

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

Execution Application No. 32/2016
IN
O.A. No. 295/2016

Amresh Singh

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 11.07.2019

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): None

For Respondent (s): Mr. Rovins Verma, Advocate for MoEF
Mr. G.M. Kawoosa, Advocate for J&K State &
SPCB
Mr. Rajkumar, Advocate for CPCB
Ms. Kritika Shukla, Advocate for NHAI
Ms. Aanchal Mullick, Ms. Shruti Arora, Advocate
for HCC
Mr. Aniruddh Singh, Advocate for Gammon India
Ltd.

ORDER

1. The matter involves control of pollution in the course of four lanning of National Highway from Udampur to Banihal in Jammu and Kashmir by the National Highway Authority of India (NHAI) through Gammon India Limited and the Hindustan Construction Co. Ltd.
2. This Tribunal directed inspections to be carried out to determine the question whether environmental norms were being carried out. The matter was considered by this Tribunal vide order dated 24.08.2018 in the light of earlier order dated 29.01.2018 and reports dated

23.04.2018 and 24.04.2017 which are based on visits to the site and showed damage to the environment on account of dumping of muck without adequate precautions. The Inspecting Committee suggested measures, including proper preparation of dumping site, construction of Plane Concrete Cement (PCC) grids or anchored RCC grid, re-assess gabion structures in vulnerable hilly eco-system, having sufficient heights of the gabion walls, construction of RCC walls instead of gabion walls in steep slopes, repair of damaged gabion walls and proper monitoring. The reports were accepted and directed to be complied.

3. A further report was sought from the Committee appointed by this Tribunal. The same was considered on 12.02.2019 and was accepted. In view of damage to the environment, a direction to pay interim compensation of Rs. 1 crore each and to furnish performance guarantee in the like amount to the satisfaction of CPCB within one month was issued to both the contractors.
4. The contractors M/s Gammon India Ltd. and Hindustan Construction Company Ltd. who were executing the work filed review applications being *R.A. No. 22/2019 and 29/2019* which were dismissed on 26.04.2019 with the following observations:

“6. As noted from the record, particularly order dated 24.08.2018 which was passed in the presence of counsel for the said parties, damage to environment by Gammon India Ltd. as well as Hindustan Construction Company Ltd. was proved from the inspection reports on record dated 24.04.2017 and 23.04.2018. Further, inspection was with a view to verify whether remedial steps had been taken. Though inspection report considered on 12.02.2019 may be with reference to the stretch which is being dealt with by Hindustan Construction Company Ltd. and not by Gammon India Ltd., the fact that Gammon India Ltd. had violated the environmental norms as found in earlier inspection reports noticed in the order of this Tribunal dated 24.08.2018 passed in the presence of all the learned counsel for the parties cannot be ignored.”

7. *There is thus no ground to say that interim compensation required to be paid pending the determination of actual extent of damage for which the Committee has to make its recommendation after all the sites are visited is uncalled for.*

8. *We are also of the view that having regard to the above reports and damage having been caused on the environment in the course of execution of the construction activities by Gammon India Ltd and Hindustan Construction Company Ltd. without taking due precautions required under the environmental law, it is necessary to get an environment audit conducted by the Committee already appointed. While undertaking the exercise for assessment of damage, the Committee may take into account the entire damage right from the beginning of the project and not merely what was observed during a particular visit.*

9. *The Committee may visit all the existing designated and non-designated dumping sites and give report regarding current practices of muck/debris dumping therein, remedial measures proposed to secure the designated dumping sites including its capacity, quantity of debris/muck received, balance quantity to be received, illegal dumping of mucks and debris on entire stretch along with the quantum of muck dumped and file report within two months by email at ngt.filing@gmail.com. The damage may be assessed with reference to all the stretches involved. Liability of both the companies executing the work may be specified, apart from liability of NHAI, if any.”*

5. We are informed by the learned Counsel for the said contractors that M/s Gammon India Ltd. filed civil appeal being C.A. No. 5113-14/2019 before the Hon'ble Supreme Court which has been dismissed on 08.07.2019. The order of this Tribunal dated 12.02.2019 has not been complied with. We give last opportunity to comply with the orders within two weeks, failing which we may have no other option but to direct civil imprisonment of the Directors of the said companies. Let an undertaking to comply with the order of this Tribunal be filed by tomorrow with the Registrar of this Tribunal by a responsible officer of the said companies. The undertaking by e-mail may be accepted which may be followed by an affidavit within one week from today.

