

IN

Threat to life arising out of coal mining in South Garo Hills District

...Applicant

Versus

State of Meghalaya & Ors.

...Respondents

APPLICATION ON BEHALF OF HILLS CEMENT COMPANY
LIMITED FOR IMPLEADMENT IN ARRAY OF RESPONDENTS

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FILED THROUGH:



NAWNEET VIBHAW
SHARDUL AMARCHAND MANGALDAS AND CO.

ADVOCATES FOR THE APPLICANT

216, OKHLA INDUSTRIAL ESTATE, PHASE III

NEW DELHI – 110 020

E-MAIL: nawneet.vibhaw@amsshardul.com, M.: 8800491477

DATE: 13.12.2023

PLACE: New Delhi

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

EASTERN ZONE BENCH, KOLKATA

I.A. NO. OF 2023

IN

ORIGINAL APPLICATION NO. 154 OF 2023 (EZ)

Threat to life arising out of coal mining

in South Garo Hills District

...Applicant

Versus

State of Meghalaya & Ors.

...Respondents

APPLICATION ON BEHALF OF HILLS CEMENT COMPANY
LIMITED FOR IMPLEADMENT IN ARRAY OF RESPONDENTS

TO,

THE HON'BLE CHAIRPERSON AND HIS COMPANION

MEMBERS OF THE HON'BLE NATIONAL GREEN TRIBUNAL

MOST RESPECTFULLY SHOWETH:

1. That the present application is filed seeking permission of this Hon'ble Tribunal to implead the present Applicant as a Respondent in OA No. 154 of 2023 (EZ). The case records of the present case have been transferred

from the Principal Bench of this Hon'ble Tribunal in New Delhi to this Hon'ble Bench in Kolkata vide Order dated 22.08.2023 passed by the Hon'ble Principal Bench in New Delhi in OA No. 110 (THC) of 2012. True copy of the Order dated 22.08.2023 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi in OA No. 110 (THC) of 2012 titled "*Threat to life arising out of coal mining in South Garo Hills District vs State of Meghalaya & Ors.*" is appended herewith and marked as **Annexure A-1 on page 7.**

2. The Applicant herein had filed Civil Appeal No. 781 of 2022 titled "*Hills Cement Company Limited vs. The State of Meghalaya & Ors.*" before the Hon'ble Supreme Court challenging the Order dated 17.01.2020 passed by this Hon'ble Tribunal in OA No. 110 (THC) of 2012 on the ground that the said Order was passed without providing the Applicant an opportunity to be heard. The Hon'ble Supreme Court tagged the Civil Appeal No. 781 of 2022 filed by the present Applicant with Civil Appeal No. 3280 of 2020 titled "*Star Cement Limited & Ors. vs The State of Meghalaya & Ors.*". The Hon'ble Supreme Court disposed of the batch of appeal vide its final order dated 02.05.2023 wherein it restored the proceedings in relation to the appellants to the stage at which the proceedings stood before the Order dated 17.01.2020 was passed by this Hon'ble Tribunal. The Hon'ble

Supreme Court further directed the appellants to submit their responses before this Hon'ble Tribunal.

True copy of the Order dated 02.05.2023 passed by the Hon'ble Supreme Court in Civil Appeal No. 3280 of 2020 titled "*Star Cement Limited & Ors. vs. The State of Meghalaya & Ors.*" is appended herewith and marked as **Annexure A-2 on pages 8 to 18.**

3. In compliance with the final order passed by the Hon'ble Supreme Court, the Applicant has filed the present application seeking its impleadment in the ongoing proceedings.
4. It is submitted that the present application has been filed in a bonafide manner and no harm whatsoever shall be caused to any of the parties if the present application is allowed.

PRAYER

In view of the aforesaid facts and circumstances it is, therefore, most respectfully prayed by the Applicant that this Hon'ble Tribunal may be pleased to:

- a. Allow the present application and implead the present Applicant i.e., Hills Cement Company Limited in the array of Respondents in Original Application No. 154 of 2023 (EZ) titled "*Threat to life arising out of coal mining in South Garo Hills District vs State of Meghalaya & Ors.*"

- b. Pass any other Order(s), as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

FILED THROUGH:



NAWNEET VIBHAW
SHARDUL AMARCHAND MANGALDAS AND CO.
ADVOCATES FOR THE APPLICANT
216, OKHLA INDUSTRIAL ESTATE, PHASE III
NEW DELHI – 110 020
E-MAIL: nawneet.vibhaw@amsshardul.com, M.: 8800491477

DATE: 13.12.2023

PLACE: New Delhi

Item No. 28

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 110(THC)/2012

Threat to life arising out of coal mining
in south garo hills district

Applicant

Versus

State of Meghalaya & Ors.

Respondent

Date of hearing: 22.08.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

ORDER

1. Since the matter relates to the Eastern Zone Bench, Kolkata, thus, the matter is transferred to Eastern Zone Bench, Kolkata
2. Thus, the Registry is directed to transfer and transmit the records of this matter to Eastern Zone Bench, Kolkata where the Registrar shall register the case and place before the Bench for further proceedings according to Rules.
3. List this matter before NGT Eastern Zone Bench, Kolkata on the date already fixed.

