

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

Original Application No.110(THC)/2012
WITH
Original Application No. 73/2014
WITH
Original Application No. 13/2014
WITH
Original Application No. 186/2014
WITH
Original Application No. 287/2017

Threat to life arising out of coal mining in south Garo Hills district

		Applicant(s)
	Versus	
State of Meghalaya& Ors.		Respondent(s)
WITH		
All Dimasa Students Union Dima Hasao Dist. Committee		Applicant(s)
	Versus	
State of Meghalaya& Ors.		Respondent(s)
WITH		
Impulse NGO Network		Applicant(s)
	Versus	
State of Meghalaya& Ors.		Respondent(s)
WITH		
Thomas Nongtdu & Anr.		Applicant(s)
	Versus	
State of Meghalaya& Ors.		Respondent(s)
WITH		
R.K. Momin		Applicant(s)
	Versus	
State of Meghalaya& Ors.		Respondent(s)

Date of hearing: 04.01.2019

CORAM: **HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON**
 HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
 HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
 HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s):	Mr. Raj Panjwani, Senior Advocate
For Respondent (s):	Mr. Rahul Pratap, Advocate Mr. Rohan Singh, Advocate, Mr. Ahathem Heny, Advocate and Mr. Vivek Kumar, Advocate Mr. Shuvodeep Roy and Mr. Vinayak Gupta, Advocates for State of Assam Mr. T.M. Singh and Ms. Mansi Kukreja, Advocates for Meghalaya State Pollution Control Board

ORDER

1. The matter has been taken up on receipt of a report of the Committee appointed by this Tribunal vide order dated 31.08.2018 in Original Application No. 110 of 2012 in Threat to life arising out of coal mining in south Garo Hills district Vs. State of Meghalaya & Ors. on the subject of restoration of environment and rehabilitation of victims on account of illegal and unscientific Rat Hole mining in the State of Meghalaya.

2. Proceedings were initiated on the basis of a news report that on 07.07.2012, 30 coal labourers were trapped inside a mine and 15 of them had died before the Guwahati High Court, Shillong Bench and were later transferred to this Tribunal. The matter has been dealt with by the Tribunal for the last six years. Various proceedings have been summed up in the last order dated 31.08.2018.

3. We may only refer briefly to some of the proceedings. On 17.04.2014, the Tribunal directed the State of Meghalaya to stop the illegal rat hole mining throughout the State and also to stop transport of the illegally mined coal. By a later order, transportation of already extracted material was permitted subject to certain conditions. However, it was found by the Tribunal that in-spite of the order banning of rat hole mining, such mining continued and illegally mined material was sought to be transported on the ground that the said material represented already mined material. The Tribunal noted in its order dated 07.10.2014 that 6.3 million tons of mined coal of the value of Rs. 307 crores was lying for which royalty was assessed to be Rs. 400 crores. The Tribunal directed making of a plan for scientific mining. Directions were also issued to videography the

operation of weigh bridges and to make an assessment of the quantum of material already mined.

4. As already noted, in spite of banning of rat hole mining, the illegal mining has continued. The Comptroller & Auditor General had also submitted a report on the subject. A separate account called 'Meghalaya Environment Protection and Restoration Fund' (MEPRF) was created and a sum of Rs. 410 crores had been credited to the said account up to 31.05.2018. The Tribunal directed 10% of the market value of coal to be credited to the said account in addition to the royalty. The available coal, after what was already transported was directed to be vested in the State the same being the result of illegal mining. The State was to deal with the said coal and also to take steps for restoration of the environment.

5. The Tribunal noted in its order dated 31.08.2018 that two matters were pending before the Hon'ble Supreme Court of India:

- (i) the issue whether ban on mining should be continued, and,
- (ii) whether illegal mined coal could be vested in the State.

6. On the subject of restoration, this Tribunal directed constitution of Committee headed by former Judge of the Guwahati High Court, along with representatives from of Central Pollution Control Board (CPCB) and Indian School of Mines, Dhanbad. By a later order, it was clarified that Additional Chief Secretary, to the Government of Meghalaya will be the Member Secretary/Coordinator for proper functioning of Committee.

