

Item No. 01

(Court No. 1)

BEFORE THE NATIONAL GREEN TRIBUNAL

(By Video Conferencing)

O.A. No. 295/2016
(I.A. No. 178/2021 & I.A. No. 183/2021)
With
Execution Application No. 32/2016

Amresh Singh

Applicant

Versus

Union of India & Ors.

Respondent

Date of hearing: 29.10.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Swarn Kishore Singh, Advocate for Applicant in the OA and E.A 32/2016

Respondent: Mr. Giridhar Aramane, Chairman NHAI with Mr. Pinaki Misra Senior Advocate & Mr. Tavinder Sidhu, Advocate with Dr. Neelu Gera, Chairperson J&K PCC & Mr. B.M Sharma, Member Secretary, J&K PCC with Mr. G.M Kawoosa. Advocate Mr. Saurabh Kirpal Senior Advocate with Ms. Aanchal Mullick, Advocate for M/s Hindustan Construction Co. Ltd. Mr. Aniruddh Singh, Advocate for M/s Gammon India Ltd. Mr Raj Kumar, Advocate for CPCB

ORDER

1. The issue for consideration is the remedial action against violation of environmental norms by National Highway Authority of India (NHAI) and its contractors - M/s Gammon India Ltd (GIL), the Hindustan Construction Co. Ltd. (HCCL) and M/s Choudhary Power Project Pvt. Ltd. (CPPPL), sub-contractor of M/s GIL and M/s HCCL, in the course of four laning of National Highway from Udhampur to Banihal in Jammu and Kashmir.

2. When the application was taken up on 30.03.2016, while issuing notice to respondents including; Ministry of Roads and National Highways, Government of India, M/s Gammon India Ltd (GIL), HCCL, statutory Authorities involved for enforcement of environmental norms, the Tribunal restrained the respondents from throwing any debris/muck resulting from the construction of the road from Udhampur to Banihal in any of the rivers directly or indirectly including, Tawi and Chenab. Execution Application was filed on 21.10.2016 alleging rampant dumping of muck and debris in Rivers Chenab and Tawi during the process of construction of the national highway in question. Notice was issued on the Execution Application on 25.10.2016 and after considering stand of the parties, the main matter and the execution application were dealt with vide order dated 24.08.2018 in the light of report dated 23.04.2018 of the Committee head by Chairman J&K PCB with the assistance of Centre Soil and Water Conservation, Research & Training Institute, Chandigarh, Central Pollution Control Board and Ministry of Environment Forest and Climate Change and Himalayan Forest Research Institute, Shimla suggesting safeguards to be followed in the construction of the highways as follows:

“Recommendation and suggestions:

1. *The acquired dumping sites should be prepared appropriately before start of dumping as all the sites are downhill side of the slopes. Appropriate engineering interventions need to be done in terraces to securely hold the muck.*
2. *The possibility of construction of Plain Concrete Cement (PCC) grids or anchored RCC grid structure on the unstable slopes may be explored to prevent overflow of muck & debries.*
3. *There is a need to re-assess gabion structures in vulnerable hilly eco-system. All the gabion structures/retaining wall should have sufficient foundation and bottom width should be 4-5 m. Length of one gabion structure should not be more than 10 m. Gabions could be bound with another in case of more length.*
4. *Angle of repose of muck should be maintained between 300-450. Long slopes should be intercepted to several short ones with the help of 1.5 to 2.0 m wide berms/terrances/benches in-between in order to maintain less than critical velocity for runoff water and to control mass erosion.*

5. *Gabion walls should be constructed above HFL of River with sufficient height. Construction of RCC/stone masonry retaining wall along river banks should be carried out instead of gabion wall in cases of steep slopes where construction of gabion wall is difficult. Height of this wall should be well above the HFL of River.*
6. *All the damaged gabion walls/structures of the muck dumping sites should be immediately repaired and strengthened to hold the muck securely.*
7. *Dumping sites which have attained full capacity should be rehabilitated with local grass, tree & shrubs. Jute Geo Textile (JGT) may also be used for establishment of vegetation at vulnerable sites.*
8. *Monitoring of river water & ambient air quality as per CPCB guidelines should be carried out.*
9. *Management plan to be prepared for natural water courses & drainages crossing the project area and submit the annual report to the authority granted environmental clearance & SPCB.”*

