

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH AT NEW DELHI  
ORIGINAL APPLICATION NO: 104 OF 2018**

**IN THE MATTER OF:-**

SHIVPAL BHAGAT & ORS.

...APPLICANT

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

**INDEX**

<b>S. NO.</b>	<b>PARTICULARS</b>	<b>PAGE NO.</b>
1.	Written Submission on behalf of the Applicant Nos. 2 to 6 to the Report dated 16.12.2021 submitted by CPCB	2-14
2.	<b><u>ANNEXURE-1:</u></b> A copy of letter dated 10.09.2021 issued by the CECB on behalf of Oversight Committee to 29 villagers	15-16
3.	<b><u>ANNEXURE-2.</u></b> True Copy of the Representation dated 08.10.2021 given by the villagers to the Committee	17-20

THROUGH

**RITWICK DUTTA RAHUL CHOUDHARY SAURABH SHARMA**  
**ADVOCATES**

Counsels for Applicant Nos. 2 to 6  
N-71, Lower Ground Floor, Greater Kailash-I,  
New Delhi- 110048  
Email:- [Litigation.life@gmail.com](mailto:Litigation.life@gmail.com)  
Mobile No. 9312407881

New Delhi  
Date: 10.01.2022

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH AT NEW DELHI  
ORIGINAL APPLICATION NO: 104 OF 2018**

**IN THE MATTER OF:-**

SHIVPAL BHAGAT & ORS.

...APPLICANT

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

**WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT NOS. 2 TO 6  
TO THE REPORT DATED 16.04.2021 SUBMITTED BY CPCB**

**MOST RESPECTFULLY SHOWETH:-**

1. That the Applicants have filed the present Original Application seeking directions to Respondents with respect to remediation of environment including soil, water and air, in villages Kosampalli, Dongamahua, Kodkel, Kunjemura and Regaon. Nagmuda, Milupara ,Sakta which fall under the Tamnar Block, as well as Bhengari, Charmar, Khokroama and Tendनावapara, Chal etc of Ghargoda block, which has, over the years, been severely damaged by mines, thermal power plants, coal washeries and other such industries operating in these villages.

**PRELIMINARY OBJECTIONS**

**Failure to Undertake Carrying Capacity Study:**

2. The Oversight Committee has failed to **commissioning a carrying capacity study** which is of critical importance to understand the capacity of the region to assimilate new industries expansion of existing industries and mining activities. for the first 6 months, although the meeting minutes repeatedly noted the need to collectively discuss and draft a TOR for such a study to and to work out the funding and commissioning modalities, nothing was done. The study was to be

completed within two years, however despite a lapse of nearly two years no progress has been made so far as the Carrying Capacity Study is concerned. The Oversight Committee clearly seems to have glossed over this very important study which could go a long way in improving the situation by devising suitable mitigation measures.

It is pertinent to point out that the need for carrying capacity was highlighted in order dated 23-08-2018 of the Hon'ble Tribunal. Further, the Joint Committee report on 14-10-2019, has specifically stated as follows:

"4.2 Long Term measure

(a) .....the precise extent of the current environmental load and the likely impact of future mining and industrial activities has to be worked out through a detailed and comprehensive environmental load carrying capacity study, to be carried out by a reputed environmental research institute or a consortium of such institutes over a 24 month period"

This Recommendation was accepted by the Hon'ble Tribunal vide order dated 27-2-2020.

3. It is submitted that it has been two years since this recommendation was accepted and yet the study is yet to be done. The Oversight Committee has not insisted strongly on this point and has infact recommended in its report dated 16-12-2021 has stated:

` Till carrying Capacity report comes, after taking due care to environment, authorities may grant mines, lease, consent permissions, EC etc. After receipt of the carrying capacity report the same should also be taken as Governing factor"

4

It is therefore clear that the recommendation of the Oversight Committee will lead to *fait accompli* situation where projects will be allowed to expand and new projects will be allowed to be set up without any assessment of the carrying capacity. The carrying capacity study will therefore be reduced to a mere academic exercise – a formality. It is therefore prayed that till carrying capacity study is completed, no new industries or expansion of existing projects should be permitted.

