

Item No. 06

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

**Original Application No. 97/2022(CZ)
(I.A.No.141/2023)
(I.A.No.143/2023)
(I.A.No.144/2023)**

Kamal Tiwari

Applicant(s)

Vs.

Union of India & Ors.

Respondent(s)

Date of Hearing: **20.12.2023**

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

For Applicant(s):

Mr. Vaibhav Pancholy, Adv.

For Respondent(s):

Mr. Nishant Kesharwani, Adv.
(for Mr. Shoeb H. Khan, Adv.)
Mr. Arvind Soni, Adv.
Mr. Shiv Narayan Bohra, Adv.
Mr. Om Shankar Shrivastava, Adv.

ORDER

1. The grievance of the applicant is encroachment on the forest land in the Nahargarh Village, which has been notified with the forest land and necessary notification has been issued. Under Section 18 of the Wildlife Protection Act, 1972 on 21.11.1961, the site has been declared as Nahargarh Wildlife Sanctuary as Eco-Sensitive Zone. Khasra No. 10 situated at Village Bir Papad/Papad, Jaipur is recorded in the name of forest department- Gair Mumkin. Respondents are illegally and in violation of environmental rules making certain constructions in the form of pucca nallah in order to discharge untreated effluent and industrial waste.
2. The notices were issued to the respondents and in view of the reply submitted by the respondent, following information were called :-

- a. Status of environmental clearance, its applicability and the validity of the respondents, project proponents.
- b. Status of consent condition and other required permissions from the competent authority with regard to the project proponent.
- c. Compliance of Solid Management Rules, 2016, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, Hazardous Wastes (Management & Handling) Rules, 1989, its applicability and validity of the project proponents/respondents.
- d. Discharge of untreated water the details of project proponent.
- e. Status of CTP, STP, ETP being used and operated in the area, generation, capacity to treat and gap analysis.
- f. Measures which has been taken for treatment of untreated water and their re-use by the project proponents/ Municipal Corporation.
- g. Whether any permission has been taken from the forest department for construction of the drain or making any construction in the sanctuary.
- h. Whether the action taken by the respondent/municipal corporation is permissible in regulated or in private category and due compliance of the rules have been followed or not.

3. A joint committee was constituted to submit the factual and action taken report. The joint committee visited the site and submitted the report, which was discussed vide order dated 01.09.2023 as follows :-

- (i) *“The impugned drains (Two Pacca Drains) near road no. 9- F-1 and 9-F-2 respectively of approximate dimensions 6 meters width and 3 meters depth have been constructed by RIICO in*

Vishwakarma Industrial Area on the land belonging to the RIICO in which untreated domestic and industrial waste water is being discharged in Nahargarh Wildlife Sanctuary.

- (ii) It is pertinent to mention that quantity of the waste water being discharged was very less, however there are possibilities of enhancement of flow and quantity of untreated effluents considering the industrial operations in VKIA.*
- (iii) Ponding of waste water was also observed in khasra No. 10 belonging to the Nahargarh Wildlife Sanctuary.*
- (iv) Representative of Forest Department informed as under: -*
 - a) That the said Khasra no. 3 was part of reserved forest as per reserved forest notification of 1961 (Annexure-4). In 1971, Khasra No. 3 of forest land was released to RIICO for industrial purpose (Annexure-5). The boundaries of NahargarhWild Life Sanctury were notified in 1980 (Annexure-6). In year 1998, an order regarding Nahargarh Sanctuary issued by the District Collector in which two areas were decided namely “Reserved Forest” and “Described Area”. In Described Area, many rights and concessions have been given to local residents and other government agencies. (Annexure-7).*
 - b) That the parts of drains have been constructed upon Khasra No.10 and Khasra No.3. The Khasra No. 10 is forest land and Khasra No. 3 belongs to RIICO (Annexure-5), Khasra No.3 falls in the described area and Khasra No. 10 falls in Reserved Forest (As per District Collector order of 1998) of Nahargarh Wildlife Sanctuary. It is further to submit that as per KML file of Nahargarh Wildlife Sanctuary uploaded on the website of Department of Forest (Annexure-8) also, it appears that both these khasras are falling in Nahargarh Wildlife Sanctuary.*

- c) It has also been transpired from report of surveyor belonging to forest department (Annexure-9) that RIICO has levelled the land of Khasra No.10 and Khasra No.3.
- d) FIR No. 34/2060 dated 22.01.2022 has been registered by the Range Forest Officer, Nahargarh Wildlife Sanctuary (Annexure-10) against contractor of RIICO and a penalty of Rs. 2 Lakh INR has been imposed in forest offence making nallah and draining waste water in sanctuary area.
- (v) Representative of RSPCB informed that catchment area of both the drains was discussed with RIICO in Sept, 2023 and as per the identification of the area, copy of the map provided by the RIICO enclosed (Annexure-11), RSPCB conducted survey of 267 units in the catchment area. RSPCB has initiated action of imposition of Environmental Compensation against the units found discharging industrial waste water outside the premises.

