

QUORUM

**HON'BLE MR. JUSTICE B. D. AGARWAL,
FORMER JUDGE, GAUHATI HIGH COURT, GUWAHATI**

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**DR. SHANTANU KUMAR DUTTA, ADDITIONAL DIRECTOR
REPRESENTATIVE OF CENTRAL POLLUTION CONTROL BOARD
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IN THE MATTER OF

Threat to Life Arising Out of Coal Mining in South Garo Hills District

-Vs-

**The State of Meghalaya & Ors.
And other connected matters**

PRESENT

- :** **Hon'ble Mr. Justice B. D. Agarwal,**
Former Judge, Gauhati High Court, Guwahati
- :** **Dr. Shantanu Kumar Dutta,**
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- : **Shri. S. M. Swami, IFS**
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- : **Shri. Manas** (through VC)
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PROCEEDINGS OF 30TH GENERAL SITTING

MINUTES OF THIRTIETH SITTING OF THE NGT COMMITTEE CONSTITUTED BY THE HON'BLE NGT UNDER CHAIRMANSHIP OF HON'BLE MR. JUSTICE B.D. AGARWAL, FORMER JUDGE, GAUHATI HIGH COURT HELD ON 02ND MARCH, 2021 AT 11:00 A.M. AT THE CONFERENCE HALL IN THE OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS & HOFF, SYLVAN HOUSE, LOWER LACHUMIERE, MEGHALAYA, SHILLONG-793001.

AGENDA

1. Review the progress in implementation of items C, D and E of the Action Plan prepared by the NGT Committee for restoration of environment in areas affected by coal mining in Meghalaya.
2. Progress by the Mining and Geology Department, Government of Meghalaya in the matter of realization of penalty from each of the Cement Manufacturing Plants and Thermal Power Plants, which have used illegally mined local coal after the ban on illegal rat-hole coal mining since April 2014, at the rate of Rs. 400 per tonne of coal consumed by each such plant and other levies and deposit the same in the MEPR Fund;
3. To consider the complaint of United A.Chik Youth Federation in relation to auction of incidentally extracted coal in South West Khasi Hills.
4. Consider the report filed in relation to alleged illegal stone and boulder mining at Rngain @Pringan.
5. Any other item with permission of the Chairman

PROCEEDINGS

AGENDA NO. 1

Review the progress in implementation of items C, D and E of the Action Plan prepared by the NGT Committee for restoration of environment in areas affected by coal mining in Meghalaya.

C RESTORATION OF WATER QUALITY IN RIVERS/ STREAMS AFFECTED BY ACID MINE DRAIN (AMD)

C.1 Identification and prioritisation of rivers/ streams to be restored

With respect to item C.1 of the Action Plan in relation to identification and prioritisation of rivers/streams to be restored Shri. I. R Lyngdoh, Assistant Manager, representative of the Meghalaya Basin Development Authority (MBDA), submitted that the cost estimates in this regard are almost ready and he would submit them both in hard copy as well as in soft copy by the end of this week to the Committee without fail. The undertaking of Shri Lyngdoh is taken on record and the same shall be carried out by the Meghalaya Basin Development Authority. The Committee has expressed concern that the Deputy Chief Executive Officer, MBDA has not attended the meeting though was intimated about the meeting. In future he shall remain present when intimated of the meeting.

C.2 Development, refinement and transfer of AMD treatment technology

In this regard, the representative of MBDA showed few MS Power Point slides in relation to the pilot project at Jalaphet, Sutnga and Suchen, Mulieh. The Committee sought the completion of study report since the representative of MBDA submitted that the project would be completed by the end of March. The aforesaid report shall be submitted by the MBDA along with the data on parameters which have been tested prior to the treatment and after the treatment. The report furnished by the Meghalaya State Pollution Control Board (MSPCB) in respect to this item of the Action Plan, communicated vide their letter No MSPCB/LEGAL-149/2019/Vol-VIII/2020-21/372 dated 01/03/2021, was perused by the Committee. It states that their

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study reveals that the pH values of the streams at Narwan Village and the Jalaphet stream record only a marginal improvement after these streams were subjected to the treatment during the Pilot Study conducted by MBDA. However, the MBDA representative stated that their recent recording of the pH values in the stream showed a much higher improvement. In support of the latter assertion, the MBDA is directed to submit a report on the test analysis of these streams complete with all data before the next Sitting of the Committee.

