

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONAL BENCH AT PUNE

ORIGINAL APPLICATION NO: 15 OF 2020

IN THE MATTER OF:

KRISHNA MARATHE

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

.... RESPONDENTS

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Through


Ritwick Dutta

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Dated:- 19.04.2023

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SUBMISSION ON BEHALF OF THE APPLICANT

MOST RESPECTFULLY SHOWETH:

1. The above titled application was filed by the Applicant before this Hon'ble Tribunal under Section 14 and 15 of the National Green Tribunal Act, 2010 (*hereinafter "NGT"*) raising substantial question relating to operation of mining activities without obtaining Environment clearance under the EIA Notification, 2006 by Respondent No.6, M/s New India Mining Company ('NIMCO') for mining of Iron Ore in mining lease area in respect of 32.83Ha in village of Redi, District Sindhudurg, State of Maharashtra.
2. That the Applicant has *inter alia* raised issues regarding mechanized open cast mining of iron ore begin carried out by Respondent M/s NIMCO without any prior Environmental Clearance, improper disposal and stacking of top soil and mining reject at earmarked sites as well as pollution to the groundwater reserves of Redi Village, Kanayal and Arabian Sea.
3. That on 01.03.2023, the day of hearing the matter *Krishna Marathe v. Union of India and Ors O.A 15 of 2020*, the Hon'ble Tribunal recorded the submission of the Respondent No.6 in Para

12 that *Section 15 of the National Green Tribunal Act, 2010* provides only five years period of limitation. Therefore, if any mineral has been mined five years prior to filing of this application, no realization on that count can be made for the quantity of mined material which has been extracted. It states as follows:

12. In rebuttal, learned counsel for respondent No.6 – Project Proponent has drawn our attention to the facts stated in the application by the applicant to the effect that respondent No.6 was carrying out mining in Sindhudurg since many years and that the applicant being resident of locality was having full knowledge of the same and yet, he has filed this application on 02.03.2020 as per the Registry, after considerable delay giving an impression that mining is still going on although from the Joint Committee report, it is apparent that mining was stopped long back in 2016. He has also argued that Section 15 of the National Green Tribunal Act, 2010 provides only five years period of limitation. Therefore, if any mineral has been mined five years prior to filing of this application, no realization on that count can be made for the quantity of mined material which has been extracted.

4. That it is pertinent to note that, this submission made by the Respondent No.6 was not raised in the counter affidavit dated 08.07.2022 (@Pg201) filed by the Respondent No.6 before the Hon'ble Tribunal. Therefore, the Applicant makes the following submissions:

- i. The Submission made by the Respondent No.6 is without any regard to the applicability of Section 15(3) which provides for limitation to file application but nowhere in the NGT Act, is 2010 any limit prescribed for which environmental compensation can be imposed/realized.
- ii. That the imposition of Environment Compensation has to be as per the formula derived by the CPCB in Hon'ble Supreme Court's order in *Paryavaran Suraksha Samiti*

v. Union of India, 2019 SCC OnLine NGT 2834. It is submitted that nowhere in the formula developed by CPCB mention any limitation in terms of period of calculation of environment compensation.

- iii. The Hon'ble Tribunal in many cases considered the past violations beyond the period of five years and held violators liable to pay environment compensation.

THE SECTION 15(3) OF THE NGT ACT, 2010 PROVIDES ONLY LIMITATION TO FILE THE APPLICATION AND NOWHERE PRESCRIBE LIMIT FOR REALISATION OF ENVIRONMENTAL COMPENSATION

5. That the argument raised by the project proponent that under Section 15 (3) of the NGT Act, 2010, only five years can be realized is wrong and contrary to the provision of the Act. The Section 15(3) of the National Green Tribunal Act, 2010 states the following:

15.(1) The Tribunal may, by an order, provide, -

(3) no application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

6. That the Section 15 of the NGT Act, 2010 specifically deals with the relief and compensation to the victims of pollution and other environmental damage and this application for grant of compensation or relief or restitution of the property or environment shall be made within a period of five years from the first cause of action. It is pertinent to note that Section 15(3) of

the NGT Act, 2010 imposes limitation to file an application within five years and nowhere in Section 15 there is limitation on realizing the compensation only for five years.

7. That in plethora of cases, the Ld. Tribunal elaborated the interpretation of the Section 15 of the NGT Act, 2010 in understanding that the it lays down period of limitation to file an application before the Hon'ble Tribunal. In *Forward Foundation v. State of Karnataka, 2015 SCC OnLine NGT 5* the Hon'ble Tribunal observed in Para 20 as follows:

20..... This being a petition under Section 15 of the NGT Act, it could be filed within five years from the date on which the cause for such compensation or relief 'first arose'

The Copy of relevant pages of the order dated 07.05.2015 in *Forward Foundation v. State of Karnataka, 2015 SCC OnLine NGT 5* is annexed here with as ANNEXURE A21

THE ENVIRONMENT COMPENSATION FORMULA DERIVED BY CPCB CALCULATE THE NUMBER OF DAYS OF VIOLATIONS AND DO NOT MENTION ANY LIMIT TO REALISE THE ENVIRONMENT COMPENSATION

