

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Exe. Appl No.09/2023
In
OA No. 634/2019

IN THE MATTER OF:

Anand

...Applicant

Versus

State of Haryana & Ors.

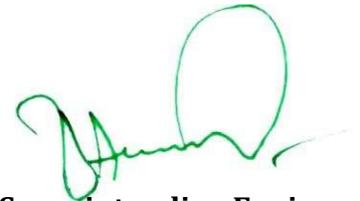
...Respondents

**REPLY ON BEHALF OF PUBLIC HEALTH ENGINEERING
DEPARTMENT HARYANA IN COMPLAINEE OF ORDER DATED
13.03.2023.**

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Dated: 11.05.2023



**Superintending Engineer,
Public Health Engineering Circle,
Rohtak**

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
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**REPLY ON BEHALF OF PUBLIC HEALTH ENGINEERING
DEPARTMENT HARYANA IN COMPLAINEE OF ORDER DATED
13.03.2023.**

MOST RESPECTFULLY SHOWETH:

- 1 That by way of present application, the applicant has prayed for direction to release/disburse the amount of Rs.3,00,000/- in favour of applicant and execution of order dated 20.11.2019 passed in OA NO.634/2019 and Order dated 19.08.2021 passed in OA No.205/2021.
- 2 That the Deputy Commissioner Rohtak, in compliance of order dated 20.11.2019 passed by this Hon'ble Tribunal, constituted a Committee consisting of the following officers:
 - (i) Superintendent Engineer, PHE Circle, Rohtak
 - (ii) Sub Divisional Officer (Civil), Rohtak
 - (iii) District Fisheries Officer, Rohtak
- 3 That such constituted Committee submitted its report dated 06.11.2020 with conclusion as reproduced below:

"From the above details scrutiny of record, site visit and on enquiry from nearby farmer, it is clear that the complainant is not having any proof (i) regarding ownership of land (ii) accounts of yearly income (iii) documents showing investment made by him on this job (iv) any subsidy received from government and (v) no proof of sewage getting into the pond on regular basis. It is clear that had the applicant made bandh on the open side of his so called land then there would have no

loss to him on account of water entering even in rainy season from the two drains. On the basis of above facts, the committee members are unanimously of the opinion that PHED is not at fault completely for the Fish kills in the pond of the applicant and the applicant seems to be trying to take undue advantage of Govt. Department for his financial gains. However as per the record on file it seems that the sewage water entered into this area as the Jassia drain was obstructed at its outfall point in drain No. 8 on 17.04.2019 due to construction work and the water being pumped by PHED could have flooded the drains and must have entered the Jassia Drain on upstream end and as there is no protection by the applicant for its pond. The Committee is of the opinion that though the applicant has not been able to justify his claims, even then as per the photographs attached it is clear that some fish kill has taken place at the said place. Hence it will meet the end of justice in case lump-sum compensation amounting to Rs. 3.00 lacs is paid to the complainant including interest etc. even than he failed to prove his claim. This amount of compensation will be in addition to subsidy, if any; he would have received from the government.”

Copy of report dated 06.11.2020 is enclosed herewith as **ANNEXURE-R/1**.

- 4 That in regard to complaint dated 01.06.2021 about death of fishes, the matter was enquired by the Committee of the Fisheries Officer, Rohtak and the Sub Divisional Engineer, PHED, Rohtak. As per report dated 23.07.2021, no sewage was mixed with water of the pond in question. Copy of report dated 23.07.2021 is annexed herewith as **Annexure-R/2**. This report was forwarded by Executive Engineer, PHED Rohtak to the SDM (Civil), Rohtak also vide his letter dated 07.09.2021.
- 5 That the sanction for the compensation amounting to Rs. 3,00,000/- as accessed by the committee constituted by the Deputy Commissioner, Rohtak was received vide the Additional Chief Secretary to Govt. of Haryana, Public Health Engineering

Department vide Memo dated 05-04-2023. In compliance of directions of Hon'ble N.G.T. the compensation amounting to Rs. 3,00,000/- has been paid to the applicant by the Public Health Engineering Department.