#### **OPAQUE FUNCTIONING OF THE COMMITTEE**

4. It is submitted that the Oversight Committee was formed with the intention of dealing with the grievance of the affected public arising out of non-compliance with the environmental clearance condition. However, the Oversight Committee chose to adjudicate the whole issue from Bilaspur which is far away from where the affected people stay. It is clear that the convenience of the members of the Oversight Committee took precedence over the convenience of the affected public. The Oversight Committee gave hardly any time for the affected people to come (3 days) and also directed them to come to the headquarter of another district (Bilaspur) which is nearly 200 km away from the area where the people reside. It is clear that the number of people who could come and make claims for compensation was limited because of hurdles put in by the Oversight Committee. It is not known as to why the Oversight Committee which has all resources and administration in its command could not conduct its proceedings directly at the place where the affected people stay or in close proximity. It is clear that in case the proceedings were conducted in close proximity the number of claimant would have been far more. It is therefore requested that a fresh assessment be conducted so that the affected people can put forward their claims.

## OBJECTIONS TO THE REPORT

### Environmental Compensation has not been calculated correctly

5. That in para 7 of it's Order dated 24.06.2021 this Hon'ble Tribunal had directed that

*"8. The State Board should prepare list of areas where unscientific disposal of fly ash has taken place and generate data about the quantity of the coal mined, used in the industries and available for TPPs. Steps need to be taken expeditiously for development of health facilities, constructing necessary road from Raigarh to Dharamjaygarh and from Punjipatra to Milupara, disposal of fly ash in abandoned coal mines and constitution of State Level Committee to look into scientific utilization of the fly ash. Taking such steps is undoubtedly necessary for protection of the environment. The suggestions of the applicants reproduced above also need to be considered by the Oversight Committee.*

*9. The Oversight Committee may make assessment of compensation for the violations on the basis of which the statutory State Board may take further action, following due process of law. The Committee may continue to oversee remedial measures in terms of directions of this Tribunal. The Committee may undertake field visit and also interact with all the stakeholders. The Committee will be at liberty to take assistance from any other Expert/Institution."*

6. That the Oversight Committee has filed a Status Report dated 16.12.2021 whereby it has proposed an Environmental Compensation Penalty/Fine on the non-complying industries and departments as follows:

S.No.	Name of the industry / department	Penalty/Fine
1.	Principal Secretary Public Works Department Chhattisgarh Government	1,00,00,000
2.	Principal Secretary State Health Department Chhattisgarh Government	1,00,00,000
3.	M/s TRN Energy Private Limited, Nawapara Raigarh	1,82,40,600/-
4.	M/s Mahavir Energy and coal benefication Limited	1,42,90,000/-

5.	M/s Hindalco Industries Limited Coal Mine	2,09,40,000/-
6.	M/s Ambuja Cement Limited Coal Mine (GP IV/8)	75,90,000/-
7.	M/s Jindal Steel & Power Limited, Dongramau, Tamnar	11, 70,000/-
8.	M/s Chhattisgarh State Power Generation Company Limited	75,90,000/-
9.	M/s Jindal Power Ltd, Tamnar	48,30,000/-

7. That the Applicants No. 2 to 6 at the very outset state that although the Committee has done well in imposition of Environmental Compensation, Penalty/Fine on the units not complying with the provisions Environmental Law. However, the Non-Compliances being done in this case is with respect to violation of the Environmental Clearance conditions which has been admitted and noted by the Committee in it's Report too. It is important to highlight that in all the Environmental Clearance letters there is a clause which states:-

*"Failure to comply with any of the conditions mentioned above may result in withdrawal of this clearance and attract the provisions of the Environment (Protection) Act, 1986."*

The Committee should have not only imposed an Environmental Compensation, Penalty/Fine but should also have recommended withdrawal of respective Environmental Clearances till the time the EC conditions are complied with, complete remediation/restoration of the area would have taken place, all the short term and long term measures as given by the Committee constituted vide order dated 22.07.2019 had been implemented and also till there was a complete carrying capacity study done.