Sheo Kumar Singh, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

August 22, 2023
SN

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ANNEXURE A-2

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCivil Appeal No 3280 of 2020

Star Cement Limited & Ors

.... Appellant(s)

Versus

State of Meghalaya & Ors

....Respondent(s)

WITH

Civil Appeal No 4144 of 2020Civil Appeal No 2302 of 2021Civil Appeal No 2355 of 2021Civil Appeal Nos 2726-2727 of 2021Civil Appeal Nos 4991-4992 of 2021Civil Appeal No 781 of 2022Civil Appeal No 3528 of 2022Civil Appeal No 4962 of 2022

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ORDER

- 1 This batch of appeals arises from a judgment of the National Green Tribunal¹ dated 17 January 2020.
- 2 In 2012, the Gauhati High Court registered a public interest litigation *suo motu* on the basis of a news item in the month of July, stating that several labourers were trapped inside a coal mine resulting in large scale deaths. The proceedings before the Gauhati High Court were transferred to the NGT and were numbered as Original Application No 110 (THC)/2012.
- 3 In the meantime, in 2014, All Dimasa Students Union Dima Hasao District Committee instituted Original Application No 73 of 2014 before the Principal Bench of the NGT making serious allegations against ‘rat-hole’ mining operations which were being carried out in Jaintia Hills of the State of Meghalaya without regulation under the law.
- 4 The NGT issued an order on 17 April 2014 directing the State of Meghalaya to ensure the cessation of rat-hole mining forthwith and of the illegal transportation of coal.
- 5 During the pendency of the proceedings, a Committee was constituted on 9 June 2014 to quantify the coal that had already been extracted before the ban and to assess its location and value. The Committee was also to prescribe the mode of transportation. This was followed by subsequent orders of the NGT. On 31 August 2018, the NGT constituted a Committee chaired by a former Judge of the
- 1 “NGT”


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Gauhati High Court to look into the restoration of the environment and rehabilitation of the victims. The Committee was also to supervise issues pertaining to receivership / custodianship of the already extracted coal, including environmental issues arising out of storage and remedial steps. The Committee furnished a report on 2 January 2019, which was considered by the NGT in an order dated 4 January 2019.

- 6 The order also took note of another tragic incident which had taken place on 13 December 2018, despite the earlier ban by the NGT.
- 7 From the impugned order of the NGT, it emerges that the Committee had submitted three reports on 2 January 2019, 31 March 2019 and 2 August 2019, which were dealt with by the NGT in its orders dated 4 January 2019, 11 April 2019 and 22 August 2019. The Committee thereafter submitted reports dated 31 August 2019, 2 December 2019 and 3 December 2019. The gist of these reports was set out by the NGT. The Committee, in the course of its fifth interim report dated 2 December 2019, arrived at the conclusion that there was a huge gap in the quantity of coal required to produce the reported quantity of clinker and/or power and the coal reported to have been purchased from legal sources by the cement manufacturing plants and thermal power plants in the State of Meghalaya for which an audit was completed by the Committee. The Committee estimated the year-wise quantity of the coal required to produce the reported quantities of clinker and/or power, the coal actually purchased from legal sources and the gap between them for 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19. Having carried out this exercise, the Committee estimated in the case of nine industrial units:



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- (i) The quantity of illegal coal used in metric tonnes;
- (ii) The royalty payable;
- (iii) The contribution required to be made to the Environmental Protection and Restoration Fund; and
- (iv) GST/VAT payable.

The Committee submitted its sixth interim report dated 3 December 2019 to deal with the objections raised by the State of Meghalaya.

- 8 From the impugned order of the NGT, it emerges that the proceedings before the NGT came up for hearing on 9 January 2020 and the impugned order was uploaded on the website on 17 January 2020. After setting out the gist of the reports, the NGT dealt with the objections which were filed by the State of Meghalaya to the reports submitted by the Committee on 31 August 2019 and 3 December 2019. After rejecting the objections of the State of Meghalaya, the NGT proceeded to issue its directions, accepting all the recommendations of the Committee in the fourth interim report dated 31 August 2019, fifth interim report dated 2 December 2019 and sixth interim report dated 3 December 2019. The directions which have been issued by the NGT are summarized thereafter in paragraph 23, which is extracted below:

- “23. Without in any manner meaning to dilute the exhaustive recommendations of the Committee, the substance of the recommendations of the Committee can be summed up to include monitoring of illegal raising and transportation of coal by the Chief Secretary of the State; steps for punitive measures for illegal mining — filling up gaps in the regulatory regime; action for preventing



