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

OA No.620 of 2022

IN THE MATTER OF:

Kaushal Kishore Vishwakarma.....

Applicant

Versus

State of Punjab & Ors

...

Respondents

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Dated:13.10.2024

Place: Panipat


Regional Officer, HSPCB

Panipat Region

Through



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Action Taken report by Haryana State Pollution Control Board in OA no. 620/2022 titled Kaushal Kishore Vishwakarma vs State of Punjab & Ors.

1. The Original Application No. 620 of 2022 was fixed before the Hon'ble National Green Tribunal on 28.08.2024 and Hon'ble Tribunal passed the following direction:

“69. PSPCB and HSPCB are directed to take further action for imposition of environmental compensation on respondents no. 4 and 7 for past violations and recovery thereof in accordance with law and file further action taken report”.

That as per report submitted by the unit 122600 MT of carbon slurry stored in the two lined lagoons. As per the HOWM Rules, 2016 the carbon slurry stored by the unit required to be disposed of within time period of 90 days after covering of the same under HOWM Rules, 2016 which is not done by the unit within time period and the carbon slurry still lies with the unit.

2. That presently, the unit has made agreement with M/s Subham Sales Co., Rohtak for scientific disposal of carbon slurry stored with the unit M/s NFL,

Panipat. The unit M/s Shubham sales Co., Rohtak starts lifting of waste in the month of February, 2024 and till September, 2024, 3124.90 MT of carbon slurry has been lifted by the unit. Presently quantity of 119473.10 MT carbon slurry still lying stored with the unit.

3. That final Personal hearing was given on 09.10.2024 by the environment compensation Assessment Committee for imposition of environmental compensation against M/s National Fertilizer Limited, Panipat held under the chairmanship of Member secretary, HSPCB. The hearing was attended by the officials of NFL for submission of reply on behalf of M/s National Fertilizer Limited, Panipat. After hearing the unit, it was found that the unit is violating with the provisions of HOWM Rules, 2016 and it was decided to impose the Environment Compensation of amount Rs 35,84,19,300/-. The proceeding of the meeting of Environment Compensation assessment committee is attached as **Annexure-R/1**.
4. The report is submitted accordingly for kind consideration. It is undertaken to comply with the directions passed by the Hon'ble Tribunal

Date - 13/10/2024


Bhupinder Singh,
Regional Officer,
Panipat.

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Proceedings of the meeting of Environmental Compensation Assessment Committee held on 09.10.2024 under the chairmanship of Member Secretary, HSPCB.

The Board, in consideration of the report of the CPCB in-house Committee for Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund, adopted the modalities/methodology for assessing, imposing and utilization of environmental compensation from the polluting units in the State of Haryana vide letter no. HSPCB/PLG/2021/2343-2381 dated 22.12.2021 as applicable.

Further, the method for Determination of Environmental Compensation to be recovered for violation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 from the polluting units in the State of Haryana, the formula as per Section - A and Section - B of violations and financial penalty and environmental compensation is as under:-

A. **Category A:** Only procedural violations of HOWM Rules, 2016, which has not caused damage to environment or third party

B. **Category B:** violations causing environmental damage including procedural violations.

i. **Category B1:** Cases where mismanagement of hazardous or other waste has resulted or resulting into environmental damage and such damages liability including assessment of remediation required can be assessed in terms of cost also by applying provisions laid down under CPCB's "Guidelines on Implementing Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty".

ii. **Category B2:** Cases where mismanagement of hazardous or other waste may have caused environmental damage and such damages & remediation required including cost thereof are difficult to assess

2. Methodology for Assessing Financial Penalty and Environmental Compensation.

A. Financial Penalty

B. Environmental Compensation Under such wide variables, the following quantity based environmental compensation calculation in Rupees may be used and be imposed on violating facility operator:

Environmental Compensation (EC) = Q x ERF x R

Where,

Q is noticed or observed quantity (in tonne) of hazardous or other wastes which have not been managed in compliance with various provisions of the Acts/Rules/Guidelines/conditions of the authorization/directions issued by CPCB/SPCB/PCC/MoEF&CC (barring procedural violations which have not caused environmental damage)

ERF = Environmental Risk Factor which is a number (as given in Table 1 below) denoting the increasing degree of risk to the environment and human health due to the scenarios as given in the Table 1.

