

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH,

NEW DELHI

I.A. No. 338 of 2022

IN

O.A. NO. 399 OF 2022

IN THE MATTER OF

Ram Ekbal Rai.APPLICANT

VERSUS

The State of Bihar &ors. RESPONDENTS

AND IN THE MATTER OF

**Vijay Sahni Prop
Suman Ply Udyof UnitApplicant**

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**Annexure-A: Copy of FIR
No. 436 of 2022 10-11**

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**REPLY ON BEHALF OF BIHAR STATE POLLUTION
CONTROL BOARD & RESPONDENT NO. 3, to I.A. NO. 338
OF 2022.**

I, S. Chandrasekhar, aged about 44 years, Son of Mr. S. Subramani, residing at B-202, Amarkunj Apartment, Vivekanand Marg-Patna-800013, do hereby solemnly affirm and state as follows: -

1. That I am posted as Member Secretary, Bihar State Pollution Control Board, Patna and as such I am well aware of the facts

and circumstances of the present matter. I am competent and duly authorized to swear the present affidavit.

2. That the instant matter was last heard on 04.01.2023, when the Hon'ble Tribunal was pleased to issue notice on aforesaid interim application and directed the answering respondent to file a response/reply.
3. That it is humbly submitted that the case of the applicant of I.A. no. 338 of 2022 is, that on 09.12.2022 the unit of the applicant was bulldozed without serving any notice or giving some time to close the unit. In the I.A., *inter-alia*, prayer has been made to direct the respondent state to compensate for the loss caused by the action which led to destruction of the ply unit of the applicant.
4. That the instant I.A. has been filed Under Section 18(2)(b) (e) & Section 19(2) (4) (a) read with Sections 14, 15, 16 & 17 of the National Green Tribunal Act, 2010. In this regard it is humbly submitted that the applicant has misunderstood the provisions as contained in Section 18(2) (b). Section 18 (2) provides that Without prejudice to the provisions contained in

section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by--

- (a) the person, who has sustained the injury; or
- (b) the owner of the property to which the damage has been caused; or
- (c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
- (d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or
- (e) any person aggrieved, including any representative body or organization; or
- (f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

In view of aforesaid provision, it is humbly submitted that, '**THE DAMAGE TO PROPERTY**' as contemplated under Section 18(2)(b) is damage caused due to environmental

pollution or adverse impact of an activity or operation or process under any enactment specified in Schedule I; and not **'THE DAMAGE TO PROPERTY'** which has been caused by the action of the State Government Officers (if any) in discharge of their duties in good faith. As such, the damage caused to the unit of the applicant is not within the purview of the National Green Tribunal Act, 2010, and as such the prayer for compensation for damage to the unit of applicant is not maintainable.

5. That it is stated that pursuant to passing of order 08.07.2022, the joint committee carried a detailed inspection from 10.08.2022 to 16.08.2022 and thoroughly verified the license and other approval obtained by the units situated in the area in question and informed the units about their illegal operation and directed them to close their units respectively. A copy of the said inspection report was filed before the Hon'ble Tribunal, the Hon'ble Tribunal vide its order dated 13.10.2022, *inter-alia*, directed the State PCB to take further action in accordance with law. However, since the State PCB has, in exercise of powers under Section 31A of the Air (Prevention and Control of Pollution) Act 1981, vide its Memo No. 2945,

dated 08.09.2022, had already directed the Respondent no. 3 to take action against the illegally operated units, the Respondent no. 03 initiated taking action against illegal units under the provision of Bihar Saw Mill (Regulation) Act, 1990, (hereinafter referred to as the Act of 1990) and has seized the illegal units in exercise of powers under Section 8 (1) (d) of the Act of 1990. The action of closing the units began from 06.12.2022 and was finally completed on 28.12.2022. That from 06.12.2022 regular announcement through 'PA SYSTEM' were being made that the illegal units be closed down and words also spread out particularly during the survey conducted by the joint committee constituted by the Hon'ble NGT(Annexure- A) that the units which have not obtained licensee under the Act of 1990 is being seized, still the applicant continued to operate the unit and now here before the Hon'ble Tribunal is taking plea of violation of principles of Natural Justice.

6. That with respect to para 3 of the I.A. application it is stated that during inspections carried on from 10.08.2022 to 16.08.2022, the applicant was made aware of illegal operation of his unit and as such the applicant ought to have closed his

unit then, however he continued the illegal operation of his unit. Further, on 06.12.2022 when the officials started closing the illegal units the applicant came to know that the illegal units are now being seized by the authorities, however he continued to operate. Further, it is settled principle of law that where a person does not have any right, and neither can he derive any right from any statute or any common law provision, he cannot ask for a remedy in that case under the principles of natural justice. Also, Natural justice principles do not apply in situations where they are expressly or impliedly prohibited by statute; and operation of saw mill without obtaining license under the Act of 1990 is prohibited by Section 5 of the Act of 1990.

