

Item No. 01

(Kolkata Bench)

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

(By Video Conferencing)

Appeal No.09/2020 (EZ)
(I.A. No. 58/2020, I.A. No. 59/2020, I.A. No. 60/2020
& I.A. No. 61/2020)

Damodar Valley Corporation

Appellant

Versus

Jharkhand Pollution Control Board

Respondent

Date of hearing: 03.03.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Appellant: Mr. Swarajit Dey, Advocate

ORDER

1. This appeal has been preferred against order of the Jharkhand State Pollution Control Board dated 07.05.2020 operative part of which is as follows:-

“Now, therefore, in view of the above and exercising the powers vested under section 33(A) of the Water (Prevention and control of Pollution) Act, 1974 and under section 31(A) of the Air (Prevention and control of Pollution) Act, 1981 the competent Authority has directed to give the following directions :

- 1. To submit a time limit for fixing responsibility.*
- 2. To submit the balance amount of Environmental Compensation of INR 48,08,000.00/- (Forty Eight Lakhs Eight Thousand only) to Jharkhand State Pollution Control Board within 30 days from date of issuance of this letter otherwise an interest @ 12 % will be charged.*
- 3. The expenditure incurred by the high level committee for calculation/assessment for environmental compensation will also be recovered from CTPS.*

However, in case of non-compliance your CTO application no 6488529 may be rejected and closure direction under section 33(A) of the Water (Prevention and control of Pollution) Act, 1974 and under section 31(A) of the Air (Prevention and control of Pollution) Act, 1981 may be issued.”

2. The order alleges that **huge quantity of furnace oil was discharged from the Unit into Damodar River on 15.10.2019**. Show cause notice was issued on 16.10.2019, based on inspection conducted on 15.10.2019, in the presence of officers of the appellant. There was further inspection on 31.10.2019. It was found that the Railways Siding had been cleaned. Interim compensation of Rs. 1 crore was paid by the appellant and the Committee was constituted to determine the final compensation. The Committee recorded following findings:-

“

A. *“2.3 Responsibility Fixing*

2.3.1 Leakage in hume pipe is non-compliance of CTO

2.3.2 It is evident that the leakage in connecting hume pipe was not detected well in time to avoid the oil spill.

2.3.3 Late detection leads to spread of oil to Damodar River which has multiple inlets for drinking water supply.

2.3.4 Closeness of oil sump with inlet of drainage system led to flow of spilled oil towards river. This is a design issue.

2.3.5 Oil collection pipe was also found to be choked in oil catcher system made to collect oil in case of untoward incidences.

2.3.6 CTPS did not disseminate the information to management of nearby water intake wells, which supplies drinking water to nearby settlements. Rather, it was other way round”

B. *Total Environmental compensation has been assessed as INR 1,48,08,000.00/- (One Crore Forty Eight Lakhs Eight Thousand only) and it can be modified later depending on exact quantity of recovered spilled oil, which is to be reported.”*

3. The grounds on which the compensation is challenged by the appellant is that **it had informed the State PCB after the incident and there was no foul play**. The inspection report was not communicated.

4. We are unable to accept the submission. From the letter dated 22.06.2020 annexed as Annexure-A 13, it is seen that the appellant has

not disputed that the furnace oil was discharged into the river by the appellant. The letter is quoted below:-

***“As you are aware that some quality of furnace oil was discharged from DVC, CTPS into Damodar river on 15.10.2019. You have been also intimated that as soon as the incident was noticed, all out efforts have been taken to minimize the impact of furnace oil spillage, Spillage intensity of oil was low and maximum quality of the same was collected manually into drums before reaching to oil catcher reservoir constructed much before the Damodar river, suitable barriers at different locations all along the flow path to prevent progress of oil into the river were taken. One of the measure taken to trap the ingressed oil was to dump ash over the locations having concentrated oil. These oil soaked ash were put into the bags for disposal in environment friendly manner as directed by the Regional Officer, JSPCB, Dhanbad.*”**

Afterwards a high level committee visited plant area to find out the cause of spillage and assessment of the oil ingress into the river. It has already been reported that total quantity of 2700 Ltrs. of oil has been leaked out of which substantial quantity of oil was retrieved into the oil drums which was witnessed by the aforesaid high level committee. The assessment of the oil stored in the drum was tentatively made as 1800 Ltrs. However, after accurate measurement oil separated from the mixture of oil and water in containers came to 1950 Ltrs which was subsequently intimated to the high level committee members. Further, the oil mixed ash bags which were witnessed by the authority of Pollution Control Board, was tested in CTPS laboratory for finding out the actual quantity of oil trapped in the ash bags. This is to further to confirm you that the total trapped into the ash bags comes to 150 Ltr.

In the above back drop, it may be concluded that out of total leaked 2700 ltrs quantity to the tune of 2100 Ltrs has been recovered for reuse.”

5. From the above, it is clear that the appellant was responsible for the pollution even if there was no foul play, as submitted. The principle of ‘Polluter Pays’ has been held to be part of sustainable development and part of domestic law of India in (1996) 5 SCC 647, *Vellore Citizens’ Welfare Forum v. Union of India & Ors.* as follows:-

15. Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary

International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khanna's opinion in A.D.M. v. Shivakant Shukla¹, Jolly George Varghese case² and Gramophone Co. case³.

6. The 'Polluter Pays' principle has also been statutorily incorporated under Section 20 of the National Green Tribunal Act, 2010 as a guiding principle in dealing with the matters.

In view of the above, we do not find any merit in the appeal, which stands dismissed. However, the amount of compensation recovered may be spent for restoration of the environment by preparing an action plan either through the appellant itself or through any other appropriate agency under supervision of a joint Committee of State PCB and District Magistrate, Bokaro.

In view of the order passed today in the main appeal, all pending I.A.s will stand disposed of accordingly.

A copy of this order be forwarded to State PCB and District Magistrate, Bokaro by e-mail for compliance.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

March 03, 2021
Appeal No.09/2020 (EZ)
(I.A. No. 58/2020, I.A. No. 59/2020,
I.A. No. 60/2020 & I.A. No. 61/2020)
SN

¹ (1976) 2 SCC 521: AIR 1976 SC 1207

² *Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360: AIR 1980 SC 470

³ *Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey*, (1984) 2 SCC 534: 1984 SCC (Cri) 313 : AIR 1984 SC 667