Table 1: Environmental Risk factor (ERF)

Sr. no.	Violation	ERF	
		For hazardous waste	For other waste
1.	When hazardous and other wastes is disposed at unauthorized place or handed over or sold to unauthorized party	1.5	0.3
2.	When treatment has not been imparted, as required, but only partial treatment has been given (by TSDF/Actual user)	1.0	0.2
3.	When product (derived from hazardous or other waste) is not conforming to prescribed specification or is specified for restricted use but sold in open market against (in case of actual user)	1.0	0.2
4.	Wastes found stored beyond the stipulated period (refer Rule 8 of the HOWM Rules, 2008)	0.1	0.05

*Applicable to waste generated indigenously only

R= Environmental Compensation factor, which may be taken as Rs. 30,000.

Note:

- i) For facility engaged in generation/ recycling/ utilizing/ disposing of hazardous or other waste and such wastes have never been handed over to common TSDF/ actual user,

Case I: If authorization has been taken at any point of time, in such cases, Q may be taken as below:

Q= Quantity in terms of tone/per year, as specified in authorization (one year = 300 days) x Y

Where, Y is Number of years of operation of the facility and may be considered as given in Table 6 below. In case authorization is given in quantity/day, then convert in tone/year by multiplying the same with 300 days.

A committee has been constituted vide order No. HSPCB/PLG/2022/138645 dated 20.10.2022 and reconstituted vide order no. I/173740/2023 dated 20.09.2023 to calculate the Environmental Compensation. The following Members of the committee were present in the meeting:

Sh. Pardeep Kumar, Member Secretary, (Chairman)
Sh. Bhupender Singh Rinwa, CEE (HQ), (Member)
Sh. Satinder Pal, Sr. EE (HQ), (Member)
Sh. Nirmal Kumar, Sr. EE(HQ), (Member)

The proposal has been placed before the committee during its meeting held on 09.10.2024 by the Sr. Environmental Engineer - SWM Cell (HQ) for assessing the environmental compensation for causing the damage to the environment against the following units:-

M/s National Fertilizer Limited, Gohana Road, Panipat.

Earlier the EC case was put up before the committee, on 06.03.2024 and the case was deferred with the remarks that "RO Panipat should resubmit the EC case after collecting the relevant information from the unit" Now, RO has resubmitted the case vide his letter dated 07.10.2024 for imposing EC of Rs. 35,84,19,300/- under HOWM Rules, 2016 and informed that the said unit is engaged in manufacturing of Basic Fertilizer and is a large scale unit and covered under Red Category of consent management of the Board. In OA no. 620 of 2022 titled as Kanshal Kishore Vishwakarma vs State of Punjab & Ors Hon'ble NGT passed an order dated 08.01.2024 with the direction as mentioned below:-

"Despite unjustified continued storage of carbon slurry by respondents no. 4 and also inaction/delay on their part in disposal thereof in accordance with mandatory statutory provisions. No action has been taken by PPCB and HSPCB for imposition of EC and also prosecution of the defaulting officers/officials and PPCB and HSPCB has been directed to initiate appropriate proceeding for imposition of EC and also prosecution of the defaulting officers/officials in accordance with law and file ATR within one month."

The AEE concerned informed to the committee that said unit is a party in the said matter as respondent no. 7. The unit has submitted status report before NGT that it has not generated carbon slurry since November, 2012. The unit has informed that the quantity of carbon slurry stored in the pond is 122600 MT, which is yet to be disposed of by them.

The unit was visited on 29.01.2024 and accordingly show cause notice for closure was issued to the unit vide letter no. 2719 dated 29.01.2024, to which unit has submitted the reply on 07.02.2024 and stated that they have provided two brick lined ponds with HDPE lining for storage of carbon slurry and hence there is no chance of leaching to the ground. The ponds are surrounded by trees and there is no room for

the carbon particles to carry alongwith air. The unit has submitted that it is not viable to cover the vast area of the ponds. Whereas, as per SOP for utilization of carbon residue generated from fertilizer industry the unit should provide designated space for storage of spent carbon/slurry (carbon residue) under cool, dry, well ventilated and covered storage shed so as to eliminate water intrusion. Further, unit has informed that earlier carbon slurry was not covered under HOWM Rules, 2008 and it was covered under the ambit of hazardous waste on 04.04.2016 at Cat. No. 18.2 of Schedule-1 after notification of HOWM Rules, 2016.

