



Office of the Chairman, National Green Tribunal (NGT) Monitoring Committee (J&K)
Justice Janak Raj Kotwal
(Former Judge High Court of Jammu & Kashmir)

In the matter of: Execution of Application No. 32/2016

In

Original Application No. 295/2016

And

Original Application NO. 295/2016

(M.A.No.539/2016)

Amresh Singh Vs. Union of India & Ors.

Report in compliance to the Hon'ble NGT Order dated 28.9.2020

This report is submitted in compliance to the order passed by the Hon'ble National Green Tribunal (NGT) on 28.9.2020. Paragraphs 9 and 10 of the order passed on 28.9.2020 are reproduced for convenience:

'9 In view of the above, we accept the recommendations of the MC that the NHAI and the contractors have to take remedial action. NHAI cannot be rest content by simply saying that it has asked the contractors to take remedial action. Responsibility of NHAI to maintain environmental norms remains. The contractors are agencies of the NHAI, for which the NHAI also remains responsible. There is no bar against the NHAI from substituting its

contractors violating the law by the compliant ones.’

‘10 The State PCB may accordingly proceed with coercive measures, including assessment and recovery of compensation for the damage and initiating prosecution against the violators of environmental norms, following the due process of law. The MC may monitor further action of the State PCB. A further report as on 31.03.2021 may be filed before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.’

Vide my office letter No.CHM/NGTMC/PS/2021/97-99 dt. 27.1.2021, I requested the Chairman, J&K Pollution Control Board (PCB) and the Regional Officer (PIU-Jammu), NHAI, Jammu, each, to furnish up-to-date compliance report in regard to the order passed by the Hon’ble NGT on 28.9.2020 with advance copy to the Administrative Secretary to Government, Forests, Ecology and Environment, Civil Secretariat, Jammu. Simultaneously, I had requested the Administrative Secretary to furnish Government’s response, if any, to the compliance reports.

No report, however, has been made by or on behalf of the Chairman, JK PCB or the Regional Officer NHAI. Nonetheless, the Member Secretary of the PCB has sent to my office a copy of his letter No. JKPCB/NGT/23/2016/2019-20 dt. 25.3.2021 addressed to the Commissioner Secretary to the Government, Department of Forests, Ecology and Environment along with copy of order No. 50 JK PCB of 2021 dt. 24.3.2021 passed by the PCB with the approval of the competent authority. (enclosed herewith)

The PCB seems to have taken steps towards compliance of the direction incorporated in paragraph 10 of the order passed by the Hon'ble NGT on 28.9.2020 and has passed order dated 24.3.2021 directing the NHAI to pay the environmental compensation. The letter dated 25.3.2021 written by the Member Secretary PCB to the Commissioner Secretary or the order dated 24.3.2021, however, does not provide pertinent information in regard to the ground situation *viz a viz* the compliance of the directions comprised in paragraph 9 of the order passed on 28. 09. 2020, more importantly, as to whether violations related to the disposal of muck/debris generated in execution of the work in the period intervening 28. 9. 2020 till date have been stopped, reduced or still continue.

Since no report has been made by or on behalf of the Chairman, PCB or the Regional Officer NHAI. I cannot but express my inability to make a useful report this time. Detailed report, however, will be submitted after more and useful information is received from the PCB and/or the NHAI.

Hence submitted

Chairman

05. 04. 2021



Government of Jammu and Kashmir
JK POLLUTION CONTROL BOARD

Winter Office: November-April
Parivesh Bhawan, Gladni
Transport Nagar, Narwal,
Jammu (J&K) 180006
Ph/Fax: 0191-2476925

Summer Office: May-October
Sheikh Ul Alam Campus
Behind Govt. Silk Factory,
Rajbagh Srinagar (J&K) 190008
Ph/Fax 0194-2311165

Email: membersecretaryjkpcb@gamil.com.

PCB

**The Commissioner Secretary to Govt.,
Department of Forests, Ecology and Environment,
(Member Secretary Monitoring Committee NGT),
Civil Secretariat,
Jammu.**

No. JKPCB/NGT/23/2016/2019-20

dt. 25-03-2021

Sub.: Compliance of directions of the Hon'ble NGT dt. 28-09-2020.

*Ref.: The Chairman NGT Monitoring Committee communication No. CHM/NGT/
MC/PS/2021/97-99 dated 27-01-2021.*

Sir,

In compliance to the directions of Hon'ble NGT dt. 29-09-2020, slew of measures have been taken by the Board and in this regard Technical Advisory Committee (TAC) constituted in the Board was directed to visit the site to assess the damage caused to the Environment on account of execution of four lanning project of National Highway by NHIA. The committee visited the site and submitted its report .

