

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

.....

APPEAL NO. 97/2013

**MATHALA CHANDRAPATI RAO
VERSUS
MEMBER SECRETARY, ODISHA STATE PCB.**

IN THE MATTER OF:

Mathala Chandrapati Rao,
aged about 78 years,
S/o Late Jagannaikulu,
Founder of Kidigam Parbata Prant Parbesh Raksha Samiti
(KPPRS),
Kidigam Hillock, Kidigam B.P.O.,
Kasinagar Tahasil, Gajapati Dist.
Odisha- 761206.

...Appellant

Versus

1. Member Secretary,
Odisha State Pollution Control Board (OSPCB),
Parbesh Bhawan,
A118 Nilakantha Nagar, Unit VIII,
Bhubaneswar-751012
2. Regional Officer, OSPCB,
3rd lane, Bramhanagar,
Berhampur,
Ganjam District, Odisha -760001
3. Collector and Dist. Magistrate,
Gajapati District Odisha,
Parlakhemundi -761201
4. M/s BVSR Construction Pvt. Ltd.
Represented by its Managing Director.

Corresponding Address-

House No 5-8-51/1 Fateh Sultan Lane,
Nampally, Hyderabad,
A.P. - 500001.

5. M/s Baccha Ramanayya,
Construction Pvt. Ltd,
HIG 29, North Extension,
Sri Saibaba Marg, Seetamdharma,
Visakhapatnam 530013 (A.P)
6. A. Gopal Rao Quarry No. 3
C/o M/s BVSR Construction Pvt. Ltd
Near Kidigam G.P. Kashinagar
P.S Gajpati Dist.-761206, Odisha
7. B. Krishna murthy, Q. No 5,
C/o M/s BVSR Construction Pvt. Ltd,
Near Kidigam Hillock, Kidigam,
G.P. Kashinagar
P.S Gajpati Dist.-761206, Odisha

...Respondents

APPELLANT IN PERSON

Shri Mathala Chandrapati Rao

COUNSEL FOR RESPONDENTS

Mr. S. S. Mishra and Mr. Mukesh Kumar, Advs. for Respondents
No. 1 to 3

Mr. Arjun Vinod Bobde and Ms. Sanya Advs. for Respondent No.
4

Mr. A. K. Panda and Mr. M. Paikaray, Advs. for Respondent No. 5
Mr. Guntur Pramod Kumar, Mr. Prashant Advs. for State of
Andhra Pradesh

JUDGMENT

PRESENT:

Reserved on: 2nd November, 2015
Pronounced on: 23rd November, 2016

- 1. Whether the judgment is allowed to be published on the net?**
- 2. Whether the judgment is allowed to be published in the NGT Reporter?**

Mr. Ranjan Chatterjee, (Expert Member)

1. The appellant Mathala Chandrapati Rao, resident of village Kidigam, Tahasil Kasinagar, District Gajapati, Odisha, is assailing the Judgments of the Hon'ble Appellate Authority, Odisha dated 19th September, 2011 and 14th May, 2012 in Appeal No. 4A of 2011 and Appeal Nos. 1A and 1W of 2012 respectively, preferred by him against the consents to establish dated 19th October, 2010 granted by State Pollution Control Board to stone crusher units, asphalt mix and wet mix units respectively, as well as cancellation of consent given to setup stone crusher unit/plant to the respondent no. 4 M/s BVSR Construction Pvt. Ltd. for production of stone chips, stone dust, asphalt and wet mix, and is further seeking directions for survey of the area for assessing the damage caused to the people, due to irresponsible operation of the crusher mixing units by the respondent no.4 and for suitable compensation to the victims of such environmental damage/pollution.

