

Item No. 01

Court No. 1

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

(By Video Conferencing)

Review Application No. 06/2022
IN
O.A. No. 226/2020 (Earlier O.A.68/2020(CZ))

Om Puri

Applicant

Versus

Hindustan Zinc Ltd. & Ors.

Respondent(s)

Vedanta, Hindustan Zinc Limited, Core-6,
Scope Office Complex, 7, Lodhi Road, New Delhi

Review Applicant

Date of hearing: 14.11.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Review Applicant: Mr. U.N. Tiwary, Adv. for Review Applicant (Vedanta)
in R.A 06/2022

ORDER

1. This application has been filed by the Hindustan Zinc Ltd., Udaipur for review of order of this Tribunal dated 02.02.2022 in O.A. No. 226/2020, *Om Puri vs. Hindustan Zinc Ltd. & Ors.* and connected matters.

2. By the said order, the Tribunal considered the grievance of violation of environmental norms by Hindustan Zinc Ltd., Udaipur, Rajasthan in executing mining lease of Lead, Zinc and associated minerals at villages Agucha, Rampura, etc., Tehsil Hurd, District Bhilwada, Rajasthan covering nearly an area about 1200 hectares of mining land.

3. Grievances considered was that heavy blasting and underground mining operations result in contamination of source of drinking of water, resulting in various diseases like Asthma and skin borne diseases. Live stocks are also affected. Dust and stones get accumulated close to the agricultural land and houses of the inhabitants. Toxic and contaminated waste water is discharged from the mines. The area is 'over exploited' in terms of the ground water, notified as such by the CGWB. There are mammoth holes at many places because of unplanned underground mining. The applicants relied upon photographs filed with the application.

4. The Tribunal sought an independent report from a joint Committee comprising of Collector, Bhilwada and the State PCB. CPCB was added to the Committee later. The Committee filed its report dated 07.09.2021 after undertaking visit to the site, examining the mining process and status of compliance with reference to the EC/consent conditions. The Committee *inter-alia* considered status of water quality, loss to the agriculture and livestock, status of ground water and health of the villagers and made certain recommendations.

5. Considering the report of the Committee, the Tribunal held that there is damage to the wells, pits, loss to agriculture produce, livestock, contamination of ground water and land degradation. The Tribunal accordingly directed the Project Proponent to deposit a sum of Rs. 25 crores for remediation measures. A restoration plan was directed to be prepared by the joint Committee for remediating soil and quality of ground water and undertaking health improvement programmes. The work was to be got executed by an appropriate agency with option to

associate the PP itself. The operative part of the order is reproduced

below:-

“8. We have duly considered the rival submissions. We find that the Committee has failed to consider the precautionary principle of environment laid down inter alia in *Vellore Citizens (1996) 5 SCC 647* and *MV Nayudu, (1999) 2 SCC 718* and on that basis ignored serious violations and damage to water and land. It has not gone into damage to health by simply referring to record of hospital admissions. While the recommendations for plantation, further studies for remedial action in other measures like de-siltation and increase of water sprinklers may certainly be undertaken, in view of damage to the quality of ground water resources adverse impact on soil, the PP has to take necessary restoration measures for improvement of water quality as well as soil. Violation of plantation condition has continued for a long period. Merely requiring cost of plantation to be depositing without fixing accountability for the past violations may not be adequate. Environmental law violations cannot be taken lightly when the violators are being entities like the present PP and victims are poor villagers. Annual turnover of the PP is said to be about Rs. 22,000/- Crores per annum¹ for the last more than three years and revenue receipt for the year 2020-2021 is more than Rs. 20,000/- Crores per annum, though it is stated that there is no separate figure for particular mining unit. The victims of damage are unspecified number of persons spread over in more than six Panchayats in Hurda block namely Bherukhera, Agucha, Parasrampura, Kalyanpura, Kothiya, Balapura & others. Thus, case is made out for requiring the PP to provide for compensation for the past violations and bear the cost of remediation, apart from complying with the recommendations of the Committee.

