

Item No. 01

(Court No. 1)

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

(By Video Conferencing)

Review Application No. 06/2022
IN
Original Application No. 226/2020
(Earlier O.A.68/2020(CZ))

Om Puri

Applicant

Versus

Hindustan Zinc Ltd.& Ors.

Respondent

Vedanta, Hindustan Zinc Limited, Core-6,
Scope Office Complex, 7, Lodhi Road, New Delhi

Review Applicant

Date of hearing: 29.03.2022

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

IN CHAMBER BY CIRCULATION

ORDER

1. This application has been filed by the Hindustan Zinc Ltd., Udaipur for review of order of this Tribunal dated 02.02.2022 in O.A. No. 226/2020, *Om Puri vs. Hindustan Zinc Ltd. & Ors.* and connected matters.

2. By the said order, the Tribunal considered the grievance of violation of environmental norms by Hindustan Zinc Ltd., Udaipur, Rajasthan in executing mining lease of Lead, Zinc and associated minerals at villages

Agucha, Rampura, etc., Tehsil Hurd, District Bhilwada, Rajasthan covering nearly an area about 1200 hectares of mining land.

3. Grievances considered are that heavy blasting and underground mining operations result in contamination of source of drinking of water, resulting in various diseases like Asthma and skin borne diseases. Live stocks are also affected. Dust and stones get accumulated close to the agricultural land and houses of the inhabitants. Toxic and contaminated waste water is discharged from the mines. The area is 'over exploited' in terms of the ground water, notified as such by the CGWB. There are mammoth holes at many places because of unplanned underground mining. The applicants relied upon photographs filed with the application.

4. The Tribunal sought an independent report from a joint Committee comprising of Collector, Bhilwada and the State PCB. CPCB was added to the Committee later. The Committee filed its report dated 07.09.2021 after undertaking visit to the site, examining the mining process and status of compliance with reference to the EC/consent conditions. The Committee *inter-alia* considered status of water quality, loss to the agriculture and livestock, status of ground water and health of the villagers and made certain recommendations.

5. Considering the report of the Committee, the Tribunal held that there is damage to the wells, pits, loss to agriculture produce, livestock, contamination of ground water and land degradation. The Tribunal accordingly directed the Project Proponent to deposit a sum of Rs. 25 crores for remediation measures. A restoration plan was directed to be prepared by the joint Committee for remediating soil and quality of ground water and undertaking health improvement programmes. The work was to

be got executed by an appropriate agency with option to associate the PP itself. The operative part of the order is reproduced below:-

“8. We have duly considered the rival submissions. We find that the Committee has failed to consider the precautionary principle of environment laid down inter alia in *Vellore Citizens (1996) 5 SCC 647* and *MV Nayudu, (1999) 2 SCC 718* and on that basis ignored serious violations and damage to water and land. It has not gone into damage to health by simply referring to record of hospital admissions. While the recommendations for plantation, further studies for remedial action in other measures like de-siltation and increase of water sprinklers may certainly be undertaken, in view of damage to the quality of ground water resources adverse impact on soil, the PP has to take necessary restoration measures for improvement of water quality as well as soil. Violation of plantation condition has continued for a long period. Merely requiring cost of plantation to be depositing without fixing accountability for the past violations may not be adequate. Environmental law violations cannot be taken lightly when the violators are being entities like the present PP and victims are poor villagers. Annual turnover of the PP is said to be about Rs. 22,000/- Crores per annum¹ for the last more than three years and revenue receipt for the year 2020-2021 is more than Rs. 20,000/- Crores per annum, though it is stated that there is no separate figure for particular mining unit. The victims of damage are unspecified number of persons spread over in more than six Panchayats in Hurda block namely Bherukhera, Agucha, Parasrampura, Kalyanpura, Kothiya, Balapura & others. Thus, case is made out for requiring the PP to provide for compensation for the past violations and bear the cost of remediation, apart from complying with the recommendations of the Committee.

9. Even if the Committee has not been able to conclude with certainty that the PP is responsible for the damage, it is possible to infer damage to the groundwater due to activities of the PP. The groundwater quality is required to be co-related with the source by comparing with parameters like Zinc and lead. With regard to the air quality, observations do not match the daily or annual average standards taking into account the resuspension of mine dust in the contiguous area. With regard to the blasting operations and continuing underground mining, comprehensive observations on the effect of such operations on the nearby houses have not been properly interpreted except mentioning with the DGMS norms and Peak Particle Velocity (PPV) was considered to be in the acceptable limits. Thus, remedial action is required for which the PP has to bear the cost and pay compensation on principles laid down by the Hon'ble Supreme Court inter-alia in *MC Mehta (1987)1 SCC 395*, *Sterlite, (2013) 4 SCC 575* and *Goel Ganga (2018) 18 SCC 257*, taking into account financial capacity of the PP and the damage/violations.