8. A mere perusal of the calculation of Environmental Compensation shows that the same is not correctly calculated. For e.g in the case of M/s TRN Energy Private Limited, Nawapara Raigarh the initial date of compensation has been calculated from 01.04.2020. However, perusal of the records indicate that the EC violations by the proponent have been continuing in this case right after 2016 when the plant started its operation. As per the Report at page 9 it is mentioned by the Committee that:

*"TRN power has created an ash dump violating EC conditions outside its ash dyke in the village Nawapara Tenda. There are physical evidences for breaching of mudwall leading to fly ash flowing into adjoined field even situation to fly ash into neighboring habitants.."*

Therefore, the Committee needs to calculate the violation from the date when violation actually started and not when it was seen by the Committee. There are number of Reports filed in Dukalu Ram's case and even otherwise which indicate environmental pollution taking place much before filing of the present case. In any case the initial date of compensation calculated from 01.04.2020 is incorrect. Similarly, in the case of Mahaveer Energy & Coal Benification Limited the plant has been operating since 2014. According to the Committee at page 12 of its Report it is observed that:-

***"Mahaveer Bio Energy has created an ash dump behind its premises in violating the SOP and EC even creating a public hazard. On field visit dated 25-08-2021 we found near a temple there was a fly ash dump adjoining to Forest and River, due to erosion from various points water along with fly ash flowing from there is clear the dump is not in low lying area but is on plane ground and as per persons gathered there the land is govt. land recorded as "ChoteJhad Ka Jungle". No guidelines as prescribed since 1999 have been followed. As per report of committee dated 11-10-2019 it has been found that M/S Mahaveer Energy is indulging in extensive and irresponsible disposal of fly ash in village Bhengari. In that report Fig. 3 Extent of fly ash dumping in agricultural land in Bhengari Village close to Bhengari Nala and Fig. 4. 40 feet height flyash dump by M/s Mahaveer Energy in Bhengari village (in the name of low lying areas***

*dump). On recent visit on 25-08-2021 we saw the spot (Fig.4 of that report) and found that earlier reporting still continues. We also saw evidence of flowing fly ash from upper portion to lower portion. On 15-17 March visit it has been noted that Mahaveer Energy has created an ash dump behind its premises the top of dump is at least 10 feet height above the ground level and does not conform to the SOP for dumping in low lying area, even there is no proper retaining wall around the dump creating a public hazard. In present visit we still found the Dump present in open sky flying ash in environment."*

*(Emphasis supplied)*

Therefore, the Committee needs to calculate the violation from the date when violation actually started and not when it was seen by the Committee. There are number of Reports filed in Dukalu Ram's case and even otherwise which indicate environmental pollution taking place much before filing of the present case. In any case the initial date of compensation calculated from 01.01.2018 is incorrect. Another example of the incorrect calculation of Environmental Compensation is with respect to the case of Chhattisgarh State Power Generation Company Limited. The Committee states at page 30 of the Report:-

*"Violations of environmental conditions and directions as noted above brings the Chhattisgarh State Power Generation Company Limited Coal Mines (Gare Pelma Sector -III) under four corners for payment of Environmental compensation"*

The Committee in its Report gives first observation of non-compliance as 17.03.2021 where as the non-compliance has been taking place for a much earlier period and a mere giving 253 days of violation is incorrect.

9. That it is stated that similar incorrect calculation of period of non-compliance has been provided by the Committee in the cases of Ambuja Cement Coal Mines to be stating from 17.03.2021, Hindalco Industries Limited-02.01.2020, Jindal Power Ltd. – 17.03.2021. which would give a correct period of violation Therefore, the Committee needs to calculate the violation from the date when violation actually started and not when it was seen by the Committee. There are number of Reports filed in Dukalu Ram's case and even otherwise which

indicate environmental pollution taking place much before filing of the present case.