3. The Tribunal thereafter directed further action in terms of the recommendations and suggestions and also constituted a monitoring Committee as follows:

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- i. *Justice J.R. Kotwal, Judge of J&K High Court (retiring on 28.08.2018) w.e.f. a date after his retirement – Chairman.*
- ii. *Representative of Central Soil and Water Conservation, Research and Training Institute, Chandigarh – Member.*
- iii. *Representative of MoEF&CC, New Delhi– Member*
- iv. *Joint Director (S), NRO, MoEF&CC Chandigarh– Member.*
- v. *Representative of Himalayan Forest Research Institute, Shimla – Member.”*

4. The matter was thereafter reviewed *inter alia* on 12.02.2019, 11.07.2019, 09.01.2020, 20.03.2020, 28.09.2020 and finally on 28.06.2021. In the last order, earlier orders were summed up as follows:-

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3. *By the **first order**, the matter was considered in the light of reports of statutory/expert committees received to the effect that damage to environment was taking place by dumping of muck without precautions. While directing remedial action, this Tribunal constituted a Monitoring Committee (MC) headed by Justice J.R. Kotwal, former Judge of J&K High Court to give an independent report in the matter.*

*By the **second order**, the matter was considered in the light of preliminary report of the said MC to the effect that damage to the environment was continuing. The Tribunal*

accordingly directed the M/s GIL and M/s HCCL to pay interim compensation for damage to the extent of Rs. 1 crore each and performance guarantee of like amount for improving the situation within next three months. **The said order was affirmed by the Hon'ble Supreme Court on 08.07.2019 in Civil Appeal No. 5113-14/2019.**

By the **third order**, the Tribunal considered the report filed on 09.07.2019 based on inspection conducted on 02.05.2019 to the effect that damage to the environment was continuing. The Tribunal directed M/s GIL and M/s HCCL to furnish performance guarantee of Rs. 2 Crore each and NHAI to furnish performance guarantee of Rs. 1 Crore to the satisfaction of CPCB for remedying the situation.

The **fourth order** also found that the violations were continuing and remedial action was directed to be taken.

Vide **fifth order** dated 20.03.2020, the Tribunal considered report dated 17.03.2020 by the MC based on site inspection on 29th – 31st January, 2020. The deficiencies were pointed out to M/s GIL by the State PCB by notice dated 20.10.2019. The MC gave suggestions and the Tribunal directed that the suggestions to be acted upon by the project proponents, including measures for slope stabilization.

4. The matter was **last considered on 28.09.2020** in the light of further report dated 24.09.2020 of the monitoring Committee based on status reports dated 31.07.2020 and 17.09.2020 filed by the Divisional Officer of the State PCB with the Regional Director, State PCB, alongwith supporting material. It was found that damage to the environment was continuing as shown by the photographic and other evidence. The NHAI, on whose behalf the contractors were hired, failed to take any remedial action. Accordingly, the Tribunal directed the State PCB to proceed with coercive measures including assessment and recovery of compensation and initiating prosecution against the violators. The Monitoring Committee was requested to give a further report about status of compliance by 31.03.2021.”