¹ https://www.google.com/search?q=turnover+of+hindustan+zinc+limited&rlz=1C1CHBF_enIN828IN828&sxsrf=APq-WBtzwf_5AM3zndm0jNmCvNUHFd4Shg%3A1643790350753&ei=DkD6YYm1LevN5OUPpo6MsA4&oq=Turnover+of+Hindustan+Zinc+&gs_lcp=Cgdnd3Mtd2l6EAEYADIGCAAQFhAeOgoIABCxAXCDARBD0gQIABBDOhEILhCABBCxAXCDARDHARDRAzoFCAAQgAQ6BQguEIAEOgsIABCABBCxAXCDAToICAAQgAQQsQM6BAguEEM6CAguEIAEELED0ggIABCxAXCDAToFCAAQkQI6BwguELEDEEM6BwgAELEDEENKBahBGABKBAhGGABQAFiTU2CmYmgAcAJ4AIAbnQKIAbUjkgEGMC4yMi41mAeAoAEBwAEB&scient=gws-wiz

10. *Having regard to the violations/damage by the PP and overall estimated cost of ecological rehabilitation and restoration and financial capacity of the PP, we require the PP to deposit a sum of Rs. 25 crore with the District Magistrate, Bhilwada within three months to meet the cost of remediation measures. A joint Committee of CPCB, State PCB and District Magistrate, Bhilwada with the assistance of any other experts may prepare a restoration plan for remediating the soil and quality of ground water in the area, apart from undertaking health improvement programme for the inhabitants and the cattle. The action taken may be placed on the website of the District Magistrate, Bhilwada and its execution duly monitored. The remediation works may be got executed by an appropriate agency utilizing the amount deposited by the PP and the PP itself will have liberty to get the such work executed of restoration/rehabilitation on its own or through any other agency, if found proper by the joint Committee in the circumstances. A public awareness group may be setup jointly by the DM and the PP to list out the issues requiring further action. The amount deposited will be utilized for executing the plan within one year, associating all stake holders, including the PP and civil society in a suitable manner, subject to overall supervision of the Committee. State PCB will be the nodal agency. In case the amount deposited is found to be deficient, the Tribunal may consider further directions, depending upon the material available. The joint Committee may have a report of status of compliance as on 31.03.2023 filed before the Registrar General of this Tribunal by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF by 30.04.2023. In case any further direction becomes necessary, the Registrar General will place the matter before the Bench.”*

6. Review Application has been filed by the PP mentioning the activities undertaken by the PP prior to and after passing of order of this Tribunal dated 02.02.2022. The submission in the Review Application is reproduced below:-

“As a company that takes its environmental responsibilities seriously, we have taken great pains to ensure remaining fully and ever compliant and an upholder of all environmental safety norms, as well as contributing more and more towards the overall welfare of the community.

We have addressed all observations made by the committee in all our earnestness. However, the recent order of Hon'ble NGT dents the image of our company and projects us as a "violation" of environmental norms. This is a major setback for us as the entire world understands our company as an ideal and exemplary sustainable mining company, and as a testament to this image we were ranked 1st in Asia-Pacific and globally 5th in Dow Jones Sustainability Index in 2021 amongst Mining & Metal global majors. HZL is perhaps the only Indian company in this prestigious list.

Considering the submissions made above, we humbly request you to modify the 02.02.22 order and direct the company to spend Rs 25 crores under its CSR programs in consultation with the district administration for addressing the genuine concerns raised by local inhabitants. We shall work closely with the pollution control board towards improving quality of soil, potable and farm water availability, increasing agricultural produce, undertaking health improvement programs for inhabitants as well as livestock improvement. A compliance report shall also be submitted periodically to the competent authorities.

Further, with reference to the committee observations, the company shall comply with the recommendations made by the committee. In absence of any scientific or reported violation of any environmental conditions, the company may be discharged from any liability under the precautionary pay principle, as all conditions for compliance have been duly fulfilled and we remain committed to environmental safety as long as we exist.

In view of the submissions made, and to support and secure the reputation of a prestigious Indian company in the international arena, we humbly request you to reassess the order passed in this OA 226 of 2020 and provide the Company with an opportunity to take all essential, corrective, and remedial measures under social outreach programs.”

7. Since the Tribunal has found the need for restoration in the light of reasons in the order sought to be reviewed and does not rule out association of the Project Proponent in taking remedial measures, we direct forwarding of the letter dated 11.03.2022 filed by the PP, which has been treated as a review petition, to the joint Committee to enable the joint Committee to furnish its action taken report in pursuance of order dated 02.02.2022 within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

The report may be placed for consideration on 15.07.2022.

A copy of this order be forwarded to CPCB, State PCB and District Magistrate, Bhilwada by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

March 29, 2022
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