Simultaneously, series of communications have been sent to the Regional Officer National Highway Authority of India for providing the details of total muck excavated and disposed of and after taking a hard stance National Highway Authority of India has submitted a report admitting that dumping has been done over and above the capacity of the sites to the extent of 200% of the designed capacity.

Matter was referred to Technical Advisory Committee which recommended levying of full and final *Environmental Compensation* after carrying out of in depth scientific study for assessing the actual damage caused to the environment of the area by illegal and un scientific disposal of muck.

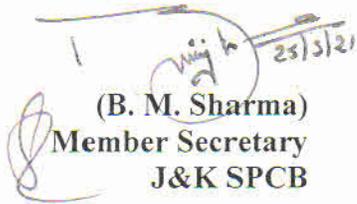
Pending assessment of the actual loss, the committee recommended levying of *Environmental Compensation* on the basis of interim data to the tune of Rs.2,00,00,000/= on National Highway Authority of India and the damage is much more as per the report of Technical Advisory Committee and accordingly *Environmental Compensation* of **Rs.2,00,00,000/=(Rupees Two crores only)** has been imposed upon the National Highway Authority of India vide Order No. 50 of JK PCB of 2021 dt. 29-03-2021. Copy of the order enclosed.

The Regional Officer National Highway Authority of India and its contractors have also been served with notice for their prosecution for causing irreversible damage to the ecology of the area by flouting the norms, while executing the project.

Central Pollution Control Board and National Highway Authority of India have been approached for nominating representatives to the Expert Committee to assess the final damage caused to the Environment by National Highway Authority of India.

Yours faithfully

Encl.: E.C. Order dt. 24-03-2021


(B. M. Sharma)
Member Secretary
J&K SPCB


Copy to the :-

- i) P.A. to the Hon'ble Chairman, National Green Tribunal (NGT), Monitoring Committee J&K for information of the Hon'ble Chairman.

IWDP-Hills, Forest Complex
Gladni, Transport Nagar,
Narwal, Jammu.



e-mail : ngtmc2019@gmail.com
Mob. 7006411843

Office of the Chairman, National Green Tribunal (NGT) Monitoring Committee (J&K)
Justice Janak Raj Kotwal
(Former Judge High Court of Jammu & Kashmir)

Consultant Judicial,
Hon'ble National Green Tribunal,
New Delhi.

No: CHM/NGTMC/PS/2021/100.

Dated : 05.04.2021

Subject: Report in terms Hon'ble NGT Order dated 28.9.2020 in O.A. No. 295/2016
titled Amresh Singh Vs Union of India & Ors.

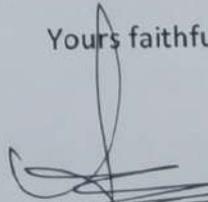
Sir,

Kindly find enclosed herewith report of the Monitoring Committee, along with
enclosures, in compliance with the order passed by the Hon'ble NGT dated
28.9.2020.

I am desired to request you that the report along with enclosures may be placed
before the Hon'ble Tribunal.

Encl: A/A

Yours faithfully,


(Devisharan Koul)
Personal Assistant 05/04/2021



Government of Jammu and Kashmir
JK POLLUTION CONTROL BOARD

Winter Office: November-April
Tarlvesh Bhanwan, Gladini
Transport Nagar, Narwal,
Jammu (J&K) 180006
Ph/Fax: 0191-2476925

Summer Office: May - October
Sheikh US Alam Campus
Behind Govt. Silk Factory,
Rajbagh Srinagar (J&K) 190008
Ph/Fax: 0194-7311165

Email: membersecretaryjktpcb@gmail.com

Sub: Levying **Environmental Compensation** on **NHAI authorities** for violation of environmental norms while executing the Four Lanning of NH-44 Project under **Section 33 (A), 31(A) and Section 5 of the Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986** respectively.

Ref: *Hon'ble NGT directions dated 28/09/2020 in OA No. 295/2016.*

ORDER NO.: 50 JK PCB of 2021
DATED : 24 -03-2021

Whereas, reports about illegal and unscientific dumping and disposal of muck in the course of four lanning of National Highway from Udhampur to Banihal by the National Highway Authority of India (NHAI) and its contractors *viz. a) M/s Gammon India Ltd. (GIL) and b) the Hindustan Construction Company Ltd. (HCCL)*, were received from the field functionaries of the Board, reporting further that such disposal has affected the environment adversely besides damaging the ecology of the area.