9. Even if the Committee has not been able to conclude with certainty that the PP is responsible for the damage, it is possible to infer damage to the groundwater due to activities of the PP. The groundwater quality is required to be co-related with the source by comparing with parameters like Zinc and lead. With regard to the air quality, observations do not match the daily or annual average standards taking into account the resuspension of mine dust in the contiguous area. With regard to the blasting operations and continuing underground mining, comprehensive observations on the effect of such operations on the nearby houses have not been properly interpreted except mentioning with the DGMS norms and Peak Particle Velocity (PPV) was considered to be in the acceptable limits. Thus, remedial action is required for which the PP has to bear the cost and pay compensation on principles laid down by the Hon'ble Supreme Court inter-alia in *MC Mehta (1987)1 SCC 395*, *Sterlite, (2013) 4 SCC 575* and *Goel Ganga (2018) 18 SCC 257*, taking into account financial capacity of the PP and the damage/violations.

¹ https://www.google.com/search?q=turnover+of+hindustan+zinc+limited&rlz=1C1CHBF_enIN828IN828&sxsrf=APq-WBtzwf_5AM3zndm0jNmCvNUHFd4Shg%3A1643790350753&ei=DkD6YYm1LevN5OUPpo6MsA4&oq=Turnover+of+Hindustan+Zinc+&gs_lcp=Cgdnd3Mtd2l6EAEYADIGCAAQFhAeOgoIABCxAXCDARBDogQIABBDOhEILhCABBCxAXCDARDHARDRAzoFCAAQgAQ6BQguEIAEOgslABCABBCxAXCDAToICAAQgAQQsQM6BAGuEEM6CAguEIAEELEDoggIABCxAXCDAToFCAAQkQI6BwguELEDEEM6BwgAELEDEENKBahBGABKBAhGGABQAFiTU2CmYmgAcAJ4AIABnQKIAbUjkgEGMC4yMi41mAEAoAEBwAEB&scient=gws-wiz

10. *Having regard to the violations/damage by the PP and overall estimated cost of ecological rehabilitation and restoration and financial capacity of the PP, we require the PP to deposit a sum of Rs. 25 crore with the District Magistrate, Bhilwada within three months to meet the cost of remediation measures. A joint Committee of CPCB, State PCB and District Magistrate, Bhilwada with the assistance of any other experts may prepare a restoration plan for remediating the soil and quality of ground water in the area, apart from undertaking health improvement programme for the inhabitants and the cattle. The action taken may be placed on the website of the District Magistrate, Bhilwada and its execution duly monitored. The remediation works may be got executed by an appropriate agency utilizing the amount deposited by the PP and the PP itself will have liberty to get the such work executed of restoration/rehabilitation on its own or through any other agency, if found proper by the joint Committee in the circumstances. A public awareness group may be setup jointly by the DM and the PP to list out the issues requiring further action. The amount deposited will be utilized for executing the plan within one year, associating all stake holders, including the PP and civil society in a suitable manner, subject to overall supervision of the Committee. State PCB will be the nodal agency. In case the amount deposited is found to be deficient, the Tribunal may consider further directions, depending upon the material available. The joint Committee may have a report of status of compliance as on 31.03.2023 filed before the Registrar General of this Tribunal by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF by 30.04.2023. In case any further direction becomes necessary, the Registrar General will place the matter before the Bench.”*

6. Review Application has been filed by the PP mentioning the activities undertaken by the PP prior to and after passing of order of this Tribunal dated 02.02.2022. The submission in the Review Application is reproduced below:-

“As a company that takes its environmental responsibilities seriously, we have taken great pains to ensure remaining fully and ever compliant and an upholder of all environmental safety norms, as well as contributing more and more towards the overall welfare of the community.

We have addressed all observations made by the committee in all our earnestness. However, the recent order of Hon'ble NGT dents the image of our company and projects us as a "violator" of environmental norms. This is a major setback for us as the entire world understands our company as an ideal and exemplary sustainable mining company, and as a testament to this image we were ranked 1st in Asia-Pacific and globally 5th in Dow Jones Sustainability Index in 2021 amongst Mining & Metal global majors. HZL is perhaps the only Indian company in this prestigious list.