**The Committee has failed to calculate property damage to villagers in a comprehensive manner.**

10. That a mere perusal of the Report submitted by the Committee shows that following industries have been found to be violating the provisions of Environmental law and local communities/villagers living near these Industries are suffering from the adverse impact from pollution caused by these Industries which are:-

1. M/s TRN Energy Private Limited, Nawapara Raigarh
2. M/s Mahavir Energy and coal beneficiation Limited
3. M/s Hindalco Industries Limited Coal Mine
4. M/s Ambuja Cement Limited Coal Mine (GP IV/8)
5. M/s Jindal Steel & Power Limited, Dongramau, Tamnar
6. M/s Chhattisgarh State Power Generation Company Limited
7. M/s Jindal Power Ltd, Tamnar

A perusal of the Committee's Report shows that only 4 persons i.e Shri Ghurauram Rathia, Shri Harcharan Rathia, Shri Malik Ram Rathia and Shri Karam Singh Rathia have been given Compensation totaling Rs. 599677.5 in an affected area of 6.483 Hectares in just four Khasra Nos. Since the issue of providing compensation to project affected persons is a critical one the Committee ought to have asked the Revenue authorities to survey the project affected areas in District Raigarh, prepared a list of affected persons and then awarded them the adequate compensation. On 23.08.2021 the Committee met the Applicants 2 to 6 and asked them to file individual complaints related to fly ash pollution with the Oversight Committee. On 10.09.2021 about 18 villagers submitted a letter to the Committee, inter-alia, outlining the issues with respect to illegal dumping of fly ash by TRN and Mahaveer

Industries leading to pollution of agricultural fields, air, water and soil in the area leading to adverse impact on the environment and ill-effect on health of the people living in and around the vicinity of the areas where these mines, thermal power plants and industries. On 10.09.2021 the Oversight Committee issued a letter to 29 villagers belonging to villages of Kantakdih and Bhengari, Tehsil Gharghoda, District Raigarh asking the villagers to give documentary proof regarding filling of fly ash in their respective lands/area. The Oversight Committee asked the 29 villagers to appear before it at Bilaspur on 14.09.2021 i.e only within 3 days period which the villagers were are not able to do being a time given at a very short notice. Moreover, the villages where these villagers reside are about 200 Km from Bilaspur and takes about minimum 5 hours to reach Bilaspur. It is stated that travelling 200 Km by Bus takes 10 hours to and from was not easy for the villagers. Bilaspur is not even the district where these villagers reside. The villagers are already facing great hardship due to impact of mining.

11. It is stated that in Environmental law there is a special burden of proof and the onus of not doing an activity leading to pollution in an area or complying with the mandatory Environmental Compliances must be done by the Industry/Project Proponent and not the villagers. (***Vellore Citizens' Welfare Forum vs Union of India and Ors, 1996 5 SCC 647, A.P. Pollution Control Board vs Prof.M.V.Nayudu & Others, (1999) 2 SCC 718 and Hanuman Laxman Aroskar vs. Union of India & Ors., (2019) 15 SCC 401***).

12. In ***Vellore Citizens' Welfare Forum vs Union of India and Ors, 1996 5 SCC 647*** it has been held by the Hon'ble Supreme Court:-

"12.The Polluter Pays" principle has been held to be a sound principle by this Court Indian Council for Enviro- Legal Action vs. Union of India J.T. 1996 (2) 196. The Court observed, "We

are of the opinion that any principle evolved in this 'behalf should be simple practical and suited to the conditions obtaining in this country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. **The rule is premised upon the very nature of the activity carried on". Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."**

(Emphasis supplied)

13. It was therefore important that the Committee should have directed the district administration and officials of CECB to camp in the affected villages and collect information/complaints from the villagers. Prior and sufficient notice should have been given to the villagers through Public Notice in two leading newspapers circulated in District Raigarh as well as through the respective village panchayats. The Oversight Committee should have carried out its proceedings at Tehsil level at Gharghoda and Tamnar so that more and more local people could have joined them. A copy of letter dated 10.09.2021 issued by the CECB on behalf of Oversight Committee to 29 villagers is annexed herewith as **ANNEXURE-1** and the True Copy of the Representation dated 08.10.2021 given by the villagers to the Committee is annexed herewith as **ANNEXURE-2**.