8. That the CPCB has published formula/methodology for Assessing Environmental Compensation as per the directions issued by the Hon'ble National Green Tribunal in *Parayavaran Suraksha Samiti & Anr v. Union of India & Ors., O.A No. 593 of 2017*. In this methodology of CPCB five years limitation is not prescribed for imposing environmental compensation on violators and this Hon'ble Tribunal while applying this methodology of CPCB has not restricted itself for five years in

imposing environmental compensation. The formula derived for the calculation of the environmental compensation is as follows:

$$EC = PI * N * R * S * LF$$

Where,

EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

That the 'N' depicts the number of days of violations took place and even in that there is no prescribed limit of days or years which emphasis that environment compensation can be only levied for five years. Therefore, it can also be levied for more than five years. In *Sudhansu Sekhar Kunar v. State of Odisha, 2021 SCC OnLine NGT 1893* the environment compensation assessed by committee by applying the CPCB formula for the illegal mining activities was Rs 30,00,000/-. It is pertinent to note that the committee report placed compliance report which recorded the number of days' violations took place without obtaining EC and CTE as 7300days i.e 20 years. It records as follows:

- 4..... a. The mining activities are coming under Red Category of Industries as specified in Sl. No. 35 as per the SPCB, Odisha Notification No. 8333 dated 11.07.2018. Therefore, for above cases PI is enclosed as 80.
- b. The Number of days of violation as reported by Joint Inspection report on 29.04.2019 by District Collector, Keonjhar and DFO, Keonjhar Wildlife Division, Anandpur in the matter of O.A. No. 11/2019(EZ) i.e. **20 years or 20×365=7300 days** (Reported enclosed as Annexure-4). No information about the number of working days/year has been provided, so 365 days has been considered for calculation.
- c. A factor in Rupees for EC has been assumed as Rs. 250/- for cases of violation.
- d. Factor of scale of operation has been considered as 0.5 (Small) assuming excavation of the top soil and mining of laterite. The average depth of quarries is 5-20 ft depth.
- e. Local Factor has been assumed as 1 (for city/town having population less than one million).....

Therefore, it is clear that that while calculating the environment damage of the violations, the number of day's violations has to be considered even beyond five years.

The copy of the order dated 09.07.2021 titled *Sudhansu Sekhar Kunar v. State of Odisha, 2021 SCC OnLine NGT 1893* is attached herewith as **ANNEXURE A22**

THE PAST VIOLATIONS CAN BE CONSIDERED WHILE GRANTING COMPENSATION

9. That the Reply affidavit filed by the Respondent no.6 (@Pg 201) in para 8 clearly states that the mining operations, started in the year 1952 and substantial overburden was generated for more than two decades and the Respondent No.6 admits of stacking waste outside the mine lease. It is pertinent to note that in 2002 the mining leases were renewed by the project proponent; however, the project proponent failed to obtain environment clearance and continued the mining activities until 2016. That this violation of the project proponent is liable to pay compensation considering the past violations. That this Hon'ble Tribunal in plethora of cases imposed environmental compensation for the past violation by applying the Polluter pays principle to retribute damage caused.
10. That in *Indian Council for Enviro-Legal Action v. Jammu and Kashmir State Pollution Control Board, 2018 SCC OnLine NGT 393*. The Hon'ble NGT directed the SIDCO and Municipal Council Samba, to pay compensation for the discharge of industrial waste into the river for more than a decade. It states as follows:

i. The SIDCO must set up TSDF and CETP within six months, failing which SIDCO will be liable to pay an amount of Rs. 5 Crores every three months by way of deposit with the Central Pollution Control Board for being spent on restoration of environment. For the past failure in more than one decade, SIDCO is held liable to pay compensation of Rs. 5 Crores which may be deposited within one month from today with the Central Pollution Control Board for restoration of the environment.

ii. Municipal Council, Samba is held liable to pay compensation of Rs. 10 Lakh for the past failure in installing STP and for discharging untreated sewage in the river. Same amount will be payable for failure to install STP after six months, i.e., at the rate of Rs. 10 Lakh per month.

The Copy of relevant pages of the order dated 22.11.2018 ***Indian Council for Enviro-Legal Action v. Jammu and Kashmir State Pollution Control Board, 2018 SCC OnLine NGT 393*** is attached herewith as **ANNEXURE A23**.

11. That in ***Re: Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues, O.A No. 606 of 2018*** states in Para 59 that

59. Award of above compensation has become necessary under section 15 of the NGT Act to remedy the continuing damage to the environment and to comply with directions of the Hon'ble Supreme Court requiring this Tribunal to monitor enforcement of norms for solid and liquid waste management. Moreover, without fixing quantified liability

*necessary for restoration, mere passing of orders has not shown any **tangible results in the last eight years (for solid waste management) and five years (for liquid waste management), even after expiry of statutory/laid down timelines. Continuing damage is required to be prevented in future and past damage is to be restored.***

The copy of relevant pages of the order dated 13.10.2022 titled ***Re: Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues, O.A No. 606 of 2018*** is attached herewith as **ANNEXURE A24**

12. That furthermore in ***Kalyan BanSingh & Ors v. HIL Ltd & Ors. 2019 SCC Online NGT 2613, (Annexure A12 @ Pg 274)*** the Hon'ble Tribunal has awarded compensation to the individual victims for the damages caused by the mining activities that abandoned asbestos mines in the year 1983. As a result of failure to take adequate closure measures the emission of dust particles which caused asbestosis to the villagers living in the Roro Hills, Jharkhand.
13. That therefore, it is humbly submitted by the Applicant that the Hon'ble Tribunal may be pleased to impose penalty to the Responded No.6 for the illegal mining operations carried out after 2002, where mining leases were renewed and mining started without obtaining Environment clearance and thereby causing severe environmental damage to the surroundings. The respondent no.6 may be kindly directed to restore, reclaim the illegally mined lands.