Considering the submissions made above, we humbly request you to modify the 02.02.22 order and direct the company to spend Rs 25 crores under its CSR programs in consultation with the district administration for addressing the genuine concerns raised by local inhabitants. We shall work closely with the pollution control board towards improving quality of soil, potable and farm water availability, increasing agricultural produce, undertaking health improvement programs for inhabitants as well as livestock improvement. A compliance report shall also be submitted periodically to the competent authorities.

Further, with reference to the committee observations, the company shall comply with the recommendations made by the committee. In absence of any scientific or reported violation of any environmental conditions, the company may be discharged from any liability under the precautionary pay principle, as all conditions for compliance have been duly fulfilled and we remain committed to environmental safety as long as we exist.

In view of the submissions made, and to support and secure the reputation of a prestigious Indian company in the international arena, we humbly request you to reassess the order passed in this OA 226 of 2020 and provide the Company with an opportunity to take all essential, corrective, and remedial measures under social outreach programs.”

7. Vide order dated 29.03.2022, the Tribunal asked the joint Committee to furnish its action taken report in pursuance of order dated 02.02.2022.

8. Accordingly, State PCB has forwarded the action taken report on behalf of the joint Committee on 14.10.2022 as follows:

“xxxxxx.....xxx

2.3 Status of deposition of Fund:- As per the contents of the direction passed by Hon’ble NGT vide order sheet dated 02.02.22 & 29.03.22 interalia reproduced as follows: “having regard to the violations/damage by the PP and overall estimated cost of ecological rehabilitation and restoration and financial capacity of the PP, we require the PP to deposit a sum of Rs. 25 crore with the District Magistrate, Bhilwada within three months to meet the cost of remediation measures.”

To ensure the compliance of the same, following actions have been taken so far detailed as:-

- PP has been directed to ensure the compliance of the above referred directions vide letter(s) dated 11.02.22, 05.04.22 & 23.05.22. **Copy of letter is enclosed as Annexure-2.**

- Subsequently PP in continuation to its letter dated 27.04.22, submitted its reply vide letter dated 08.06.22 mentioning proposal to open a joint account in nationalized bank with joint signatory of Integrated Business Unit (IBU)-CEO, HZL-Agucha along with District Collector, Bhilwara followed by deposition of Rs. 25 Crore for the purpose of rehabilitation and restoration in accordance with Hon'ble NGT order. **Copy of letter is enclosed as Annexure-3.**
- Matter related to PP's proposal regarding opening of Joint Account has been forwarded to the State Govt. vide letter dated 22.06.22 for approval. **Copy of letter is enclosed as Annexure-4.**
- State Govt. of Raj has approved proposal to open an Joint Account vide letter dated 08.07.22. Thereafter, Joint Account has been opened on 07.09.2022 and Amount of Rs. 25 Crore has also been deposited in Joint Account by M/s HZL on 08.09.2022. **Copy of relevant letter(s) are enclosed as Annexure-5.**
- Further, PP has also deposited an amount of Rs.90 Lac through DD to RSPCB, Jaipur vide letter dated 05.08.2022 in compliance to Joint Committee recommendations mentioned in their report for the non-fulfilling plantation criteria of 1500 Plants/Year /Hectare imposed under Environmental Clearance condition. **Copy of letter is enclosed as Annexure-6.**
- Apart from above, action related to creation of public awareness group and preparation of restoration plan has also been completed.

2.4 Constitution of Public Awareness group and its hearing camp:- In compliance of Hon'ble NGT order dated 02.02.2022, a public awareness group under the chairmanship of Sub Divisional Officer, Gulabpura comprising members viz. Tehsildar, Block Development officers, Sarpanch(s) of related village Panchayats, Panchayat Primary Education officers, Block Medical and health Officer, Joint Director Animal husbandry, Assistant Engineer of Public Health engineering department, Agriculture supervisor, Mining Foreman of Particular area, Nominees from chairman of awareness group and representative from Hindustan Zinc limited has been constituted vide District Collector, Bhilwara order no. 45339 dated 23.05.22.