**SUGGESTIONS:**

- i. The Hon'ble NGT should direct that there would not be any grant of EC/CTE/CTO to any industry or process till the time the load carrying capacity study has been carried out.
- ii. Committee should be directed to recommend withdrawal of respective Environmental Clearances of Industries mentioned in it's Report till the time the respective EC conditions are complied with, complete remediation/restoration of the area would have taken place, all the short term and long-term measures as given by the Committee constituted vide order dated 22.07.2019 had been implemented and also till there was a complete carrying capacity study done.
- iii. Direct the Committee to calculate the correct Environmental Compensation as the Committee needs to calculate the violation from the date when violation actually started and not when it was seen by the Committee. There are number of Reports filed in Dukalu Ram's case and even otherwise which indicate environmental pollution taking place much before filing of the present case.
- iv. The environmental compensation should also be calculated considering the following parameters in addition to the existing violations:
  - a. Dried up nalas and rivers and depleted groundwater
  - b. Severely contaminated water
  - c. Illegally expanded mines, and displaced individuals
  - d. Damage to people's health
- v. The individual compensation calculated should be based on loss of past, present and future livelihood as prescribed by the Loss of Ecology Authority in the Vellore Citizens cases.

- vi. Direct the district administration and officials of CECB to camp in the affected villages and collect information/complaints from the villagers and direct them to submit the same to the Committee. The Committee be directed to calculate and provide compensation to these complainants as per law.
- vii. It is stated that in ***Research Foundation for Science Technology National Resource Policy v. Union of India, (2005) 10 SCC 510*** it has been held that:

"42. The legal position has already been noticed. Clearly, the right to information and community participation necessary for protection of environment and human health is an inalienable part of Article 21 and is governed by the accepted environment principles. The Government and the authorities have to motivate the public participation by formulating the necessary programmes."

Therefore, the Hon'ble NGT should direct setting up of permanent District level monitoring Committee in which selected local residents should be appointed as wardens for environmental surveillance, particularly to take note of illegal fly ash dumping and other EC violations.

- viii. Direct permanent District level monitoring Committee to ensure that there is restoration/remediation of the affected villages/areas and violations are not repeated in the future by the Industries in this District.
- ix. The Environmental Compliance by these violating industries be monitored by permanent District level monitoring Committee quarterly and the EC of those found violating be withdrawn and also a fresh Environmental Compensation is imposed on them.
- x. The permanent District level monitoring Committee be directed to file a bi- monthly compliance Report before the Hon'ble NGT

till the time restoration/remediation work in the District is completed.

- xi. Officials responsible for the implementation of the NGT order should be penalized and prosecuted in an event of failure of time-bound implementation of the court's directions.

THROUGH



**RITWICK DUTTA RAHUL CHOUDHARY SAURABH SHARMA  
ADVOCATES**

Counsels for Applicant N-71,  
Lower Ground Floor, Greater Kailash-I,  
New Delhi- 110048

Annexure - 1



क्षेत्रीय कार्यालय  
छत्तीसगढ़ पर्यावरण संरक्षण मंडल  
टी.वी. टॉवर रोड, रायगढ़ (छ.ग.)

जावक क्र. 1023 /क्षे. का./पसंमं/2021

रायगढ़, दिनांक 10/09/2021

प्रति,

सूची संलग्न

- विषय:- माननीय राष्ट्रीय हरित अधिकरण, प्रिंसिपल बेंच, नई दिल्ली द्वारा ओ.ए. नं. 104/2018 के संबंध में।
- संदर्भ:- माननीय राष्ट्रीय हरित अधिकरण, प्रिंसिपल बेंच, नई दिल्ली द्वारा ओ.ए. नं. 104/2018 में गठित ओवरसाईट कमेटी के अध्यक्ष माननीय श्री व्ही.के. श्रीवास्तव, पूर्व न्यायाधीश, छ.ग. हाईकोर्ट द्वारा दिनांक 14.09.2021 को आयोजित बैठक के संबंध में।

