

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)**

Original Application No.21/2022/EZ

M/s. Greenland Waste
Management Enterprise

Applicant(s)

Versus

State of Jharkhand & Ors.

Respondent(s)

Date of hearing: 13.09.2022.

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s) : Ms. Amrita Pandey, Advocate (in Virtual Mode)

For Respondent(s) : Ms. Aishwarya Rajyashree, Advocate for R-1 (in Virtual Mode)
Mr. Ashok Prasad, Advocate for R-3,
Mr. Surendra Kumar, Advocate for R-4,

ORDER

1. Ms. Amrita Pandey, learned Counsel is present (in Virtual Mode) for the Applicant.
2. Counter-affidavit dated 01.09.2022 has been filed on behalf of the Respondent No.4, Jharkhand State Pollution Control Board; the same is taken on record.
3. In the affidavit it is stated that M/s. Greenland Waste Management Enterprise has applied for grant of Consent to Establish (CTE) before the Board through its Application No.10696345 on 29.06.2021. The application was returned to the Unit on 30.06.2021 for submission of the following documents:-

- a) *Project report,*
- b) *Copy of Environmental Clearance,*
- c) *Lay-out plan with dimension,*
- d) *Details of Air Pollution Control Devices (APCD) &
Effluent Treatment Plant (ETP),*

e) Ambient Air Quality Report (AAQR) & Noise Monitoring Report (NMR),

f) Longitude & Latitude of project area at four points.

4. Paragraph-8 of the affidavit further states that the Unit worked during the Covid pandemic without Consent to Establish (CTE) and Consent to Operate (CTO) and hence is liable for Environmental Compensation but according to the Board's decision dated 04.05.2022, it has been decided by the Board that no Environmental Compensation should be levied on M/s. Greenland Waste Management Enterprise, if the Unit applies for Consent to Establish (CTE) / Consent to Operate (CTO) by 31.10.2022.

5. Paragraphs-8 and 9 of the Affidavit read as under:-

"8) That, it is humbly stated and submitted that the unit worked during Covid Pandemic without CTE/CTO and hence is liable for environmental compensation but according to the Board's above said decision no Environmental Compensation should be levied on M/s. Greenland Waste Management Enterprise, if the unit applies for CTE/CTO by 31/10/2022.

9) That, it is humbly stated and submitted that as the Environmental Compensation for the Unit was proposed to be either Rs.14,10,000/- or Zero. Now, as the Competent Authority has decided the Environmental Compensation levied on the Unit to be Zero as per the Board's abovesaid Office Order, it is placed before the Hon'ble Tribunal."

6. The question is how can the Board absolve the offending Unit which is operating in violation of Environmental Laws as provided in the Environmental (Protection) Act, 1986 and Water (Prevention and Control of Pollution) Act, 1974 from liability to pay Environmental Compensation.

7. The concept evolved by the Board and by the Member Secretary who has sworn the affidavit, in Para-8 of the affidavit is also contrary to the law laid down by the Supreme Court of India on the 'Principle of Polluter Pays'. This reflects a clear and an absolute ignorance of the

Members of the Board who have taken such a decision to waive Environmental Compensation and other liabilities for the period when the Unit was operating without statutory Certificates and Clearances. The Action of the Board also, prima facie, smacks of collusion between the Jharkhand Pollution Control Board and the violators.

8. Reference to Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 has been made. We do not find that any of the Sections in these Acts confer any power on the Board to grant waiver to an offending Unit operating in violation of Environmental Laws from the rigour of the 'Principle of Polluter Pays'.
9. The Hon'ble Supreme Court in:-
 - i. (1987) 1 SCC 395, *M. C. Mehta and Another Versus Union of India and Others*.
 - ii. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum Versus Union of India and Others*.
 - iii. (2000) 3 SCC 745, *U.P. Pollution Control Board Versus Mohan Meakins Ltd., and Others*.
 - iv. (2005) 10 SCC 510, *Research Foundation for Science Technology National Resource Policy Versus Union of India Another*.
 - v. (2005) 13 SCC 186, *Research Foundation for Science (18) Versus Union of India and Another*.
 - vi. (2009) 9 SCC 737, *Tirupur Dyeing Factory Owners Association Versus Noyyal River Ayacutdars Protection Association and Others*.
 - vii. (2013) 4 SCC 575, *Sterlite Industries (India) Limited and Others Versus Union of India and Others*.

viii. (2017) 5 SCC 326, *Paryavaran Suraksha Samity and Another Versus Union of India and Others.*, has reiterated the 'principle of polluter pays'.

The State Pollution Control Board has been created under the provisions of Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 as a regulatory body to ensure prevention and control of pollution in the State. We are astounded that the Jharkhand State Pollution Control Board is itself proposing to condone the environmental violation of M/s. Greenland Waste Management Enterprise and thereby encouraging and creating a precedent for violation of environmental laws by other violators and polluters.

10. We also direct the Jharkhand State Pollution Control Board to take steps to recover Environmental Compensation for the period from 07.04.2021 to 11.10.2021 i.e., 188 days computed at Rs.14,10,000/- (Rupees Fourteen Lakhs Ten Thousand) in accordance with law within one month and file affidavit of compliance by 04.11.2022.
11. We, therefore, direct that a copy of this order shall be placed before the Chief Secretary, State of Jharkhand for recording these entries in the Annual Confidential Report of the Member Secretary, Jharkhand State Pollution Control Board reflecting his complete ignorance of law and defiance of the judgment of the Supreme Court of India on the 'Principle of Polluter Pays'.
12. We also direct the Chief Secretary, Jharkhand to initiate disciplinary proceedings against Mr. Yatindra Kumar Das, the Member Secretary, Jharkhand State Pollution Control Board, for acting in gross defiance of Environmental Laws and in defiance of the judgment of the Supreme Court of India.

13. The Chief Secretary, State of Jharkhand shall file his personal affidavit within one month showing what action has been taken.
14. The Registrar, NGT shall also forward a copy of this order to the Secretary, Ministry of Environment, Forest and Climate Change (MoEF & CC) for information and action.
15. **List on 18.10.2022.**

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B. Amit Sthalekar, JM

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Saibal Dasgupta, EM

September 13, 2022,
Original Application No.21/2022/EZ
BD