

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

In OA No. 744/2022

In the matter of

Moharram Ali

APPLICANT

Versus

State of U.P

RESPONDENT

SUBMISSIONS ON BEHALF OF THE APPLICANT
MOHARRAM ALI

1. That the applicant had filed the present application apprising about the heap of black ash lying at near Ganga Canal causing serious environmental damage where one person died due to burn injuries and two others got serious burn injuries.
2. It was apprised that the said fly ash has been disposed off in an illegal manner by the 3 paper mills in that area whose name is mentioned in the complaint by violating the disposal guidelines prescribed by the UP State PCB.
3. The applicant also highlighted the factum of hazardous chemicals lying beneath the fly ash where one Mohammad Nadeem stepped on the swamp of flyash and hazardous

chemicals and received burn injuries and died during the course of treatment.

4. That this fact of Mohmmad Nabi receiving burn injuries broke as news in the local media and the administration got into action and registered FIR no. 179/2022 PS Bhopa District MujaffarNagar against the transporter/contractor who have dumped.
5. That the Applicant also highlighted a subsequent tragedy which happened on 22.08.2022 at the same site when the Applicant's brother Momeen and son of Applicant Saif entered in to that chemical laden fly ash, while collecting twigs for their livelihood and got seriously burnt because of some heat producing chemical reactions. An FIR no. 193/2022 was registered at Thana Bopa MuzaffarNagar in this regard.
6. That the Applicant's brother and his son was taken to the local hospital and thereafter referred to various city hospitals.
7. It has also been submitted by the Applicant in his complaint that the Victims Mohammad Nabi, Momeeen and Saif have no fault on their part in the said incidents and who reached at the dumping site when they were wandering in search for their livelihood. And for this reason, the Victims being the direct victim of Environmental accident, claimed through the Applicant

compensation of Rs 25 lakh for the dead and 27 lakhs for the injured.

8. That on the complaint of the Applicant the Hon'ble Tribunal has constituted a Joint Committee for factual verification vide order dated 30.09.2022.
9. In furtherance of the said order the Committee has submitted the report dated 07.12.2022. The report highlighted the factum of Inspection of site in village Nangla Bujarg, police station Bhopa, District Muzaffarnagar by concerned officials. And found presence of dumped ash brown colored waste(Sludge) which was extremely hot. The samples collected were found to contain, as per the analysis report of scientists of IITR Lucknow and UPPCB, high concentration of calcium and potassium, chloride and sulphate were present with a possibility that with reaction with moisture may have led to exothermic reaction leading to high amount of heat.
10. The Joint committee noted that there has been unscientific disposal of fly ash at the site by the paper and pulp industries in that area. The Committee recommended for the issuance of show cause notice for non complying industries and also suggested environmental compensation.
11. However as regards the Specific violators the Joint Committee directed the Police department to give all records of investigation.

12. The matter was taken up and the report was considered by the Hon'ble Tribunal on 10.01.2023 and sought further report w.r.t. persons responsible for alleged dumping and further remediation and prevention of further damage to the environment and also sought the details of compensation paid to deceased/victims.
13. In compliance of the said directions the Joint Committee has filed a second report dated 13.02.2023.
14. As per the investigation by the police, it is revealed that the chemicals have been transported and dumped at the site on 12.11.2018 and lying there since then.
15. At running page 319, it is stated that as per the Case Diary of the police and the statement of one Anjum S/o Latafat, he was carrying on the trade of dumping of the chemicals and storing it in village Kasampura. And it is further stated that on receiving complaints of nearby villagers, SDM Jansath, C.O. Bhopa and other police officials reached the site immediately. Shri Anjum called excavator, dug up a patch of land belonging to irrigation department and dumped all the chemical from the drums on the land. Drums were again taken back by him. No sign or protective boundary was made around the area by the defaulter or District Administration.

In light of the above facts, it is submitted that because the SDM Jansath and C.O. Bhopa present at the site and approved the act of dumping the chemicals in the

alleged site, District Administration is responsible for the illegal dumping/disposing of the chemicals.

