

Item No.06

Court No. 1

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

M.A. No. 123/2019

IN

Original Application No. 109/2018

Gaurav Jain

Applicant(s)

Versus

National Highways Infrastructure Development
Corporation Ltd. &Ors.

Respondent(s)

Date of hearing: 17.05.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

Mr. Sidharth Bhatnagar, Sr. Advocate, Mr.
Prasentit Keswani, Advocate, Mr. Raghvendra
Pratap Singh, Advocates

For Respondent(s):

ORDER

1. Remedial steps and Accountability of dumping of muck waste into Bhagirathi River in the *Batheri Chungi* and *Nallupani* areas of the NH-34 leading to the Gangotri Dham is the question for consideration.
2. Vide order dated 24.08.2018, a joint inspection was directed to be conducted by representative of the MoEF&CC, Central Soil and Water Conservation, Research and Training Institute,

Chandigarh, CPCB, and G. B. Pant National Institute of Himalayan Environment and Sustainable Development, Uttarakhand to consider the allegation of illegal muck dumping in the river.

3. Accordingly, a report was furnished by the said Committee along with the photographs finding absence of precautions by way of retaining/gabion wall and breaking up of long slope for slopes stability. The Committee suggested that before dumping of muck at the yard, retaining/gabion wall should be constructed. Dumping sites should be properly designed. Gabion structures/retaining wall should have sufficient foundation. Angle of repose of muck should be maintained and capacity of the site should be more than the volume of the muck.
4. The recommendations were considered vide order dated 01.11.2018 of the Tribunal and were accepted. The Committee was required to visit the site quarterly. The National Highway Infrastructure Development Corporation Ltd. (NHAI/IDCL) was required to deposit a sum of Rs. 2 crores with the Central Pollution Control Board (CPCB) for the restoration of the environment.
5. The present application has been filed for modification of the order dated 01.11.2018 requiring deposit of cost of restoration on the ground that the area in question is factually land slide

zone. The work assigned to the NHAIDCL is to mitigate the land slides. The dumping in the present case was because of land slide. The applicant is to protect only the hill side and not the valley side. Muck was flowing in the dumping site due to natural land slide. Thus, NHAIDCL cannot be responsible or required to pay any amount.

6. We have again perused the report and the photographs which are part of the report. The Committee comprises of credible officers of the Government and factual aspects of the report cannot be doubted. Inspection was carried out in the presence of the representatives of the NHAIDCL. Wherever muck spilling was found due to natural land slide, it is so mentioned. Wherever muck was being dumped through hydraulic dumpers at designated site, it is also mentioned. At the same time, where muck is going to the river on account of absence of any barriers/retaining wall on the river side, the same is also specifically mentioned and shown in the photographs for which NHAIDCL cannot disown liability as the site is with NHAIDCL.

7. Submission on behalf of the NHAIDCL that taking of precautions is not within the scope of the work assigned to the applicant cannot be accepted. In view of the fact that any person executing the work on the river bank has to take precautions to prevent dumping of muck and debris into the river especially in the land slide prone area. However, since

it is stated that a further report is said to have been filed yesterday by the Committee, we may to take up the matter along with the said report.

8. Pending such consideration, we direct that environment audit of the work undertaken by NHAIDCL at *Batheri Chungi* and *Nallupani* areas of the NH-34 by the Committee so as to ascertain the total quantity of muck/debris generated by works undertaken by NHAIDCL, quantity disposed at designated dump site(s), capacity of designated site(s), adequacy of protection measures, any short comings in terms of muck quantities generated and scientifically disposed which can be specifically attributed to NHAIDCL. The Committee may furnish report within one month by email at ngt.filing@gmail.com. CPCB may coordinate the cost of the audit will be borne by the project proponent.

List for further consideration on 06.08.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

May 17, 2019
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