

Item No. 02

Court No. 1

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

Original Application No. 68/2022

Raman Sharma

Applicant

Versus

State of Haryana & Ors.

Respondent(s)

Date of hearing: 25.07.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Raman Sharma, Applicant in Person
Respondent: Mr. Rahul Khurana, Adv. R - 1 to 4 & 6
Ms. Radhika Gautam, Adv. for R - 7
Mr. Sanjay Upadhyay & Mr. Shubham Upadhyay, Advs. for R - 8
Ms. Noopur Singhal, Adv.

ORDER

1. The grievance as raised by the applicant is noncompliance of the Environment (Protection) Act, 1986 and violation of the Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control) Act, 1974 and C & D Waste Management Rules, 2016. It is alleged that the respondent has violated the rule and made construction in violation of environmental rules and running 10 DG sets in the green belt area and causing pollution and health hazard to the persons residing therein.

2. This Tribunal vide order dated 28.03.2023 directed the authorities concerned to assess the violation and illegalities committed by the Respondents and to submit a report.

3. Respondent No. 8 has filed the reply and submitted that an application has been filed before SEIAA and he should be provided opportunity of hearing before SEIAA.

4. We have gone through the notice dated 14.06.2023 issued by SEIAA to the Project Proponent with the fact that:

- i. As per EIA Notification 14.09.2006 and within the scope and meaning of the said Notification under Category 8 (a)/8 (b) Project Proponents are required to obtain Environmental Clearance.
- ii. A notice was issued on 14.06.2023 providing an opportunity for hearing to the Project Proponent by filing the objection and putting appearance before the Authority on 22.06.2023.

5. Contention for the Learned Counsel for the Respondent of is to the effect that the matter is pending before the SEIAA and before proceeding further a report is required to be furnished by SEIAA with regard to applicability of the EIA Notification, Consent Conditions, violation of the Noise Pollution (Regulation and Control) Rules, 2000 by operating a number of DG Sets, noncompliance of C & D Waste Management Rules, 2016 and not maintaining minimum green belt area as provided in the environmental clearance conditions.

6. We direct the SEIAA and State PCB to submit a report on the above points and compliances of conditions and to ensure in case of non-compliances necessary action must be initiated against the Project Proponent according to the rules.

7. It is to be noted that Section 3 of the Environment (Protection) Act, 1986 empowers the Central Government to take all such measures for the purpose of

protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. One of the measures provided in Section 3 (2) (v) is restriction of areas in which any industries, operations or processes or class of industries shall not be carried out or shall be carried out subject to certain safeguards. The Environment (Protection) Rules, 1986 were made in exercise of power conferred by Sections 6 and 25 of the Environment (Protection) Act, 1986. According to Rule 5, the Central Government may prohibit or restrict the location of industries and the carrying on of processes and operations in different areas. In exercise of the power conferred on the Central Government by Sub-Clause (i) and Clause (v) of Sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986 read with Clause (b) of Sub rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Ministry of Environment and Forests, Government of India issued a Notification on 14.09.2006 directing construction of new projects or activities or the expansion or modernization of existing projects or activities listed under the Schedule to the Notification shall be undertaken only after prior environmental clearance from the Central Government or the State Level Environment Impact Assessment Authority.

8. A statutory rule or Notification is to be treated as a part of the statute. [1982]2scc 205. Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act, are to be of the same effect as if they are contained in the Act, and are to be judicially noticed for all purposes of construction or obligation [1961] SCC (2) 679. The principles of interpretation of subordinate legislation are applicable to the interpretation of statutory Notifications. [2011]6 SCC 545 If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law-giver.

9. It has been repeatedly held by the Court that where there is no ambiguity in the words, literal meaning has to be applied, which is the golden rule of interpretation. The words of a statute must prima facie be given their ordinary meaning. [2002] 3 SCC 722.

10. While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment [Indian council for enviro-legal action v union of India [1996]5scc 281]. The traditional concept that development and ecology are opposed to each other is no longer acceptable [Vellore citizens welfare forum v. union of India [1996]5scc 647].