16. The photographs of inspection site as appended in the report suggest that dumping site has grown grass and vegetation around it and nobody can think of presence of chemicals in that area.
17. In the subsequent report dated 13.02.2023 filed by the Joint Committee various industries and transporters have been fined and directed to be paid Environmental Compensation of various amounts extending up to Rs One Crore 63 lakhs.
18. In the case of fly ash disposal, the transporter Irfan alias Bhura has been imposed with the Environmental compensation along with the industrial units which has generated this fly ash.
19. However in respect to the source of Hazardous chemicals which was lying at the alleged site near the Ganga Canal, It is submitted that although Anjum is liable being transporter of hazardous chemicals, however it has not come out as to for whom Anjum was working as transporter and from where he has lifted these hazardous chemicals. The report is silent on this aspect.

20. The report at running page no. 319 has made Shri Anjum S/o Latafat, Village Nangla Bujurg, Thana Bhopa, Muzaffarnagar as mainly responsible and guilty for dumping of hazardous chemicals and imposed environmental compensation Rs. 87,10,000/ on him.
21. Thus it is submitted that the actual defaulters who have generated the said hazardous chemicals, have not come out in the report.
22. It is submitted that despite the specific directions of the Hon'ble Tribunal the District Administration has not taken any steps for the compensation to the victims.
23. That the Hon'ble Tribunal is empowered u/s 15(a) of the National Green Tribunal Act 2010, to provide for compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance). It is submitted that this Hon'ble Tribunal is not bound by the determination of compensation by the District Administration as the section 15(a) of the Act is independent and not subject to any value of compensation arrived at by the District Administration.
24. Further in light of the specific averment of the Applicant in his complaint that despite the death of victim Mohammad Nabi after stepping on that heap of fly ash and chemicals on 09/07/2022 which fact came in the knowledge of the

Administration on 11/07/2022, the area in question where these hazardous chemicals were lying was not sealed or cordoned off. It is thus submitted that due to this gross negligence of the administration the victim Momeen and Saif (son of Applicant) entered into the area on 21.08.2022 and received serious burn injuries because of chemical laden fly ash. Thus, had the administration acted on time, two accidents could have been avoided.

25. Therefore, not only industrial units but the administration was negligent on previous occasion when these chemicals were dumped and it has been negligent again when despite the knowledge of death of one Mohammad Nabi, no steps have been taken to prevent further similar accidents/injuries.
26. It is also submitted that the victims are the direct victims of the accident occurred due to illegal dumping of Chemicals, at the point of contact.
27. That the quantification of the compensation should be such to tide over and cover all past, present and future medical expenses and the future loss of livelihood and mental agony faced by the victims. Further, it is submitted that any amount of compensation cannot be substitute for the loss of near ones.
28. That the Hon'ble Tribunal in the matter of **Neyveli Lignite Corporation boiler blast case (OA 108/2020)**, has

awarded the compensation to the victims on the principle of absolute liability as laid down in M.C Mehta v. U.O.I 1987 1 SCC 395, para 31 & 32.

29. It is submitted that the report is silent on the aspect of further prevention of such incidents involving hazardous waste disposal in future and what mechanism the UP State PCB and the District Administration has in place regarding this aspect. The guidelines in this regard can be taken from the Judgment passed by this Hon'ble Tribunal directions in O.A. No. 804/2017 Rajiv Narayan v Union of India.

30. That apart from the liability of the polluters/defaulters/violators who have dumped such a hazardous chemicals, there is also liability of higher degree of the

a) UP PCB who have failed to check the violation by the industries,

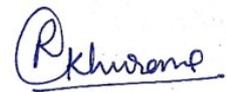
b) Irrigation Department, on whose land this chemical has been lying for around 5 years

c) District Administration, who despite being aware on 11/07/2022 about the presence of hazardous chemicals have not taken any steps to cordon off the area or remove the chemicals from that area immediately. And this gross negligence has led to the Victim Momeen and Saif (son of Applicant) receiving serious burn injuries.

31. It is thus prayed before this Hon'ble Tribunal that appropriate direction for compensation as prayed for be awarded in favour of the Victims. It is also prayed that Administration be directed to act promptly in such cases of environmental pollution/damage involving Hazardous waste so that accidents like the present one could be averted.

Applicant

Through

A handwritten signature in blue ink, appearing to read 'R. Khurana', with a horizontal line underneath.

Rahul Khurana, Advocate

Date: 21.03.2023

Place: New Delhi