

Item No. 02

(Court No. 1)

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

(By Video Conferencing)

M.A. No. 27/2022 & M.A. No. 28/2022  
IN  
Original Application No. 301/2021

Joginder Bhandari

Applicant

Versus

Union Territory of Jammu & Kashmir

Respondent(s)

Afcons Infrastructure Limited  
Afcons House, 16, Shah Industrial Estate,  
Veera Desai Road, Azadnagar,  
Andheri (West) Mumbai

Applicant in M.A. No. 27/2022

Larsen & Toubro Limited  
L&T House, N.M Marg,  
Ballard Estate, Mumbai

Applicant in M.A. No. 28/2022

Date of hearing: 29.04.2022

**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**

Applicant: Mr. Amar Dave, Senior Advocate with Mr. Mahesh Agarwal, Advocate for  
Applicant in M.A 27-28/2022

**ORDER**

1. These Applications have been filed by Afcons Infrastructure Limited and Larsen & Toubro Limited seeking recall of order dated 17.02.2022 passed by this Tribunal in *Original Application No. 301/2021, Joginder Bhandari v. Union Territory of Jammu & Kashmir*, requiring the said applicants to pay compensation of Rs. 1 Crore each for restoration of environment on 'Polluter Pays' principle. It was found, after verification

by the Committee headed by former Judge of the J&K High Court and comprising of statutory regulators dated 10.01.2022 that the applicant had illegally dumped muck on the bank of the drain obstructing its natural course. Relevant extracts from the order are reproduced below:-

“

1. *Grievance in this application is against unscientific muck dumping in Arzi Nallah by AFCONS Infrastructure Limited at Pakal Dul Hydroelectric Project in District Kishtwar, J&K, resulting in damage to the environment. The applicant has annexed photographs in support of the allegation.*

2. *Vide order dated 11.11.2021, the Tribunal sought a factual and action taken report from a joint Committee of J&K PCC, SEIAA, J&K and the District Magistrate, Kishtwar to be overseen by Justice J.R. Kotwal, former Judge of J&K High Court, who has been earlier requested to oversee certain environmental issues in J&K.*

3. *In pursuance of above, a report has been filed on 10.01.2022 by the State PCB on behalf of the joint Committee making following observations, recommendations and action taken:*

**“C) Observations of Committee:-**

- *M/s AFCONS- JAL JV has developed an area on the right bank of Arzi Nallah for setting up of batching plant, office etc, while as, M/s L&T Ltd. is also developing the area for platform on the right bank of Arzi Nallah.*
- *Muck dumping has been done by both the contractors on the duly acquired site along the right bank of Arzi Nallah which spilled over and caused partial blockage of the natural course of nallah.*
- *The clearance of Nallah and protection of the bank has been initiated by the concerned Agencies.*
- *Wire crates were installed on the bank of Arzi Nallah for protection of platform and residential colony.*
- *Both the Companies have under taken and resolved not to dump muck in Arzi Nallah in future and muck will be dumped at designated sites only. To reduce emission of dust, three water tankers are being used by each company for sprinkling water on the work site and approach roads on regular basis.*
- *Dumping has been done at the point where approach road is crossing Arzi Nallah to broaden the curve for movement of machinery but culvert is yet to be constructed to ensure free flow of water.*

- *The flow of water in the Nallah goes to sub surface in the patch approximately 300 Mtrs. and is re-surfacing downstream.*
- *Most of the conditions of Environmental Clearance are being followed by the CVPPL and the compliance report is being submitted to Ministry of Environment, Forest and Climate Change (MoEF & CC) regularly.*

**D) Recommendations of Joint Committee for Remedial Measures:-**

- *The muck dumped in a patch of approx. 350 m in the Arzi Nallah needs to be immediately removed for ensuring free flow of the water during lean and rainy seasons.*
- *Wire crates of the suitable height should be raised and strengthened on the right bank of the Arzi Nallah in the stretch of 350 m, where muck dumping for development of the land has been done. This strengthening of protection work shall ensure stoppage of the muck spillage into Nallah for smooth flow of water.*
- *Use of scientific, engineering, biological and bio-engineering measures for the stabilization of the slopes of the dumping site should be taken up on priority basis, so as to avoid overflow of the material during snow/rainy periods to nallah.*
- *The culvert needs to be immediately constructed by the M/s Chenab Valley Power Project Pvt. Ltd. on the approach road passing through part of the Arzi Nallah in order to ensure free passage of natural water through nallah.*
- *The CVPPL needs to implement the conditions of Consent and Environmental Clearance.*
- *CVPPL should carry out muck dumping in a scientific manner using various bio-engineering methods at the designated places(s) ensuring no environmental damage to the catchment areas, flora and fauna etc.*
- *The remedial action to be taken by the CVPPL as per the directions of the Joint Committee should be submitted within a period of two weeks along with photographic proof. Also, the updated status of Environmental Clearance conditions should be submitted along with the report.*

**F) Remedial Action Report submitted by the CVPPL:-**

*In compliance to on-spot instructions of the Joint Committee, the CVPPL has submitted the Remedial Action Taken Report for the restoration of Arzi Nallah and other*

issues along with the updated status of Environmental Clearance conditions.