C.3 *Restoration of prioritised stretches of rivers/ streams*

The Committee perused the cost estimates submitted by the Public Health Engineering (PHE) Department for undertaking restoration of 3 (three) prioritised stretches of rivers/ streams viz., Mutong stream for a sum of Rs. 28,73,640/-, Khlieh Umpurong stream for a sum of Rs. 50,29,050/- and Wah Umkram stream at Suchen Village for a sum of Rs. 62,23,440/- respectively. Considering the fact that the sums involved are very large, the Committee is of the opinion that the PHE Department may undertake the current exercise as proposed by them on a pilot basis, restricting the restoration activity to only two stretches in respect of Wah Umkram stream at Suchen Village viz., Stretch No.1 and Stretch No.2 for an estimated sum of Rs. 9,40,420/- and Rs. 7,65,170/- respectively. In anticipation of the approval of the Hon'ble NGT, the Committee directs the Mining & Geology Department to release the total sum of Rs 17,05,590/- in favour of the Chief Engineer, (PHE) Department to enable the Department to undertake restoration of water quality in the aforesaid stream at Suchen Village and on receipt of the sanctioned sum, the (PHE) Department would expeditiously execute the same within the time frame which has been furnished by them in their scheme for completion of the activity.

D. **PROVISION OF SAFE DRINKING WATER IN AREAS AFFECTED BY ACID MINE DRAIN**

D.1 *Development of potable water purifier to treat acidic water to ensure availability of good quality potable water in affected areas*

The Regional Director, Central Pollution Control Board (CPCB) showed to the Committee the Project Report submitted by the Civil Engineering Department of IIT, Guwahati, wherein a concept note along with the cost estimate was submitted by the IIT, Guwahati to the CPCB for its consideration and sanctioning the said project. The CPCB is requested to examine the effectiveness of the proposal and submit its remarks and recommendation on the same to the Committee. Thereafter the Committee would deliberate on sanctioning the project from the fund of Rs. 100 crore available with the CPCB for implementation of the Action Plan prepared by the Committee for restoration of the environment affected on account of illegal coal mining in Meghalaya.

During the course of deliberations, the Secretary, Mining & Geology Department, requested that a private agency viz., Ion Exchange India Ltd., Mumbai, may be given an opportunity for making a presentation (through video conference) on developing portable water purifiers to treat acidic water to ensure availability of good quality potable water in coal mining affected areas. It was stated that the presentation would cover the technology available with the agency and the cost estimate for undertaking the project on a pilot basis at selected sites. The Director of Ion Exchange India Ltd stated that he is looking forward to undertake this project in Meghalaya and wanted to make a presentation in this regard to the Committee. However, in view of the time constraint and the failure of VC link, no presentation could be made by the Ion Exchange India Ltd. Therefore, the Committee directs the Secretary, Mining & Geology Department to submit a formal proposal in this regard with complete details of the agency/agencies which may be suggested by him along with the cost estimate for execution of the project before the next Sitting of the Committee for its consideration.

The Secretary, Mining & Geology Department, also requested that the PHE Department may kindly be requested to list the parameters detrimental to human health which are present in the AMD affected areas (especially in the ground water harvestable through deep bore well in the areas affected by rat hole coal mining) and furnish the same to him. The Chief Engineer, PHE Department submitted that, approximately within a week, they may be in a position to submit the requested information to the Secretary, Mining & Geology Department. The Secretary, Mining & Geology Department is requested to submit the same to the Secretary, Mining & Geology Department, Shillong, Meghalaya.



Geology Department. The Chief Engineer, PHE Department is directed accordingly to make the data available to the Secretary, Mining & Geology Department within a week with reference to the water quality parameters in respect of both deep bore well ground water as well the nearby surface streams which could be explored for tapping drinking water after due treatment.

