

Item No. 03

Court No. 1

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

Original Application No. 269/2021
(I.A. Nos. 297/2022 & 298/2022)

Vijay Sharma

Applicant

Versus

State of Jharkhand

Respondent(s)

Date of hearing: 22.11.2022

**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**

Mr. Amit Sharma, Advocate for the PP in I.As.

ORDER

1. Grievance in this application is against inaction of the authorities in taking steps against air pollution caused by burning of overburden from the open cast mine of Coal India Limited at Bhagmara, Jharkhand.
2. According to the applicant, air pollution is affecting the inhabitants and aggravating COVID-19 but no action is being taken by the statutory regulators.
3. Vide order dated 08.11.2021, the Tribunal constituted a joint Committee of CPCB, State PCB, District Magistrate, Dhanbad and SEIAA, Jharkhand to look into the grievance and to take remedial action in accordance with law. The Committee was to furnish an action taken report to the Tribunal.

4. Accordingly, an action taken report has been filed by the Committee on 21.09.2022 mentioning the action taken and compliance status as follows:-

S. No.	Recommendation of NGT Committee	Observation by the Regional Officer JSPCB Dhanbad	Action taken/ Prevailing practice in ABOCP mine (complaint site)	Present status
2.1	It was observed that the Over Burden removal operation were being carried out in fiery patch for extraction of coal	At the time of inspection, no such activity was being carried out. However the PP informed that to avoid the fiery patch wetting of the area is being carried out. Moreover, the wetting /sprinkling is also carried out during shovel operation, excavation, material, transportation at T point, dumping etc.	Operation is carried out fiery patch with adequate dust control measures deployed.	Mining was found being done during the inspection. Wetting / sprinkling carried out during shovel operation was found not sufficient as the fugitive emission was seen during the inspection.
2.2	Water sprinkler and fog-based dust suppression systems are far less in number and is not commensurate with scale of operation (Photographs enclosed as Annexure C)	The PP informed that 04 mobile sprinklers of 20 KL capacity. 1 truck mounted fog cannon gun of 40 m radial throw, 1 mist sprinkler of 12 KLD capacities are deployed at mine site.	04 no's of mobile sprinkler of 20KL capacity is functional 24X7. One truck mounted fog cannon/ gun of 40 m radial throw having 12 KLD along with one 50 m cannon is deployed in OB dumping area. Indent for 03 no's of 100 m rang stationary fog cannon / gun has been made. Amount : Rs. 20,85,000/-	Mobile sprinklers and fog canon was found in operation. As informed by the PP stationary Fog canon deployment is still under tendering process.
2.3	Haul roads in the lease area are made of loose spoil. It adds to fugitive emission for plying of heavy vehicles at high frequency.	The PP informed that water spraying is being done on the haul roads with the help of the 4 mobile sprinklers of 20 KL capacity which are deployed at the mine site.	04 no's 20 KLD capacity mobile sprinkler is functional 24x7. Process for use of chemical based suppressant has been initiated that will be done by Dec, 2022.	Mobile sprinklers were found being in operation. Apart from that PP has also proposal for using chemical dues suppressant in mines to reduce dust emission from haul road during heavy earth moving machinery (HEMM) movement.
2.4	Tree plantation is	The PP	Work order of Eco	300 gabion plantation