7. We have perused the report of the Committee received on 02.01.2019.

8. We may at the outset record our appreciation for the commendable work done by the Committee in conducting spot

inspections, reviewing and analyzing the ground situation and initiating an action plan.

9. We direct the report of the Committee to be placed on the website of the National Green Tribunal as well as CPCB so that the same can be accessed by all concerned.

10. We find from the report that the Committee has already held six sittings starting from 11.09.2018. In its 3rd sitting, the Committee considered Acid Mine Drainage (AMD) caused by illegal mining, resulting in highly acidic surface water in the rivers and mines making such water unsuitable for consumption by humans and animals. Result of dumping of extracted coal in open high lands have created a major environmental problem of degradation of soil and rendering the same unfit for any type of cultivation. The stand of the State was that no mining lease, no Environmental Clearance had been granted and mining was going on illegally. No lease was granted for captive lime stone mines for the cement plants. The State Pollution Control Board had no record of production of coal or number of rat hole mines. A sum of Rs. 433.07 crores was available in the MEPRF fund. The amount meant for restoration of the environment had not been spent.

11. The Committee on its 4th sitting noticed from the report of the Commissioner and Secretary to the Government, Mining Department, that acid mine drainage problem was noticed as long as in 1991-92, but no steps were taken to improve the quality of water in the affected streams of the rivers. From the satellite images, the extent of coal mined, felling of trees and ongoing coal mine activities could be seen. The Committee found that coal activities were going on for a long time in unplanned and unscientific manner, causing huge ecological disturbance and negative environmental impacts. Water in rivers in streams had become highly acidic, destroying biological life of water

bodies besides affecting the air quality. The Committee sought information about the number of trucks involved in transportation, number of trucks seized, number of cement plants and extent of coal consumption. The Committee also undertook sampling of water in different rivers and water bodies. The water quality was found to be not meeting the prescribed standards. Relevant extracts from the report are as follows:

“

Sl. No.	Water Bodies	Location	pH	Iron (mg/l)	Sulphate (mg/l)
1.	Kalipal River	Rymbai	2.51	4.2	100.2
2.	Kme-um River	Rymbai	2.7	4.4	99.1
3.	Waikhyrwai River	Mookhlot	26.	4.2	99.9
4.	Kwai River	Moolamyliang	3.71	1.0	79.3
5.	Myntdu River	Mihmyntdu	7.1	0.30	9.7
6.	Borewell (Khliehwah Shasem-A)	Khilehriat	5.9	0.45	22.8
7.	Borewell (Khliehwah Shasem-A)	Khilehriat	4.4	0.80	10.2
8.	Borewell (Good Shepherd Parish)	Ladrymbai	7.5	0.3	6.4

TABLE: WATER QUALITY DATA OF RIVERS IN MEGHALAYA DURING 2014, 2015, 2016, 2017 & 2018

Name of Rivers	Location	Districts	Year	pH		
				Ave	Min	Max
Umiam Mawphlang River	Shella	East Khasi Hills	2014	7.48	7.20	7.90
			2015	7.7	7.4	8.0
			2016	7.75	7.4	8.2
			2017	7.6	7.4	8.0
			2018	7.1	7.4	7.3
River Wahblei	Shaddkhar	West Khasi Hills	2014	7.29	7.00	7.40
			2015	7.35	7.2	7.5
			2016	7.0	6.6	7.7
			2017	6.75	6.3	6.9
			2018	6.6	6.8	6.7
Lukha River	Sunapur	East Jaintia Hills	2014	6.63	4.40	7.60
			2015	6.7	4.8	7.3
			2016	7.2	6.4	8.1
			2017	7.2	6.7	7.6
			2018	7.1	7.2	7.4
Lunar River	Myndihati	East Jaintia Hills	2014	2.67	2.20	3.00
			2015	2.6	2.2	3.0
			2016	2.8	2.7	3.0
			2017	3.0	2.8	4.4
			2018	3	2.8	2.7
Kyrhukhla River	Khliehriat	East Jaintia Hills	2014	2.93	2.40	3.50
			2015	3.2	2.8	3.6
			2016	3.0	2.8	3.3
			2017	3.2	2.78	3.7
			2018	3.1	3	3.1
Myntdu River	Leshka	West Jaintia Hills	2014	5.63	4.5	7.1
			2015	5.75	4.5	7.0
			2016	5.2	4.8	6.2
			2017	5.7	5.0	6.5
			2018	5	6.2	6.4
River Kynshi	Ranikor	South West Khasi Hills	2014	6.98	6.70	7.20
			2015	7.0	6.8	7.2
			2016	7.3	7.0	7.6
			2017	6.8	5.9	7.4
			2018	6.8	5.9	7.4
Simsang River	Williamnagar	East Garo Hills	2014	7.32	7.10	7.60
			2015	7.25	7.1	7.4
			2016	7.5	7.4	7.6
			2017	7.5	7.1	7.9
			2018	7.3	7.2	7.3