2. At the outset, it needs to be recorded that the issue of

against the consents to establish stone crusher units and asphalt mixing plant, no more survives as the respondent no. 4- M/s BVSR Construction Pvt. Ltd. has terminated its operation for good and now only the issue of environmental damage and compensation arising therefrom survives for our consideration. Parties before us conceded to this position and proceeded to make submissions after having availed of the opportunity to place all such material supporting their respective cases for and against the only surviving issue before us. Substantially, therefore, in plain and simple words, this is an application under Section 15 of the NGT Act, 2010.

3. Admittedly, the consent to operate was granted on 6th May, 2011. According to the appellant the crusher was in operation from 8th March, 2011 and the stone crusher as well as the plant continued to operate in violation of the conditions stipulated for its operations, thereby causing environmental degradation, the effect of which could be seen from fall in agricultural/horticulture produce and increase in respiratory diseases. Even going by the case of the appellant/applicant and the provision of law under Section 15 of the NGT Act, 2010, it can very well be seen that the present application is well within the prescribed period of limitation. Section 15 sub-clause 3 prescribes the

Section 15 (3)

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal, unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose: Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

Thus, even assuming that the first cause of action arose when the operations of the stone crusher and asphalt mixing were commenced on or about 19th October, 2010, when consent to establish was granted. The appeal as filed on 28th October, 2013 and now treated as an application can be said to be well within the prescribed period of 5 years from the date of such cause of action having first arisen.

4. According to the appellant (now the applicant seeking compensation), Government of Odisha had issued an order dated 6th August, 2010 requiring the respondent no.3-Collector and District Magistrate, Gajapathi, to ensure that no stone crusher continued its operations in violation of the conditions stipulated for establishing its operation; and the Odisha State Pollution Control Board had granted consent to establish the stone crusher unit, subject to the following conditions:

- b) Construction of wind breaking wall all around crusher unit.
- c) Construction of metalled road within the premises of the unit.
- d) Development of thick green belt along the periphery of the unit.
- e) Plantation of indigenous species around the available vacant land inside the factory premises.
- f) Land conversion in respect of the land occupied from agricultural to industrial purpose to be obtained,

and yet, none of these conditions were faithfully complied with. The appellant further submitted that the conditions stipulated for grant of consent to establish being pollution control measures, were designed to ensure the protection of the environment and as such non-compliance of the said conditions adversely affected the environment and also affected the people's lives in and around the village Kidigam, where the said stone crusher units and asphalt mixing plant were located.

5. According to the respondents, stone crusher unit and asphalt mixing plant were operated under consent to operate which remained valid up to 31st March, 2014 and consents to operate granted from time to time were never challenged before the Appellate Authority and the State

recommended renewal of the consent for the period from 31st March, 2013 to 31st March, 2014. The Appellate Authority had directed the Director of Horticulture vide order dated 18th June, 2011 to examine the allegations made by the appellant about the possible damage to the crops, vegetation and plantations surrounding the crusher units through its Scientist deputed therefore; and on the basis of the report of the Director of Horticulture, had dismissed the said allegations, vide order dated 17th September, 2011. The respondent no. 4 further submitted that periodical inspection of the stone crusher unit conducted by the State Pollution Control Board found the unit operating within the prescribed norms and that it had complied with all the terms and conditions of the consent order dated 19th October, 2010 and the boundary wall around the crusher unit was wiped out by the cyclone named Phailin, damaging the unit itself.

6. Admittedly, the consent to establish and consent to operate required the respondent no. 4 to abide by the conditions stipulated, particularly, the following conditions:

- a) Dust containment cum suppression system shall be provided at all potential dust generating sources of the crusher.

- c) Metalled road shall be constructed within the premises of the unit.
- d) Regular cleaning and wetting of ground shall be carried out within the premises.
- e) A thick green belt shall be developed along the periphery of the unit.
- f) The suspended particulate matter measured between 6m and 10m from any equipment of the stone crusher shall not exceed 600 microgram per cubic meter.
- g) The unit shall abide by provisions of Environment Protection Act, 1986 and the rules framed there under.