5. Since violations were found to be continuing as noted in detailed order dated 28.09.2020, in the report of the State PCB dated 05.04.2021 and also the report of the monitoring committee, the Tribunal directed taking of coercive measures against the violators and also required MD of NHAI and Chairman, State PCB to remain present in person by video conferencing with their action taken reports. The operative part of the order is reproduced below:

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5. Accordingly, the Monitoring Committee has filed its report dated 05.04.2021 to the effect that the State PCB has passed its order dated 24.03.2021 in compliance of directions in Para 10 of the order of this Tribunal dated 28.09.2020. However, the said order does not provide information about the compliance status. The order of the State PCB is that compensation of Rs. 2 crores has been assessed against the NHAI vide order dated 24.03.2021 as follows:

*“Whereas, reports about illegal and unscientific dumping and disposal of muck in the course of four lanning of National Highway from Udhampur to Banihal by the National Highway Authority of India (NHIA) and its contractors viz. a) M/s Gammon India Ltd. (GIL) and b) the Hindustan Construction Company Ltd. (HCCL), were received from the field functionaries of the Board, reporting further that such **disposal has affected the environment adversely besides damaging the ecology of the area.***

Whereas, on the directions of Hon'ble NGT, two reports dt. 31/07/2020 and 17/09/2020 filed by the Divisional Officer Ramban with regard to above were submitted before the Hon'ble NGT, which was pleased to direct the Board for recovery of Environmental Compensation for damages and initiation of prosecution against violators of environmental norms, accordingly.

Whereas, the Board vide its communication dt. 15.12.2020 directed its Technical Advisory Committee (TAC) to verify the ground position further and assess the damage caused to the Environment by illegal and unscientific muck dumping by NHAI.

Whereas, the authorities of NHAI have also been directed through a number of letters/notices, latest in the series vide letter dt. 24/11/2020 addressed to Regional Director/Officer, NHAI Jammu, to provide the details of muck excavated and status of its dumping, which was finally, submitted by NHAI on 11-02-2021.

*Whereas, as per the referred report of NHAI submitted by Project Director PIU Ramban, **muck disposal in atleast 05 sites is above 100% than the designed capacity and NHAI authorities have admitted dumping of 200% muck at these locations.***

*Whereas, the report of the JKPCB Committee dt 03-02-2021 also shows that NHAI has failed to take adequate Engineering and Biological measures as per EMP, framed at the time of seeking the Environmental Clearance, with the result **the muck has destabilized at the slopes and eventually slipped into river channels at many sites and***

damaged the biological environment in utter and blatant violation of the conditions of the Environmental Clearance.

Whereas, the designated sites have not been developed before-hand to retain the muck excavated during the four lanning / construction works and the executing agencies kept on dumping the waste, which has caused serious damage to the Environment and Hydrological conditions, causing blockade of water course of natural drainage and rivulets besides narrowing the water channels and seasonal nallahs.

Whereas, the damage caused to the bio-diversity, river course, aquatic life, natural plantation forest cover, stability of slopes, geological disturbance and erosion of soil on slopes, is irreversible and has resulted in serious environmental concerns.

Whereas, the matter has also been examined by the Technical Advisory Committee (TAC) of the Board which vide report dt 03-02-2021 has opined that the actual damage caused to the ecology and environment of the area by illegal and unscientific disposal of muck for levying of full and final Environmental Compensation on NHAI requires in-depth scientific study by the Expert Committee with representatives from Central Pollution Control Board and NHAI itself. **However, the interim data indicates the environmental damage has occurred and evaluated tentatively as far more than Rs.2,00,00,000/= (Rupees Two Crore only).**

Now, therefore. in exercise of powers vested in the Board under Section 33 (A), 31(A) and Section 5 of the Water (Prevention & Control of Pollution) Act 1974, the Air (Prevention & Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 respectively, read with the directions of Hon'ble NGT dt. 28/09/2020 in OA No. 295/2016, the NHAI shall deposit a sum of Rs.2,00,00,000/= (Rupees Two Crore only) as Environmental Compensation, as an interim measure, pending final assessment of damage in terms of the ecological loss till full and final damage is assessed by the Expert Committee. This recovery of interim Environmental Compensation on Polluter Pays Principles shall be the part of enforcement strategy and not a substitute of the compliance to be done as recommended by the Expert Committee approved by Hon'ble NGT.