”

12. The Committee also sought information about the names and addresses of coal mine workers who are adversely affected and of persons carrying out mining activities. Thereafter, in its 6th meeting, notices were issued to the cement plants, thermal power plants, lime stone miners and notice was also issued inviting claim from the victims.

13. The Committee framed following issues for consideration:-

- “(A) Whether coal mining activities, including extraction of coal and the transportation of the same, are going on despite the order passed by the Hon’ble NGT imposing ban on coal mining and transportation?”*
- “(B) Quantity of extracted coal as on the date on which the ban was imposed by the Hon’ble NGT and left to be transported?”*
- “(C) Quantity of un-inventoried coal which has been extracted before imposition of ban by the Hon’ble NGT?”*
- “(D) Whether coal mining activities as well as dumping of coal results in adverse environmental effect, if so, the nature and extent thereof?”*
- “(E) What are the steps required to be taken by the Committee for restoration of the environment and rehabilitation of victims of coal mining?”*
- “(F) The extent of execution of the Action Plan prepared by the Committee?”*

14. On the first issue, it was noticed that cranes were being used for mining activities and one of the cranes had been freshly greased. Recently mined coal had been dumped on the road side. Number of cranes used for lifting of the coal from the mines were found on the site, apart from the vehicles. Coal based power plants and cement plants were also noticed. It was found that 2,712 trucks were seized for illegal transportation for which 1,139 cases were registered. In this regard, the report is as follows:

“

Sl. No.	District	Number of trucks seized	Number of cases registered
1.	East Jaintia Hills District	715	531

2.	West Jaintia Hills District	101	62
3.	East Khasi Hills District	120	112
4.	Ri-bhoi District	1541	284
5.	West Khasi Hills District	130	102
6.	South-West Khasi Hills District	14	7
7.	East Garo Hills District	69	25
8.	North Garo Hills District	6	4
9.	West Garo Hills District	16	10
10.	South-West Garo Hills District	0	0
11.	South Garo Hills District	0	2
	Total	2712	1139

”

15. The number of trucks seized in Ri-bhoi district was the highest amongst all the districts, though according to the Deputy Commissioner no coal mines exist in the said district, as trucks coming to the State of Assam pass through Ri-bhoi district. It was also noted that mining activities were going on in clandestine manner during night and morning hours.

16. The Committee, in its proceeding dated 13.11.2018, discussed in details the outcome of the said site visit and recorded the following observations:-

- "(i) Many coal dumps on the roadside in Rymbai Village. Though coal in some coal dumps appears to be old, many such dumps appears to be of recently mined coal.
- (ii) No mining activities were found in the coal mines along the Rymbai Road, which the team visited. Abandoned pits were found without any reclamation. Temporary sheds near the mines, however, are found, wherein few workers were also present. A good number of cranes used for lifting coal from the mine were also found in the sites, out of which one crane was found to be freshly greased and having diesel oil for its operation, from which it appears to the Committee that the said crane has recently been used. Huge coal dump, appears to be of freshly mined, was also found near the foot of the said crane.
- (iii) Few vehicles including the trucks are noticed near the coal mines as well as near the coal dumping yards. The team also went to river Umshyllih, over which Rymbai Road Bridge has been constructed, to analyze the pH level of the water at site. It was found to be as low as 2.87, which indicates that the water in the river is highly acidic. The team also found abandon box cutting for coal mines as well as mines opening on the bed of the river as well as on both the sides of the said river. No biological lives is seen in the river. The rocks in the river bed turned yellowish, which also indicates flow of acid mine drainage.
- (iv) Numerous coal dumps on both sides of Sutnga Road and Tluh Road are noticed, while the team crossed Sutnga Township and moved along the Tluh Road till Latyrke for

