liability qua the Answering Respondent may be imposed by the Department of Mines and Geology or any other authorities.

12. The Compliance Report further for the very first time also states that the payment for the works undertaken by the Committee such as coir matting/soil capping work, retaining toe wall, bio-remediation, PCC road construction, repairing of approach road, construction of water tank, barbed wire fencing etc., seed sowing/plantations, will be recovered from the Respondent No.1 **[Pg. 4 of Compliance Report]**. On the other hand, the Compliance Report itself mentions that several schemes for reclamation and rehabilitation of the erstwhile asbestos mines are being undertaken using the DMFT Fund **[Pg.5 of the Compliance Report]**. The details of such schemes are also mentioned as including construction of water-tower, barbed wire fencing with R.C.C. pole, repairing of approach road, construction of 500 ft PCC road to Roro village chowk. It may also be noted that the earlier Compliance Reports dated 1 May 2019 and 13 November 2019 filed by the State of Jharkhand submitted before this Hon'ble Tribunal also clearly state that the cost is to be made available from the District Mineral Foundation Trust (**'DMFT'**). Therefore, without prejudice, it is submitted that the Committee cannot now change its stand and seek recovery of such works from the Respondent No.1. Further, the cost of the works ought not to be recovered twice from both the DMFT Fund and the Respondent No.1.

13. It is also pertinent to mention that as per the DMFT Fund status on the website of the Ministry of Mines, the total amount collected till date under the DMFT Fund in the State of Jharkhand is Rs. 5181.04 crores upto January 2020. Further, the total amount spent in the State of Jharkhand as on January 2020 is only 2409.22 crores. Therefore, it is submitted that an amount of Rs. 2772.02 crores remains unspent and unutilized till date, and the same should be utilized for the aforesaid works by the Government of Jharkhand. Copy of the DMFT Fund status is annexed hereto and marked as **ANNEXURE-C**.

14. It is submitted that the Department of Mines and Geology, Government of Jharkhand has also misrepresented the Action Taken Report as letter from DMO, Chaibasa in the Compliance Report. The Compliance Report placing reliance upon the said Action Taken Report, states that 164 out of 565 local residents were found with symptoms of asbestiosis, however, the letter submitted by the DMO, Chaibasa along with the statement of facts by the Deputy Commissioner, West Singhbum, does not even mention asbestiosis, It mentions that the said residents were found with symptoms of silicosis. It is submitted that asbestiosis and silicosis are different and cannot be treated in the same manner. It is submitted that the Compliance Report ought not to be accepted only in view of the glaring and deliberate misrepresentation on behalf of the Department of Mines and Geology, Government of Jharkhand.

15. In light of the above, it is prayed that this Hon'ble Tribunal may kindly consider the aforesaid objections to the Compliance Report. Further it is humbly submitted that no action may be taken against the Respondent No.1 pursuant to the report till the pendency of Civil Appeal 39475/2019.

RESPONDENT NO.1

THROUGH

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PLACE: NEW DELHI

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VERSUS

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AFFIDAVIT

I, KR. Veerappan, son of Shri S. Karuppan Chetty, aged about 53 years, resident of Flat # 714, Vayu Block, My Home Nawadweepa Apartment, Madhapur, Hyderabad-500 081, do hereby solemnly affirm and state as hereunder:-

1. That I am the Chief Financial Officer of the Respondent No.1 Company in the above-mentioned matter and I am well aware of the facts and circumstances of the case. I am therefore competent and authorized to affirm the present affidavit on behalf of the Respondent No.1 Company.

2. That I have read and understood the contents of the accompanying Objections to the Compliance Report dated 9 August 2020, which has been drafted under my instructions and state that the contents of the same are true and correct to my knowledge based on the records maintained by the Respondent No.1 Company.

3. I say that the contents of the para no. 1 and 2 of the affidavit are true and correct.

KARUPPAN CHETTY VEERAPPAN
Digitally signed by KARUPPAN CHETTY VEERAPPAN
Date: 2020.09.29 10:21:34 +05'30'

DEPONENT

VERIFICATION:

I, the Deponent above named, do hereby verify that the contents of foregoing affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at __________ on this 29th day of September 2020.