7. That with respect to facts stated in paragraph A, B, D, F, and I it is stated that the applicant has obtained registration under MSME; and have obtained loan under PM mudra loan is not relevant for closing the illegally operated units without obtaining license under the Act of 1990.
8. That with respect to paragraph 'E' it is stated that the facts stated therein is admission on part of applicant that he never got the requisite valid license for operating a saw mill; and on

30.09.2010 he made an application for obtaining license but the same has not been granted due to capping on the number of saw mills which could be permitted in State of Bihar. As such the applicant had been operating his saw mill illegally since its very inception without valid license under the Act of 1990.

9. That with respect to paragraph 'g' it is submitted that it is matter of record and needs no comment.

10. That with respect to paragraph 'h' it is stated that the facts stated in the said paragraph is denied and the proper verification was done before preparing the report. Further, the applicant has admitted in paragraph 'E' that he has not obtained license under the Act of 1990, so there is inconsistency in statement made by the applicant, as on one hand he states that there has been no verification of papers before preparation of report, on the other hand he states that he has not obtained license under the Act of 1990, thus his name is rightly included in the report. Such a statement could have been only made if there were cases/units whose name appear in the report but had a valid license. But, no such claim has come forward rather the applicant has himself not obtained license under the Act of 1990.

11. That it is further submitted that the action taken by the State Government is under the Bihar Saw Mills (Regulation) Act, 1990, which is a complete code in itself and Section 21 of the said act provides for protection of action taken in good faith. It is further stated that the appellant and proprietor of other units pelted stones on the vehicles of the officers due to which vehicles got damaged; and tried to create a law and order situation to prevent the action of seizure of their units and to defeat the process of law for which an FIR has been registered on 10/12/2022 in Motipur P.S., Case No- 436/22 and is under investigation. That in view of above stated facts, laws and peculiar circumstances covering the instant case it is humbly prayed that the Interim Application No. 338 of 2022 may kindly be dismissed. And the applicant is not entitled to any of the relief as prayed for because of the reasons stated above and that damage to property caused in course of an administrative action is not an Environmental Damage and as such no compensation is payable under Section 18 (2) (b) of the NGT Act, 2010.
12. That I have read the contents of the affidavit and have understood the same.

DEPONENT

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12. That I have read the contents of the affidavit and have understood the same.


DEPONENT
(S. CHANDRA SEKAR)



बिहार सरकार

कार्यालय: वनों के क्षेत्र पदाधिकारी, मुजफ्फरपुर (पश्चिमी) वन प्रक्षेत्र।
अरण्य विहार, शेरपुर, पो.- एम. आई. सी. बेला, मुजफ्फरपुर, पिन-842005
संख्या- 750

प्रेषक,

वनों के क्षेत्र पदाधिकारी
मुजफ्फरपुर पश्चिमी वन प्रक्षेत्र।

सेवा में,

थाना अध्यक्ष,
मोतीपुर थाना, मोतीपुर।

विषय-

मुजफ्फरपुर, दिनांक- 9/12/2022
दिनांक-09.12.2022 को मोतीपुर थाना अन्तर्गत पनसलवा स्थित अवैध प्लाई मिल
को जप्ती के क्रम में विभागीय वाहन एवं जानलेवा हमला करने के संबंध में।

महाशय,

उपर्युक्त विषयक सन्दर्भ में सूचित करना है कि मैं उमार्शकर राय, पिता- स्व० राम
लक्षण सिंह, ग्राम- हिन्दुनी, पो०-आलमपुर गौनपुरा, थाना- फुलवारीशरिफ जिला- मुजफ्फरपुर
वर्तमान में वनों के क्षेत्र पदाधिकारी, मुजफ्फरपुर (पश्चिमी) वन प्रक्षेत्र में पदस्थापित हूँ। माननीय
राष्ट्रीय हरित न्यायाधिकरण द्वारा पारित आदेश के आलोक में दिनांक-09.12.2012 को वन प्रमंडल
पदाधिकारी, तिरहुत वन प्रमंडल, मुजफ्फरपुर एवं आपकी उपस्थिति में मोतीपुर प्रखण्ड के पनसलवा
ग्राम में अवैध रूप से संचालित निम्नलिखित पिलिंग मिल की जप्ती की कार्यवाई किया गया-

1. श्री विजय सहनी पिता- श्री रामेश्वर सहनी, ग्राम- पनसलवा, थाना- मोतीपुर,
जिला- मुजफ्फरपुर।

इनके द्वारा अवैध रूप से पिलिंग मिल का संचालन किया जा रहा था। इनके मिल
विद्युत मोटर-1, प्लाई पत्ता- 2 बन्डल, सामग्री जप्त कर जे०सी०बी० के मदद से ट्रैक्टर से परिवहन
कर वन विभाग के अभिरक्षा में लिया गया। प्लाई मिल एवं डीजल इंजन स्थल पर सील बन्द कर
छोड़ दिया गया।