—00—

उपरोक्त विषयांतर्गत लेख है कि माननीय राष्ट्रीय हरित अधिकरण, प्रिंसिपल बेंच, नई दिल्ली द्वारा ओ.ए. नं. 104/2018 में गठित ओवरसाईट कमेटी के अध्यक्ष माननीय श्री व्ही.के. श्रीवास्तव, पूर्व न्यायाधीश, छ.ग. हाईकोर्ट द्वारा दिनांक 14.09.2021 को प्रार्थना भवन (सभा भवन), नगर निगम कार्यालय के पीछे, बिलासपुर में पूर्वान्ह 11:30 बजे बैठक का आयोजन किया गया है। उक्त बैठक में कृपया आपके भूमि में पलाई ऐश के भराव से संबंधित साक्ष्य एवं दस्तावेज सहित उपस्थित होने का कष्ट करें। सूचनार्थ प्रेषित।

क्षेत्रीय अधिकारी  
छ.ग. पर्यावरण संरक्षण मंडल,  
जिला-रायगढ़

## सूची :-

1. हरिचरण राठिया, पिता-माधव राम, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
2. ब्रम्ह राज राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
3. मनिराम राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
4. ईश्वर प्रसाद राठिया, पिता-जयराम, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
5. अरूण प्रकाश वैष्णव, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
6. चैतराम राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
7. इतवार सिंह राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
8. मालिक राम राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
9. सुखसिंह राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
10. जगनीराम राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
11. भोग सिंह राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
12. परमेश्वर राठिया, पिता-पहरसिंह राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
13. करमसिंह राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
14. श्यामलाल राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
15. महेश राम राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
16. परमेश्वर राठिया, पिता-उदय राम राठिया, ग्राम-कटंगडीह, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
17. मोहर साय राठिया, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
18. जीतराम पटेल, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
19. आनंद राम पटेल, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
20. भुपदेव सिंह पटेल, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
21. महेश राम गुप्ता, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
22. गणेश राम गुप्ता, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
23. फुलसिंह पटेल, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
24. शंभु प्रसाद मेहरा, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
25. घासीराम पटेल, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
26. गंगाराम पटेल, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
27. श्रीराम गुप्ता, ग्राम-नवापारा, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
28. सरोज कुमार गुप्ता, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)
29. हकिम पटेल, ग्राम-भेंगारी, तहसील-घरघोड़ा, जिला-रायगढ़ (छ.ग.)

र. ८  
५२

Annexure - 2

Date: 08.10.2021

To,

Hon'ble Mr. Justice V.K.Srivastava(Retd.)

The Chairperson of Oversight Committee

(Appointed by the Hon'ble NGT in OA 104/2018)

Subject: Representation on behalf of the Applicants informing the Oversight Committee about prevalent widespread pollution issues in the District Raigarh alongwith certain suggestions for remediation and restoration.

Respected Sir,

1. The Undersigned are the Applicants before the Hon'ble NGT who have filed the OA No. 104/2018 praying, inter-alia, for remediation of environment in villages Kosampalli, Dongamahua, Kodkel, Kunjemura and Regaon. Nagmuda, Milupara, Sakta which fall under the Tamnar Block, as well as Bhengari, Charmar, Khokroama and Tendनावapara, Chal etc of Ghargoda block, which have, over the years, been severely damaged by air, water and soil pollution caused by mines, thermal power plants and coal washeries operating in these villages/Blocks of District Raigarh, Chhattisgarh.
2. An Expert Committee was constituted by the Hon'ble NGT by it's Order dated 22.07.2019. Subsequently, CPCB on behalf of the Expert Committee filed a Report dated 14.10.2019 before the Hon'ble Tribunal which provided for both Short term and Long term measures for remediation and restoration of the area. Further, by it's Order dated 27.02.2020 the recommendations of Expert Committee were accepted by the Hon'ble NGT and the Expert Committee was directed by Hon'ble NGT to act as an Oversight Committee.  
Copy of the Order dated 22.07.2019 and 27.02.2020 passed by the Hon'ble NGT are annexed herewith as **Annexure-1** and **Annexure-2** respectively.
3. On 23.08.2021 Your Committee met the Applicants and asked them to file individual complaints related to fly ash pollution with the Oversight