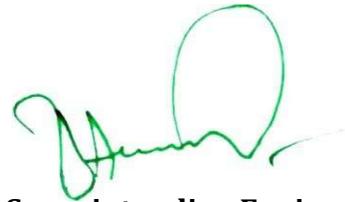
- 6 That in compliance of the orders of Hon'ble N.G.T. remedial measure has been taken. The domestic effluent is being disposed off in the drain downstream to the pond which has its natural gradient opposite to the pond & is towards drain No.8. There is no possibility of back flow of effluent into the pond. However, as a abundant caution a "earthen bundh" has already been created to avoid entry of domestic effluent into the pond through back flow in any circumstances. No complaint regarding fish death received after 20.07.2021, in the year 2022 and till date.

In order to clarify the location of pond in question and position of 'in and out drains', a google map is enclosed herewith as **Annexure-R/3**. One drain is shown from Point 'D' to Point 'E'. Sewage of the city is being channelized through underground pipeline from Point 'G' upto disposal point at point 'A'. From disposal point, sewage is pumped out and disposed through drain shown in red colour and reaches up to drain No.8 through points 'B', 'C' and 'H'. The earthen Bundh is created between point 'C' and 'F'.

The present reply may kindly be taken on record. The directions passed by this Hon'ble Tribunal shall be complied with.

Place: Rohtak

Dated: 11.05.2023



**Superintending Engineer,
Public Health Engineering Circle,
Rohtak**

प्रेषक:- कार्यालय अधीक्षक अभियन्ता, जन स्वास्थ्य अभियान्त्रिकी परिमण्डल, रोहतक
प्रेषित:-

उपायुक्त महोदय,
रोहतक।



F.R.
D.S./HDM/Sr. D.A.O./E.A./CC

क्रमांक न०:-

दिनांक:-

विषय:- NGT के आदेशो के बावजूद पब्लिक हेल्थ विभाग द्वारा प्रार्थी को मुआवजा न देने बारे गुहार।

संदर्भ:- आपके कार्यालय के पत्र क्रमांक 2684/सीईवी दिनांक 22.09.2020।

विषयाधीन मामले से संबन्धित एवं उपरोक्त विषय एवं संदर्भ के अंतर्गत आपकी सेवा में आपको अवगत कराया जाता है कि इस कार्यालय द्वारा तीन सदस्यीय एक कमेटी गठित की गई जिसमें निम्नलिखित सदस्य शामिल है:-

1. Superintending Engineer, PHE Circle, Rohtak
2. Sub Divisional Officer (Civil, Rohtak
3. District Fisheries Officer, Rohtak

जिसकी विस्तृत रिपोर्ट संलग्न सहित आपके कार्यालय को अग्रिम आवश्यक कार्यवाही हेतु प्रेषित है।

संलग्न/कमेटी रिपोर्ट
पेज न० 1 से 25 तक

पृष्ठ क्रमांक:- 9972

दिनांक 06/11/2020

अधीक्षक अभियन्ता

उपरोक्त की एक प्रति कार्यकारी अभियन्ता, जन स्वास्थ्य अभियान्त्रिकी मण्डल न० 3, रोहतक को सूचनार्थ एवं आगामी आवश्यक कार्यवाही हेतु भेजकर लिखा जाता है आप निजी तौर पर उपरोक्त मामले में माननीय उपायुक्त महोदय, रोहतक के कार्यालय में संपर्क करके उपरोक्त मामले का निपटान करवाए। इसमें किसी भी प्रकार की देरी/लापरवाही के लिए आप स्वयं ज़िम्मेदार होंगे।

इसे अति आवश्यक समझे।

अधीक्षक अभियन्ता

Endst. No. 6795

Dated. 25-11-2020

A copy is forwarded to the Sub Divisional Engineer Public Health Engineering Sub Division No.9, Rohtak for information. You are directed to get the dispute settled amicable by inviting the applicant at personal level as per amount given in the report last para of the committee.

