

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

(By Video Conferencing)

Original Application No. 43/2019

Muzaffar Hussain, Ecosorz Foundation

Applicant

Versus

State of Rajasthan

Respondent(s)

Date of hearing: 28.10.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

**ORDER**

1. Question for consideration is remedial action against illegal extraction of ground water at Rawatbhata, District Chittorgarh, Rajasthan by water mafia for commercial purpose.

2. The matter was last considered on 05.02.2020 in the presence of the Member Secretary of the State PCB to ascertain the effectiveness of remedial measures of illegal extraction of ground water. It was found that the compensation regime to effectuate the 'Polluter Pays' principle was required to be properly implemented so that violation of law does not remain profitable. It was observed:-

*"3. Accordingly, the Member Secretary, Rajasthan State PCB is present in person and has handed over a compliance report to the effect that the earlier compensation was interim and in compliance of the CPCB report dated 26.06.2019 mechanism has been now evolved for levy of environmental compensation. The State PCB has*

also issue closure directions. The State PCB has also taken steps to recruit the necessary staff.

4. We have considered the above compliance report. It is still not clear as to how the compensation has been assessed. As observed earlier, the compensation can be for a period up to five years proceeding such assessment and can be based on best judgement assessment in absence of positive evidence.<sup>1</sup> It is permissible to draw inference of violation in the past unless it is shown to the contrary by the violator.

5. Accordingly, let a further report be filed in the matter within three months by email at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in).”

3. Accordingly, further report has been filed by the State PCB on 26.10.2020 which only mentions that a show cause notice was given to the project proponents to which objections have been filed and the matter was under consideration.

4. The above stand shows sorry state of affairs. It appears that the State PCB is unconcerned about its duty to prevent violation of environmental law. The matter is being taken up after more than eight months during which no effective steps are shown to have been taken. In such matters prompt action is required and matter cannot be kept pending for indefinite period, as appears to be done by the State PCB for reasons difficult to understand except unwillingness, incompetence or the like. Nobody has cared to appear to explain the position which shows lack of responsibility.

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<sup>1</sup> NGT order dated 04.01.2019 in O.A No. 110(THC)/2012:

“30:..... While actual damages may be determined on the basis of objective data, if available, absence of precise data is not a ground not to undertake the exercise of determining such damages based on legal principles, including *res ipsa loquitur*, having regard to common course of events etc”.

NGT order Dated 13.05.2019 in O.A No. 95/2018:

“27:.....Learned Counsel for the GPCB, CETP operators and the industrial units have not been able to show any justification for the approach of applying the ‘Polluter Pays’ principle only to the period post inspection as can be seen from Para 21 above nor they are able to show justification for not including all polluters or to justify grossly disproportionate compensation. There is no rebuttal to the contentions raised on behalf of the applicant.”

5. While disapproving such attitude of the State PCB, we defer the proceedings and expect the State PCB to take prompt action in the matter and file action taken report before the next date by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The Member Secretary of the State PCB may remain present in person (online).

List again on 22.02.2021.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

October 28, 2020  
O.A. No. 43/2019  
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