about 10 Kms. Most of the coal dumps appears to be of freshly mined coal. Temporary bamboo partitions with tarpaulin sheets are found to have been erected so as to hide the coal dumps from public view.

- (v) The coal mining activities, despite the ban imposed by the Hon'ble National Green Tribunal, appears to be continuing in East Jaintia Hills District of the State of Meghalaya."

17. The Committee also made the following observations in respect of its visit of Coal Based Power Plants of Meghalaya Power Limited and Star Cement Limited:-

- "(i) M/s Meghalaya Power Limited is a 43 MW Coal Based Power Plant. The Unit stands beside M/s Star Cement Limited, which is an integrated cement plant. M/s Meghalaya Power Limited, M/s Star Cement Limited and another cement plant, namely, M/s Star Cement Meghalaya Limited, are Units of same group of Companies. The cement plants are branded as 'Star Cement'.

- (ii) Huge quantity of coal is lying in open coal storage areas. The representative of the cement plants, present during the visit, claims that they procure coal for the plant from North East Coal Fields Limited, Margherita and from Eastern Coal Fields as well as from the State of Nagaland. It has also been stated that they procured coal from local market when the transportation of the coal from mines in the State of Meghalaya was allowed by the Hon'ble Supreme Court and Hon'ble National Green Tribunal. They also claimed import of about 20000 MT of coal from Malaysia during the last financial year.

- (iii) As per the record of the Central Pollution Control Board, the Star Cement Group of Companies, which has 2(two) power plants of 1 X 43 MW and 1 X 8 MW capacity, which need considerable amount of coal for operating the power plants. It has 2(two) integrated cement Units, viz. Star Cement Limited and Star Cement Meghalaya Limited, which use coal of about 15% of total clinker production.

Moreover, as per the record of Central Pollution Control Board, there are few other Coal Based Power Plants in Lumshnong areas of East Jaintia Hills District. The capacity of captive power plants of various cement producing mills, as is available with the Central Pollution Control Board, is given below –

Sl. No.	Name of the Cement Plant	Capacity of Captive Power Plants
1.	Adhunik Cement Limited	25 MW
2.	Meghalaya Cements Limited	12 MW
3.	Amrit Cements Limited	10 MW
4.	Goldstone Cements Limited	10 MW

- (vi) From the aforesaid materials available before the Committee, it is, therefore, evident that the coal mining activities, which includes the extraction of coal and

transportation, is going on in the State of Meghalaya, at least in East Jaintia Hills District, where such mining activities are most, despite the ban imposed by the Hon'ble NGT vide its order dated 17.04.2014. Very sincere and honest efforts are required on the part of the State Government to stop the mining activities, which are going on. Such mining activities are going on without adopting any safety measures for the workers and without caring for adverse environmental affect. A sincere desire to stop such illegal mining activities is also necessary on the part of the State and Central Government agencies for implementation and monitoring of health, safety and environmental regulations.”

18. In view of above, it was concluded that despite the ban by the Tribunal vide the order dated 17.04.2014, mining activity was going on without adopting safety measures for the workers and without caring for the adverse environmental impacts. As a result, a tragic incident occurred on 13.12.2018 in a coal mine in Ksan Village near Lytein River under Saipung Police Station in East Jaintia Hills District where 15 workers were trapped while working in the mine for which a case under Section 304 (A) and Section 21 of the MMRD Act has been registered against a coal mine owner and a magisterial enquiry had been ordered.