This Public awareness group was advised to conduct camp/public hearings in affected villages in presence of group members to create awareness about restoration plan, to seek inputs, suggestions and feedback of inhabitants of affected areas during the preparation of restoration Plan (Pre-Stage) and during the execution of restoration plan for monitoring and review of the progress (Post stage).

So far a hearing camp has been organized. Suggestions received from Public awareness group and inhabitants viz. development of pasture land, improvement in medical facilities through strengthening of Hospitals and Community Health Centre in the

affected area, improvement in veterinary facilities through strengthening of veterinary Hospitals in the affected area etc. are also incorporated as a part of restoration plan. Copy of Public awareness group constitution order and Copy of minutes of meeting is enclosed as Annexure-7 collectively.

3. Preparation of Restoration Plan and Scope area: - That Hon'ble NGT has directed joint Committee with the assistance of any other experts to prepare a restoration plan for remediating the soil and quality of ground water in the area, apart from undertaking health improvement programme for the inhabitants and the cattle. To ensure the compliance, restoration plan has divided in following activities / Chapter (s):-

- 3.1 Remediation of Soil Quality.**
- 3.2 Remediation of Ground water Quality.**
- 3.3 Availability and quality of Drinking water supply**
- 3.4 Human Health Improvement Plan.**
- 3.5 Livestock Health Improvement Plan.**
- 3.6 Property Damage Assessment**
- 3.7 Betterment of Ambient air quality through Plantation & Pasture belt development**
- 3.8 Strengthening of School infrastructure in affected areas**

Chapter wise detailed restoration Plan framework comprising introduction, present scenario, restoration activities ,Short term and Mid Term/long term Plan, Outcomes, line listing of work to be done, estimated cost and timeline has been prepared.

Scope Area:- For the preparation of restoration plan, scope area is required to be assessed. As per the primarily mapping of villages located nearby lease boundary area, total 10 Village Panchayats(Revenue Villages) covering total 46 villages jurisdiction there under are situated under 02 Blocks namely Hurda Block and Shahpura Block. **List of 10 villages panchayats consisting villages name is enclosed as Annexure-8.**

However, scope area of activity proposed under restoration plan has been identified on the basis of following key factors:-

- a. Proximity of area /villages with lease boundary.
- b. Present status and data available with respect to trends related to activity proposed and inputs received from concerned departments.
- c. Priority and interconnected effects of activity proposed for restoration in coherence with fund allocation.
- d. Identification of centralized point/location for activity execution and implementation of Plan so as to ensure the maximize the benefit coverage.
- e. Status of existing infrastructure/ Govt. projects already under progress for the public use purpose and requirement for Gap filling.
- f. Issues being raised by inhabitants.
- g. Division of activities into phased manner for the activities requires and involves Pilot Study, more fund allocation, post implementation review etc.”

9. The report also mentions scope area activity-wise in detail. At the end, activity-wise estimated fund allocation is as follows:

“4. Activity wise fund allocation (Estimated)

S. No.	Remediation Plan	Activity Proposed	Responsible Agency	Estd. Cost (in Lac Rs.)	Chapter wise allocation (in Lac Rs.) & % allocation of total allocation
1	Soil Quality remediation (Phase-I) village(s) namely Agucha and Palola 02 Kheda	Gypsum Treatment	Agriculture dept.	52.69 Lac	78.52 Lac (4.75%)
2		Green Manure (Dhencha Plantation)	Agriculture dept.	25.83 Lac	
3	Ground Water Quality remediation	Restoration of non functional and repairable roof top rainwater harvesting structures (RTRWHS)- 11 Nos.	Ground Water Department	21.57 Lac	445.79 Lac (26.99%)
4		Roof Top Rainwater Harvesting Structure - 31 nos.	Ground Water Department in association with PHED	73.55 Lac	
5		Recharge Shaft- Approx 40 Nos. including 10 ponds reclamation	Ground Water Department in association with PHED	321.76 Lac	
6		Hydro geological survey and Isotopic analysis	Ground Water Department in association with M/s HZL	28.91 Lac	
7	Drinking water supply	RO plant installation with 07 year O&M-14 nos. each having 0.5KLPH	Public Health Eng. Dept.	315 Lac	431.31 Lac (26.11%)
8		Seizure of the groundwater sources where Pb & Zn found in exceedance of the prescribed drinking water standards (Presently not	Ground Water/ Public Health Eng. Dept. / RPCB	1.0 Lac	
		needed but reserved in Plan for similar kind of use)			