D.2 Distribution of portable water purifiers in areas affected by acid mine drain

The Committee noticed that MBDA is yet to comply with the directives issued to them by the Committee in its 27th Sitting held on 18th November, 2020 with reference to submission of feedback of the public regarding the performance and utility of the portable water purifiers hitherto distributed by them in the villages affected by acid mine drainage in Meghalaya. The MBDA representative stated that the MBDA would submit the requisite report within two weeks without fail. The absence of the Deputy CEO of the MBDA on consecutive dates of sitting of the Committee and non-submission of reports by them as required by the Committee is a matter of concern. The Committee has taken due notice of the same and expects that the same is not repeated by the MBDA authorities.

D.3 Financial assistance for construction of roof top rain water harvesting structures to store rain water to meet requirement of potable water in areas affected by acid mine drain

In the 25th Sitting of the Committee held on 1st September, 2020, the PHE Department was directed to submit within four weeks a detailed estimate for executing the project for construction of roof top rain water harvesting structures to store rain water to meet the requirement of potable water in areas affected by acid mine drain (AMD affected districts of Meghalaya), after conducting the required survey. In compliance with these directives, the PHE Department has submitted vide their letter dated 21.09.2020 the requisite project containing an estimate of expenditure for covering 10 (ten) villages with 18 rainwater harvesting units for a total sum of Rs. 36 lakhs.

The Committee on perusal of the project report approves implementation of this project by PHE Department on a pilot basis covering 10

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(ten) villages only through installation of one unit in each of the villages in the community centres of the Village. The NGT Committee approves sanctioning of Rs. 2 lakhs per unit subject to the condition that in each rain water harvesting unit two PVC storage tanks of 4000 ltrs capacity shall be installed instead of one tank of 4000 ltrs capacity. Further, in response to the queries of the Committee the Chief Engineer, PHE Department assured that he would submit the structural design of the harvesting structure within 3 (three) days to the Committee.

In anticipation of the approval of the Hon'ble NGT in this regard, the Mining & Geology Department is directed to release a sum of Rs. 20 lakhs in favour of the Chief Engineer, PHE Department to enable the Department to undertake implementation of this project and complete the same within a period of two months after receipt of the aforesaid sum from the Mining & Geology Department.

- D.4 *Assessment of feasibility to provide safe drinking water in AMD affected areas through deep bore-wells*
- D.5 *Provision of safe drinking water in AMD affected areas through deep bore-well wherever found feasible*

In respect of D.4 and D.5 of the Action Plan, the Chief Engineer, PHE Department vide letter dated 21.09.2020 has submitted detailed proposal for provision of safe drinking water in areas affected by AMD in compliance with the directives issued by the NGT Committee in its 25th Sitting held on 01.09.2020. The estimates submitted by the PHE Department in respect of only 4 (four) villages aggregates to a total sum of Rs. 2,32,12,750. The Committee has perused the same and is of the opinion that the same needs an in-depth examination and scrutiny by the Technical Committee before it could be considered by this Committee. Therefore, the Chief Engineer, PHE Department is directed to submit this scheme proposal to Shri. W. S. Manner, IFS, Member Secretary of the Technical Committee of MEPR Fund & Chief Conservator of Forests (SF & Env) who shall place the same before the Technical Committee in its next meeting.

E. Biological reclamation of areas affected by coal mining

E.1 Identification/ delineation of areas affected by coal mining

In the 25th and 27th Sittings of the NGT Committee, the North Eastern Space Application Centre (NESAC) was directed to submit detailed estimate for identification and delineation of areas affected by coal mining in Meghalaya through remote sensing. In compliance with the directives, the NESAC has submitted the requisite estimate for a total sum of Rs. 80,98,152/- vide letter dated 04.11.2020. The Committee have already recommended to the Hon'ble NGT for approving the estimate of Rs. 80,98,152/- in favour of NESAC for the purpose of undertaking the project. In this regard, the NESAC has been given a sum of Rs. 15 lakhs only a few days ago by the Mining & Geology Department from the MEPR Fund in anticipation of approval of Hon'ble NGT to enable NESAC to procure satellite imageries and other requisite data necessary for executing the project. NESAC is expected to do the needful in an expeditious manner.