19. On issues B and C, it was noted that the Deputy Commissioner, East Jaintia Hills admitted regarding on going illegal mining activity and freshly mined out coal was found.

20. The current trend of newly developed mass consumption Centres of the natural resources of Meghalaya (coal and limestone) in the form of power plants and the cement plants are also encouraging coal mining activities in the region as reported in the report as follows:

“(iii) The Commissioner & Secretary to the Government of Meghalaya, Mining & Geology Department, in the ATR submitted on 13.11.2018 has stated about the availability of 176655 MTs of already inventorised coal for transportation, which has also been reflected in the order dated 04.12.2018 passed by the Hon'ble Supreme Court. The Commissioner & Secretary, in the said ATR, has also stated that 23,25,663.54 MTs of coal, other than those inventorized coal, remained un-inventorized and available

for transportation, district-wise break up of which is as follows:-

**REPORT ON EXTRACTED COAL REFLECTED AS UN-ASSESSED OR
NIL IN THE INVENTORY APPROVED BY NGT**

Sl. No.	Name of District	Declared Quantity in MT	Assessed Quantity in MT
1.	East Jaintia Hills District	15,46,687.00	13,22,379.00
2.	West Khasi Hills District	7,29,757.00	7,78,297.99
3.	South-West Khasi Hills District	1,25,600.63	2,14,145.55
4.	South Garo Hills District	12,834.00	10,841.00
	Total	24,14,878.63	23,25,663.54

“(iv) From the aforesaid District wise break up of extracted coal, which was un-inventorised, it appears that the quantity of such coal was highest in East Jaintia Hills District, where the Deputy Commissioner, as noticed above, has admitted ongoing coal mining activities despite the ban imposed by the Hon’ble NGT vide order dated 17.04.2014. The stand of the Government that the quantity of coal, as reflected in the aforesaid chart were mined prior to the said ban, appears to be not acceptable, in view of the aforesaid admission of the Deputy Commissioner and also what the Committee has noticed during its field visit on 12.11.2018. It seems that there is an attempt to show the freshly mined coal, i.e. the coal mined after the ban imposed by the Hon’ble NGT, as the coal left out from the assessment and remained un-inventorised though mined prior to the said ban. The Committee also apprehends that such freshly mined coal may be transported taking advantage of the order dated 04.12.2018 passed by the Hon’ble Supreme Court.”

21. Under issue number D, it was noted that the Meghalaya State Pollution Control Board in its report in September, 1997 had noted that unplanned and unscientific coal mining activities were taking place. This had achieved dangerous dimensions in the last two decades creating ecological disturbance and adverse environmental impacts. This showed that though cognizance of the problem was taken in the year 1997, the problem continues even 20 years thereafter. The State Pollution Control Board had, in the year 1997, recommend steps to check illegal mining including generation of awareness, legislative measures, use of technology, carrying out of study but none of the recommendations were implemented even after 21 years. The result was degradation of surface land because of illegal mining and adverse environmental impact.

“ENVIRONMENTAL IMPACT OF COAL MINING IN JAINTIA HILLS DISTRICT”

“The uncontrolled and unscientific coal mining operations in Jaintia Hills District have already created massive ecological disturbances and environmental degradation because presently neither any pollution control measures are adopted by the miners nor any sincere efforts are made for reclamation of the mine land”. In the said report, the following recommendations were made to minimize the overall adverse environmental impacts of the mining activities:-

- “(a) To generate social awareness among the public in general and the miners in particular about the adverse environmental impacts and the health hazards associated with such unscientific and unplanned coal mining activities.*
- (b) Preparation of the inventory of the mine owners, areas under mining and rate of land use change to get the first hand knowledge about the quantum of the efforts required for better management of these activities.*
- (c) To enforce suitable legislations on the lines of the National Mineral Policy immediately for exploitation of coal in most sustainable manner.*
- (d) To engage expert institution for finding out the most suited technologies for the coal exploitation with appropriate pollution control measures in order to ensure that the environment as a whole is not subjected to further degradation.*
- (e) To engage the expert institution for finding out the suitable ways for rehabilitation of the mined land in phase manner so that the scarce land resources can be brought back to productive uses.*
- (f) To look for the alternative transport facilities to control vehicular pollution.*
- (g) To identify the suitable location for the storage of coal for sale with adequate facilities to treat dump run offs.*
- (h) To study the aspect of the presence of trace elements in the surface and ground water because the low pH values increase the dissolution power of water. Large numbers of trace elements are always associated with the coal which gets dissolved in low pH waters. These trace elements are serious health hazards even in very low concentrations.*
- (i) To introduce lucrative schemes for the afforestation in the most affected areas.*
- (j) To develop the State Mineral Policy with the interaction of Government Agencies, Social Institutions, Local Elders and the Miners, keeping in view the specific land ownership system of the State.*