7. The Environment Protection Rules, 1986 Schedule I, item no. 37 (stone crushing unit) prescribes the standards for implementation of the pollution control measures as follows:

- a) Dust containment cum suppression system.
- b) Construction of wind breaking walls.
- c) Construction of metalled roads within the premises.
- d) Regular cleaning and wetting of the ground within the premises.
- e) Growing of a greenbelt along the periphery of the unit.

of the stone crushing activity. Needless to state, every stone crushing activity generates stone dust which can be carried by wind, and such other mechanized activity has a propensity to spread dust in the environment. Requisite measures for checking air pollution caused by dust are part of the conditions stipulated for grant of consent to establish or operate the stone crushing activity and any violation thereof is bound to translate such activity as a source of air pollution, not benign to the environment.

8. Some scientific studies on the environment were even made available for our perusal. A scientific study carried out by Mr. Jitin Rahul and published in the issue of the journal "Nature" dated 9th April, 2013 under the title "Stone Crusher Dust and its Impact on Tree Species" reveals adverse impacts of stone crusher dust on tree species and neighbouring areas. Emissions from stone crusher are classified as primary and secondary emissions and primary emission being fine dust generated during operations of the stone crushers as well as at the point of unloading of raw material in jaw crushers, screens and at the points of final discharge; and secondary emissions are those where the fine dust settle on ground or on equipment or form stock piles, get air borne due to wind or vehicle movement and remain in suspension for a long time. Study

Saha and Mr. Pratap Kumar Padhy at the Centre for Environmental Studies, Institute of Science, Visva-Bharati University, Santiniketan- 731235, India recorded the following observations:

“stone dust is a primary aerosol and it is released directly from the source. It has a detrimental effect on people and environment, including flora and fauna, for example, changed soil pH and productivity, formation of haze reducing visibility in the surrounding areas, destruction of habitat, damage of natural resources like valuable vegetation and wild life, promotion of spreading of many diseases etc. (Sivacoumar et al., 2006).”

9. Similar studies done by Mr. Jahan and Mr. Iqbal in 1992 recorded the following observations:

“reduction in leaf blade area of five tree species as a result of extensive dust and SO₂ pollution. Most of the plants experience physiological alterations before morphological injury symptoms become visible on their lives (Liu and Ding, 2008). Prajapati and Tripathi (2008) studied species-wise and season-wise dust deposition patterns on six selected tree species and their effects on chlorophyll and ascorbic acid content in foliar tissues. Investigations on ten annual plant species by Rai et al. (2010) reveals that the foliar surface was an excellent receptor of atmospheric pollutants leading to a number of structural and functional changes. The study concluded that trees are planted around industries and along roadside to absorb pollutants to air including particulate matter so as to reduce air pollution. Although trees possess some stress-tolerant mechanisms within them, considerable amount of damage is caused to them which are evident from

microorganisms and insects. Dust fall depends on Suspended Particulate Matter (for short "SPM") in the ambient air. Both the parameters, 'SPM' and dust fall contributed significantly to the degraded air quality at Lalpahari. These two tree species are thriving with hardship in this polluted environment. There is a spatial influence on effects of pollutants observed; so the trees at the site closest to the crushing activities had the greatest effects as compared to others. Some regulations like implementation of dust containment and suppression measures must be imparted on this vital industrial sector for better survival of plants at Lalpahari forest".

10. The above scientific studies thus clearly bring out the adverse effect of stone crushers on plants. Stone crushers give rise to substantial quantity of fugitive dust emissions, leading to health hazard for the workers and the population living nearby. Obviously, failure to take pollution control measures as contemplated by law and prescribed by the authorities as aforesaid is bound to adversely impact the environment. A question, therefore, arises as to whether from the facts revealed before us, it can be said that there was a failure on the part of respondent no.4 to take adequate pollution control measures in course of operating the said stone crusher unit and asphalt mixing unit.