E.2 Development of cost effective models for biological reclamation of coal mining affected areas

In compliance with the directive of the Committee in its 27th Sitting held on 18.11.2020, the Additional Principal Chief Conservator of Forests (CC and R &T) had submitted requisition to the Mining & Geology Department for releasing a sum of Rs. 31,73,500/- for execution of the component entrusted to the Research & Training Wing of the Forest Department. Accordingly, the Mining & Geology Department has released a few days ago the said sum in favour of the Additional Principal Chief Conservator of Forests (R & T). The Additional Principal Chief Conservator of Forests (R & T) submitted that they would very soon commence implementation of the project and intimate CPCB after completion of fencing in the identified plot so that they can undertake the activity and thereafter the CPCB would commence implementation of the component of the pilot project assigned to them viz., raising dense plantation within an area of 1 hectare through Akira Miyawaki method. The CPCB is advised to place indent with the Mining & Geology Department along with a detailed project proposal for releasing the sum of Rs. 4,60,000/- which includes a sum of Rs. 2 lakhs towards mass awareness programmes in coal

mining affected areas, pertaining to the component of the project assigned for implementation by the CPCB.

E.2.1. Identification and prioritisation of AMD resistant species

As suggested by the Secretary, Mining & Geology Department, the Committee in its earlier sitting had agreed to involve expertise of Rain Forest Research Institute (RFRI), Jorhat for raising plantation in the areas affected by rat hole coal mining in Meghalaya. Accordingly, the Chief Conservator of Forest (SF & Env) of the State Forest Department is directed to request RFRI, Jorhat to submit proposal for executing a pilot project which would cover *inter-alia* the tree species suitable for coal mine affected areas, method of plantation, and reclamation of the soil of coal mining affected areas in the State.

With reference to raising plantation in coal mining affected areas the Secretary, Mining & Geology Department has submitted today the Action Taken Report, which also includes compliance pertaining to the other directions of the Committee issued in its recent sittings. The Committee has perused the same. The ATR states that the Technical Committee during its meeting held on 11.12.2020, had finalized the cost norms for plantation and also the plantation technique for reclamation of coal mining areas through raising plantation. The Secretary, Mining & Geology Department further submitted that plantation manual is being prepared by the Technical Committee for adoption of the same by the implementing department. The Chief Conservator of Forests (SF & Env) submitted that in compliance of the directives of the NGT Committee in the 27th Sitting, the RFRI, Jorhat was approached with a request to identify AMD resistant species. Accordingly, the RFRI, Jorhat has submitted a list of 13 AMD resistant species and the list has been considered in detail by the Technical Committee in their Sitting. The list of these species which have been shortlisted and approved by the Technical Committee may kindly be furnished to the Committee as well. The Secretary, Mining & Geology Department, also submitted that the Steering Committee in its meeting held on 16th December, 2020 has directed the Deputy Commissioners to identify a total of 20 hectares in their respective districts which would cover 10 hectares for Miyawaki plantation and 10 another

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hectares for afforestation in each of the districts affected by coal mining in the State. The Deputy Commissioners were also directed to identify in their respective districts strips of land of at least 50 meters breadth and 5 kilometres length for raising strip plantations along both sides of the rivers and streams affected by coal mining. The Committee takes note of the progress as briefed aforesaid by the Secretary, Mining & Geology Department.

AGENDA NO. 2

Progress by the Mining and Geology Department, Government of Meghalaya in the matter of realization of penalty from each of the Cement Manufacturing Plants and Thermal Power Plants, which have used illegally mined local coal after the ban on illegal rat-hole coal mining since April 2014, at the rate of Rs. 400 per tonne of coal consumed by each such plant and other levies and deposit the same in the MEPR Fund

This Committee had examined the issue of utilising of Meghalaya coal by various cement plants as well as power plants without legal procurement post NGT ban on rat hole mining and transportation vide judgment of the Hon'ble NGT dated 25th March 2015 in O.A. No. 73 of 2014 in the matter of *All Dimasa Students Union Dima Hasao Dist. Committee Vs State of Meghalaya*. As per the Committee assessment, the cement and power plants had utilised 39,36,683 MT of illegal coal and accordingly, the Committee had assessed a sum of Rs 614.123 Crores being payable by the cement and power plants. The aforesaid decision of the Committee was approved by the Hon'ble NGT in their order dated 17.01.2020 in O.A No 110(THC)/2012.