6. In the meanwhile, we have received further report dated 02.05.2019 from the State Pollution Control Board (SPCB). The same has been filed on 09.07.2019. The report states that inspection was conducted on 02.05.2019 in respect of the dumping sites maintained by the Gammon India Ltd. as well as the Hindustan Construction Company Ltd. and the dumping sites maintained by both the contractors were found to be deficient as follows:

“HCC Muck Dumping Sites: (Ramban to Banihal)

S. No.	Name of the site/Village	Chainage (Existing)	Title of the land	Status
1	Marog (Near Tunnel-2)	155+000 to 155+200 km	Forest	Closed
2	Battery Chaishma	159+850 to 160+100 km	Forest	Closed
3	Anokha Fall	160+400 to 160+700 km	Forest	In-use
4	Digdole-I	162+600 to 162+980 km	Forest	In-use
5	Digdole-II	163+050 to 163+400 km	Forest	Closed
6	Digdole-III	164+750 to 164+940 km	Forest	In-use
7	Panthyal	168+180 to 168+340 km	Forest	In-use

S. No.	Name of the site/Village	Chainage (SB)	Title of the land	Status
1	Seri	152+700 to 152+850 km	Private	Closed
2	Marog (Near Tunnel-2)	155+000 to 155+100 km	Private	Closed
3	Ramsoo-I	167+000 to 167+680 km	Private	In-use
4	Ramsoo-II	168+680 to 168+800 km	Private	In-use
5	Ramsoo-III	170+950 to 171+250 km	Private	Closed
6	Sherbibi	175+700 to 176+200 km	Private	In-use
7	Chamalwas	177+000 to 177+200 km	Private	Closed
8	Ratanwas-I	179+200 to 179+400 km	Private	In-use
9	Ratanwas-II	179+500 to 179+540 km	Private	In-use
10	Ratanwas-III	179+560 to 179+620 km	Private	Closed
11	Banihal-I	Private Land-I	Private	Closed
12	Banihal-II	Private Land-II	Private	Closed

General observations:

It is observed that all the sites have been put to use without proper preparation and gabion walls/structures constructed at foot of these sites are inadequate to meet the desired results/purpose.

Further, most of the sites have attained their full capacity, as much as the angle of repose is not less than 70° to 75°. No more dumping at these sites should be allowed. The sites which have attained their full capacity need to be stabilised and rehabilitated by using engineering and botanical methods.

The loose muck dumping has been done and the practice is still being followed at all the sites inspected.

At most of the dumping sites retaining structures are not provided and at few sites where gabion exists along river/nallahs, no care of HR is taken and some are washed away or spilled over by excessive muck dumping. No proper engineering techniques/methods are adopted to properly stabilise the sloped in terraces or in erection of retaining structures, besides there is no provision of drainage system in dumping area. That no slope stabilization work by way of plantation of suitable species and other green cover not done. At few sites only the small terraces have been provided and gabion wall constructed. At almost all sites muck dumping was found done without proper compaction. If proper compaction and engineering methods are adopted then the volume of dump can be reduced and more muck can be accommodated, otherwise loose muck will eventually overflow/spill over into Chenab and other water bodies.

Specific observations:

At following locations dumping needs to be stopped immediately and gabion structures need to be constructed for holding muck from spilling over to water bodies:

S. No.	Name of the site	Specific Observations
1	Near Tunnel (T-2) Marog	Dumping in-progress with no protection provided.
2	Near Battery Chaishma	Dumping in-progress and nallah choked with no protection provided.
3	Near Anokhe Fall	Dumping closed but gabion structures need to be repaired.
4	At Digdole	Dumping is in progress, nallah plugged due to unscientific dumping with no protection provided.
5	In Ramsoo area	Dumping of muck as well as landslide debris is done in an un-planned manner.
6	In Sherbibi area	Dumping in progress with no protection provided,
7	In Chamalwas area	Along Bislari nallah, gabions not provided.
8.	In Ratanwas area	Huge dumping done and still in-progress with no protection provided.

Gammon Muck Dumping Sites: (Nashri to Ramban):

S. No.	Name of the site	Chainage (NB/SB)	Title of the land	Status
1	Dhalwas -I	130+690 to 130+800 km -(NB)	Forest	Closed/Land Sinking
2	Dhalwas -II	131+280 to 131+350 km -(NB)	Private	Closed
3	Dhalwas -III	132+400 to 132+500 km -(NB)	Forest	In-Use
4	Dhalwas -IV	133+050 to	NHAI acquired	Capacity