*As per the report and photographic evidence submitted by CVPPL, corrective measures for removal of muck from the Arzi Nallah and also for its protection as advised on the spot by the Joint Committee, have been taken and the same stands acknowledged by the Committee.”*

4. We have also seen the minutes of meeting dated 11.02.2022 held by Justice Janak Raj Kotwal, Former Judge, High Court of Jammu & Kashmir inter-alia stating as follows:

“xxx

.....xxx.....xxx

**It emerged as indisputable position that lot of muck has been thrown along the bank of Arzi Nallah not only by AFCONS but also by another contractor, namely, M/s L&T Ltd. There are, however, conflicting reports by the District Magistrate on one hand and the committee constituted in furtherance of the order passed by the Hon’ble NGT in the matter of the remedial measures taken in this regard. That apart, the representatives of M/s. AFCONS tried to justify the dumping of the muck along Arzi Nallah in their own way. Necessity of spot inspection by the Chairman was, thus, found. A detailed report on this aspect shall follow after the Chairman is in position to visit and inspect the site, hopefully in near future.”**

5. From the above, it is seen that illegal muck dumping was happening on the bank of the drain, obstructing its natural course. Though the companies in question are reported to have decided not to dump the muck in future and taken measures to stabilize the slopes to avoid overflow of the material to the drain, their past liability has also to be determined. Further, wire crates have been used for preventing muck dumping which may not be adequate to remedy the situation. Appropriate step will be to construct RCC wall.

6. In view of above, M/s. AFCONS Infrastructure Limited and M/s. L&T Limited need to be accountable for the past violations on ‘Polluter Pays’ principle. The compensation has to be computed in the light of cost of restoration and also financial capacity of the said units so as to act as deterrent as per law laid down inter alia in MC Mehta, (1987) 1 SCC 395, Sterlite (2013) 4 SCC 575 and Goel Ganga (2018) 18 SCC 257. We assess the compensation at Rs. 1 crore each which may be deposited with the State PCB within two months and utilized for restoration of the environment by preparing an action plan in consultation with the said Project Proponents as well as any other stakeholder, including the Forest Department and also considering the District Environment Plan. It is made clear that if the said Companies are aggrieved by this order, they are at liberty to move this Tribunal.”

2. Contention raised in the application for recall is that illegal dumping of muck by the applicants was on account of the project proponent (PP) - M/s Chenab Valley Power Projects (P) LTd. (CVPPL), on whose behalf the applicant was executing the work, not providing suitable place. Further plea is that the muck has now been removed.

3. We do not find any merit in the applications. The application *inter-alia* states:

“

*27. On 15.05.2021, AJJV sent a letter to CVPPL strongly rejecting CVPPL's allegations and stating (i) AJJV has dumped on CVPPL land near school building only till May 2020 since Feb 202 and that too on CVPPL's instructions; (ii) AJJV dumped only to a certain extent and when there was only limited space available on the said land, AJJV dumped on the designated area as per the contract; (iii) AJJV is now finding difficult to dump on the designated dumping area as CVPPLC has allotted the designated dumping area to TBM contractor; and (iv) AJJV denies that it has taken the land adjacent to designated area and started dumping muck there. A copy of letter dated 15.05.2021 sent by AJJV is annexed as **ANNEXURE A-24.**”*

4. Thus, it is undisputed that the applicants violated the environmental norms for which fault is attributed to the PP, who is their principal. Once the applicants caused damage and violated environmental norms, they cannot escape liability for such wrong on restitution principle which is part of 'Polluter Pays' principle. Subsequent clearance of waste cannot be a ground for waiving the compensation for damage already caused and violation already committed. Even though for such violation, on 'Polluter Pays' principle, deterrent compensation is liable to be paid having regard to the financial capacity of the polluter, the Tribunal has adopted extremely conservative approach of requiring compensation of Rs. 1 Crore each only. The Application now filed is utterly without any merit. We are inclined to award heavy cost for such uncalled for application but are persuaded by learned counsel for the applicant not to do so by expressing regret.

The Applications are accordingly dismissed, recording disapproval about the conduct of the applicants.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

April 29, 2022  
M.A. No. 27/2022 & M.A. No. 28/2022  
IN Original Application No. 301/2021  
AB