Whereas, on the directions of Hon'ble NGT, two reports dt. **31/07/2020** and **17/09/2020** filed by the Divisional Officer Ramban with regard to above were submitted before the Hon'ble NGT, which was pleased to direct the Board for recovery of **Environmental Compensation** for damages and initiation of prosecution against violators of environmental norms, accordingly.

Whereas, the Board vide its communication dt. **15.12.2020** directed its **Technical Advisory Committee (TAC)** to verify the ground position further and assess the damage caused to the Environment by illegal and unscientific muck dumping by NHAI.

Whereas, the authorities of NHAI have also been directed through a number of letters/notices, latest in the series vide letter dt. **24/11/2020** addressed to Regional Director/Officer, NHAI Jammu, to provide the details of muck excavated and status of its dumping, which was finally submitted by NHAI on **11-02-2021**.

Whereas, as per the referred report of NHAI submitted by Project Director PIU Ramban, muck disposal in atleast 05 sites is above **100%** than the designed capacity and NHAI authorities have admitted dumping of **200%** muck at these locations.

Whereas, the report of the JKPCB Committee dt **03-02-2021** also shows that NHAI has failed to take adequate Engineering and Biological measures as per EMP, framed at the time of seeking the **Environmental Clearance**, with the result the muck has destabilized at the slopes and eventually slipped into river channels at many sites and damaged the biological environment in utter and blatant violation of the conditions of the Environmental Clearance.

Whereas, the designated sites have not been developed before hand to retain the muck excavated during the four lanning / construction works and the executing agencies kept on dumping the waste, which has caused serious damage to the Environment and Hydro-logical conditions, causing

blockade of water course of natural drainage and rivulets besides narrowing the water channels and seasonal nallahs.

Whereas, the damage caused to the bio-diversity, river course, aquatic life, natural plantation forest cover, stability of slopes, geological disturbance and erosion of soil on slopes, is irreversible and has resulted in serious environmental concerns.

Whereas, the matter has also been examined by the Technical Advisory Committee (TAC) of the Board which vide report dt 03-02-2021 has opined that the actual damage caused to the ecology and environment of the area by illegal and unscientific disposal of muck for levying of full and final Environmental Compensation on NHAI requires in-depth scientific study by the Expert Committee with representatives from Central Pollution Control Board and NHAI itself. However, the interim data indicates the environmental damage has occurred and evaluated tentatively as far more than Rs.2,00,00,000/= (Rupees Two Crore only).

Now, therefore, in exercise of powers vested in the Board under Section 33 (A), 31(A) and Section 5 of the Water (Prevention & Control of Pollution) Act 1974, the Air (Prevention & Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 respectively, read with the directions of Hon'ble NGT dt. 28/09/2020 in OA No. 295/2016, the NHAI shall deposit a sum of Rs.2,00,00,000/= (Rupees Two Crore only) as Environmental Compensation, as an interim measure, pending final assessment of damage in terms of the ecological loss till full and final damage is assessed by the Expert Committee. This recovery of interim Environmental Compensation on Polluter Pays Principles shall be the part of enforcement strategy and not a substitute of the compliance to be done as recommended by the Expert Committee approved by Hon'ble NGT.

Accordingly, Regional Officer, National Highway Authority of India (NHAI), Jammu is hereby directed under Section 5 of the Environment (Protection) Act 1986 to deposit a sum of Rs.2,00,00,000/- (Rupees Two Crore) in the Environmental Compensation Fund Account No. 0023040510000001 of the Board in J&K Bank Ltd. within 45 days without fail and on lapse of above said period, an interest @ 12% on the Environmental Compensation amount shall accrue, at the risk and responsibility of the National Highway Authority of India.

'As approved by the Competent Authority'.


(B.M. Sharma), IFS
Member Secretary
JKPCB, Jammu
24/3/2021

No. JK PCB/LSJ/NGT/23/54-60
Dt. 24-03-2021

Copy to the:-

- Commissioner/Secretary to Govt., Deptt. of Forest, Ecology & Environment, Civil Secretariat, Jammu (Member Secretary Monitoring Committee on NH-44 Four Lanning Project) for information.
- Deputy Commissioner Ramban for information and necessary action.
- Regional Officer, National Highway Authority of India, Jammu for immediate compliance.
- Regional Director Pollution Control Board Jammu for information and necessary action.
- Divisional Officer Pollution Control Board, Ramban for information and necessary action.
- P.A. to Chairman, for information of Chairman Pollution Control Board Jammu.
- I/c website for uploading the order on JKPCB website.