

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

Original Application No.164/2018
(Earlier O.A.No.276/2013)
(I.A. No. 155/2019,I.A. No. 337/2019 &
I.A. No. 384/2019)
WITH
Execution ApplicationNo. 22/2018
IN
O. A. No. 276/2013

Ashwani Kumar Dubey

Applicant(s)

Versus

Union of India &Ors.

Respondent(s)

(Report of the Committee in O.A 164/2018 with I.A. No. 155/2019 for direction dispensing the implementation of the Core Committee's Recommendation. I.A. No. 337/2019 for permitting the applicant to continue to transport coal by road&I.A. No. 384/2019 for quashing the recommendation of the Core Committee)

Date of hearing: 19.07.2019

**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):

For Respondent (s):

Ms. Vidushi Garg, Advocate for R-10,11 & 12
Mr. AnipSachthey, Sr. Advocate, Ms. Anjali Chaudhary, Ms. Ria Sachthey, Advocates for NCL
Dr. Ashwani Bhardwaj with Ms. Kavita Rawat, Advocates for R- 33 to 35
Mr. Pradeep Misra, Mr. DaleepDhyani, Advocates for UPPCB
Mr. Rajkumar, Advocates for CPCB
Mr. Sarvjit Pratap Singh, Advocate for R-24&26
Mr. Ranji Srinivasan, Sr. Advocate, Mr. Syed Shahid Husssain Rizvi, Mr. Zeeshan Rizvi, Ms. Sylona Mohapatra, Advocates for R-20, Hindustan Industries

Mr. Ajitesh Sai, Advocate for Essar MP
Mr. Gaurav Dudej, Mr. Sudhanshu Goil,
Advocate for R-25
Mr. Prag Tripathi, Senior Advocate for Grasim
Industries

ORDER

1. **I. A. No. 155/2019** has been filed by Grasim Industries Limited (earlier Aditya Birla Chemical Industries Limited) for modification(which in substance is by way of review)of the order dated 28.08.2018,*inter alia* directing the said applicant to shift the hazardous waste to the TSDF.
2. According to the applicant, it generated hazardous waste in the course of its activities of manufacturing Castic Soda which was stored in its premises since 2010. The said waste has Mercury bearing brine sludge which has to be disposed of as per Rule 16 of the Hazardous Waste Management Rules, 2016. However, the said waste continues to be stored in the premises of applicant.
3. This Tribunal dealt with the matter of industrial pollution in District Sonebhadra in the State of Uttar Pradesh in the light of allegation of discharge of mercury beyond the prescribed limits, affecting the nervous system and causing disorder and illness to the inhabitants of District Sonebhadra, Uttar Pradesh since the year 2006-2017.
4. To consider the above allegation, this Tribunal, on 25.08.2014, constituted a Core Committee and Sub-Committees to assess the potential impact of pollution and further action.

5. The Core Committee gave its report on 03.04.2018 which was considered and accepted by the order dated 28.08.2018. Directions were issued in terms of the said report. In respect of the applicant, it was *inter-alia* noted:

“(iii) M/s Aditya Birla Chemicals, Renukoot a) Industry shall ensure proper operation of effluent treatment plant so as to ensure the compliance of the effluent discharge standard. The industry shall also ensure that no untreated/partially treated effluent finds its way in to the Nallah leading to the Rihand Reservoir. The channel leading to Rihand Reservoir has to be intercepted, diverted and treated within the industry. The nallah presently passing through the factory should be isolated so that the industry cannot discharge any treated/partially/treated/untreated effluent which is being done now. b) **There is also an urgent need for the preparation of an action plan by the industry to shift the mercury bearing brine sludge and the muck contaminated with chlorinated chemicals from the factory premises to the TSDF in consultation with the UP State Pollution Control Board.** It may be stated here that storage of hazardous mercury bearing brine sludge and the muck contaminated with chlorinated chemicals inside the premises is not permitted by the prevailing Hazardous Waste Management Rules, 2016 and, therefore, to be shifted to a suitable TSDF immediately.”

(highlighting by us)

6. The Tribunal disposed of the application and constituted an Oversight Committee to oversee the compliance of the above recommendations/directions, headed by a former Judge of the Allahabad High Court, with representatives of the CPCB, State PCB and the District Magistrates of Districts Sonbhadra and Singrauli as members.
7. The Committee in its meeting dated 07.06.2019 considered the compliance of the said direction in respect of the applicant unit as follows:

“Shifting of Mercury bearing brine sludge:

*M/s Grasim Industries Ltd. is manufacturing Caustic Soda. Admittedly, in the manufacturing of Caustic Soda, Mercury was one of the items which was obtained as a sludge in the process of the manufacturing. On the objection being raised, it is the case of the Company that they have completely changed the process of manufacturing of Caustic Soda, in which no Mercury is coming out as a bye product in the form of sludge since 2012. **However, admittedly a huge stock of the mercury bearing brine sludge/waste which was obtained as a bye product during the course of manufacturing prior to 2012, has been stored in the premises of the Company. Mercury is a hazardous goods.** The Hon’ble NGT in its order dated 28.08.2018 directed the industry to shift the mercury from the factory premises to TSDF immediately. The direction was as follows:*

“There is also an urgent need for the preparation of an action plan by the industry to shift the mercury bearing brine sludge and the muck contaminated with chlorinated

chemicals from the factory premises to the TSDF in consultation with the UP State Pollution Control Board. It may be stated that storage of hazardous mercury bearing brine sludge and the muck permitted by the prevailing Hazardous Waste Management Rules, 2016 and, therefore, to be shifted to a suitable TSDF immediately”.

Admittedly, the aforesaid direction has not been complied with. In some of the meetings, the Company requested time to take steps but subsequently its representative stated that they have stored the mercury sludge properly in a place. He further stated that it would be difficult to shift the mercury from the premises to the TSDF. He also stated that TSDF will also store mercury sludge in the same manner in which they have stored.

Today, the representative of the Company stated that they have moved an Application before the Hon'ble NGT for the modification of the order dated 28.08.2018 and the said application is on the board for hearing on 19.07.2019. He requested that the matter may be taken up after 19th July, 2019.

It may be stated that in the meeting dated 23.11.2018 the Company expressed their difficulty in shifting the mercury waste/ sludge from the premises to TSDF. The Committee categorically stated that they have no power to modify the order and the Company can approach the NGT for the modification of the order. It may be mentioned here that in the earlier meetings the R.O. Sonbhadra was directed to get the sample of the Dongianullah and also find out the source of the water.

It may be mentioned here that the Committee has visited the Dongianullah in district Sonbhadra and has taken out

the sample of the flowing water. The said sample was analysed by the Central Pollution Control Board in their lab in which the mercury was found. In this regard, a report was submitted. In the report, the mercury was .0452 mg. per litre while the standard as per the E/Rules 1986 the permissible limits is .01 mg. per litre.

In the survey report of Dongianullah prepared by Shri Rajesh Singh, Scientific Assistant, Senior Engineer, Dr. S.C. Shukla Assistant Scientific Officer and submitted by ShriRadheyShyam, R.O. Sonbhadra, wherein it is reported that in the column of waste source, discharge in nullah was from M/s Grasim Industries Ltd. Ranukoot. **In this way, the survey report demonstrates that the waste water discharge found from M/s Grasim Industries Ltd. in Dongianullah.**

At the time of the meeting, a query was made from ShriAvinashRai, representative of the Company, that whether there is any another source from where the mercury may come to Dongianullah. He stated that to his knowledge, there is none but it may be possible that some discharges may be coming from other sources. The Committee is of the view that most probably the discharge of mercury in the Dongianullah may be from Grasim Industries wherein the mercury sludge is stored. The Committee is of the view that on the facts and circumstances the Hon'ble NGT has categorically directed the industry to shift the mercury waste brine sludge from the premises to TSDF, Kanpur and they have not been allowed to store mercury bearing brine sludge has not yet been shifted. The order of the NGT has not been complied with. The company is not able to show that NGT has modified its order and, in the circumstances, the Committee is of the view that the Company has clearly violated the

order of the Hon'ble NGT. In these circumstances, we propose to levy the penalty/ compensation of rupees one crore which will be subject to the approval by the Hon'ble NGT."

(highlighting by us)

8. It is, thus, clear that activity of discharge of Mercury in the environment by the applicant has been found and storage of hazardous waste is illegally continuing for which the applicant is liable to be dealt with as per law.
9. Prayer in the present application is that recommendation of the Core Committee regarding shifting of the Mercury brine sludge and muck may not be required to be enforced as the said storage is safe and covered by the consent given by the UPPCB.
10. On the other hand, learned counsel for the UPPCB points that under Rule 8 of the Hazardous Waste Management Rules, 2016, there cannot be storage of hazardous waste for more than 90 days and the jurisdiction of the UPPCB to extend it is further 90 days. Thus, the UPPCB has no authority to permit continuing storage of Mercury bearing brine sludge. Consent of UPPCB cannot be set up as an estoppels against the statutory provisions. Thereafter, the hazardous waste is to be shifted to a Treatment Storage and Disposal Facility (TSDF) set up by the State under Rule 16. Transportation has to be in terms of Rule 18 and 19. There is thus no occasion to modify the order of this Tribunal dated 28.08.2018. Moreover, the Committee in

its report dated 07.06.2019 has found that on taking sample of the flowing water outside the unit of the applicant, Mercury was found to be 0.452 mg/l against the standard of 0.1 mg/l. The finding has already been quoted above. The Committee has suggested penalty of Rs. 1 Crore as compensation.