Through



Ritwick Dutta



**Rahul Choudhary
Counsel for the Applicant**

2015 SCC OnLine NGT 5

Affirmed in Mantri Techzone (P) Ltd. v. Forward Foundation, (2019) 18 SCC 494

In the National Green Tribunal, Principal Bench New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON, U.D. SALVI, J.M., DR. D.K. AGRAWAL, E.M. AND PROFESSOR A.R. YOUSUF, E.M.)

In the Matter of:

Forward Foundation A Charitable Trust Having its registered office at 24/B, Haralur Village, HSR Layout Post Bangalore-560102 Through its Secretary and Others ... Applicants;

Versus

State of Karnataka, Vidhana Soudha Bangalore-560001 Through its Chief Secretary and Others ... Respondents.

Original Application No. 222 of 2014

Decided on May 7, 2015, [Reserved on: January 27, 2015]

Counsel for Applicant:

Mr. Raj Pajwani, Sr. Adv. Along with Ms. Megha Mehta Agrawal, Advocate

Counsel for Respondents:

Mr. Devraj Ashok, Advocate for Respondent No. 1, 3, 4 & 5

Mr. B.R. Srinivasa G., Advocate for Respondent No. 7

Mr. R. Venkatramani, Sr. Advocate, Mr. Shekhar G. Devasa, Mr. D. Mahesh, Advocates for respondent No. 9

Mr. Raju Ramachandran, Mr. Devashish Bharuka, Mr. Vaibhav Niti and Mr. Suraj Govindraj, Advocates for Respondent No. 10

Mr. Sajan Poovayya, Sr. Advocate and Mr. Sumit Attri, Advocate for Respondent Nos. 11 & 12

JUDGMENT

1. Whether the judgment is allowed to be published on the net?

2. Whether the judgment is allowed to be published in the NGT Reporter?

SWATANTER KUMAR, (CHAIRPERSON):— All the three applicants have approached the Tribunal under the provisions of the National Green Tribunal Act, 2010 (for short 'the NGT Act'), with a common prayer that a direction be issued to respondent no. 1, the State of Karnataka to take cognizance of the Reports dated 12th June, 2013 and 14th August, 2013 prepared by respondent nos. 6 and 2 respectively, and take coercive and punitive action including restoration of the ecologically sensitive land. Further the applicants also prayed for issuance of a direction that the valley land is to be maintained as a sensitive area, without developments of any sort, so that the ecological balance of the area is not disturbed. Besides this, they even prayed for issuance of such other order or directions as the Tribunal may deem fit in the circumstances of the case and render justice.

The three applicants are either a registered charitable trust and/or a Society, registered under the relevant laws in force. They claim to be keenly interested in protecting the environment and ecology, particularly, in the State of Karnataka. Their principal grievance is in relation to certain commercial projects that are being developed by respondent nos. 9 & 10 in a large-sized, mixed use development project/building complex, including setting up of a SEZ park, Hotels, Residential

the interest of environment and ecology issue any directions and if so, to what effect?

Discussion on Merits

1. Whether the application filed by the applicants and supported by respondent nos. 11 and 12, is barred by time and thus, not maintainable?

20. According to respondent no. 9, it had submitted a proposal to establish Information Technology Park, R & D Centre, Residential Complex and other facilities and sought for allotment of lands for the project in the year 2000. On 15th January, 2001, the Government in exercise of powers conferred upon it under Section 3(1) of the Karnataka Industrial Area Development Act, 1966 declared the land in question as an Industrial Area. Preliminary notification for acquisition of land in question was issued on 15th January, 2001 by KIADB and final Notification for acquisition of the land was issued on 23rd April, 2004, which was preceded by a Global Investor meet held on 10th February, 2004. On 28th June, 2007, respondent no. 7 issued the letter of allotment to respondent no. 9 allotting 63 acres 37½ gunta in Agara and Jakkasandra village. The possession certificate in favour of respondent no. 9 was issued on 29th June, 2007 in furtherance to which said respondent had paid the amount and executed the lease-cum-sale agreement. Project lease was sanctioned on 4th July, 2007. Airport Authority issued the NOC on 9th April, 2010. Clearance for the project construction was issued by BSNL on 16th April, 2010. BWSSB issued NOC on 12th May, 2011. Bangalore Electricity Supply Company Ltd. issued NOC on 27th April, 2011. After meetings of the State Level Expert Appraisal Committee and SEIAA, proposal was considered and Environmental Clearance was granted to respondent no. 9 on 17th February, 2012 for which notice was published in 'Kannada Prabha' and 'Indian Express' on 12th March, 2012 and 14th March, 2012 respectively. Modified building plan had been approved by respondent no. 7 on 30th August, 2012 which was valid up to 10th August, 2014. On 4th September, 2012, KSPCB issued consent for establishment under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as per conditions stated in the NOC. On 12th June, 2013, the LDA made a report stating that the KIADB has initiated a colossal mixed-use development project in the catchment area of Bellandur Lake. With reference to these dates and events, respondent no. 9 had advanced the plea that the application is barred by limitation. It is the contention of respondent no. 9, that all material events that would give rise to filing of an application under the provisions of NGT Act, 2010, had occurred on and prior to 17th February, 2012 and as the application was filed before the Southern Zone Bench of the Tribunal on 13th March, 2014, thus, same is hopelessly barred by time and is liable to be rejected on that short ground alone.