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- 10 Section 19(1) of the National Green Tribunal Act 2010 provides that the NGT shall not be bound by the procedure laid down by the Code of Civil Procedure 1908, but shall be guided by the principles of natural justice. The National Green Tribunal (Practices and Procedures) Rules 2011 provide in Rule 15 for service of notice and processes and in Rule 16 for the filing of replies and other documents by respondents.
- 11 The appellants were not parties before the NGT and did not have the opportunity to deal with the contents of the reports of the Committee appointed by it. The NGT had assigned a fact finding and recommendatory role to the Committee. The ultimate decision on the reports of the Committee had to be taken by the NGT, which could only be arrived at after considering the submissions of the parties, who would be directly affected by the findings of the Committee if they were to be accepted by the NGT.
- 12 Reading the impugned order of the NGT, we do not find any independent application of mind. The Committee, which was chaired by a former Judge of the High Court, had in the view of the NGT, carried out a copious exercise. But that would not obviate the need for the NGT to arrive at its own independent findings after furnishing the parties, who would be directly affected, an opportunity of being heard. The NGT having not done so, we would have to restore the proceedings in relation to the appellants back to the file of the NGT, at the stage, at which they stood prior to the passing of the impugned judgment dated 17 January 2020. Consequently, and to facilitate the above exercise, we set aside the impugned judgment dated 17 January 2020 in relation to its applicability to the appellants before this Court and direct that:



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- (i) The appellants shall submit their responses to the interim reports of the Committee appointed by NGT within a period of four weeks;
 - (ii) NGT shall furnish to the appellants an opportunity of being heard, after which it shall proceed to pass orders after dealing with the suggestions and objections of the appellants in accordance with law;
 - (iii) NGT shall take a final decision in three months; and
 - (iv) The appellants would be at liberty to apply to the NGT for inspection of records, including the underlying documents which were submitted by the Committee.
- 13 The appeals shall accordingly stand disposed of.
- 14 Pending application, if any, stands disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

New Delhi;
May 02, 2023
-S-



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- 4 The application for permission to file the Special Leave Petition and the Special Leave Petition are dismissed as withdrawn.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)



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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO. 154 OF 2023 (EZ)**

Threat to life arising out of coal mining
in South Garo Hills District

...Applicant

Versus

State of Meghalaya & Ors.

...Respondents

VAKALATNAMA

KNOW ALL to whom these presents shall come that Hills Cement Company Limited, appoints Mr. Shardul S. Shroff, Ms. Pallavi Shroff and Mr. Nawneet Vibhaw, Advocates of M/s. Shardul Amarchand Mangaldas & Co., 216, Amarchand Towers, Okhla Industrial Estate, Phase-III, New Delhi-110020 (hereinafter called "the Advocates") to be the Advocates for Hills Cement Company Limited in the abovementioned case, to do all the following acts, deeds and things or any of them, that is to say:-

1. TO ACT, appear and plead in the abovementioned case in this Court/Tribunal or any other Court/Tribunal in which the same may be tried or heard in Appeal or Review or Revision or Execution or in any other stage of its progress until its final decision.
2. TO PRESENT Pleadings, Appeals, Cross-Objections or Petitions for Execution, Review, Revision, withdrawal compromise or other Petitions or Affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said cause in all its stages.
3. TO EMPLOY any other Legal Practitioner authorising him to exercise the power and authority hereby conferred on the Advocates.

AND we hereby agree to ratify on behalf of Hills Cement Company Limited whatever the Advocates or their substitute/s responsible for the result of the said cause in consequence of their absence from the Court when the said cause is called up for hearing.

AND we hereby agree that in the event of the whole or any part of the fees agreed by me/us to be paid to the Advocates remaining unpaid they shall be entitled to withdraw from the prosecution of the said cause until the same is paid.

IN WITNESS WHEREOF I hereunto set our hand on behalf of the Hills Cement Company Limited Limited to these presents the contents of which have been explained to and understood by me, this the 13th day of December, 2023.

Accepted subject to the terms regarding fees payable to the Advocates.

Signature:.....

Name: Nawneet Vibhaw,
Advocate

Enrolment No. ...D/1502/2010.....

M. NO. 8800491477

M/s. Shardul Amarchand Mangaldas & Co.

Hills Cement Co. Ltd.

Nikhil Mittal

(Nikhil Mittal) Director
Authorised Signatory
Hills Cement Company Limited
Signature identified by

Signature.....
Name: PRANNOY SEBASTIAN, Advocate
D/9711/2019
M. NO. 9818598429



PROOF OF SERVICE

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Sebastian, Prannoy

From: Sebastian, Prannoy
Sent: Thursday, December 14, 2023 2:38 PM
To: 'enatoli@gmail.com'; 'avijitmani@gmail.com'; 'ccb.cpcb@nic.in';
'secy-moef@nic.in'
Cc: Vibhaw, Nawneet
Subject: Threat to life arising out of coal mining in South Garo Hills District
vs State of Meghalaya & Ors. [OA No. 154of 2023/ EZ] - Advance
Service of IA for Impleadment on behalf of Hills Cement Company
Ltd.
Attachments: Hills Cement IA for Impleadment - Service.pdf

Dear Sir/ Ma'am,

In reference to OA No. 154 of 2023 titled "*Threat to life arising out of coal mining in South Garo Hills District vs State of Meghalaya & Ors.*" pending before National Green Tribunal, Eastern Zone Bench at Kolkata, kindly find attached the IA for impleadment filed on behalf of **Hills Cement Company Ltd.**

Kindly treat this email as due advance service and acknowledge the receipt of the same.

Thanks and regards,

Prannoy