11. The record reveals that the villagers of Village

there has been steep increase in cases of Cough, Asthma, Bronchitis and even TB and 25 out of 320 persons populating the said small village were affected by TB. Though, the Teshildar did not report any loss to the public health due to operations of respondent no.4 crushing unit, the Chief District Medical Officer, Gajapati in his letter dated 10th September, 2014 to the Collector, Gajapati revealed incidence of respiratory diseases like Acute Respiratory Infection, Cough, Asthma, Bronchitis as common ailments which could be attributed to seasonal variations. However, in the detailed report of Venkatapur (G.P Kidigam) Village, regarding the patients treated for different respiratory diseases by the Mobile Health Unit Team, a spurt in respiratory diseases in the years 2011-12 and 2013 during the operations of the respondent no.4 stone crusher unit in a population of 320 people (78 households) was revealed as under:

Year	Number of Respiratory Cases
2011	: 31
2012	: 55
2013	: 43
2014	: 26

12. Secondly, the incidents of respiratory diseases came down, coinciding with the stoppage of operation of Respondent No.4-Unit in the year 2014. These revelations,

hereinabove, unmistakably draw us to the conclusion that air pollution was caused. The fact that Respondent No.4 did not take the precautionary measures which he ought to have taken as per orders of Orissa State Pollution Control Board, particularly construction of wind breaking wall around the crusher unit and development of thick green belt along the periphery reveals its role in the air pollution. The photographs produced by the Andhra Pradesh Pollution Control Board dated 10th March 2011 show that the crusher unit is practically located in an open area, without any boundary wall all along its periphery to stall spreading of dust. For this omission, as per orders of the Tribunal dated 3rd April 2014, a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) were ordered to be deposited by Respondent No.4 before the Orissa Pollution Control Board. Further, the joint inspection report dated 16th April 2014 of Orissa Pollution Control Board, Andhra Pradesh Pollution Control Board and Central Pollution Control Board, clearly bring out that there is no permanent boundary wall put up by the Project Proponent. Further, it is revealed, the crusher materials are stored as heaps. The entire unit is an open site. The said report further indicates that there is no barrier provided on the east and north side of the premises, whereas a green patch of

sheets have been put up on the southern side, in lieu of a wind breaking wall.

13. The language of the requirement is to have wind breaking wall, which ought to have been constructed prior to commencement of operation. As evident from the pictures, the G.C. sheet barricade on the southern side is merely an eye wash and cannot withstand any pressure of wind to stall the spreading of the dust. Clearly, the project proponent had put up some G.C. sheet 9' to 12'ft. height approximately only on one side, not on all sides. The pictures furnished by the Pollution Control Board and the learned counsel of Respondent No.4 indicate that some haphazard G.C. sheets have been put up only on the southern side, not on all sides. These are extremely flimsy and can by no stretch of imagination be called as wind breaking wall.

14. None of the inspection reports could find the wall around the stone crusher units. All of them merely did lip service of stating that the project proponent (henceforth) will comply with this condition which indeed was a condition precedent. The fact that perimeter wall as well as the green belt around the unit are preconditions required for issue of consent to operate and the same were not in position in the operations by Respondent No.4, *per-*

crops and populace around it. Therefore, we have no hesitation in coming to the conclusion that pollution was caused by the Respondent No.4 in the said locality.

15. This brings us to the question of 'polluter pays principle'. This principle has been enshrined in Section 20 of the 'NGT' Act, 2010 as one of the guiding factors in deciding cases. The Hon'ble Supreme Court in the *Indian Council for Enviro-Legal Action Vs. U.O.I. 1996(3) SCC 212* laid down the said principle that the financial cost of preventing or remedying damage caused by pollution should lie with the undertakings which cause pollution. It is not the task of the government to meet the cost involved in prevention of such damage.

Further, the Hon'ble Supreme Court in ***Vellore Citizens Welfare Forum Vs. Union Of India &Ors 1996 5 SCC 647 had laid down:***

"The Polluter pays" principle has been held to be a sound principle by this Court in Indian Council for Enviro-Legal Action vs. Union of India J.T. 1996 (2) 196. The Court observed, "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.

water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation..."