Similar events had taken place in regard to the project of respondent no. 10 who had been granted Environmental Clearance on 30th September, 2013. The contention raised by this respondent, which is, without prejudice to its other contentions, is that the grant of Environmental Clearance would put an end to all other challenges and even if the reports dated 12th June, 2013 and 14th August, 2013 are taken into consideration, even then the application had to be filed within a period of 6 months from the date on which the 'cause of action for such dispute has first arisen' in terms of Section 14 of the NGT Act, 2010. Admittedly, present application has been filed in March, 2014 i.e. much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Even otherwise, the period of 60 days beyond the prescribed period of limitation has long expired and as such the Tribunal will have no jurisdiction to condone the delay. The Applicants contend, which contention is also duly supported by respondent Nos. 11 and 12 that the present application is not an application simplicitor under Section 14 of the NGT Act. It is an application where a specific prayer has been made with reference to the reports dated 12th June, 2013 and 14th August, 2013 for restoration of

the Ecologically Sensitive Land and for maintaining the sensitive area in its natural condition, so that ecological balance of the area is not disturbed. This being a petition under Section 15 of the NGT Act, it could be filed within five years from the date on which the cause for such compensation or relief 'first arose'. According to the applicants, the present application is even filed within the period of limitation as contemplated under Section 14 of the NGT Act, 2010, for the reason that with reference to the inspection reports dated 12th June, 2013 by respondent no. 6 and 14th August, 2013 by respondent no. 2, various actions had been taken by different authorities, fully substantiating the plea of the applicant that such huge construction activity in the catchment area of the lakes is bound to have adverse impact on the environment and ecology. According to them, it is evident from the record that on 14th August, 2013, respondent no. 7 had issued a communication to respondent no. 9 to comply with Ecology and Environmental Rules, as well as to take approval from the LDA. Various letters were exchanged between different authorities and the Project Proponent about the progress of the project and its irregularities. A letter of stop work notice was issued by the BBMP on 23rd December, 2013. KIADB also issued a stop work notice to respondent no. 9 on 2nd January, 2014. According to these applicants, in light of these facts, it is the case of 'continuing and/or recurring' cause of action relating to environmental issues. Thus, the application had been filed within the prescribed period of 6 months even in terms of Section 14 of the NGT Act and the limitation would trigger from each of these dates mentioned above.

21. Sections 14 and 15 of the NGT Act, 2010 to a large extent are self contained provisions. They deal with the remedies that an aggrieved person is entitled to invoke. The present application, if treated as an application under Section 15 of the NGT Act, viewed from any angle, is within the prescribed period of limitation. The Environmental Clearance was granted to respondent no. 9 vide order dated 17th February, 2012 and all events have occurred thereafter till institution of the petition. The applicant has prayed for relief and restoration of ecology particularly with reference to the catchment areas of Bellandur Lake & Agara Lake. The applicant could not have availed of any remedy before the Tribunal, prior to 2nd June, 2010 and/or 18th October, 2010 respectively, i.e. the dates on which the Act came into force and the Tribunal was constituted. Thus, the period of limitation would start running at best from these dates. The present application for the purposes of Section 15 has been filed within 5 years there-from and thus, has to be treated as within time.

However, what needs to be deliberated upon is whether in terms of Section 14 of the NGT Act, 2010, the present application has been filed within the prescribed period of limitation or not. Section 14(3) mandates that no application for adjudication of dispute under Section 14(1) shall be entertained by the Tribunal unless it is made within the period of 6 months from the date on which the 'cause of action for such dispute first arose'. The jurisdiction of the Tribunal under Section 14 is over civil cases where a substantial question relating to environment, including enforcement of any legal right relating to environment, is involved and such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. The dispute or questions that the Tribunal is required to settle must fall within the ambit and scope of Section 14(1) of the NGT Act. In other words, it must be a dispute raising a substantial question relating to environment.

22. The contesting respondents while relying upon the language of Section 14 read cumulatively, contend that the expression 'within the period of 6 months from the date of which the cause of action for such dispute first arose' mandates that the period of limitation has to be reckoned when the cause of action for such dispute first arose and not thereafter. In the present case, the Environmental Clearance had been granted to respondent no. 9 on 17th February, 2012 and therefore it is their contention

(Signature)

t.c.

2021 SCC OnLine NGT 1893

In the National Green Tribunal[±]

(BEFORE B. AMIT STHALEKAR, MEMBER (JUDICIAL) AND SAIBAL DASGUPTA, MEMBER (EXPERT))

Sudhansu Sekhar Kunar and another ... Applicant(s);

Versus

State of Odisha ... Respondent(s).

Original Application No. 11/2019/EZ

Decided on July 9, 2021

Advocates who appeared in this case:

Mr. Sankar Prasad Pani, Advocate, for the Applicant(s);

Ms. Sampika Mishra, ASC, for the Respondent(s);

Ms. Papiya Banerjee Bihani, Advocate For Respondent;

Mr. Gora Chand Roy Chodhury, Adv. For MoEF&CC,;

Mr. Surendra Kumar, Advocate For CPCB,.

ORDER

1. Mr. Sankar Prasad Pani, learned Counsel is present for the Applicant.

2. Ms. Sampika Mishra, learned Additional Standing Counsel is present for Respondent Nos. 2, 3, 4 & 5, State Respondents, Govt. of Odisha, Ms. Papiya Banerjee Bihani, learned Counsel is present for Respondent No. 6, Odisha State Pollution Control Board, Mr. Gora Chand Roy Choudhury, learned Counsel is present for Ministry of Environment, Forest and Climate Change and Mr. Surendra Kumar, learned Counsel is present for Central Pollution Control Board.

3. This Tribunal in its order dated 16.10.2019 had observed that the recovery of Rs. 23, 53, 364/- (Rupees Twenty Three Lakh Fifty Three Thousand Three Hundred Sixty Four only) was made towards the royalty and penalty and did not cover the amount of Environmental Compensation as well as the cost of restitution, remediation and restoration of the environment under the Environment (Protection) Act, 1986.