Pursuant to further directions of this Committee, the Mining & Geology Department had issued several demand notices and the last demand notice was issued on 24.02.2021. The Secretary, Mining & Geology Department has submitted a report to this Committee wherein it has been stated that out of 9 cement plants and 1 ferro – alloy plant, 2 cement plants, 1 thermal power plant and 1 ferro – alloy plant have challenged the Order of the Hon'ble NGT before the Hon'ble Supreme Court of India and the matter is under consideration before the Hon'ble Supreme Court. The Secretary, Mining & Geology Department also informed the Committee that the Hon'ble Supreme Court had verbally directed the Learned Advocate General not to take any coercive action to realise the penalty and dues from the cement plants etc.

Be that as it may, till now the Hon'ble Supreme Court has not issued any formal notice to the Respondents and the State is being deprived of realising huge amount of dues from the cement and power plants etc.

Hence, the Secretary, Mining & Geology Department is directed to request the learned Advocate General to make an endeavour to get the matter listed before the Hon'ble Supreme Court and obtain further directions in the matter.

AGENDA NO. 3

To consider the complaint of United A.Chik Youth Federation in relation to auction of incidentally extracted coal in South West Khasi Hills

An organisation viz., United A.Chik Youth Federation had submitted a complaint to this Committee dated 07.12.2020 alleging that the Deputy Commissioner of South West Khasi Hills with the approval of the Mining & Geology Department had auctioned 53,224 Metric Tonne of coal without having any quantity of coal at a place known as Borsora and Ranikor Civil Sub-division. In reply to the said complaint, the Deputy Commissioner has intimated this Committee by way of written reply stating that the coal was incidentally recovered in the process of widening of road from Borsora to Ranikor and the allegation of fake auction is totally baseless.

Considering the seriousness of the allegation, this Committee vide decision taken in its ninth Special Sitting had deputed one of its Members Dr. Shantanu K. Dutta to make a spot visit and give a factual report. Accordingly, Dr. Shantanu K. Dutta visited the site accompanied by officers from Mining & Geology Department, Public Works Department and also the Sub-divisional Officer of Mawkyrwat. After making a detailed enquiry, the learned Member has submitted an elaborate report to this Committee along with photographs of the site establishing the fact that coal was indeed recovered in the process of widening of the road. The learned Member has also justified that nearly 54,000 metric tonne of coal could also be recovered from a stretch of nearly 9 kms of road where 2 – 3 seams of coal presence were seen by him. After receipt of this Report, the Committee forwarded a copy of the Report to the complainant organisation for their comments or objections vide letter dated 19.01.2021. However, the NGO has not submitted any kind of reply or objection to the technical report submitted by Dr. Shantanu K. Dutta. Considering both the facts,

the report is accepted and it is held that the quantity of coal which was auctioned was indeed incidentally recovered from the site at Ranikor.

After going through the replies of the State as well as the Deputy Commissioner, this Committee has found that while auctioning the coal, the bidder had paid only the bid amount, Royalty @ of Rs. 675/- per metric tonne, and Cess @ Rs. 300/- per metric tonne.

Today, the Secretary, Mining & Geology Department has admitted that the bidder is also supposed to pay GST @ 5% on the bid value and GST compensation cess @ Rs 400/- per metric tonne and to realise the said dues notices have already been issued to the successful bidder. However, the notices were issued in the month of January, 2021 and till now the bidder/ buyer has not yet responded to the notices. Hence, the Mining & Geology Department is directed to pursue the matter and recover the GST as well as GST compensation from the bidder as early as possible and intimate this Committee.

The next issue connected with the sale of incidentally recovered coal is the realization of levy towards MEPR Fund. The fund known as "Meghalaya Environment Protection and Restoration Fund" (MEPRF) was created by the Hon'ble NGT (Principal Bench) through their Order dated 25th March, 2015, passed in O.A. No.73 of 2014 and the Hon'ble NGT has stipulated that a sum of Rs. 485/- per metric tonne, which is calculated on the basis of 10% of the market price of the coal at the relevant point of time, should be realized from the owners of the coal. However, in practice, this amount is being realised from the coal owners at the time of auction/ sale of the coal.