Accordingly, Regional Officer, National Highway Authority of India (NHAI), Jammu is hereby directed under Section 5 of the Environment (Protection) Act

1986 to deposit a sum Rs.2,00,00,000/- (Rupees Two Crore) in the Environmental Compensation Fund Account No. 0023040510000001 of the Board in J&K Bank Ltd. within 45 days without fail and on lapse of above said period, an interest @ 12% on the Environmental Compensation amount shall accrue, at the risk and responsibility of the National Highway Authority of India.”

6. We have duly considered the report of the monitoring Committee and the State PCB and heard learned Counsel. The report of the Monitoring Committee is that the State PCB as well as NHAI failed to give compliance status to the Committee. **Though violations mentioned in the order of the PCB are undisputed as the said order has not been questioned, complete information about compliance status of the mandate of the Water Act and other provisions, including the consent conditions of EC/CTE/CTO has not been furnished. Remedial action requires ascertaining change in water quality in terms of increase in turbidity and effect on blockages of streams/ Nalla and the river Chenab due to muck disposal. Violations are criminal offence under the concerned environmental laws. To uphold rule of law, the guilty must be prosecuted, as directed but neither the violations have been remedied nor prosecution initiated which is a matter of regret. When the violations are continuing for long, the same can be considered deliberate calling for more stringent action. As earlier observed, violations are statutory offences inter alia under the provisions of the Water (Prevention and Control of Pollution) Act, 1974. When violations are by juristic persons, apart from the corporate body, liability is also of all Directors, Managers and other officers. Further, the interim compensation does not give the basis in terms of assessed monetary cost of restoration, deterrence element for continuous violations, having regard to financial capacity of the violator and cost of environmental services lost forever. While construction of roads is social necessity, it cannot be at the cost of environment. Principle of sustainable development cannot be avoided. If protection of environment cannot be ensured, the Project may have to be halted to prevent damage to the environment by unauthorized muck dumping destroying the overall environment.**
7. **In view of serious failure on the part of the State PCB to perform its statutory obligation of initiating prosecution against the violators as earlier directed, the Chairman PCB has to explain why action be not taken for non-compliance of law and orders of this Tribunal. Compliance must now be ensured within two months from today. Similarly, NHAI which is a Government Organization and a Statutory Authority has failed to perform its obligation of preventing violations by not**

taking action against its errant contractors which needs to be explained by the Managing Director of NHAI. Compliance may also be ensured now by the Managing Director of NHAI within two months positively.

8. ***In view of continuous violations, as shown from the report of the Monitoring Committee headed by a former Judge of the High Court, we direct the Managing Director of NHAI and Chairman, State PCB to remain present in person by way of video conferencing with their respective action taken reports on the next date. Needless to say, if the failure to take action continues, the Tribunal may have no other option except to take coercive measures against Managing Director of NHAI as well as Chairman, State PCB personally.***

6. In pursuance of the above, Mr. Giridhar Aramane, Chairman NHAI, and Dr. Neelu Gera, Chairperson J&K PCC are present in person with counsel.

7. We have perused letter of the monitoring Committee dated 25.09.2021 with an application of the Applicant before the Monitoring Committee giving details of continuing and past violations, report dated 21.09.2021 filed by the J&K PCC, report dated 01.10.2021 filed by the NHAI and affidavit on behalf of the HCCL, respondent No.06, in response to the report of the NHAI dated 01.10.2021.

8. The report of the J&KPCC is that prosecution has been initiated against the NHAI and its contractors under the Water (Prevention and Control of Pollution) Act, 1974, Air Water (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 on 17.08.2021. Technical Advisory Committee of J&K PCC undertook field visits to study the extent of damage in four laning of NH-44 stretch and assessed the amount of Rs. 129 (approx.) crore for restoring the damage by way of execution of the Environment Management Plan which is as follows:

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S.No.	Description of works	Unit	Average Length/area	Amount required to restore the damage	Budget kept by the NHAI in EIA/EMP
ENGINEERING MEASURES					
1	Construction of slope protection work Retaining Wall with PCC M-15 ht. 3 m	Rs. 24000/m (As per Normative Cost Norms as per NHAI)	12 Km (Dumping sites only)	Rs. 24000x12000 x(4*)= Rs 115.20 Cr. Rs. 115.20 /12=Rs. 9.6 Cr/km (app.)	NHAI has kept Rs. 1.78 Lacs/km for Env. Protection work.
2	Preparation of Muck Disposal Site	Rs. 3.0 Lac/ha	** 70 ha	Rs. 70x3.0= Rs. 2.10 Cr	Nil
3	Provision of 10 cm soil layer	Rs. 5.0 lac/ha	70 ha	Rs. 70x5.0= Rs.3.50 Cr	Nil
4	Channelization of Nallahs	Rs. 0.15 lac/m	#20x50=1000m	1000x0.015= Rs.1.5 Cr.	Nil
			Sub Total (A)	Rs.122.30 Cr.	Rs. 1.04 Cr

BIOLOGICAL MESURES					
1	Development of vegetation cover	Rs. 20000/ha	35 ha	35x20,000=7 lac =Rs.0.07 Cr.	Nil
2	Plantation/Afforestation	Rs. 5 lac/km	70 ha	## Rs. 6.69 Cr.	Rs. 6.69 Cr. But no Monitoring Stations established. No Plantation towards river side.
3	Maintenance of Plantation	LS	70 ha		
4	Monitoring of Air, Water & Noise parameters	LS	LS		
			Sub Total (B)	Rs. 6.76 Cr.	
GRAND TOTAL (A+B)				Rs. 122.20+Rs. 6.76 Cr= Rs. 129 Cr(app)	

”

2% of the above amount was assessed as deterrent measure for environmental compensation which has been deposited. Stand of the NHAI is that action has been initiated for rehabilitation of dumping sites by way of civil work for which the tender was floated and work will be awarded by first week of November 2021. Violations are by the contractors against whom action has been initiated. Contract of HCCL have been terminated on 29.03.2021 and notice of termination has also been given to the Gamman Engineers and Contractors. Estimated cost of lifting the extra

muck is Rs. 20.22 crores. The stand of the HCCL is that violations have taken place as requisite dumping sites were not provided and other reasons, including that number of designated dumping sites were not sufficient to accommodate the quantity excavated of stones, boulders and muck. Construction of RCC Retaining walls at the slopes of dumping yards is not feasible in the prevailing geotechnical conditions. One of the documents annexed to the affidavit of the HCCL, (Annexure-A-VI), is a letter of the District Development Commissioner, Ramban suggesting that in view of the topography of the area better option is tunneling. Relevant extract of the letter is reproduced below:-

“In this context, it is reiterated that four laning of the National Highway (NH-44) is in progress from Nashri to Banihal. However, the stretch between Ramban to Banihal is more hilly, sloppy, fragile and slide prone. The slope angle in this area varies from 60 to 80 degree. Land sliding is common phenomenon in this hilly area which may be attributed to cutting of high slopes. The existing road was constructed years ago but till date the area has not become stable and the sliding in the area has become a routine phenomenon due to on-going construction work of NH-44. The scientific treatment i.e. anchoring of the slopes in this stretch is also not feasible due to loose strata of rocks.

A number of High Tension Towers of Power Development Department have also become unstable in the said stretch due to earth cutting and sliding thereafter. The re-alignment of the towers is also cumbersome exercise and it will add more burden to the Government exchequer, as well.

The available data reveals that in this stretch, a number of commuters have died due to accidents and shooting stones. Hardly about 14% of the work has been executed in this stretch till date and the whole area where the execution has started has become slide prone as a result of which the vehicular movement remains adversely effected.

Since the stretch between Ramban to Banihal has unique topography as compared to rest of the National Highway portion, therefore tunneling is the only alternative in this stretch so that the NH-44 which is the only life line to the Kashmir Valley may remain functional round the year and the causalities due to accidents and shooting stones may get reduced.

Therefore, in view of the above, it is requested that the Proposal for more tunnels between Ramban-Banihal section of

NH-44 as proposed by Collector Land Acquisition in the earlier referred letter may be taken up with the Higher Authorities at an appropriate level for a better road connectivity.”