	very poor in and around inspection site. Negligible plantation is visible is safety zone and along haul roads.	informed that the work order for tree plantation over an area of 8 ha. (20000 nos.) visible in safety zone and along haul roads.	restoration site is 8 ha block plantation along will 500 gabion plantations has been given to DFO, Dhanbad along with 3.5 ha Departmental plantation is to yet carried out in FY 2022-23 near the complaint site. Work of an amount awarded to DFO Dhanbad Rs. 44, 78,388.05/- Work order Ref. No. BCCL/GM/B-II/Env/2021-22/2485	and block plantation in about 3-5 hectares area has been started as informed.
3.1				
(a)	Over burden handling areas:	As informed by the PP, it is under Proposal stage	The working in fiery patch (overburden handling area) has been limited to a particular zone where the dust suppression system is properly implemented. There are 3 different pipe ranges connected to 2000GPM pump is utilized for quenching fiery benches, 4 Nos of 20KL mobile water sprinkler, 1 no of 50m range Fog cannon & one truck mounted Fog cannon is operational of the complaint site. Truck mounted Fog cannon already procured and deployed at the site. Purchase Amount Rs. 36,18,412.00/-	Fog canon was found in operation. As informed by the PP stationary Fog canon deployment is under tendering process.
(b)	Steps to prevent spillage from transporting vehicles	As informed by the PP, a free board is being maintained in the loading vehicles. However, at time of inspection no transportation was going on.	The Overburden (OB) handling dumpers ensured with handling of lesser quantity of OB and wetting with overhead canopy-based shower arrangement. For coal caring vehicles plying public road is ensured with 100% covered transportation. Also, the transportation route has been converted to Pavement Quality Concrete (PQC) road amounting 1,21,67,908.12/- with a dedicated 28KL fogging based water sprinkler deployed.	Pucca transportation road has been provided
(c)	Vehicle plying on	As informed by the PP, it is	The option of use of chemical as dust	PP has proposal for

	road: water spraying using chemical dosed	under proposal stage	suppressant is being explored and communication is made for granting of approval for HQ level and its implementation will be ensured within 6 months (by Dec, 2022). Note sheet initiated for forming the base of trial run of use of chemical-based suppressant in Kuya collier Bastacolla ara.	using chemical dust suppression in mines to reduce dust emission due to HEMM movement.
(d)	Installation and interlocking of online system with operation of water sprinklers.	As informed by the PP, it is under proposal stage	2 Online PM ₁₀ analyzer System already installed near to the complaint site (both within 1 km range) thus its online data is Monitored regularly and strict dust control measures implemented if data goes on higher note. i.e., stoppage of work till the dust is suppressed using truck mounted fog cannon and other sprinkling arrangements deployed. Also indent for 3 nos. of 100 m range fog cannon has also been done.	It is under process. PP has informed that they have technical issues in connecting IoT Devices connected to online portal. Data is being uploaded Individually but there is some problem in interlocking system
(e)	Keep multiple handling of overburden to minimum	As informed by the PP, at present the OB is being stored at a designated place and it has reached the maximum height	The complaint being a fiery patch removal is taking place to cut the expansion of fire, these 13 shovels of 2.4m ³ each while the operational capacity utilization is limited to 5 shovels of 2.4m ³ each i.e.,(38.5%). The dumping of overburden is done at a designated site away from windward side of habitation zone.	Total no. of OB handling shovel is 13 but only 5 shovel is being operated at present to minimize OB handling at multiple places. But Fugitive emission was seen during handling of Fiery overburden.
(f)	Overburden burden shifting and dumping only in upwind direction away from habitation	As informed by the PP, at present the OB is being stored at a designated place and it has reached the maximum height and now the OB which is being stored is in upwind	Predominant wind direction is SW/W. Dumping is ensured to minimize the dust propagation keeping in view of dominant wind direction.	Assured to comply. As informed by the PP there is plan to change the existing OB dump site and In-pit dumping will be started.

		<i>direction only.</i>		
3.2	<i>Dense green belt development</i>	<i>As informed by the PP, it is under proposal stage.</i>	<p><i>For FY 2022-23, 08 Ha in the safety zone adjacent to the site and 500 No's of gabion plantation along the transportation/connecting route has been awarded to DFO Dhanbad for plantation for which 70% work is completed and rest will be completed by this monsoon season. Also 3.2 Ha barren land/slope area has been taken for plantation in Fy 2022-23.</i></p> <p><i>There are total of 45 Ha of plantation/eco-restoration sites in Block 2 OCP in which adjacent to the site there is 7.2ha in West while 12.4 in North and grassing of 4 Ha of OB dump running parallel to the site.</i></p>	<i>Work order has been given to Forest department. PP has informed that plantation shall be done.</i>
3.3	<i>Ecological restoration of Overburden</i>	<i>As informed by the PP, it is under proposal stage.</i>	<i>32 Ha inactive and old OB dump has already been under ecological restoration. Currently all OB dumping sites are active, while the OB dumping site of inspection site will be taken for next FY which will be around 5Ha.</i>	<i>Old dump and road side wher, plantation has not survived, Plantation is being done again The Plantation on road side was found being done along the newly constructed PCC road. More saplings to be planted in this monsoon as informed by the PP.</i>
3.4	<i>All available bare *land to be thickly vegetated and properly maintained</i>	<i>As informed by the PP, it is under proposal stage.</i>	<i>All available bare/barren lands are taken up every year in phased manner. For FY 2022-23, 08 Ha in the safety zone adjacent to the site and 500 nos. of gabion plantation along the transportation/connecting route has been finalized for plantation by DFO. Also 3.2 Ha barren land/slope area will be taken for plantation in FY 2022-23</i>	<i>Assured to comply</i>
3.5	<i>Dedicated team for controlling dust emission</i>	<i>As informed by the PP, it is under proposal</i>	<i>Shri K.K.Dutta Mines Manager along with site Manager is the assigned person dedicatedly appointed</i>	<i>Dedicated team for controlling dust emission has been constituted headed by shri Anjani Kumar and</i>