Conclusion

- (i) Two impugned drains (Two Pacca Drains) near road no. 9-F-1 and 9-F-2 respectively of approximate dimensions 6 meters width and 3 meters depth have been constructed by RIICO in Vishwakarma Industrial Area on the land belonging to the RIICO in Khasra No. 3 and a part in Khasra no. 10 of the Forest land through which untreated waste water is being discharged in Nahargarh Wildlife Sanctuary.
- (ii) It is pertinent to mention Khasra No.3 land belongs to RIICO, and, as per the official KML file uploaded on the website of Forest Department, this khasra is falling under the Nahargarh Wildlife Sanctuary. Further Khasra No. 10 is forest land.

- (iii) Forest Department has already imposed penalty on contractor of RIICO on activity of construction of drains carried out by RIICO on Khasra No. 10 and the case is compounded.
- (iv) Discharge of waste water through the drains constructed by the RIICO still continues in a very low quantity and finally it is getting accumulated on the adjacent forest land.
- (v) In order to identify the sources and quantum of waste water generated, RSPCB conducted survey of 267 units in the catchment area of impugned drains and action has also been initiated for imposing Environmental Compensation against the units found discharging industrial waste water outside the premises.
- (vi) That the RIICO is not having any plan for treatment and final disposal of trade effluent as well as sewage generated from the Vishwakarma Industrial Area (VKIA). Further the RIICO has not obtained Consent to Establish and Consent to Operate for VKIA. In this regard a letter has also been issued on dated 25.08.2023 from the Member Secretary, RSPCB to MD, RIICO to obtain Consent to Establish and Consent to Operate for all the RIICO Industrial Areas. Copy of letter dated 25.08.2023 enclosed (Annexure-12).

Recommendation

The committee is of the opinion that any activity proposed on any parcel of land of RIICO which falls under the Nahargarh Wildlife Sanctuary, a prior intimation and necessary approvals under the prevailing rules must be obtained from the State Forest Department.

- (i) State Forest department shall ensure that no construction, levelling or any other non-forest activity is done on the forest land of Khasra No.10 and the existing construction of drains upon this Khasra No.10 be demolished being in violation of Forest Conservation Act, 1980 and Wildlife

Protection Act, 1972.

- (ii) Waste water reaching to the forest land through the drains constructed by RIICO needs to be treated and diverted to gainful purposes ensuring no discharge on forest land.*
- (iii) The RIICO must immediately prepare a detailed plan incorporating treatment of industrial and domestic effluent being generated from the industrial area along with plan for re-use of the treated waste water in industrial units or for other gainful purposes.*
- (iv) That RIICO should ensure that no treated or untreated effluent be allowed to reach the forest land.”*

4. The matter was considered again on 01.09.2023 and this Tribunal after examining the report and hearing the parties observed as follows :-

- 1. “Perusal of the report reveals that there are serious violation and no action has been taken or initiated by the State Pollution Control Board and the units are operating in violation without any consent to establish and consent to operate in this Vishvkarma Industrial area.*
- 2. It is reported that there are approximately 267 units. It is further reported that the area under Nahargarh Wildlife Sanctuary is being violated and constructions or drains are being constructed without any authority in violation of environmental rules. Though the order of this Tribunal and the order dated 26.10.2023 issued by the State of Rajasthan directed the authorities to calculate the environmental compensation but the same has not been done by the authorities concerned. It shows that the Rajasthan Pollution Control Board failed to exercise their duties sincerely, fairly and honestly and directly or indirectly permitted the industrial unit to be operated without any authority and without any consent order. There are serious violations against which no action has been initiated by the State Pollution Control Board.*

3. Accordingly, we direct the same committee to calculate the environmental compensation of all the unit holders who are violating the environmental norms and also the RIICO which is genesis of these violations and to take action for recovery of environmental compensation, prosecution and to submit the report within two weeks.