2. श्री मुन्ना प्रसाद सहनी, पिता- श्री सीताराम सहनी, ग्राम- पनसलवा, पंचायत-
कल्याणपुर हरौना, थाना- मोतीपुर, जिला- मुजफ्फरपुर।

इनके द्वारा भी अवैध रूप से पिलिंग मिल का संचालन किया जा रहा था, जिसके
कारण इनके प्लाई मिल को सील बन्द कर स्थल पर छोड़ दिया गया एवं हवा पम्प-1 विद्युत
मोटर-1 जप्त कर वन विभाग की अभिरक्षा में ले लिया गया।

3. श्री रनधीर कुमार चौरसिया, पिता- श्री रामबालक चौरसिया, ग्राम- पनसलवा,
थाना- मोतीपुर, जिला- मुजफ्फरपुर।

उपर्युक्त क्रम संख्या-1 एवं 2 पर अवस्थित मिल के जप्त सामग्रियों के साथ श्री
रनधीर कुमार चौरसिया के मिल को जप्त करने हेतु वन प्रमंडल पदाधिकारी, तिरहुत वन प्रमंडल,

Reomssner's M072PRR PS case No 438122 dt. 10-12-22
US-197/148/149/341/323/353/379/309/509/34 I.P.C.
P.S.I Ramdore, Vahan wadi P.L. @winn w. cut
30/12/22

मुजफ्फरपुर अपने दल बल के साथ जिसमें आप भी उपस्थित थे उनके मिल पर पहुँचे। श्री चौरसिया के मिल को जप्त की कार्रवाई प्रारम्भ करते ही श्री चौरसिया द्वारा अपने मिल को जप्त करने से विरोध करना प्रारम्भ कर दिया गया। काफी नॉक-ड्रॉक चल ही रहा था तब तक अवैध मिल संचालक श्री मुन्ना प्रसाद सहनी के पुत्र श्री राजु कुमार सहनी, श्री विजय सहनी एवं श्री मुन्ना प्रसाद सहनी लगभग हजारों की संख्या में आकर जप्ती दल पर जानलेवा हमला प्रारम्भ कर दिया गया। जिसमें जप्ती दल के कई कर्मचारी/ पदाधिकारी को हलका चोट लगी। ट्रैक्टर चालक आपनी जान बचा कर ट्रैक्टर छोड़ कर भाग गये। काफी अफरा-तफरी मच गयी। इसी क्रम में श्री राजु कुमार सहनी द्वारा वन विभाग के अभिरक्षा में लिए गए जप्त सामग्री जो ट्रैक्टर पर लदा हुआ था अपने सहयोगियों के मदद से ट्रैक्टर सहित सभी जप्त सामग्री को लेकर भाग गये। ट्रैक्टर पर ले जाने के क्रम में फोटोग्राफी किया गया जो संलग्न है। जप्ती दल का वाहन बोलेरो संख्या-बी0आर0-1ए0पी0-8180, महिन्द्रा कैम्फर-बी0आर0-06 जी0बी0-7059, कैम्फर-बी0आर0-06 जी0ए0-7633, गरखा वाहन-बी0आर0-06 डी0ए0-1719 एक स्कौर्पियो-बी0आर0-04एन0-5615 एक- जे0सी0बी0, एवं ट्रैक्टर-4 तथा जिला पुलिस के वाहन को भी उन लोगों द्वारा क्षतिग्रस्त कर दिया गया। वाहन को क्षतिग्रस्त करने के क्रम में उपद्रवियों का कुछ फोटोग्राफ लिया गया जो संलग्न है।

जप्ती दल अवैध आरा मिल की जप्ती कार्रवाई बन्द कर जब वापस मोतीपुर की ओर जा रहे थे तब देखा गया कि जो ट्रैक्टर श्री राजु कुमार सहनी द्वारा जप्त सामग्रियों साथ ले कर भाग गये थे, सामग्री उतार कर, ट्रैक्टर एन0एच0-28 के किनारे खड़ा किया हुआ पाया गया जिसे वन विभाग के कर्मचारियों द्वारा अपनी अभिरक्षा में खाली ट्रैक्टर ले लिया गया।

अतः अनुरोध है कि उपर्युक्त के सन्दर्भ में प्राथमिकी दर्ज करते हुए विधि सम्मत कार्रवाई करने की कृपा की जाय। साथ ही जप्त सामग्रियों की बरामदगी करते हुए अवगत कराने की कृपा की जाय।

अनुलग्नक: यथोक्त।

विश्वासभाजन,

usroy
8/12/22

वनों के क्षेत्र पदाधिकारी,
मुजफ्फरपुर पश्चिमी वन प्रक्षेत्र,
मुजफ्फपुर।