KARUPPAN CHETTY VEERAPPAN
Digitally signed by KARUPPAN CHETTY VEERAPPAN
Date: 2020.09.29 10:22:18 +05'30'

DEPONENT

Annexure-'A'

11

ITEM NO.17 COURT NO.4 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 39475/2019

(Arising out of impugned final judgment and order dated 14-08-2018 in OA No. 453/2013 22-07-2019 in OA No. 453/2013 11-10-2019 in MA No. 210/2019 passed by the National Green Tribunal)

HIL LIMITED Appellant(s)

VERSUS

KALYAN BANSINGH & ORS. Respondent(s)

(IA No.177424/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.177425/2019-EX-PARTE STAY and IA No.177427/2019-EXEMPTION FROM FILING O.T. and IA No.177422/2019-CONDONATION OF DELAY IN FILING APPEAL and IA No.177429/2019-PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 29-11-2019 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Appellant(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Pinaki Mishra, Adv.
Mr. Ajay Bhargava, Adv.
Ms. Vanita Bhargava, Adv.
Ms. Shweta Kabra, Adv.
For M/s. Khaitan & Co., AOR

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Applications seeking exemption from filing Official Translation and Certified Copy of the impugned order are allowed.

Issue notice.

Status *quo*, as of today, shall be maintained in the meantime.

Validity unknown
Digitally signed by R NATARAJAN
Date: 2019.11.29
16:59:00 IST
Reason:

(R. NATARAJAN)
COURT MASTER (SH)

(NISHA TRIPATHI)
BRANCH OFFICER

(T.C.)

ANNEXURE-'B'

ITEM NO.22 REGISTRAR COURT. 1 THROUGH VIDEO CONFERENCE
SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

BEFORE THE REGISTRAR SH. ANIL LAXMAN PANSARE

Civil Appeal No(s). 9136-9138/2019

HIL LIMITED Appellant(s)

VERSUS

KALYAN BANSINGH & ORS. Respondent(s)
(IA No.177424/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.177425/2019-EX-PARTE STAY and IA No.177427/2019-EXEMPTION FROM FILING O.T. and IA No.177422/2019-CONDONATION OF DELAY IN FILING APPEAL and IA No.177429/2019-PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 17-09-2020 These appeals were called on for hearing today.

For Appellant(s)
Ms Swati Jain, Adv.
M/S. Khaitan & Co., AOR

For Respondent(s)
Ms Anmol Gupta, Adv.
Ms. Srishti Agnihotri, AOR
Mr Kumar Anurag Singh, Adv.
Mr Nishant Piyush, Adv.
Ms. Tulika Mukherjee, AOR

UPON hearing the counsel through Video Conference, the Court made the following

O R D E R

Respondent nos.1,2,12,15,16 and 20 are granted four weeks time, as last opportunity for filing counter affidavit, as service is complete on 16.12.2019 to 20.1.2020 respectively and vakalatnama has been filed on 14.1.2020 and 22.2.2020 respectively.

Service is complete on respondent nos. 3 to 11, 13,14,17 to 19 and 21 but none has entered appearance.

Registry to process the matter for listing before the Hon'ble Court after completion of period of four weeks whether counter affidavit is filed or not as further opportunity stands declined.

ANIL LAXMAN PANSARE
Registrar

(T.C.)

ANNEXURE-'C'