4. Subsequently, an affidavit was filed on 16.12.2019 by the Central Pollution Control Board indicating that for the area of 29.90 acres in Madanpur Mouza, Tehsil Ghasipura, District-Keonjhar, Odisha, a sum of Rs. 7, 30, 00, 000/- (Rupees Seven Crore Thirty Lakhs only) has been assessed towards Environmental Compensation. However, there is nothing on record to show whether this amount has been recovered till date or not. The compliance report of the Committee to that effect is reproduced herein below:—

"Compliance report in the matter of OA No. 11/2019/EZ filed by Sudhansu Sekhar Kunar v. State of Odisha before the Hon'ble National Green Tribunal, Principal Bench, New Delhi (Video Conferencing) and Order dtd. 16.10.2019 thereof of the Hon'ble NGT.

1.0 Background:

The Ho'nble NGT, Principal Bench, New Delhi vide order dated 16.10.2019 in para 8(iii) (Enclosed as Annexure 1) has directed as follows : The State PCB, the District Collector and the District Mining Officer Keounjhar District and the CPCB shall collectively assess (a) the damage caused to the environment and (b) the cost of remediation, restitution and restoration of the damages caused and the net present value of the ecological foregone.

In compliance to the above said direction and subsequent order of Collector

and District Magistrate, Keonjhar vide letter no. 2233/Judl. Dtd. 22.11.2019, the following officials have visited the alleged site on 02.12.2019 to assess the damage caused to the environment and the cost of remediation. Sri Madhab Chandra Birua, Tahasildar(1/C), Ghasipura, representative of District Collector, Keonjhar, has accompanied with team.

1. Ms. Susmita Ekka, Scientist D, Central Pollution Control Board,
 2. Sir P.C. Behera, Regional Officer, State Pollution Control Board, Keonjhar, Odisha,
 3. Sri D.C. Sahoo, Mining Officer, Keonjhar, Odisha Before inspection to the alleged site, the committee had discussed the case matter with Tahasildar, Ghasipura. After field visit, the committee along with Tahasildar Ghasipura had also discussed the case matter with Sub-Collector, Anandpur. Sub-Collector instructed to the Tahasildar Ghasipura to provide necessary information to the committee.
2. Field Observation:
- (a) The committee visited the site cashew forest land known as Kisam Jungle in Madanpur Mouza in Ghasipura Tehsil of Keonjhar District in Khata No. 754, Plot no. 2824 on 02.12.2018. However, no mining activities was observed during the date of inspection.
 - (b) Excavation of minor mineral i.e., laterite was observed patch wise in the affected area.
 - (c) Trench has been developed presently around the affected area to restrict the illegal mining.
 - (d) Tahasildar Ghasipura has collected a sum of Rs. 23, 53, 364/- from the offenders towards royalty and penalty during the last 3 years from alleged land. (Report of Tahasildar is enclosed as Annexure 2).

3. Assessment of Environmental Compensation

The Hon'ble NGT vide order dated 13.09.2018 in OA No. 186 of 2016 (Satendra Pandey v. MoEF&CC, Govt. of India) has inter alia directed as follows:

The MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mine out areas along with the net present value of Ecological Services foregone because of illegal or unscientific mining. In absence of the above said guidelines, it was attempted to assess the cost of restoration taking assumption and references from the available following Rule and methodology.

- I. Report of the CPCB In-house Committee on Methodology for assessing Environmental Compensation and action plan to utilize the fund.
- II. Orissa Minor Mineral Concession Rule, 2016

A. Environmental Compensation as per Methodology developed by CPCB

A report was prepared by the in-house Committee of Central Pollution Control Board (CPCB), on Methodology for assessing Environmental Compensation and action plan to utilize the fund (enclosed as Annexure 3), in compliance to the orders of Hon'ble NGT, Principal Bench in the matter of OA No. 593/2017(WP (civil) No. 375/2012), Paryavaran Suraksha Samiti v. Union of India Environmental Compensation has been assessed adopting the following formula:

Formula:

$$EC = PIXNXRXSXLN$$

Where:

EC= is Environmental Compensation in Rupees

PI = Pollution Index of Industrial sector

N= Number of days of violation took place

*R= A factor in Rupees for EC
S= Factor of scale of operation
LF= Local Factor*

<i>Location of alleged site</i>	<i>Total Mine out area</i>	<i>Pollution Index of Industrial Sector</i>	<i>Nfumber of days violation took place (operating without EC/CTO)</i>	<i>A factor in Rupees for EC</i>	<i>A Factor for scale of operation</i>	<i>Local Factor</i>	<i>EC=PIXN XRXSXLFF (in Rupees)</i>
<i>Factor</i>		<i>PI</i>	<i>N</i>	<i>R</i>	<i>S</i>	<i>LF</i>	
<i>Madanpur in Ghasipura Tehsil</i>	<i>29.9 0</i>	<i>80</i>	<i>7300</i>	<i>250</i>	<i>0.5</i>	<i>1</i>	<i>7,30,00,000/-</i>

Note:

- a. The mining activities are coming under Red Category of Industries as specified in Sl. No. 35 as per the SPCB, Odisha Notification No. 8333 dated 11.07.2018. Therefore, for above cases PI is enclosed as 80.*
- b. The Number of days of violation as reported by Joint Inspection report on 29.04.2019 by District Collector, Keonjhar and DFO, Keonjhar Wildlife Division, Anandpur in the matter of O.A. No. 11/2019(EZ) i.e. 20 years or 20×365=7300 days (Reported enclosed as Annexure-4). No information about the number of working days/year has been provided, so 365 days has been considered for calculation.*
- c. A factor in Rupees for EC has been assumed as Rs. 250/- for cases of violation.*
- d. Factor of scale of operation has been considered as 0.5 (Small) assuming excavation of the top soil and mining of laterite. The average depth of quarries is 5-20 ft depth.*
- e. Local Factor has been assumed as 1 (for city/town having population less than one million)*