Executive Engineer

Report of Committee constituted for taking remedial measures in compliance to NGT orders dated 20.11.2019

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A committee consisting of following officers from various department was constituted by Deputy Commissioner, Rohtak vide order No.424-26/C&EB dated 29.01.2020 to suggest/take remedial measures in compliance to NGT order dated 20.11.2019 and also to determining the loss caused to Sh. Anand S/o Sh. Mohinder Singh R/o H.No.961/18 Ghanipura, Rohtak. It is also term of the enquiry to find out as to which department will bear the expenses in lieu of compensation.

Committee Members :

1. Superintending Engineer, PHE Circle, Rohtak
2. Sub Divisional Officer (Civil), Rohtak
3. District Fisheries Officer, Rohtak

The committee members held several meetings, visited sites in question, scrutinized the record pertaining to instant case, enquiry from Public Health Engineering Department and from Fisheries Department. The applicant was asked to give the details of bills and other income to assess the loss, if any on actual basis. The Executive Engineer, PHED No. 3 Rohtak submitted his reply to the allegations (copy attached). The details submitted by the applicant dated 16.06.2020 & letter dated 26.08.2020 regarding detail of losses was perused. On the basis of such investigation following points came up: -

1. Sh. Anand S/o Sh. Mahender Singh R/o H.No. 961/18, Ghanipura, Rohtak made a complaint to the NGT stating that he owns a fisheries pond on Gohana road on drain No.8 and due to release of sewage water by Public Health Engineering Department, he suffered huge loss due to death of fishes. After thorough investigation it has been established that :
 - (i) The piece of land on which the pond exists is disputed one and the complainant has no clear ownership rights and that this land seems to pertain to the WAKF Board. The case is under consideration of Hon'ble Punjab and Haryana High Court as reveals from the record produced before the committee. As such, the matter regarding ownership of this land is sub judicious and the complainant is not having clear ownership on the piece of land.
 - (ii) The complainant has not erected any bandh kacha or pucca around the pond and on-site inspection it was noticed that the said pond does not have any clear boundary and two drains namely Jassia Drain and Makrouli Drain are passing

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through the pond area and all the surface run off during rains will come and pass through the pond of the applicant and that could also be one of the major reasons for any fish kill on account of pesticides used in fields, other material etc. Similarly rainy water from adjoining agricultural land can easily enter into it. It is also apprehension that the complainant might have been drawing water from the drain for the pond as and when so required by him. It is not clear that how the applicant is maintaining his said pond land without any bandh or boundary and how he is protecting his land from the storm water discharge of Jassia drain and Makrouli Drain. The fish kills can be attributed to hundreds of reasons i.e. change in temperature, depletion of oxygen, change of water being used etc. Hence the contention of the applicant that the fish kills on the said dates on 14.09.2009, 24.09.2013 & 17.04.2019 with sewage of PHED seems to be an afterthought for undue gains from the department.

- (iii) The complainant failed to produce any documentary proof of the loss being claimed by him in support of his claim. One or two documents made available by him are not reliable. For example he produced a copy of bill issued by Sunder Lal Ram Kumar invoice No.B2C3263 dated 01.07.2020 on account of purchase of 20 katte of cotton seed oil cake. The bill has been issued on 10.07.2020 whereas according to the claim the loss pertains to the year 2013 and 2019. More so, a copy of estimate produced by him contains capital cost, which cannot be termed as a loss to the owner. As such, it appears that he has prepared these documents as an afterthought. He was requested to produce any bill or income tax returns of preceding years from which it can be ascertained that he is actually having any such income from Fish Production. The complainant however failed to produce any authentic documentary proof to assess the so called loss to him.