It is the stand of the State Government that MEPRF is not a statutory levy and as such it cannot be imposed on the buyer of incidentally recovered coal. In the written reply, the State has also pleaded that levies can be imposed only if it is validated under Article 265 of the Constitution of India.

In the opinion of the Committee, this legal aspect must have been taken into consideration by the Hon'ble NGT. Besides this, the creation of the fund is for the benefit of the State and more particularly for the restoration of the environment which is being degraded on account of activities like coal mining etc. The issue of creation of this fund was challenged before the Hon'ble Supreme Court and was elaborately debated. The Hon'ble Supreme Court in Civil Appeal No. 10720 of 2018 and other connected Civil Appeals has finally approved and vetted the creation of the aforesaid

fund vide their Judgment dated 03.07.2019. Hence, this Committee has no jurisdiction to re-examine the issue of creation of the fund. In our opinion, a sum of Rs 485/- is to be recovered from the buyer of coal in all kinds of recovery. Accordingly, the Committee directs the Secretary to the Government of Meghalaya, Mining & Geology Department and the Director of Mineral Resources, Mining Department to issue demand notices to the buyer of the coal for recovery of the said dues along with other remaining dues and intimate this Committee.

AGENDA NO. 4

To consider the report filed in relation to alleged illegal stone and boulder mining at Rngain @Pringan

The Committee has perused the Report submitted by the Divisional Forest Officer in relation to quarrying at Rngain alias Pringan. This Agenda has been taken up *suo moto* on receipt of information that large scale hill cutting is going on at a place known as Rngain alias Pringan in East Khasi Hills District, Meghalaya in its 10th Special Sitting held on 08.01.2021. The Forest Department was directed by the Committee to submit a report on the matter. In reply to the notice of the Committee, the Forest Department has submitted a report through the Divisional Forest Officer, Khasi Hills & Ri – Bhoi District vide letter dated 18.01.2021. Vide this report the DFO has intimated that the hill-cutting is being done on the basis of stone quarry licenses given to two individuals after obtaining approval from Meghalaya State Pollution Control Board.

The report has been perused and accepted. However, the following directions are issued to the Divisional Forest Officer for compliance without fail:

1. The Divisional Forest Officer shall ensure that the operation of the quarry at this site is regulated strictly in accordance with the provisions of the Mining Plan which has been submitted to the State Forest Department by the leaseholder.
2. The Divisional Forest Officer shall ensure that the conditions of CTO issued by the MSPCB and the conditions of Environmental Clearance issued by SEIAA or DEIAA for the aforesaid quarry are strictly complied with by the quarry operator without any laxity on his/her part.

3. If there is any illegal operation or extension of the quarry beyond the permitted area, action shall be taken against the quarry owner in accordance with law. If there is any extraction of minor mineral beyond the lease area, the Divisional Forest Officer shall take all action as permissible under law including seizure of the contraband material and initiation of criminal proceedings against the quarry owner in accordance with law.
4. For the purpose of enforcing the provisions of mining plan and the conditions of environmental clearance laid down by the SEIAA or the DEIAA, and MSPCB in respect of the aforesaid quarry at Ryngain @ Pringan, if required, the Department is at liberty to seek assistance from other authorities who have been notified by the State Government as being competent to take cognizance of offences relating to minor minerals under the provisions of MMMDR Act, 1957. However, the Divisional Forest Officer (Territorial) shall primarily be responsible to coordinate the action.

AGENDA NO. 5

Shri. Peter A. Sawian, who was nominated as Commissioner of the NGT Committee in respect of audit of 4 coke units in Meghalaya, has expressed his inability to accept the assignment citing some personal health problems. The request of Shri Peter A. Sawian is accepted by the Committee and instead Shri Hamklet Suchiang, MFS, Deputy Conservator of Forests (Social Forestry & Env.) & Member Secretary SEAC, Meghalaya is nominated as Commissioner in respect of audit of the four coke oven units in Meghalaya which have been listed in the minutes of the 21st Sitting of the NGT Committee held on 2nd February, 2021.

The next sitting of the Committee will be held on **5th April, 2021** in Shillong.

The Chairman thanked all present and concluded the meeting.



(Justice B.D. Agarwal)
Former Judge, Gauhati High Court
And Chairman, NGT Committee, Meghalaya