Nothing of the above recommendations have been implemented so far.

- (ii) It is, therefore, evident that apart from the water, air pollution, there is degradation of surface land because of the coal mining activities in the State of Meghalaya. Despite publication of the said report by the Meghalaya State Pollution Control Board as back as in the year 1997, no steps appeared to have been taken by any authority to check the adverse environmental affect and also to remedy the same.”*

22. The Committee finally considered the steps required such as carrying out necessary studies by mapping the affected areas, treatment of acidic effluents, adopting monitoring programmes, compiling information, coordinating with all authorities. Since the Committee found that the execution of the plan will require time, the Committee proposed directions and interim compensation of Rs. 1 lakh to the family members of each of the land mined workers who were suspected to be trapped in the mining incident of 13.12.2018, proposal for additional grant to carry out scientific studies and to set up additional water quality monitoring stations.

23. The Committee having regard to the facts and circumstances formulated an Action Plan. Some of the relevant extracts are as follows:

“(c) Mapping of affected areas in the State of Meghalaya with the help from Remote Sensing Agency to prepare up to date maps of the land used, water reign (drainage patter) on urgent basis so that the extent of Rate Hole Mining could be identified. The said process is to be started immediately. A monthly report in that regard shall be submitted to the Committee.

(e) The Ministry of Forest & Environment, Government of Meghalaya, in association with the State Pollution Control Board and the Central Pollution Control Board, shall draw comprehensive monitoring programme of all major water streams and implement the same. All necessary infrastructure and manpower shall be provided in that respect. A monthly report in that regard shall be submitted to the Committee by the Secretary to the Government of Meghalaya, Forest & Environment Department.

(f) The Government of Meghalaya shall finalize the proposal submitted by the Council of Scientific & Industrial Research and Central Institute of Mine Fuel Research (CIMFR-CSIR), Dhanbad for pilot project of Acid Water Treatment Plan at a cost of Rs. 50,00,000/- plus applicable GST, on priority basis, for one of the location in West Jaintia Hills area. Based on the result of the said Pilot Project, reapplication of the same to other areas would be considered. A report in that regard shall be submitted before the Committee in its next meeting.

(g) The Government of Meghalaya, Ministry of Forest & Environment shall also take a decision, within a month, on the proposal of Council of Scientific &

Industrial Research and Central Institute of Mine Fuel Research (CIMFR-CSIR), Dhanbad of controlled blasting to fill up the abandon mines voids and apprise the Committee about the same.

(j) The Meghalaya Pollution Control Board, in active co-operation of the Ministries of Mining & Geology as well as the Forest & Environment, shall conduct a Social Impact Assessment (SIA) to find out the socio-economic impact of Rate Hole Mining on the affected population and submit a report to this Committee within 2 (two) months.

(k) The Ministries of Forest & Environment as well as Mining & Geology shall also conduct a survey relating to the mining of other minerals like limestone etc., whether the same has been done in an organized and scientific manner with due attention to the safety, health and environmental concerns. A report in that regard shall be submitted to the Committee within 2 (two) months.

(n) The Commissioner & Secretary to the Government of Meghalaya, Education Department, in association with the Ministry of Forest & Environment, Mining & Geology as well as the Deputy Commissioners, Gaonbuhraas and the District Councils shall conduct regular awareness campaign in all the localities affected by Rat Hole Mining and also in the Schools, identified by them, to make the public about the environmental damage caused by the Rat Hole Mining. A monthly report in that regard shall be submitted to the Committee."