9. The letter of the monitoring Committee forwards the application filed before the monitoring Committee by the applicant pointing out the violations *inter alia* as follows:-

*“5. That the respondent no. I i.e. Ministry of Environment & Forests had granted Environmental Clearance for the project proponent. In clause 5 (Xxvi) of the same Environmental clearance, it is given "**there shall be no blasting of rocks**" (sic). A copy of the environmental clearance given by Union Ministry of Environment & Forests is annexed herewith and marked as Annexure-A.*

*6. That throwing caution to the winds and in abject disregard to the stipulations and regulations of Union Ministry of Environment & Forests, **District Magistrate Ramban & Udhampur are issuing permissions for blasting with utmost flamboyance. The populace both human and animal and even the habitats of birds are at a high risk due to this reckless granting of permissions for blasting by District Magistrate Ramban & Udhampur. Some copies of the permission of blasting are annexed herewith and marked as Annexure-B.***

7. That the situation has so very worsened that the construction companies and their sub-contractors are throwing muck and debris directly in the River Chenab without any deterrence by virtue of the directions of Hon'ble Tribunal and directives monitoring of the committee as well. That some photographs exhibiting the ruthlessness of the construction companies and their sub-contractors are annexed herewith marked and as Annexure C.”

10. From the above resume, it is shown that huge damage to the environment has been caused by unscientific dumping of muck in the rivers. Detailed findings about violations have been recorded in the order dated 28.09.2020. Damage has also been caused to the slopes which need to be stabilized. The PCC has failed to assess the cost of rehabilitation and to take steps for recovery of compensation for restoration of the environment. According to the report of the J&K PCC, amount of Rs. 129 crores is required for restoring damage for implementing Environment Management Plan which can also be treated as cost of restoration due to damage to the environment. According to the tendered documents of the

NHAI, cost of lifting the muck unscientifically dumped alone is Rs. 20.22 crores and apart from the said step, other steps are also required. Since compensation has to consider the cost of restoration, compensation assessed by the JK PCC is not adequate, even according to the NHAI. Though earlier stand of the NHAI has been that work having been awarded to the contractors, not causing damage is their responsibility. This stand cannot be approved. Chairman NHAI fairly agrees with the legal position that conservation of environment is their responsibility and cost of implementation of environment management plan and restoration of damage has to be done by NHAI, at the cost of the contractors. *Inter se* liability of the NHAI and its contractors is not a matter for consideration by this Tribunal. Damage to the environment has to be reversed which will be the responsibility of the NHAI. Environment and public health are required to be restored on 'Polluter Pays' principle.

11. Accordingly, we direct NHAI to set apart amount of Rs. 129 crores, which is tentative cost for implementing environment management plan and cost of restoration of damage to the environment. NHAI is free to proceed against contractors, if permissible in terms of contractual rights but we do not express any view about such *inter se* dispute. NHAI may implement the Environment Management Plan which should include restoration of the damage caused during the course of construction of NHAI-44 so far. Restoration plan may be prepared within one month by the NHAI, which may be overseen by the monitoring Committee constituted by this Tribunal, with the assistance of any other expert/institution or otherwise. Thereafter, the same may be executed as far as possible within six months. NHAI will be bound by the direction of the Monitoring Committee subject to any objection against the same being agitated before this Tribunal. This covers past violations and in future all

possible precautions be observed so as to maintain the environment free from damage.

12. In the light of experience in the present case, it will be appropriate that the NHAI sets up forthwith an inhouse environment compliance monitoring panel at the headquarters, reporting to the chairman, NHAI, to monitor compliance of EC/FC conditions for various developmental projects being executed by the NHAI to prevent recurrence of such incidents and to ensure protection of environment.

The Application is disposed of. No further order is required on the IAs and EA which will also stand disposed of.

A copy of this order be forwarded to the Chairman of the monitoring Committee, Justice Kotwal for information.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

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