4. It is further directed that Chief Wildlife Warden and Divisional Forest Officer of Wildlife Sanctuary, Nahargarh is directed to take necessary action to calculate their own method of calculation or damage to the forest, wildlife and to proceed in accordance with law for realisation of the damage caused to the wildlife sanctuary and the forest land. In addition to initiation of prosecution. The Member Secretary, State Pollution Control Board, Rajasthan to remain present through video conferencing on the next date of hearing. Further action taken report be filed before the next date of listing.”

5. The Learned Counsel for the RIICO has filed the objection against the joint committee report and submitted that :-

- i. The State Pollution Control Board and the member of the committee has not discussed the documents and site in question and the methodology adopted is erroneous.
- ii. The quantity of the waste water being discharged was very less, however, there are possibilities of enhancement of flow and quantity of untreated effluents.
- iii. RIICO is engaged in only development of industrial zone and providing infrastructural development for industrial growth.
- iv. The industries are required to treat the effluent as per prescribed norms.
- v. The boundary of eco-sensitive zone of Nahargarh Wildlife Sanctuary has not been properly demarcated.

6. The State Pollution Control Board, Rajasthan is competent to monitor all the activities and violation of environmental rules.

I.A. No. 141/2023

7. On the basis of above an application I.A. No. 141/2023 has been moved to recall or review the order or modify the order dated 01.11.2023. We have heard the learned counsel and gone through the records. There are violation of environmental rules and discharge of untreated water for which the respondents are responsible for environmental compensation on the principle of polluters to pay.
8. The Forest Department has clearly submitted that the area falls within the eco-sensitive zone. The ground taken by the RIICO and the respondents are that the boundary is still to be demarcated, does not create any ground in favour of the respondent to cause mischief or pollute the environment or violate the environmental norms or violate the eco-sensitive zone guidelines. Accordingly, **I.A. No. 141/2023 stands dismissed and disposed of.**

I.A. No. 143/2023

9. In compliance of the order dated 01.11.2023 (quoted above) the learned counsel for the State has submitted the compliance report calculating the environmental compensation and cost according to the forest rules. The calculation as submitted by the Forest Department are as follows :-

1. *“Construction of pucca nala 480 meter X 10 meter*
2. *JCB मशिन के द्वारा prosopis Juliflora हटकर समतली करण कार्य करवा गया*

*Total affected forest area 480 meter in length and 10 meter in width:
480 meter x 10 meter = 4800 Sqmt. = 0.48 hac. As per forest
Conservation Act, 1980, UA must deposit the following amount
Net Present Value : $0.48 \times 670140 \times 5 = 1608336$ (Rates area taken Eco
Class IV open forest in sanctuary area)
CA: 350000.00 (Planting of 100 Plant due to area below 1 Ha.*

1. Total 1958336.00

2. Cost of 10 Trees which are felled : 5000/- (Prosopis Juliflora)

Penal Amount due to UA has already done the work inside the sanctuary area (calculation as per FC guideline 2019 para 1.21

Total amount (1+2) = 1963336/-.”

10. During the course of hearing learned counsel for the respondent nos. 8 & 9 (RIICO) has moved an application I.A. No. 144/2023 with the facts that the terms and conditions of allotment letter, lease deed issued to the allottees are requirement of CTE and CTO from Rajasthan State Pollution Control Board before establishing the industrial units and if there is any violation, the violators should be taken into account.
11. Learned counsel for State Pollution Control Board has submitted that show-cause notices have been issued to the respondents who are found to be involved in violation of the environmental rules and after reply submitted by the respondents the State Pollution Control Board may proceed in accordance with rules.
12. State PCB is a statutory body and bound to proceed and act according to rules. It is neither desirable nor proper to intervene in the statutory function of the State PCB. Accordingly, we are not of the view to pass any order to restrain the public authorities not to do their legal duties. State authorities/SPCB are expected to do according to rules and to ensure the compliances of environmental rules. Since, in response to the notice issued by the SPCB the applicant, if aggrieved, has alternate remedy to file the reply before the State PCB, thus, at present no interim order is required to be passed against the authorities concerned. However, the State PCB is expected to provide an opportunity of hearing to the aggrieved person and after that to proceed in accordance with law.

13. The State PCB is further directed to act on the principle of polluter to pay and not to pollute and pay. **I.A. No. 143/2023 and I.A. No. 144/2023 stands disposed of** accordingly. State PCB is directed to submit the compliance report within two weeks. Since, the reply by the respondents have already been filed. List it on **12th January, 2024** for final hearing.

Sheo Kumar Singh, JM

Dr. Afroz Ahmad, EM

20th December, 2023
O.A. No. 97/2023 (CZ)
PN