B : For Environmental Management Fund:

As per the sub-rule (2) of Rule 49 of the Odisha Minor Mineral Concession Rule, 2016 it states that "An amount equal to 5% of the royalty payable shall be collected from the lessees and shall be paid to the Environment Management Fund in such manner, as may be specified in the notification, issued by the Govt. and such amount shall be realized along with the royalty. As per the sub rule (3) of the said Rule, the Environment Management Fund shall be utilized for the following objects, namely;

(i) Restoration;

(ii) Repair, reclamation and rehabilitation work required to be undertaken for adjoining or external, outside the quarry, caused by mining activities.

Moreover it has also been provided that any casualty by the lessee due to his negligence or non-compliance of conditions made in the lease deed shall be compensated or re-habilitated by the lessees.

In the above circumstances, as the alleged area has not been lease out by the revenue authority for mining activities and illegal mining was carried out by the local people. Tahasildar Ghasipura has collected a sum of Rs. 23,53,364/- towards royalty and penalty during the last 3 years from the offenders. 5% of the said penalty amount may be deposited in the Environmental Management Fund as per Odisha Minor Mineral Concession Rule, 2016.

4. *Conclusion:*

In view of the above, it is concluded as follows:

Based on the methodology recommended by the in-house committee of the CPCB, the Environmental Compensation is assessed to be of Rs. 7,30,00,000/- (Rupees seven crore thirty lakhs only)"

5. So far as restoration, repair, reclamation and rehabilitation work is concerned which was required to be undertaken for adjoining or external damage outside the quarry caused due to illegal mining activities, the same does not find mention in the Committee's report.

6. Subsequently, another Committee was constituted and the report of that Committee has been brought on record on 18.12.2020 through an affidavit sworn by the Assistant Conservator of Forest, Keonjhar Wildlife Division, Anandapur, known as Action Taken Report which contains the rehabilitation plan. It also mentions that this rehabilitation plan has been submitted to the Collector and District Magistrate, Keonjhar District, Odisha for allotment of funds to the tune of Rs. 2,01,57,500/- (Rupees Two Crore One Lakh Fifty Seven Thousand Five Hundred only). There is nothing on record to show whether this amount has been received from the State Government and whether the rehabilitation work has started/completed or not.

7. Ms. Sampika Mishra, learned Additional Standing Counsel for State Respondents, Govt. of Odisha, prays for and is granted two weeks time to file a fresh affidavit clearly indicating whether the Environmental Compensation as assessed has been recovered and the rehabilitation plan has been executed or not and what is its latest status, and also whether any criminal action has been taken against the defaulters/illegal miners.

8. Let such affidavit be filed within two weeks.

9. List on 28.07.2021.

† Eastern Zone Bench, Kolkata (Through Video Conferencing)

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t.c.

2018 SCC OnLine NGT 393

In the National Green Tribunal[±]

(BEFORE ADARSH KUMAR GOEL, CHAIRPERSON, S.P. WANGDI, MEMBER (JUDICIAL), K. RAMAKRISHNAN, MEMBER (JUDICIAL) AND NAGIN NANDA, MEMBER (EXPERT))

Indian Council for Enviro-Legal Action & Ors. ... Applicant(s);
Versus

Jammu and Kashmir State Pollution Control Board & Ors. ...
Respondent(s).

Original Application No. 483/2016

Decided on November 22, 2018, [Date of Hearing: 22.11.2018]

Advocates who appeared in this case :

Ms. Katyani and Ms. Mehak, Advocates for the Applicant(s)

Mr. Dilip Pandit along with Sh. Agninder Bakshi, Ex. Eng. and G.M. Kawoosa,
Advocates for J&K PCB& State

Mr. Rajkumar, Advocate for CPCB for the Respondent(s)

ORDER

1. This application seeks direction to close down industries causing pollution, discharging effluents/waste into or near the River Basantar and operating without statutory consent. Direction has also been sought to remove encroachments upto 500 meters from the High Flood Line on both sides of River Basantar to stop projects or their extension on the river bed/floodplains and banks of the said river, to identify landfill sites for Municipal Solid Waste in District Samba, Jammu and Kashmir, to submit a list of hazardous industries in the State, to determine and recover compensation and disburse the same to the victims or utilize the same for restoration of the environment.

2. The applicants claim to be interested in protection of environment in the area in Samba District and the floodplains, river banks of the River Basantar which is a tributary of River Ravi by controlling pollution caused by the polluting industries. The applicants rely upon a report of the Central Pollution Control Board (CPCB) submitted in February 2015, titled "River Stretches for Restoration of Water Quality" identifying the stretch from Samba to Chakmangarakwal as polluted river stretch. On account of pollution, the cattle grazing at the banks of the river have fallen sick and have died. Fish and other aquatic organisms have been found dead.

3. Industrial Growth Centre has been developed by State Industrial Development Corporation (SIDCO) which is an agency for promotion and development of medium and large scale industries. About 250 industries are manufacturing pesticides and chemicals and discharging effluents into or near the river in violation of the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the Hazardous Waste Rules, 2008. Degradation of environment is taking place on account of dumping of waste on the river bank. A research paper refers to a study of Physio Chemical Parameters of Basantar River and impact of Industrial waste on groundwater quality in vicinity of dumping site in Samba Town, Jammu & Kashmir, India. It was published in March 2016 in International Journal of Engineering Research & Technology. It mentions that the industrial complex in the vicinity of the bank of River Basantar has industries from which waste is generated and thrown into the river. The pollution is affecting the aquatic life and the inhabitants. The water of the river is not complying with the standards. Groundwater

and the soil are also affected.