9		Elevated Service Reservoir (ESR) -02 nos. for Kheda Palola and Bherukheda-II	PHED	115.31 Lac	
10	Human Health Improvement Plan	Door to Door Survey by Medical Dept	Medical and Health	5.0 Lac	346.50 Lac (20.98%)
11		CHC Gulabpura as Model Hospital and Equipment proc.	Medical and Health	296.50 Lac	
12		CHC Asind Equipment proc.	Medical and Health	25.0 Lac	
13		CHC Phuliyakalana Equipment proc.	Medical and Health	20.0 Lac	
14	Live Stock Health Improvement Plan	Veterinary Hospital Hurda as Model Veterinary Hospital and Equipment supply	Animal Husbandry Dept.	53.27 Lac	107.59 Lac (6.51%)
15		Veterinary Hospital Agucha :- Construction work	Animal Husbandry Dept.	30.00 Lac	
16		Veterinary Hospital Kothiya :- To construct Cattle shed alongwith boundary wall.	Animal Husbandry Dept.	4.97 Lac	
17		Water Kundi (s) for live stock drinking water-45 nos.	Animal Husbandry Dept.	19.35 Lac	
18	Property Damage Assessment	HouseCracks issues	Revenue in association with Mining dept.	Expert Study*	3.63 Lac (0.21%) + Expert Study*
19		To provide safety fencing around the potholes locations-29 nos.	Revenue & PS, Hurda	3.63	
20		Filling of potholes/pits in agriculture fields	Revenue in association with Mining dept.	Expert Study*.	
21	Plan for betterment of	Plantation in forest land @ Hurda Bid	Forest	75	75 Lac
	Ambient Quality Air	(approx 50 Hectare Area)			(4.54%)
22		Development Pasture land	Forest & Revenue		
23	Plan for Strengthening of Civil infrastructure of schools located in affected area.	Repairing and Renovation of school building and construction of new classroom	Education Department	163.41	163.41 Lac (9.90%)

Total	1651.75	1651.75
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Table 28: Activity wise proposed fund allocation details.

Note:

1. *Above mentioned activities are provisionally allocated approx. 66% fund allocation out of total 25 Crore fund. In addition to above, 3% fund is allocated for engagement and hiring expenses for Project Management Unit (PMU) and 2% fund is allocated for administrative expenses, thus total 5% fund is allocated for Project management unit and administrative expenses which may be extendable up to 7 % as per requirements including various activities viz. execution, monitoring and evaluation purpose.*
2. *Decision related to allocation of remaining 27%-29% fund as well as any alteration and changes in presently allocated fund for activities proposed or subsequent phases of activities through expanding scope area /coverage of other villages /addition of any other activity will be based on the outcomes of execution and implementation of above proposed activities of restoration plan in consultation with concerned departments /agencies /stakeholders.*
3. **Estimated cost for expert study requirement (Property damage assessment and remedial measures) will be incorporated subsequently in accordance with expert agencies proposal and financial requirements for study.*
4. *Execution agency for abovementioned proposed activities is being identified by Joint Committee and will be finalized in consultation with concerned departments /agencies/stakeholders.*

In view of above, Restoration Plan is being submitted for kind perusal.”

10. We have heard learned Counsel for the review applicant. It is submitted that since the PP has made the necessary deposit and is willing to execute the remediation plan as proposed above, instead of the amount being treated as compensation, it may be treated as CSR activity. Having regard to the fact situation, we allow this prayer and further direct that in the course of execution of the action plan, Micro Watershed Management Plan for protection of ground water and soil quality and health cards for the households may be duly focused. Further, for proper

monitoring and evaluation, independent third-party validation of remedial measures may be obtained by the PP through a credible agency and its reports placed on the website of the PP on six monthly basis till completion of restoration measures.

The Review Application will stand disposed of accordingly.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

November 14, 2022
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