

Item No.8

(Court No. 2)

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

(Through Physical Hearing with Hybrid VC Option)

Original Application No.151/2023

Hassina Wajid (Sarpanch)

...Applicant

Versus

State of Jammu & Kashmir (UT) & Ors.

...Respondents

Date of hearing: 01.04.2024

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.**

Applicant: Mr. Pankaj Pandey, Advocate for the Applicant.

Respondents: Ms. Palak Mittal, Advocate for Respondent No. 4-
Department of Geology and Mining (UT of J &
K) (through VC).

Mr. P. S. Rathore, Director, Department of Geology
and Mining (UT of J & K) (through VC).

Mr. Ajit Sharma, Mr. A. Renganath and Mr. Kanchan
Kumar, Advocates for Respondents No. 6 to 8.

**Application has been filed under Sections 14, 15 read with Section
18 of the National Green Tribunal Act, 2010.**

ORDER

1. The applicant has filed the present application raising the grievance regarding establishment and operation of stone crusher and hot mix plant at the distance of just 100 to 200 meters from the residential area and adjoining to agricultural land without requisite permissions and in violation of environmental norms.

2. Vide order dated 20.03.2023 notices were ordered to be issued to the respondents and a Joint Committee comprising of representatives of Central Pollution Control Board (CPCB), Jammu and Kashmir Pollution

Control Board and District Magistrate, Poonch was constituted with direction to submit its report within two months.

3. J & K PCC filed response and action taken report alongwith copy of the report of the Joint Committee vide email dated 17.07.2023. The relevant part of the report is reproduced as under:-

“Response and Action Taken Report of J&K Pollution Control Committee in compliance to Hon'ble National Green Tribunal (NGT) order dt. 20-03-2023 in OA 151/2023 titled Hassina Wajid (Sarpanch) V/s State of Jammu and Kashmir (UT) & Ors.

X X X X

Action taken by the Joint Committee:-

In compliance to the Hon'ble National Green Tribunals aforesaid order, the Joint Committee comprising of Sh. Sampat Singh Manhas, Divisional Officer, PCC, Poonch, Dr. Narender Sharma, CPCB, Chandigarh and Sh. Tahir Mustafa Malik, JKAS, Additional District Magistrate, Poonch conducted site visit, verified the factual position and has submitted its report to the Regional Director, J&K Pollution control committee, Jammu and the Regional Director, J&K Pollution Control Committee, Jammu vide communication no. PCC/RDJ/SA/NGT/OA/151/1087 dt. 14-07-2023 has endorsed the report of the Joint committee constituted by the Hon'ble National Green Tribunal for the purpose. The copy of the report of Joint committee is enclosed as Annexure 'A'

Action taken by J&K Pollution Control Committee:-

The Regional Director, J&K Pollution Control Committee, Jammu vide no. PCC/RDJ/Consent-O/23/1127-28 dt. 15-07-2023 copy enclosed as Annexure 'B' has recommended for initiation of closure proceedings against Dewan Stone crusher, chaktroo, Haveli, District Poonch, since notices have been issued by the Regional Director, J&K Pollution Control Committee, Jammu vide no. PCC/RD-J/N-1/consent-O/23/110-112 dt. 23-04-2023 and no' PCC/RD-J/O/N-II/23/ 320-22 dt. 18-05-2023 (copy of notices issued enclosed as) Annexure C & D.

In this regard, it is submitted that the stone crusher shall be closed after following all legal procedures and Environmental compensation also shall be levied against Dewan stone crusher and the compliance report of closure of the Stone crusher and Environmental compensation orders shall be submitted to the Hon'ble National Green Tribunal at the earliest.”

4. Despite notice none appeared for respondents no. 1 to 5 on 19.10.2023.

5. Respondents no. 6 to 8 filed their reply vide email dated 15.02.2024.
6. Vide order dated 19.10.2023, personal appearance of the Director, Department of Geology and Mining was ordered.
7. The Director, Department of Geology and Mining sent letter to Consultant of this Tribunal vide email dated 20.03.2024 enclosing therewith the factual position of the case submitted by District Mineral Officer, Poonch forwarded by the Joint Director, Jammu and Officer Incharge Mineral Concession Cell, Jammu with the request to draft and file the response before this Tribunal at an earliest. The relevant part of the reply reads as under:

“X X X

2. In this regard, it is submitted that, M/S Dewan Stone Crusher located at Chaktroo area of District Poonch, Department has granted License in favour of the INS Dewan Stone Crusher, Proprietor Sh. Shazad Shabnum S/o Abdul Rashid R/o village chaktroo Tehsil Haveli District Poonch. This Stone Crusher was operating before issuance of S.o 60, and the requisite Noc's has been completed by the proprietor of M/s Dewan Stone Crusher for running of the Crusher.

3. Whereas, M/s Dewan Stone Crusher was non-operational w.e.f 25-03-2022 to 16-01-2023 due to seizure order issued by the Administration and the owner of the crusher has approached to the J&K High Court and Hon'ble court has given directions to the District Administration for de-seal of the crushers, and this crusher has de-sealed by the Administration on 16-01-2023.(copy enclosed)

4 Whereas, undersigned along with field staff visited on the complaint site and found that no fresh mining is seen on the spot where complaint of illegal mining has been reported by the petitioner .It is further submitted that ,the present status of the unit is non operational due to closer order issued by the population deptt on 31-10-2023 (copy enclosed)

5. Therefore, I hereby submitted factual position of the spot of the complaints for your kind information and for further necessary action at your end...”