4. There is also a plan to set up a Krishi Vigyan Kendra (KVK) on the river bed/flood plain which will add to the pollution. Part of land has been allotted to Sher-e-Kashmir University, Jammu on the banks of the river. Development of river bed will increase risk of flood, add to vulnerability of structures, result in loss of wetland, biodiversity and micro-organisms, contaminate river water, decrease water holding capacity of the soil and reduce water level.

5. The applicants refer to Industrial Policy 2016 of the State Government. The object of the Policy is to encourage eco-friendly and environmentally sustainable industrial growth.

6. Reference has also been made to the judgments of the Hon'ble Supreme Court in *Hinch Lal Tiwari v. Kamala Devi*¹, *Susetha v. State of Tamil Nadu*² and *Maharaj Singh v. State of Uttar Pradesh*³ highlighting the importance of material natural resources and their conservation on the doctrine of Sustainable Development. Reference has also been made to the Precautionary Principle enunciated in *M.C. Mehta v. Union of India*⁴ and *Indian Council for Enviro Legal Action v. Union of India*⁵.

7. In reply to the notice issued by this Tribunal, the Central Pollution Control Board has stated that it has already identified the river stretch from Samba to Chakmangarakwal as polluted river stretch in its report published in February 2015. Implementation of Hazardous Waste Rules is the responsibility of the State Pollution Control Board and the Municipal Council.

8. The State Pollution Control Board has stated that its endeavor is to enforce zero discharge of effluents by enforcing recycling of waste water after treatment by the ETP. The matter has also been taken up with MD, SIDCO for setting up of Common Effluent Treatment Plant (CETP) in all the Industrial Estates and Industrial Growth Centers and to re-circulate the waste water after tertiary treatment in CETP. It is also pressing hard for having Treatment Storage Treatment Facility (TSTF) for the site as identified. IGC Samba is one of the largest Growth Centers in the State. Encroachment should be removed in the river bed as it is harmful to the environment.

9. The SIDCO has taken a stand that it has already initiated action for construction of CETP. There is no pollution caused to the river nor any air pollution is caused in District Samba. No toxic waste is discharged from the industrial centers. NOC has been obtained. Only after that lease deed is executed in favour of the industries. There is no dumping of waste at the banks of the river. Steps have been taken for the CETP by making DPR at a cost of Rs. 12.87 crores on 30.05.2013. Construction has been sanctioned on 10.07.2015. SEIAA has given online pre-feasibility report on 24.08.2016.

10. On 27.02.2018, the SIDCO was required by this Tribunal to obtain instructions about quality of effluents being discharged. Report has been filed on 13.03.2018 that out of 210 total industrial units, 44 units required ETPs which has since been done.

11. However, in the report filed by the Jammu and Kashmir State Pollution Control Board (J&KSPCB) on 15.03.2018, it is stated that water quality is better in upstream of IGC and is deteriorated in downstream IGC Samba which may be due to untreated domestic effluents as well as effluents coming out from IGC Samba.

12. We have heard the learned Counsel for the parties and perused records.

13. During the course of hearing, learned Counsel for the J&KSPCB has handed over "Compliance Report" to the effect that there is no STP in place to treat the domestic sewage from Samba town which is being discharged into the river Basanter. Waste water from Industrial Estate is also discharged into the river. Municipal body has been asked to set up STP of adequate capacity. Closure of 23 defaulting units at IGC Samba for non-compliance has been ordered but seven orders were withdrawn, on compliance. Consent to three industries has been kept in abeyance on account of

absence of pollution control devices. Out of 140 units, 33 units are in red category and 107 in orange category. Effluents generating units have been directed to install digital flow meters with the ETPs. Monitoring of air quality, ground water, surface water was carried out. Ambient air quality was found to be exceeding permissible limits due to heavy traffic load, open burning and other factors. Water sample exceeded the permissible limit in respect of important parameters such as Alkalinity, Hardness, Potassium, level of Calcium. Sewage waste water exceeded the standard limit for majority of parameters leading to increased pollution level in the River Basanter. Early setting up of Common STPs is required. A copy of letter dated 25.10.2018 addressed to the Municipal Council, Samba has been annexed to the effect that raw sewer was getting discharged into the river near IGC Samba and a CSTP was required to be installed.

14. A perusal of the above shows that the stand of SIDCO is misleading and is contradicted not only by the report of the Central Pollution Control Board but also the report of the J&KSPCB. SIDCO has denied any amount of pollution but the SPCB, after testing of samples, ordered closure of 23 defaulting units (out of which 07 orders have been withdrawn), which clearly means that at least 16 industrial units were found to be creating pollution. It is also shown that 33 units are in red category and 107 are in orange category. The water sample and ambient air quality are exceeding the limits. Sewer waste water is exceeding the standard limits for majority of parameters. The minutes of the meeting conducted by the J&KSPCB dated 21.08.2018 further show that Treatment Storage Treatment Facility (TSTF) for treatment of hazardous waste is pending for more than a decade. The CETP has not been installed. Untreated sewage waste and industrial effluents are being discharged in the river on account of delay in establishment of CETP and STP, which is clearly illegal and detrimental to the environment.