DMF Fund Status - upto January 2020

Amount in Cr

Sr. No.	State	DMF figures as on	Total No. of Districts in State	Total Number of districts in which DMF has been set up	Date of notifing the DMF		Total amount collected under DMF in respect of Coal & Lignite	Total amount collected under DMF in respect of Major Minerals (Other than Coal & Lignite)	Total amount collected under DMF in respect of Minor Minerals	Total amount collected under DMF
					For Major Minerals	For Minor Minerals				
1	Andhra Pradesh	**31.01.2020**	13	13	27.06.2015	27.06.2015	0.00	449.47	456.15	905.62
2	Chhattisgarh	**31.01.2020**	27	27	02.01.2016	02.01.2016	2685.39	2138.77	156.58	4980.73
3	Goa	**31.01.2020**	2	2	15.01.2016	N/A	0.00	188.65	0.00	188.65
4	Gujarat	**31.01.2020**	33	32	01.04.2016	01.04.2016	91.98	328.96	247.17	668.11
5	Jharkhand	**31.01.2020**	24	24	23.03.2016	13.01.2017	3853.04	1137.79	190.21	5181.04
6	Karnataka	**31.01.2020**	30	30	11.01.2016	12.08.2016	0.00	1558.24	284.15	1842.39
7	Maharashtra	**31.01.2020**	36	35	01.09.2016	01.09.2016	1053.96	228.13	446.36	1728.45
8	Madhya Pradesh	**31.01.2020**	51	51	28.6.2016	N/A	2311.98	547.08	5.27	2864.32
9	Odisha	**31.01.2020**	30	30	18.08.2015	18.08.2015	2308.47	7149.40	43.61	9501.48
10	Rajasthan	**31.01.2020**	33	33	31.05.2016	31.05.2016	67.43	2977.81	468.90	3514.15
11	Tamilnadu	**31.01.2020**	32	30	19.05.2017	19.05.2017	232.65	233.12	144.52	610.30
12	Telangana	**31.01.2020**	33	32	19.1.2016	19.1.2016	1898.20	273.18	602.62	2774.00
Sub -Total			**344**	**339**			**14503.08**	**17210.60**	**3045.55**	**34759.24**
13	Assam	**31.01.2020**	33	33	26.08.2016	N/A	49.78	13.74	17.09	80.61
14	Bihar	**31.01.2020**	38	38	23.05.2018	23.05.2018	0.00	3.91	68.61	72.52
15	Himachal Pradesh	**31.01.2020**	12	12	22.08.2017	22.08.2017	0.00	103.30	40.00	143.30
16	Jammu & Kashmir	**31.01.2020**	22	22	11.01.2017	11.01.2017	0.00	19.38	11.51	30.89
17	Kerala	**31.01.2020**	14	14	22.05.2018	22.05.2018	0.00	9.19	13.33	22.52
18	Meghalaya	**31.01.2020**	11	6	08.12.2017	08.12.2017	0.00	42.63	6.17	48.80
19	Uttarakhand	**31.01.2020**	13	13	17.11.2017	17.11.2017	0.00	0.24	72.62	72.86
20	Uttar Pradesh	**31.01.2020**	75	75	15.05.2017	15.05.2017	344.42	27.07	280.02	651.51
21	West Bengal	**31.12.2019**	23	22	29.07.2017	29.07.2017	11.07	0.02	32.04	43.12
Sub-Total			**241**	**235**			**405.27**	**219.48**	**541.40**	**1166.15**
Grand Total			**585**	**574**			**14908.35**	**17430.08**	**3586.95**	**35925.39**

Project & Fund Allocation / Utilization Status (As on January 2020)

Sr. No.	State	No. of Projects Sanctioned	No. of Projects yet to start	No. of Projects Completed	No. of Ongoing Projects	No. of Projects Scrapped / Cancelled	Amount Allocated (In Cr.)	Amount Spent (In Cr.)
1	Andhra Pradesh	12267	1538	4438	5758	533	752.62	169.85
2	Chhattisgarh	36565	0	22687	11734	2144	4829.84	3358.45
3	Goa	5	1	0	4	0	7.38	4.06
4	Gujarat	12989	3144	5270	1846	2729	651.23	236.56
5	Jharkhand	17437	1231	13990	2109	107	4979.96	2409.22
6	Karnataka	4180	2279	579	1206	116	1815.53	320.29
7	Maharashtra	5366	0	1029	4337	0	1181.62	608.92
8	Madhya Pradesh	8961	2174	3679	2822	286	2173.25	852.96
9	Odisha	13519	2816	6638	4065	0	9084.74	2794.19
10	Rajasthan	17014	6184	3824	4379	2627	2641.99	748.63
11	Tamilnadu	1528	317	795	396	20	416.81	228.56
12	Telangana	18935	6797	4606	7314	218	1739.41	492.04
	Sub Total	**148766**	**26481**	**67535**	**45970**	**8780**	**30274.38**	**12223.72**
13	Assam	114	60	8	39	7	39.10	4.86
14	Bihar	19	0	1	18	0	5.24	0.38
15	Himachal Pradesh	56	56	0	0	0	14.39	0.00
16	Jammu & Kashmir	30	3	9	9	9	3.89	1.17
17	Kerala	0	0	0	0	0	0.00	0.00
18	Meghalaya	0	0	0	0	0	0.00	0.00
19	Uttarakhand	424	416	1	0	7	16.97	0.50
20	Uttar Pradesh	710	23	1	683	3	293.41	181.90
21	West Bengal#	59	7	16	36	0	4.21	1.85
	Sub Total	**1412**	**565**	**36**	**785**	**26**	**377.21**	**190.66**
	Total	**150178**	**27046**	**67571**	**46755**	**8806**	**30651.59**	**12414.38**

Data as on December 2019

(T.C.)