The unit has informed that e-auction was carried out by them on 02.03.2020 and M/s Shubam Sales Corporation, Rohtak came as Higher Bidder in tender and was awarded the contract for lifting of carbon slurry, but due to administrative reason NFL terminated the contract with them vide termination letter dated 20.05.2023. However, as on date unit has issued delivery order dated 15.12.2023 to M/s Shubham Sale Co. for lifting of carbon slurry from NFL ponds and party is in the process of lifting of carbon slurry. But, Hon'ble NGT has not considered the justification given by them as mentioned in its order dated 08.01.2024 which was submitted by the unit before Hon'ble NGT.

Therefore, RO vide letter dated 07.10.2024 recommended that EC of Rs. 35,84,19,300/- may be imposed on the unit for violation under HOWM Rules, 2016 as per the formula for determination of environment compensation to be recovered for violation of Hazardous and Other Waste (Management and Trans boundary movement) rules, 2016 the categorization of violations and financial penalty and Environment Compensation the violation of the unit falls at Cat. B as per order dated 22.12.2021. Therefore, the EC is calculated as per the formula prescribed under:-

$$\text{Environmental Compensation (EC)} = Q \times \text{ERF} \times R$$

Where, Q is noticed or observed quantity (in tons) of hazardous or other wastes which have not been managed in compliance with various provisions of the Acts/Rules/Guidelines/conditions of the authorization/directions issued by CPCB/SPCB/PCC/MoEF&CC (barring procedural violations which have not caused environmental damage), ERF = Environmental Risk Factor which is a number denoting the increasing degree of risk to the environment and human health, R= Environmental Compensation factor, which may be taken as Rs. 30,000. In table-1 of the order dated 22.12.2021 unit falls at sr. no. 4 i.e. waste found stored beyond the stipulated period (refer Rule 8 of the HOWM Rules, 2008) and therefore taken as 0.1. The carbon slurry covered under HOWM Rules, 2016 from 4th April, 2016 which needs to be disposed off within 90 days as per the provisions of said rules. Hence,

the carbon slurry was required to be disposed of by 3rd July, 2016 but unit failed to do so. The unit get started lifting of the waste from February, 2024 through vendor M/s Shubham Sales Co., Rohtak and till 07.10.2024, only 3126.90MT of waste has been lifted from the site.

The month wise lifting of waste is given below:-

Sr. No.	Month	Carbon Slurry Lifted (MT)
1.	February, 2024	21.49
2.	March, 2024	303.7
3.	April, 2024	972.86
4.	May, 2024	976.96
5.	June, 2024	559.60
6.	July, 2024	236.58
7.	August, 2024	0.00
8.	September, 2024	55.71
Total		3126.90

Total 3126.90 MT of waste have been lifted from the site but still 1,19,473.1 MT of waste is lying with the unit and accordingly the value of Q is taken as 1,19,473.1 MT, ERF is taken as 0.1. The unit is thus liable to pay the environmental compensation as per the letter no. HSPCB/PLG/2021/2343-2381 dated 22.12.2021 of the Board.

Environmental Compensation (EC) = Q x ERF x R

Where, Q is noticed or observed quantity (in tons) of hazardous or other wastes which have not been managed in compliance with various provisions of the Acts/Rules/Guidelines/conditions of the authorization/directions issued by CPCB/SPCB/PCC/MoEF&CC (barring procedural violations which have not caused environmental damage), ERF = Environmental Risk Factor which is a number denoting the increasing degree of risk to the environment and human health, R= Environmental Compensation factor, which may be taken as Rs. 30,000.

Personal hearing

Sh. Kuldeep Singh, AEE, attended the hearing on behalf of RO Panipat, Sh. Narendera Singh and Sh. Seema Chawla representatives of above said unit appeared before the committee to represent their case. The representatives informed that all best efforts were made for disposal of the carbon slurry, but due to less requirement in the market, the disposal of the said waste becomes a difficult task for the unit and requested that minimum compensation be imposed.


Recommendation


After detailed deliberation, the committee is of the opinion that the Environment compensation recommended by RO is justified and accordingly, the environmental compensation is calculated and finalized as under:-

$$EC=QxERFxR= 1,19,473.10x0.1x30000 = Rs. 35,84,19,300/-$$

(On leave)
Nirmal Kashyap
(SEE-HQ)


Satinder Pal
(SEE-HQ)


B.S Rinwa
(CEE-HQ)


Pardeep Kumar, IAS
(Member Secretary)