24. We have heard learned Amicus Curiae Shri Raj Panjwani, Senior Advocate and Shri Ranjan Mukherjee, Advocate appearing for the State of Meghalaya.

25. We find no reason not to accept the report of the Committee. The same is accepted. The Committee may proceed further with the execution of its task.

26. In view of the fact that the State of Meghalaya has failed in performing its duties to act on recommendations in the report of the Meghalaya SPCB in the year September 1997 and acknowledgment that the problem existed since 1991 and 1992 huge damage to the environment is clearly established.

27. We have considered the question of requiring an interim amount being deposited towards restoration of the environment.

28. It is a matter of serious concern that compliance of environment norms is not satisfactory and result is large scale deaths and diseases and serious damage to air, water and earth.¹ As per CPCB report, 351 river stretches in the country are polluted, 102 cities are classified as non-attainment cities in terms of ambient air quality, there are 100 industrial clusters, there is wide gap in compliance of statutory rules for waste disposal, which issues are subject matter of proceedings before this Tribunal.²

29. The above shows that in-spite of statutory framework and binding legal precedents and orders, violation of law is rampant. Stern approach is, thus, required against the polluters as well as statutory authorities conniving or colluding with the polluters. The statutory authorities are trustees of the people and if their failure results in harm to the citizens or to the environment, the Court/Tribunal has to adopt strict approach to make them accountable so that such action acts as deterrent to prevent further harm.

30. As already noted, some amount has been recovered from the persons involved in illegal mining and credited to the Restoration Fund which is now being planned by the Committee to be used for

¹ As per some studies (the Lancet Commission Report on Pollution and Health) 2.51 million that took place in India in 2015, ranking India No. 1 in pollution related deaths. Pollution has been responsible for the most non-communicable disease deaths. In 2015, all forms of pollution combined were responsible for 21% of all deaths from cardiovascular disease, 26% of deaths due to heart disease, 23% due to stroke, 51% to chronic obstructive pulmonary disease, and 43% due to lung cancer. Pollution was also responsible for these times as many deaths as AIDS, tuberculosis, and malaria combined. <http://www.thehindu.com/sci-tech/energy-and-environment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece>

² (a). Original Application No. 673/2018, News item published in 'The Hindu' authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" dated 20.09.2018 : wherein the Tribunal issued directions to prepare and implement Action Plans to rejuvenate and restore the 351 polluted river stretches.

(b) Original Application No. 681/2018, News Item Published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15" dated 08.10.2018: wherein the Tribunal directed Action Plans to be prepared for the 102 non-attained cities to bring the standards of air quality within the prescribed norms.

(c) Original Application No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" dated 13.12.2018 : wherein the Tribunal directed preparation of time bound Action Plans to ensure that all industrial clusters comply with the parameters laid down in Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.

(d) Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 dated 31.08.2018: wherein the Tribunal constituted Apex and Regional Monitoring Committees for effective implementation of MSW Rules, 2016.

restoration. This does not cover entire period and entire clandestine mining. Only mining which is identified and on which royalty has been recovered has been covered. Moreover, State functionaries have not been required to be made accountable for their wrongful acts and omissions. To uphold the Rule of Law and accountability of those who are trustees of environment, it is necessary that the state machinery is required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. This is required not only as a part of principle of 'polluter pays' which applies not only to actual polluters but also to those who collude with polluters or enable pollution to be caused and also for the negligence of public duties, adversely affecting the citizens. While actual damages may be determined on the basis of objective data, if available, absence of precise data is not a ground not to undertake the exercise of determining such damages based on legal principles, including *res ipsa loquitur*, having regard to common course of events etc. Satellite images etc may help. The assessment of quantum of loss to the environment is not free from difficulty. The environment is priceless. These principles are settled in decisions of Hon'ble Supreme Court.³