8. In its report the Joint Committee observed- **“Further, now the revised siting criteria/guidelines for establishment of new stone crushers/hot mix plants have been notified/issued by J&K PCC vide Order No. 37-JKPCC of 2023 dated 27/02/2023 (Annexure-11).**

In view of this, Tehsildar Haveli was requested to provide the distance certificate of various parameters as on date w.r.t. M/s Dewan Stone Crusher and as per feedback received from the Office of Tehsildar, Haveli (poonch) vide No.TH/OO/143 dtd. 02/05/2023 (Annexure-12), the unit does not meet the siting criteria w.r.t. Distance from Residential Area and Educational Institution at present, which come under critical criteria.” The representative of Central Pollution Control Board (CPCB) while expressing his dissent observed- ***“M/s Dewan Stone Crusher was neither complying with the siting criteria applicable at the time of establishment in 2016 nor it is complying with the revised siting criteria applicable in 2023”. (emphasis added)***

9. In their reply respondents no. 6 to 8 have referred that they filed writ petition (c) No. 742/2022 and contempt petition no. CCP (S) No. 157/2022 on which de-sealing of their unit was ordered. Respondents no. 6 to 8 have also referred to W.P. (C) No. 2522/2022 titled as Inhabitants of Village Chaktroo through Hussina Wajid Vs. U.T. of J & K & Ors. and pleaded concealment of material facts by the applicant from this Tribunal. Respondents no. 6 to 8 have also claimed the report of the Joint Committee to be riddled with factual errors and the stone crusher and hot mix plant to be within the siting norms and relied upon the reports dated 22.01.2024 and 30.01.2024 submitted by J&K PCC before Hon’ble High Court of Jammu and Kashmir regarding the stone crusher and hot mix plant being compliant to environmental norms.

10. We find the representation of facts in the report of the Joint Committee and action taken report of J&K PCC filed before this Tribunal and replies/reports filed before Hon’ble High Court of Jammu and Kashmir to be contradictory. On the one hand J&KPCC has issued closure order on the ground of non-compliance whereas on the other

hand it has submitted reports before Hon'ble High Court of Jammu and Kashmir as to the stone crusher and hot mix plant being compliant with environmental norms.

11. None has appeared for respondents no. 1-State of J&K (UT) and 5-Chairman, J&K Pollution Control Committee today despite being aware of the pendency of the matter and the date fixed.

12. The proceedings before this Tribunal cannot be treated as part of adversarial litigation where the State/UT or its instrumentalities may opt out to remain absent and suffer ex-parte proceedings. On the other hand, the State/UT and its instrumentalities are under constitutional and statutory obligations to protect and improve environment and ensure compliance with environmental norms and, therefore, the State/UT and its instrumentalities have to file their response and ensure their representation through duly authorised representatives/Counsel before this Tribunal.

13. Non-appearance of respondents no. 1 (UT of J&K) and 5 (J&K Pollution Control Committee) today has the effect of causing unnecessary adjournment delay and in convenience in appropriate resolution of the environmental issues involved in the case. Such deliberate non-appearance warrants imposition of appropriate costs for unnecessary adjournment, delay and inconvenience thereby caused.

14. In these facts and circumstances respondents no. 1 (UT of J&K) and 5 (J&K Pollution Control Committee) are directed to pay costs of Rs. 1,00,000/- each. The costs shall be deposited with the National Green Tribunal Bar Association, Principal Bench, New Delhi. The amount of costs so deposited shall be utilized for providing legal aid to the applicants not represented by any lawyer for effectively presenting their case before this Tribunal and creating facilities for the litigants visiting this Tribunal for hearing of cases filed by them.

15. Mr. P. S. Rathore, Director, Department of Geology and Mining (UT of J & K) seeks time to file his reply.

16. Reply be filed within one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

17. Learned Counsel for respondents no. 6 to 8 has submitted that in view of writ petition filed by inhabitants of the village before J&K High Court this Tribunal ought not to proceed further with the matter.

18. Learned Counsel for the applicant has submitted that he will take instructions from the applicant regarding continuance with either of the proceedings before J&K High Court and this Tribunal.

19. Learned Counsel for respondents no. 6 to 8 have submitted that stone crusher and hot mix plant are not in operation and no ad-interim injunctive order is required to be passed in the matter.

20. It seems that in view of the fact of the stone crusher and hot mix plant not being in operation no ad-interim injunctive order has been passed by Hon'ble High Court of Jammu and Kashmir.

21. However, in view of the peculiar facts and circumstances of the case referred above particularly the observations made in the report of the Joint Committee and action taken report of the J&K PCC that the stone crusher and the hot mix plant do not meet the siting criteria and the provisions of Section 20 of the National Green Tribunal Act, 2010 it is ordered that stone crusher and hot mix plant shall remain closed till further orders to the contrary to be passed by this Tribunal and will be allowed to operate only after specific orders to be passed by this Tribunal in this regard on due verification of the factual position after proper hearing and giving opportunity of being heard to the concerned parties.

22. However, in case of any conflict with any order to be passed by Hon'ble High Court of Jammu and Kashmir, the order passed by this Tribunal shall not operate to the extent of such conflict.

23. List for further consideration on 16.05.2024.

24. In view of the facts and circumstance of the case, we also consider personal appearance of the Director, Department of Geology and Mining, Jammu & Kashmir, Member Secretary, JKPCC and District Magistrate, Poonch **(physically or through VC)** on the next date of hearing to be essential for producing the relevant record and assisting this Tribunal in just and proper adjudication of the questions involved in the case. Accordingly they are directed to remain present before this Tribunal on that date with the relevant record.

25. A copy of this order be sent by email to the Chief Secretary, Government of J&K, Director, Department of Geology and Mining, Jammu & Kashmir, Member Secretary, JKPCC and District Magistrate, Poonch for ensuring requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

April 01st, 2024
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