

Item No. 04

Court No. 1

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

Original Application No. 65/2023

(With report dated 13.05.2023)

Vikas Shakya

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 17.05.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Abhishek Kumar Chaubey, Advocate

Respondent: Mr. U.N. Tiwary and Mr. Akshat Tiwary, Advocates for M/s ACC Limited
& M/s ACC Cement Pvt. Ltd. (R - 10 & 11)

ORDER

1. Grievance in this application is against violation of environmental norms by M/s ACC Cement Pvt. Ltd., the project proponent (PP), Salai Banwa Grinding Unit, Village Salai Banwa, Tehsil Obra, District Sonebhadra, UP. Violations alleged are obstruction of water streams/drains flowing into river Son, a tributary of Ganga at Nos. 1134(Dam), 1118, 1147, 1151 (Natural Stream Drain). The said streams are source of drinking water for wildlife and inhabitants in the adjoining villages. The unit in question has been granted Letter of Comfort (LOC) by the UP Industrial Department on 07.01.2022. It started construction after exchange of land under the UP Revenue Code, 2006 which was subject to the condition that water flowing in the area will not be disturbed. In breach of the said condition and also in violation of environment law, damage to

water bodies/streams/drains is taking place against which representation was made on 27.09.2022 to the State Authorities but no action has been taken.

2. Vide order dated 13.02.2023, the Tribunal constituted a joint Committee of CPCB, State PCB and District Magistrate, Sonbhadra and nominee of ACS/Principal Secretary, Department of Jal Shakti, UP to verify facts by site visit and interaction with the stakeholders.

3. Accordingly, report of joint Committee dated 13.05.2023 has been filed. Finding in the report is that two naturally flowing drains are passing through the project site. Hume pipes have been placed by the PP to pass the Nallah through the boundary wall constructed by the unit. It has been further found that **“the huge amount of coal has been unscientifically dumped near the railway siding area and the Station Superintendent does not have any related records regarding the amount of coal dumped in that area and its ownership. The dumped coal has blocked the way of these naturally flowing drains. Though these drains are dry at present, however, this activity can adversely impact the flow and quality of water during the rainy season”**. Relevant extracts from the report are as follows:

“13. Finding of the committee

13.1. Two naturally flowing drains are passing through the project site of M/s ACC limited. The Araj No. 1134(Dam), 1118, 1147, 1151 (Plot areas) allotted to these drains and Bandh have been acquired by the Project Proponent from the government.

13.2. The details of these Nallah are also given in the EIA report submitted by the Project Proponent and the conservation plan for the same has been considered while issuing the EC by MoEF&CC. The required conditions have also been imposed by the ministry while issuing the said EC.

13.3. The unit has yet to start any construction activity at site and they have only constructed boundary wall along the

periphery of acquired land. Except Hume pipes placed for passing the Nallah through the boundary wall no activity has been done by the Project Proponent around this Nallah.

13.4. These Nallah carry surface runoff water from the catchment area which is in adjacent to the proposed project site and carry it to the Bandhi which is useful for water conservation purpose.

13.5. The action is required by railway authority to clear the unscientifically stored coal in railway siding which will block the flow of these drains during rainy season. The project proponent is required to increase the opening of Hume pipes, so that natural flow of seasonal drains is not obstructed. The project proponent is also required to comply with all the conditions of Environmental Clearance given by MoEF&CC before start of production especially with reference to protection of natural drain and its flow.”

4. We have heard learned Counsel for the parties present. Question is whether material on record warrants any further interference by the Tribunal.

5. We are of the view that free flow of a drain cannot in any manner be obstructed in view of prohibition under the provisions of the Water (Prevention and Control of Pollution) Act, 1974.

6. Faced with this legal position, learned Counsel for the PP submits that the PP will not undertake any activity which may obstruct the drains in question. The boundary wall and Hume pipes will be removed and plantation done on either side of the drains before proceeding with the project. We take this statement on record which may be acted upon and the statutory regulators, including the State PCB and Irrigation Department may monitor compliance. Proceedings are closed with regard to the PP.

7. However, the report shows violations at railway siding of which the Railway is owner. Dumping of coal obstructing flow of the drain is violation of environmental norms under the provisions of the Water Act. Railways

are responsible to prevent and remedy such violations. The State PCB may take further action in the matter against the Railway Administration and file an affidavit of compliance within two months. The Railway Administration will also be free to file its response before this Tribunal before the next date. State PCB may put the Railway Administration to notice of these proceedings.

List for further consideration on 16.08.2023.

A copy of this order be forwarded to State PCB, Irrigation Department, U.P. and the Railway Administration (through General Manager, Eastern Railways) by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

May 17, 2023
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