		stage.	to look after the implementation of active dust control measures.	consisting Sri Biswaroop Bandhyopadhyay & Sri Uttam Kumar Jha.
--	--	--------	---	--

5. The report further states that show cause notice dated 10.09.2022 was issued to the Project Officer, M/s Block II OCP, BCCL, Baghmara Area, P.O. Nudkherke, District Dhanbad. Compensation amount of Rs. 75,93,750/- has been levied for the violations. The State PCB has also issued directions on 09.09.2022 to the PP as follows:-

“(a) To submit an Environmental Compensation of ₹ 75,93,750.00/- (i.e. Rupees Seventy Five Lakhs Ninety Three Thousand Seven Hundred and Fifty Only) within 30 days of issuance of this letter. In case of failure to do so an interest of 12% per annum will be charged.

(b) To provide sufficient wetting / sprinkling facilities to minimize the fugitive emission during shovel operation within 2 months.

(c) To finalize the tendering process of stationary fog canon deployment and install the same within 3 months.

(d) To resolve the technical issues in connecting IoT Devices connected to online portal and in interlocking system within 1 month.

(e) To make proper arrangements for wetting / sprinkling of fiery overburden to minimize the fugitive emission which was seen during handling within 2 months.

(f) To complete the plantation work by the end of monsoon (i.e. 15th October, 2022).”

6. As against above, I.A. Nos. 297/2022 and 298/2022 have been filed by the PP – M/s Bharat Coking Coal Limited, seeking impleadment and directions. Stand of the PP is that grievance against burning of overburden from open cast mine has since been redressed and the complainant stands satisfied.

7. We have considered the matter and heard learned counsel for the PP.

8. We do not see any reason not to accept the report of the joint Committee dated 11.02.2022. Accordingly, the same is accepted. In view of the report, it is difficult to accept that the PP is not accountable for the violations either on account of remedial action claimed to have been taken later or the plea that it inherited mining from the earlier operator. It is clear from the report and notice issued by the PCB that there was dust pollution. Sprinkling to control the dust was not adequate. Plantation was not done as per norms but started later. Master Plan for control of fire and rehabilitation is still under implementation. Work order has been issued for Gabion plantation and block plantation. Other remedial measures may have been taken subsequently but violations did exist for which the PP cannot avoid responsibility. Some of the equipments for suppression of dust installed by the PP are still not operational and even if there were historical violations, the PP remain accountable for remedying the same. Polluter Pays principle is applicable. The quantum of compensation is not excessive. The compensation amount is calculated @ Rs. 250/- per day which is only token as it does not take into the account the extent of violations and the financial capacity of the PP as per principle laid down by the Hon'ble Supreme Court in MC Mehta v. UOI & Ors.¹, Sterlite Industries (India) Ltd. v. Union of India² and M/s Goel Ganga Developers India Pvt. Ltd. v. Union of India³. The amount collected has to be used for restoration measures, associating the PP. Thus, the assessed amount of compensation be paid by the PP and remedial action taken in the light of the report which may be overseen by the statutory regulators as per law.

¹ (1987) 1 SCC 395

² (2013) 4 SCC 575

³ (2018) 18 SCC 257

The application is disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

November 22, 2022
O.A. No. 269/2021
(I.A. Nos. 297/2022 & 298/2022)
A