3

- a) Sterlite Industries (India) Ltd. v. Union of India (2013) 4 SCC 575 : ¶ 47- To the effect that compensation must be deterrent having regard to paying capacity and magnitude of the polluter.
- b) T.N. Godavarman Thirumulpad v. UOI & Ors. (2006) 1 SCC 1 : ¶ 1- That protection of environment is responsibility of the State.
- c) Indian Council for Enviro-Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212 : ¶ 67 and Vellore Citizens Welfare Forum v. UOI , (1996) 5 SCC 647 : ¶ 11 to 13- Polluter Pays Principle extends not only to compensate harm to the victim but also to the environment.
- d) M.C. Mehta v. Kamal Nath (1997) 1 SCC 388 : ¶ 10 -Public Trust Doctrine, ¶ 24 Imposition of exemplary damages to be paid by polluter as a measure of as deterrence.
- e) M.C. Mehta v. UOI & Ors., W.P © No. 13029/1985 order dated 24.10.2017, Supreme Court : Liability of public functionaries for inaction.
- f) MCD v. Uphaar Tragedy Victims Association (2011) 14 SCC 481 : ¶ 99, 100- Principles of Private Tort do not control failure of State functionaries. Damages can be punitive and exemplary. Cost to cost method may not be applied in all situations.
- g) Vadodra Municipal Corporation v. Purshottam v. Murjani & Ors. (2014) 16 SCC 14 : ¶ 17 - monetary liability can be fastened for failure of statutory duty.
- h) M. C. Mehta & Anr. v. Union of India (1987) 1 SCC 395 : ¶ 32 -measure of compensation to be co-related to magnitude and capacity of enterprise, compensation must have deterrent effect

31. Paying capacity and the amount which may act as deterrent to prevent further damage is also well recognised. Net Present Value of the ecological services foregone and cost of damage to environment and pristine ecology, the cost of illegal mined material, and the cost of mitigation and restoration are also relevant factors. The Committee may go into these aspects to determine the final figure.

32. We are satisfied that having regard to the totality of factual situation emerging from the record, damages required to be recovered are not, *prima facie*, less than Rs. 100 Crores. Accordingly, by way of an interim measure, we require the State of Meghalaya to deposit Rs. 100 crores within two months with the CPCB in this regard.

33. We have already noted the extent of damage found and the value of the illegally mined material, apart from clandestine mining for which sufficient material is not available. The State had collected, as noted in the earlier order, royalty of Rs. 400 crores which by now must be higher figure.

34. The State is at liberty to recover the amount from those involved in illegal or clandestine mining and also from the officers who may colluded or who may have failed in their duties.

35. The amount deposited with the CPCB will be spent for restoration.

36. The Committee may also consider the following:-

1. Any cranes and trucks found to be involved in illegal mining or transportation which have not yet been seized may also be seized. The seized vehicles or equipments be released by the concerned District Magistrates only after recovering damages to the extent of 50% of the showroom

price of the vehicles or equipments. The said amount may also be credited to the restoration fund.

2. Efforts be expedited to identify victims who have suffered at least since 01.07.2012 and to assess loss to the environment and the manner of restoration.
3. Disaster Management Plan for the whole of the area 'on site' as well as 'off site' needs to be prepared and put into operation.
4. Appropriate technology to replace rat hole mining.
5. Resource (coal) audit of Meghalaya Power Limited and Star Cement Limited to ascertain the legitimate procurement of coal and its source.
6. The Committee may take services of NEERI Nagpur, Indian School of Mine, Dhanbad, FRI Dehradun, CPCB apart from any other agency for making assessment of the damages.
7. Survey of health of the habitants may also be considered.
8. Skill Development Programmes to provide alternative means of employment to the workers involved in rat hole mining may be considered.
9. Mitigation/restoration of impacted areas due to AMD.

37. We note the statement of Shri Mukherjee that the Hon'ble Supreme Court has sought a status report from the State and the said matter is to be considered on 07.01.2019, on the issue of rescuing the workers trapped in incident.

38. The Committee may give its next report by 31.03.2019 instead of 06.03.2019.

The matter may now be listed on 11.04.2019, instead of 06.03.2019 as earlier directed.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 04, 2019
Original Application No.110(THC)/2012
And other connected matters
A