		133+080 km -(NB)		available but dumping stopped
5	Dhalwas -V	133+120 to 133+160km (NB)	NHAI acquired	Capacity available but dumping stopped
6	Dhalwas-Peerah-VI	134+770 to 134+820 km (NB)	Forest	In-use
7	Dhalwas-Peerah-VII	135+300 to 135+350 (NB)	Forest	In-use
8	Sawani -I	135+ 900 to 135+940 km (NB)	NHAI acquired	Closed
9	Sawani -II	136+760 to 136+810 km (NB)	NHAI acquired	In-use
10	Hotel Darn View (Sawani) Peerah	138+050 to 138+100 km (SB)	Private	In-use
11	Chanderkote-I	141+200 to 141+250 km -(NB)	Private	In-use
12	Chanderkote-II	141+300 to 141+320 km -(NB)	Private	Closed
13	Kanthi (Karol)-I	144+950 to 144+970 km -(SB)	Private	Closed
14	Kanthi (Karol)-II	145+440 to 145+500 km -(SB)	Private	Closed
15	Kanthi	145+520 to 145+620 km -(SB)	Private	Closed
16	Kow bagh	149+650to149+750 km -(SB)	Forest	In-use

Observations:

That gabions/retaining structures in most of the portion along the Nallah were either not provided or washed away and spilled over by excessive muck dumping. That muck dumping was found done in un-scientific manner without proper compaction and terracing. That at most of the sites no slope stabilization work found done by way of plantation of suitable species and other green cover.

Specific observations:

At following locations dumping needs to be stopped immediately and gabion structures need to be constructed for holding muck from spilling over to water bodies:

S. No.	Name of the site	Specific Observations
1	Dhalwas-I	No retaining structure constructed and area is in sinking zone.
2	Dhalwas-III	Gabions provided but muck is overflowing.
3	Dhalwas-Peerah —VI & VII	Dumping in-progress and no protection provided.
4	Near Dam View Hotel-Peerah	The gabions provided are not of sufficient height/width to hold the muck.
5	Chanderkote -I & II	No retaining structures provided and muck has reached upto river Chenab.
6	Kanthi-Karol I & II to Kanthi	Gabions provided but needs to be repaired.
7	Kow Bagh, Ramban	Protection provided is not sufficient.

Recommendations:

1) in compliance to Hon'ble NGT orders "The project authorities need to discontinue with the use of dumping sites which have attained full capacity and need to take immediate steps to stabilize and rehabilitate them by planting shrubs/trees and local grass and all other engineering/botanical methods.

2) Also, in compliance to Hon'ble NGT orders " The project authorities need to take steps for adequate preparation of the dumping sites, which are in use and where further dumping is possible, by raising concrete retaining walls wherever necessary and adopting all other scientific methods.

3) That Notice-1 under Environment (Protection) Act, 1986 may be issued against Project Director (NHAI), Jammu for non-compliance of conditions of Environmental Clearance obtained by them for execution of the project (04 laying of NH-44) and directions of Hon'ble NGT issued from time to time.

4) That Project Director National Highway Authority of India (NHA1) may be directed to rectify the above shortcomings & submit compliance report along with Photographic proof within a period of 15 days."

7. In view of above, since there is further default even after order dated 12.02.2019 whereby the said contractors were required to pay interim compensation of Rs. 1 crore each and furnish performance guarantee for improving the situation within next three months in the sum of Rs. 1 crore each, the performance guarantee if furnished will have been liable to be forfeited. Same consequence will follow if such guarantees have not been furnished as the said parties cannot take advantage of their default. In other words, M/s Gammon India Ltd. as well as M/s Hindustan Construction Company Ltd. are now required to pay a sum of Rs. 2 Crores each within one month from today. The amount be deposited with the Central Pollution Control Board (CPCB) which may be spent for restoration of the environment.
8. Direction in the order dated 26.04.2019 is to require the Committee to visit the designated and non-designated dumping sites and report the current practice of dumping and assess the damage with reference to all the stretches involved, determining final liability of the companies executing the work as well as of the NHAI. Let the said direction be complied within one month.

9. Learned Counsel for the contractors as well as the NHAI made a statement that in future all precautions will be taken. In view of repeated failures and the track record of deficiencies in maintaining environmental norms, we require M/s Gammon India Ltd. as well as M/s Hindustan Construction Company Ltd. to furnish further performance guarantee in the sum of Rs. 2 Crores each to the satisfaction of the CPCB within two weeks. The NHAI may also furnish a performance guarantee in the sum of Rs. 1 Crore to the satisfaction of CPCB within two weeks. It is made clear that the amount of performance guarantees will be liable to be forfeited if there is any further default in maintaining the environmental norms henceforth.

List for further consideration on 24.09.2019.



Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

July 11, 2019
Execution Application No. 32/2016
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