Committee. Consequently, the Applicants in order to assist the Oversight Committee got 29 individual complaints from the villages in Tehsil Gharghoda, District Raigarh and submitted them to you which complained of cases of illegal fly ash dumping and widespread pollution in the area. On 10.09.2021 about 18 villagers submitted a letter to you, inter-alia, outlining the issues with respect to illegal dumping of fly ash by TRN and Mahaveer Industries leading to pollution of agricultural fields, air, water and soil in the area leading to adverse impact on the environment and ill-effect on health of the people living in and around the vicinity of the areas where these mines, thermal power plants and industries are operating.

4. As you are aware, on 10.09.2021 the Oversight Committee issued a letter to 29 villagers belonging to villages of Kantakdih and Bhengari, Tehsil Gharghoda, District Raigarh asking the villagers to give documentary proof regarding filling of fly ash in their respective lands/area. The Oversight Committee asked the 29 villagers to appear before it at Bilaspur on 14.09.2021 i.e only within 3 days period which the villagers are not able to do being a time given at a very short notice. Moreover, the villages where these villagers reside are about 200 Km from Bilaspur and takes about minimum 5 hours to reach Bilaspur. We would like to state here that travelling 200 Km by Bus would take 10 hours to and fro is not easy for the villagers. Bilaspur is not even the district where these villagers reside. The villagers are already facing great hardship due to impact of mining.
5. It is stated that in Environmental law there is a special burden of proof and the onus of not doing an activity leading to pollution in an area or complying with the mandatory Environmental Compliances has to be done by the Industry/Project Proponent and not the villagers.<sup>1</sup> It is important to State that the Expert Committee's Report dated 14.10.2019 is very clear and categorical about violations been done by the Industries in District

---

*(Vellore Citizens' Welfare Forum vs Union of India and Ors, 1996 5 SCC 647, A.P. Pollution Control Board vs Prof.M.V.Nayudu & Others, (1999) 2 SCC 718 and Hanuman Laxman Aroskar vs. Union of India & Ors., (2019) 15 SCC 401)*

Raigarh and has been accepted by the Hon'ble NGT too and the CECB is well aware of these violations for last many years.

Copy of the letter dated 10.09.2021 issued by the Oversight Committee to 29 villagers is annexed herewith as **ANNEXURE-3**

It is therefore, requested that the is Hon'ble Committee may be pleased to:-

- a. Direct the district administration and officials of CECB to camp in the affected villages and collect information/complaints from the villagers
- b. Prior and sufficient notice to the villagers through Public Notice in two leading newspapers circulated in District Raigarh as well as through the respective village panchayats.
- c. Direct and oversee that the CECB and the Industries in District Raigarh should comply with the Short term and Long term recommendations of the Report of the Expert Committee dated 14.10.2019 accepted by the Hon'ble NGT by it's Order dated 27.02.2020.
- d. The Oversight Committee should carry out it's proceedings at Tehsil level at Gharghoda and Tamnar so that more and more local people can join them.
- e. The Oversight Committee should withdraw it's letter dated 10.09.2021 in view of the difficulties faced by the villagers and the law laid down by the Hon'ble Supreme Court recently in ***Sanghar Zuber Ismail vs. Ministry of Environment, Forest and Climate Change & Anr., 2021 SCC Online SC 669*** which has held that,

"The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking

committees to carry out a function which vests in the tribunal.”

- f. Direct the CECB to identify the polluters in the District Raigarh and impose the Environmental Compensation on them by using the Calculation/Formular used by CPCB.

**SRIRAM GUPTA**

**RINCHIN**

**JANAKI SIDAR**

(True Copy)