The National Green Tribunal also in its various judgments has upheld the principle of 'Polluter pays'. In ***M/s. DSM Sugar Distillery Division Vs. Shailesh Singh*** judgment by the 'NGT' dated 10th December, 2015.

...12. The above statutory scheme and the environmental laws have to be seen and examined in the background of the Fundamental Duty imposed under Article 51(A)(g) of the Constitution of India, which imposes a constitutional duty upon every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. For a citizen to claim enforcement of the Fundamental Right to a decent and clean environment granted under Article 21 of the Constitution and to expect the State to discharge its constitutional responsibility within the ambit of Article 48A, the citizen has to keep in mind that the expectation of framers of the Constitution was also that the citizens would perform their constitutional duty for the protection of the environment...

12. The scheme of Section 15 and 17 read with Section 14 of the 'NGT' Act clearly places the onus upon a polluter to show that it is not causing pollution. It is for the reason that every industry is expected to take the consent of the Board and operate only within the prescribed parameters and the conditions of the consent order

in running the crusher unit and the hot mix plant, in close proximity to human habitation, have caused pollution. This is further corroborated by the rise in incidence of respiratory cases in Kashinagar Tahsil, Gajapati District Odisha. In this case, he has taken the consent but has failed to function the crusher unit within the prescribed parameters. Thereby applying the principle of strict liability, Respondent No.4 will have to pay damages for the pollution caused.

17. Next question that arises is whether the Phailin cyclone can be regarded as a saving circumstances for Stone Crusher Unit of Respondent No.4 from the liability incurred.

The Appellant has vociferously argued that there was no impact of cyclone on the stone crusher and Kidigam area in general, because Kasinagar Tahsil, Gajapathi District, is at a distance of 84 Km. from the seacoast. The report of the 'APPCB' clearly brings out that there was no impact of hurricane on the project as it was located at considerable distance from the seashore. However, in the additional affidavit, the Respondent No.4 has stated that the intensity of the cyclone Phailin wiped out the entire boundary wall, which is refuted by the Appellant. During inspection of

mixing plant all operated till the first week of November 2013, that is, 3 (three) weeks after the occurrence of cyclone on 11.10.2013. There is no reference to hurricane in this report as well as reports of 'OSPCB' which gives rise to preponderance of probability that there was no impact of hurricane on the crusher unit. This goes to show that the excuse that hurricane had broken the walls, is flimsy, not borne out by facts and that the project proponent clearly violated the condition of the requisite boundary wall and the green belt. Even otherwise, upon invoking the principle of no fault under Section 17 of the 'NGT', Act, 2010, impact of Phailin cyclone can not be of any avail to the Respondent no.4 as it conducted activity causing adverse impact as aforesaid.

18. Considering the extent of damage caused to the health of the local villagers and appellant's relentless struggle to seek environmental justice, particularly, the fact that he had to come from a distant village in Odisha to Delhi for at least on 35 occasions, we, pass the following order:

1. We direct Respondent No.4-Project Proponent, to pay Environmental Compensation of Rs. 5,00,000/- (Rs. Five Lakhs) to the Collector, Gajapati District

5 additional beds and other infrastructure for outpatient department. The existing number of 16 beds will thereby increase to 21. The Collector will make a plan for health care to spend Rs. Five Lakhs, urgently and a compliance report regarding the same be filed before the Tribunal by 1stFebruary,2017.

2. We direct the Project Proponent (Respondent No.4) to pay an amount of Rs. 2,00,000/-(Rupees Two Lakhs only) to the Appellant to cover his cost of transportation to approach this Tribunal.

19. With the above directions we dispose of this Appeal No. 97/2013.

Justice U. D. Salvi
Judicial Member

Mr. Ranjan Chatterjee
Expert Member

Date : 23rd November 2016

New Delhi

NGT