On the other hand, he in his application dated 03.12.2019 as submitted to the Deputy Commissioner, Rohtak stated that the loss is as under:

1.	On 14.09.2009	:	Rs. 12 lacs
2.	On 24.09.2013	:	Rs. 13 lacs
3.	On 17.04.2019	:	Rs. 10 lacs
	Total	:	Rs. 35 Lacs

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Contrary to this, such quantum of loss has been shown as Rs. 85.00 lacs in another application dated 16.06.2020. Similarly the applicant has in his letter dated 26.08.2020 again submitted a different detail, which is not more than Rs. 15 Lakh. This detail is also arbitrary and does not have any basis or substance in it. It has been specifically observed by the committee that besides any documentary proof, the complainant also did not supply any Income Tax Return filed by him with the Income Tax Department even for single financial year when he is claiming income in lacs of Rs every year. May be, his income is nontaxable but filing of return is mandatory if the income exceeds certain limits fixed by the government. He also failed to give account of subsidy received from the Haryana Govt. which is admissible for such type of jobs. Thus he concealed the facts with ulterior motive.

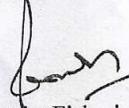
(iv) A report was sought by the Hon'ble NGT from the SDM, Rohtak with reference to allegation of dumping of untreated sewage water into the pond from drain No.8 by Public Health Engineering Department at village Ghanipura and a report filed on 18.11.2019 is in negative.

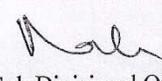
Besides this, on a visit to site, it revealed that the Public Health Engineering Department is pumping out sewage water in drain No.8 at a connecting point on downstream end at a distance away from the so called pond and this point is no way connected to the so called pond of the applicant. A bandh has been erected in the drain prior to the pond. Hence, there is no chance of sewage entering in the pond unless until the drain falling into drain No. 8 is obstructed or rainy water from the Jassia drain and Makrouli drain is taken to drain No. 8. It has been observed by the committee that there is no bandh around the tank towards drain No.8 and agricultural land on the other sides and accordingly there is every possibility of entering rainy water from agricultural land due to overflowing and such water contains pesticides used by the farmer, which could be the reasons for death of fishes. The record of Sep. 2009 shows that there was heavy rain on 10th & 11th & 12th of Sept. 2009 and as such the rain water from Jassia & Makrouli Drain must have entered in the pond and that the applicant is blaming the PHED for the fish Kills. Similarly during Sept. 2013 there was rain in around Rohtak on 22.09.2013. A committee consisting of Public Health Engineering Department, Haryana State Pollution Control Board, Bahadurgarh and Sub Divisional Engineer of Water Services Department visited the sites on 05.09.2019 and made a report that no effluent is coming into the pond.

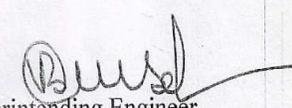
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Conclusion :

From the above details, scrutiny of record, site visit and on enquiry from nearby farmer, it is clear that the complainant is not having any proof (i) regarding ownership of land (ii) accounts of yearly income (iii) documents showing investment made by him on this job (iv) any subsidy received from government and (v) no proof of sewage getting into the pond on regular basis. It is clear that had the applicant made bandh on the open side of his so called land then there would have no loss to him on account of water entering even in rainy season from the two drains. On the basis of above facts, the committee members are unanimously of the opinion that PHED is not at fault completely for the Fish kills in the pond of the applicant and the applicant seems to be trying to take undue advantage of Govt. Department for his financial gains. However as per the record on file it seems that the sewage water entered into this area as the Jassia drain was obstructed at its outfall point in drain No. 8 on 17.04.2019 due to construction work and the water being pumped by PHED could have flooded the drains and must have entered the Jassia Drain on upstream end and as there is no protection by the applicant for its pond. The Committee is of the opinion that though the applicant has not been able to justify his claims, even then as per the photographs attached it is clear that some fish kill has taken place at the said place. Hence it will meet the end of justice in case lump-sum compensation amounting to Rs. 3.00 lacs is paid to the complainant including interest etc. even than he failed to prove his claim. This amount of compensation will be in additional to subsidy, if any; he would have received from the government.