15. The above material, which is unchallenged, shows clear violation of environmental laws and also failure of the statutory authorities to take adequate action. In spite of the findings of the J&KSPCB, there is nothing to show that any prosecution has been initiated or any other coercive measures have been taken against the units which were found to be polluting, except closure of some of them after longtime. For the past pollution, no amount of compensation for damage to the environment or the inhabitants has been recovered. It can hardly be disputed that in the course of upholding and protecting environment, on 'Polluter Pays' principle, the Pollution Control Board is entitled to and must have a provision, followed by action, for recovering adequate amount of compensation, apart from any other penal or any other action.

16. Accordingly, we direct as follows:

- i. The SIDCO must set up TSTF and CETP within six months, failing which SIDCO will be liable to pay an amount of Rs. 5 Crores every three months by way of deposit with the Central Pollution Control Board for being spent on restoration of environment. For the past failure in more than one decade, SIDCO is held liable to pay compensation of Rs. 5 Crores which may be deposited within one month from today with the Central Pollution Control Board for restoration of the environment.
- ii. Municipal Council, Samba is held liable to pay compensation of Rs. 10 Lakh for the past failure in installing STP and for discharging untreated sewage in the river. Same amount will be payable for failure to install STP after six months, i.e., at the rate of Rs. 10 Lakh per month.
- iii. The J&KSPCB is directed to take appropriate coercive measures, including prosecution for the violations. It may be ensured that flood plains/river bed are free from encroachment and no garbage is dumped in the river.

- iv. Any surviving issue with regard to non-compliance of Solid Waste Management Rules, 2016 will stand covered by order of this Tribunal dated 20.08.2018 in O.A. No. 606 of 2018 and can be dealt with by the Committees constituted in terms of the said order.
 - v. It will be open to the concerned authorities to recover the amount from the erring officials/polluters.
 - vi. We also direct that the Committee already constituted by this Tribunal vide order dated 24.08.2018, *Execution Application No. 32/2016* in Original Application No. 295/2016 *Amresh Singh v. Union of India*, headed by Justice J.R. Kotwal retired Judge, Jammu & Kashmir High Court, will act as Oversight Committee in the matter with the modification that only other Members will be the State Pollution Control Board and the Central Pollution Control Board. The Nodal Agency will be the State Pollution Control Board for coordination. If any additional expenses are to be incurred for functioning of the Committee, the State Pollution Control Board will provide such funds, as may be directed by the Chairman of the Committee.
17. The application is disposed of.

† Principal Bench at New Delhi

¹ (2001) 6 SCC 496 (Civil Appeal 4787/2001)

² (2006) 6 SCC 543 : AIR 2006 SC 2893

³ (1977) 1 SCC 155

⁴ (1987) 4 SCC 463

⁵ (1996) 5 SCC 281

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t.c.

Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 606/2018

(In respect of State of Karnataka)

In re: **Compliance of Municipal Solid Waste Management Rules,
2016 and other environmental issues**

**(Arising out of directions of the Hon'ble Supreme Court
in W.P. No. 888/1996 and W.P. No. 375/2012)**

Date of hearing: 13.10.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Present: Ms. Vandita Sharma, Chief Secretary, Karnataka
Mr. Rakesh Singh, Add. Chief Secretary, Karnataka
Dr. Ajay Nagbhushan, Secretary, Urban Development Department
Mr. Srinivasulu, Member Secretary, KSPCB
Mr. Tushar Girinath, Chief Commissioner, BBMP
Mr. Harish Kumar, Commissioner, BBMP
Ms. Manjushree, Director, DMA with Mr. Darpan KM and Mr. Rajat
Jonathan Shaw, Advocates for the State of Karnataka

ORDER

**The Issue – Monitoring of compliance of waste in terms of orders of
Hon'ble Supreme Court dated 02.09.2014 and 22.02.2017**

1. The issues of solid as well as liquid waste management are being monitored by this Tribunal as per orders of the Hon'ble Supreme Court order dated 02.09.2014 in *Writ Petition No. 888/1996, Almitra H. Patel vs. Union of India & Ors.*, with regard to solid waste management and order dated 22.02.2017 in W.P. No. 375/2012, reported in (2017) 5 SCC 326, *Paryavaran Suraksha vs. Union of India*, with regard to liquid waste

Un-remediated legacy waste is to the extent of 178.59 MT. The total compensation under the head of failure to scientifically manage solid waste works out to Rs. 540 crores. The total compensation comes to Rs 3396 crores, or say Rs. 3400 crores. Out of the said amount, we deduct amount of Rs. 500 crore levied as compensation vide order dated 10.10.2022 in OA No. 324/2021, *In re : News item published on 21.11.2021 in the Indian Express titled "Lakes of Bengaluru : Industrial effluents, raw sewage; stinky tale of Chandrapura lake"* for restoration of Chandrapura lake. Remaining amount of Rs.2900 crore may be deposited by the State of Karnataka in a separate ring-fenced account within two months, to be operated as per directions of the Chief Secretary and utilised for restoration measures preferably within six months. As already directed, the Chief Secretary may evolve an appropriate mechanism for planning, execution and oversight of programmes for remedial action involving concerned departments within one month.

59. Award of above compensation has become necessary under section 15 of the NGT Act to remedy the continuing damage to the environment and to comply with directions of the Hon'ble Supreme Court requiring this Tribunal to monitor enforcement of norms for solid and liquid waste management. Moreover, without fixing quantified liability necessary for restoration, mere passing of orders has not shown any tangible results in the last eight years (for solid waste management) and five years (for liquid waste management), even after expiry of statutory/laid down timelines. Continuing damage is required to be prevented in future and past damage is to be restored.



t.c.