11. In view of above, we are of the view that the applicant must forthwith shift the hazardous waste in accordance with the Rules and for the illegal storage as well as damage to the environment on account of contamination, the applicant is liable to pay environmental compensation and be dealt with as per rules. Such compensation may be assessed by a joint Committee comprising representative of the MoEF&CC, CPCB and the IIT, Kanpur within one month pending such assessment, the applicant may deposit a sum of Rs. 1 Crore towards the interim compensation with the CPCB to be spend for the restoration of the environment. CPCB will be the nodal agency for the purpose. The application as well as the report of the Committee with regard to the applicant stands disposed on in the above terms.

12. **I.A. No. 337/2019** is dismissed as withdrawn.

13. **I.A. No. 384/2019:** The prayer in this application is in substance to review the order of this Tribunal dated 28.08.2018 accepting recommendations of an Expert Committee in its report dated February, 2018 on the subject of emission limit of the particulate matter for boilers.

14. According to the applicant, the said limit according to MoEF&CC is to apply from 2022 but the said matter is pending before the Hon'ble Supreme Court in *W.P No.13029/1985, M.C Mehta v. U.O.I.*
15. In view of the above, the matter is adjourned to avoid parallel proceedings on the issue before the Hon'ble Supreme Court and this Tribunal.

REPORT OF THE COMMITTEE

16. The Committee constituted by this Tribunal vide order dated 28.08.2018 has furnished its report dated 28.06.2019 suggesting ban of manufacturing of red bricks by use of clay/soil and by burning of coal with a view to facilitate more disposal of fly ash in brick manufacturing. This aspect may be looked into by the MoEF&CC and CPCB and a report be furnished to this Tribunal before the next date, by email.
17. The other aspects may be monitored by the Committee and its final report be given which may set out recommendations cumulatively at one place in a tabular form giving the status of compliance and the recommendations on or before 31.08.2019. The Chief Secretary of Uttar Pradesh in respect of District Sonbhadra and Chief Secretary of Madhya Pradesh in respect of Singrauli area may suggest further course of alternative oversight mechanism, in view of the fact the Committee is being asked to conclude its proceedings.

REPORT OF THE CPCB

18. We have also perused the report furnished by the CPCB in pursuance of the order dated 21.05.2019 on the subject of compliance of consent conditions. The Tribunal noted that consent conditions requires all internal roads to be made *pucca* to control the emission of particulate matter generated due to coal transportation in the area of Singrauli in Madhya Pradesh.

19. The relevant observations of the Committee are as under:

“Specific observations related to compliance of consent conditions:

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- i. *The industry is non-complying with the regular operations of STP piezometers establishment in periphery of ash pond & remote calibration assess to MPPCB.*
 - ii. *The industry is partially complying on following conditions:*
 - a. *Ground water depletion study not yet carried out.*
 - b. *Not yet informed MPPCB regarding the low-lying area filling with ash.*
 - c. *Fly ash utilization upto 86.42% by FY 2018-19*
 - d. *Flue -gas-desulfurization plant installation in under process.*
 - e. *Internal roads of weighbridge to coal handling area & ash pond area are not yet pucca. However, other major lengths of road have been mad pucca.*
 - f. *Fugitive dust control system (water mist spray) is inadequate at CHP area.*
 - g. *Interlocking of the process with APCDs.”*

20. The Committee observed as follows:

“By 12 different locations, public roads are being used as haul roads which are passing through various

villages due to which the vulnerability of population to dust emission, vehicle pollution & chances of road accident increases. The nearest place from where industry is lifting coal is GajraBahra siding which is 15 kms far from the plant. For this industry is using MPRDC road as haul road this path passes through less habited & forest area. It is also pertinent to mention that having 24X7 vigils over the trucks for their tarpaulin cover & speed is not possible.”

21. It has further been observed that transportation of coal by road was taking placed in violation of the order of Hon’ble Supreme Court of which compensation of Rs. 19,50,000 was liable to be paid.
22. We are informed that the Hon’ble Supreme Court has by an interim order permitted such transportation till further order. In view of the order of the Hon’ble Supreme Court, we defer the matter with regard to transportation only. However, the unit must comply with the requirement of operation of STP, establishment of piezometers and remote calibration as well as other deficiencies forthwith which may be overseen by the CPCB. In this regard the CPCB may assess compensation for the damage in this regard for the last five years and give its report within one month by email at judicial-ngt@gov.in.

List for further consideration on 30.09.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

July 19, 2019

Original Application No.164/2018and connected matters

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