11. In a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the rule of law provides the cornerstone. The rule of law is to be distinguished from rule by the law. The former comprehends the setting up of a legal regime with clearly defined rules and principles of even application, a regime of law which maintains the fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is capable of exacting compliance. Rule by the law on the other hand can mean rule by a despotic law. It is to maintain the just quality of the law and its observance of reason that rule of law precepts in constitutional democracies rest on constitutional foundations. A rule of law framework encompasses rules of law but it does much more than that. It embodies matters of substance and process. It dwells on the institutions which

provide the arc of governance. By focusing on the structural norms which guide institutional decision making, rule of law frameworks recognize the vital role played by institutions and the serious consequences of leaving undefined the norms and processes by which they are constituted, composed and governed. A modern rule of law framework is hence comprehensive in its sweep and ambit. It recognizes that liberty and equality are the focal point of a just system of governance and without which human dignity can be subverted by administrative discretion and absolute power. Rule of law then dwells beyond a compendium which sanctifies rules of law. Its elements comprise of substantive principles, processual guarantees and institutional safeguards that are designed to ensure responsive, accountable and sensitive governance. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools – conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges – of how they have been shaped by humanity’s interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity’s actions have charted. The environmental rule of law seeks to facilitate a multi– disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the ‘law’ element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all

stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats.

In its decision in *Hanuman Laxman Aroskar vs Union of India*, [2019] 15 SCC 401 the Court, recognized the importance of protecting the environmental rule of law. The court observed:

“142. Fundamental to the outcome of this case is a quest for environmental governance within a rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our ecosystem.

“156. The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution.”

12. In its first global report on environmental rule of law in January 2019, the United Nations Environment Programme (“UNEP”) has presciently stated:

“If human society is to stay within the bounds of critical ecological thresholds, it is imperative that environmental laws are widely understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and the planet. Environmental rule of law offers a framework for addressing the gap between environmental laws on the books and in practice and is key to achieving the Sustainable Development Goals.

Successful implementation of environmental law depends on the ability to quickly and efficiently resolve environmental disputes and punish environmental violations. Providing environmental adjudicators and enforcers with the tools that allow them to respond to environmental matters flexibly, transparently, and meaningfully is a critical building block of environmental rule of law.”

13. In a recent decision of the Court in *Bengaluru Development Authority vs Sudhakar Hegde* 2020 SCC online 328, the Hon’ble Supreme Court held:

“107. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no

trade-off between the two. The protection of the environment is an inherent component of development and growth...

“0. Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the state and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public spirited individuals are called to invalidate such actions...

“108. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.”

14. In *Lal Bahadur vs State of Uttar Pradesh* [2018] 15 SCC 407, the Court underscored the principles that are the cornerstone of our environmental jurisprudence, as emerging from a settled line of precedent: the precautionary principle, the polluter pays principle and sustainable development. This Court further noted the importance of judicial intervention for ensuring environmental protection. In a recent decision in *State of Meghalaya & others vs All Dimasa Students Union*, [2019] 8 SCC 177 this Court reiterated the key principles of environmental jurisprudence in India, while awarding costs of Rs. 100 crores on the State of Meghalaya for engaging in illegal coal mining.

15. In *Goel Ganga Developers India Pvt. Ltd. vs Union of India* [2018] 18 SCC 257, the Court dealt with a situation in which the project proponent had engaged in construction that was contrary to the environmental clearance granted to it. Coming down on the project proponent, a two-judge bench, held as follows:

“64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more.”

16. Vide order dated 15.03.2023, this tribunal in paragraph – 13 has observed that the project proponent has not obtained environmental compensation (EC)/CTO/CTE as required under the EIA notification, 2006 and the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and in view of the above law laid down by the Supreme Court of India in (2018) 18 SCC 257, a parameter has been laid down for assessment and realization of environmental compensation at the rate 10 % of the project cost which has not been calculated or assessed by the Pollution Control Board. The Pollution Control Board being statutory body is under obligation and duty bound to enforce the environmental rules and in case of its violation to proceed with in accordance with law, but the perusal of report reveals that the State Pollution Control Board has failed to perform its duties sincerely and fairly. The matter of C&D waste and its disposal was within the knowledge of the authorities concerned but they further failed to assess and realized the environmental compensation. Realization of cost of disposal is one thing and the realization of environmental compensation is another thing. While considering the calculation of violations, the past violations and days must be considered according to rules.

17. State Environment Impact Assessment Authority, Haryana vide its letter dated 14.06.2023 had issued notice with the facts that project proponent is required to obtain environmental clearance and the project was constructed without any Environmental Clearance and State Pollution Control Board with SEIAA failed to perform their duty sincerely and fairly and failed to act in accordance with law.

18. Accordingly, we direct the State Pollution Control Board and the SEIAA to dispose of the matter and take a decision according to rules after giving an opportunity of hearing to the person concerned within a reasonable time.

19. Further action taken report be filed within three weeks 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.

20. List the matter on 27th September, 2023.

Sheo Kumar Singh, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

July 25, 2023
Original Application No. 68/2022
HB