District Fisheries Officer,
Rohtak


Sub Divisional Officer (Civil)
Rohtak


Superintending Engineer,
PHE Circle, Rohtak

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Sign कराने हे राजी

कार्यकारी अभियन्ता जन स्वास्थ्य अभियान्त्रिकी, मण्डल न0.3, रोहतक।

सेवा में

उप मण्डल अधिकारी (नागरिक)
रोहतक।

क्रमांक- 4246 दिनांक- 02/01/21

विषय:- पीरभेदी तालाब में मछलियों के मारने से नुकसान बारे।

सन्दर्भ:- आपके कार्यालय के पत्र क्रमांक न0.2632/स्टैनों दिनांक 04.06.2021
तथा पृ.क्रमांक 2821/स्टैनों दिनांक 23.06.2021.च
CR-178.

उपरोक्त विषय के संदर्भ उप मण्डल अभियन्ता जन स्वास्थ्य अभियान्त्रिकी उप मण्डल न0.9 रोहतक के पत्र क्रमांक 892 दिनांक 27.08.2021 द्वारा अवगत करवाया है कि दिनांक 23.07.2021 को मत्स्य विभाग व उप मण्डल अधिकारी द्वारा मौका निरीक्षण किया जिसमें पाया गया कि PHED विभाग का प्रार्थी की मछलिया मरने में कोई हाथ नहीं है बारिश के कारण खेतों व सड़को से ड्रेन में पानी आ गया जिससे तालाब के पानी की गुणवत्ता खराब हो गई और मछलिया मर गई सीवर का पानी कहीं से भी ड्रेन में नहीं गया है। अतः Joint inspection रिपोर्ट आपके सूचनार्थ सलग्न की जाती है।

सलग्न :- Joint inspection रिपोर्ट व फोटो

पृ.क्रमांक 4247 दिनांक 02/01/21

इसकी एक प्रति उप मण्डल अभियन्ता जन स्वास्थ्य अभियान्त्रिकी उपमण्डल न0.9 रोहतक को उसके पत्र क्रमांक 892 दिनांक 27.08.2021 के हेतु प्रेषित है
CR-185

कार्यकारी अभियन्ता

निरिक्षण रिपोर्ट पीर भोदी तालाब में मछलियों के मरने से नुकसान बारे ।

विषय- पीर भोदी तालाब में मछलियों के मरने से नुकसान बारे ।

संदर्भ- उप मण्डल अधिकारी नागरिक रोहतक का पत्र क्रमांक 2821 स्टेनो
दिनांक 23.06.2021

यादि

उपरोक्त विषय पर निम्नहस्ताक्षरकर्ताओ द्वारा दिनांक 23.07.2021 को पीर भोदी तालाब रोहतक का निरिक्षण किया गया जिसमें पाया गया कि मौके पर उक्त तालाब में ड्रेन से पानी चल रहा था व किसान आन्नद भी मौके पर हाजिर था। मत्सय विभाग रोहतक द्वारा दिनांक 11.06.2021 को दी गई रिपोर्ट में बताया गया था कि पीर भोदी तालाब में मछलियां मरी हैं।

यहाँ मत्सय विभाग द्वारा उक्त रिपोर्ट के संदर्भ में फोटोग्राफस भी दिखाए जो साथ सलग्न है व यह भी बताया गया कि ड्रेन में जो पानी आया था उसमें कही भी सीवर का पानी लिक नहीं था। खेतों तथा सडक आदि से बारिश का पानी ड्रेन में आ गया जिससे पानी में Organic Load बढ़ गया व Cloudy Conditions की वजह से मछलियों को पुरी आक्सीजन नहीं मिल पाई जिससे मछलिया मर गयी। इस पानी में कही भी सीवर के पानी की मिलावट नहीं हुई। दिनांक 23.07.2021 को भी निरिक्षण के दौरान कही भी सीवर के पानी की मौजूदगी नहीं मालूम हो रही थी। यह दिनांक में हम दोनो द्वारा चैक किया गया। यह महोदय की सेवा में आगामी आवश्यक कार्यवाही हेतु प्रेषित है।


उपमण्डल अभियन्ता
जन स्वास्थ्य अभियान्त्रिकी
उप मण्डल न0.9, रोहतक


मत्सय अधिकारी
रोहतक

