

**BEFORE THE NATIONAL GREEN TRIBUNAL, CENTRAL ZONAL BENCH,
BHOPAL**

**Original Application No. 319/2014 (CZ)
Dukalu Ram & 5 Ors. V/s Union of India & 5 Ors.
and**

(M.A.No. 623/2014/2015, 54/2015, 55/2015, 249/2015, 318/2015 & 319/2015)

CORAM : HON'BLE MR. JUSTICE DALIP SINGH, JUDICIAL MEMBER
HON'BLE MR. BIKRAM SINGH SAJWAN, EXPERT MEMBER

PRESENT : Applicant : Ms. Rinchin
Respondent/MoEF: Mr. Dharamvir Sharma, Advocate for
Mr. Om Shankar Shrivatava, Advocate
Respondent/CECB: Ms. Parul Bhadoria, Advocate for
Mr. Purushaindra Kaurav, Advocate
Respondent /State of C.G. : Mr. Rohit Sharma, Advocate for
Mr. S.S.Chouhan, Advocate
Respondent No. 4: Mr. Anurag Maheshwari, Advocate
Respondent No.6 : Mr. Yogesh Bhatnagar, Advocate

Date and Remarks	Orders of the Tribunal
<p>Order No. 13 1st September, 2015</p>	<p>The reply on behalf of CECB has been filed today along with the affidavit of Shri R.K.Sharma, RO, Raigarh, CECB. A copy of the inspection report has also been filed. Copy of the reply affidavit and inspection report has been provided to the Applicant. The Applicant wishes to controvert the contents of the same and pray for time to make their submission.</p> <p>It has further been brought to our notice that under the order of the Hon'ble Supreme Court of India, coal block allotted to the Respondent No. 4 / M/s Jindal Steel & Power Ltd. was cancelled. However, it has been submitted that there is still a litigation pending before the Hon'ble High Court of Delhi by way of Writ Petition (Civil) bearing No. 3001/2015 and CM No. 5379/2015 titled Jindal Power Ltd. & Anr. V/s Union of India & Anr. It has further been brought to our notice that the Hon'ble High Court of Delhi vide its order dated 27.03.2015 directed as follows :</p> <p style="text-align: center;"><i>“..... In the meanwhile, we are making clear that any and every action taken connected with the present matter will be subject to final orders that may be passed by this Court. In so far as the course of action to be adopted on 01.04.2015 is concerned, we feel</i></p>

that it would be appropriate if Coal India Limited functions as a custodian akin to the designated custodian contemplated under Section 18 of the Second Ordinance. Coal India Limited function as such custodian, shall utilize the requisite manpower of the Petitioner to ensure continuity in coal mining operations and production of coal. All the coal produced on or from 01.04.2014 shall belong to Coal India Limited and they shall be entitled to dispose of the same in any manner they deem fit. This is however, only an interim measure and shall not create any equities in favour of the Coal India Limited or any of the other Respondents.....”

Learned Counsel Shri Yogesh Bhatnagar appearing for the SECL and Coal India Ltd. which has been added as party Respondent No. 6 has submitted that in terms of the above order, if any operation are today being carried out, though he is not in a position to state whether the mining activity in the coal area in dispute is being carried out, the same is under permission granted by the Hon'ble High Court of Delhi in terms of the order dated 27.03.2015.

As far as the allegation of the Applicant with regard to the ongoing raging of fires in the coal dump, which is alleged to be lying after being extracted by both Respondent No. 4 and now presently by Respondent No. 6, it is the allegation of the Applicant that the Respondent No. 6 through SECL is in fact carrying on the activity of mining and even blasting for the said purpose is being carried out. The Applicant, as has been stated above, disputed the inspection report and has said that the very fact that the inspection report clearly states that smoke can be seen at a few places goes to show that there is fire as has been alleged by the Applicant.

It is further alleged by the Applicant that neither Respondent No. 4 / M/s Jindal Power Ltd. nor the Coal India Ltd. / SECL who are now the custodian of the coal mine in question are complying with the EC conditions laid down with regard to the maintenance of the area,

monitoring the water quality, air quality as well as the green belt and the CSR activity.

The original EC dated 22.09.2004 has been submitted for our perusal by the Learned Counsel for the CECB as also the EC dated 12.06.2012 both granted in favour of M/s Jindal Power Ltd. for the coal mine in question which are part of the captive power plant. We find that the portion dealing with the specific conditions in the EC requires that raw coal, washed coal and middling and coal waste / rejects shall be stacked properly at earmarked sites(s) within sheds/stockyards fitted with wind breakers /shields. Adequate measures shall be taken to ensure that the stored mineral do not catch fire. At this stage whether it is Respondent No.4 M/s Jindal Power Ltd. or Respondent No. 6 Coal India Ltd which has now handed over the responsibility to M/s SECL, represented by Shri Yogesh Bhatnagar before us, in terms of order dated 27.03.2015 of the Hon'ble High Court of Delhi, the responsibility for adhering to and complying with the conditions of the EC still remains with that of the Respondent No. 4 and / or Respondent No. 6. Likewise we find that the other conditions of the EC particularly dealing with environment for maintaining the green belt also lie with the Respondent No. 4 and / or Respondent No. 6.

Since it is one of the complaints made before us by the Applicant that as a result of the ongoing activity, the ground water has got depleted and some of the handpumps and wells which were the source of drinking water for the villages in and around the coal mines have run dry and / or the water quality is no longer potable. We find from the EC conditions particularly No. XXXII of the specific conditions, which *interalia* provides as under :

“As the entire mine water is proposed to be used for the mine

cum washery operations, measures shall be taken for recharging ground water in and around the mine in the study area and for agricultural use. A plan for water conservation and recharge measures of ground water along with budgetary provisions be prepared and implemented in consultation with the Central / State Ground Water Board to mitigate the adverse impact of mining which may lead to depletion of ground water in the area. The company shall put up artificial ground water recharge measures for augmentation of ground water resource in case monitoring of ground water levels indicate decline of water table. Any additional water requirement for mining operation shall be met from rain water use only. The project authorities shall meet water requirement of nearby villages in case the village wells go dry due to dewatering of mines. It shall be ensured that if the river / nallah discharge of mine water takes place, it shall be treated to conform to prescribed standards before discharge.

Thus, there is a specific condition with regard to monitoring of the ground water levels by the State and Central Ground Boards and in case the same has not been done, the Collector, Raigarh is directed to ensure that such monitoring is carried out and even if past data is available with regard to the same, the same shall be taken into account and in case of allegations of the Applicant found to be correct, he shall direct the project proponent to comply with the aforesaid Condition No. XXXII for providing potable water in the villages adversely affected. The sample reports after the testing of the water by the Ground Water Board of the State / Centre shall be provided to the project proponent for taking effective measures in this behalf.

Similarly, we find that specific conditions have been laid down for the development of the green belt along the areas such as washery unit, crushing units and stockyards, at transfer points. Apart from the above, XXXIV also requires the development of the green belt on the sites mentioned therein for planting the native species such as Sal, Tendu, Mahua, etc. in consultation with the Forest and Agriculture

Department.

We also find that under the EC conditions, the project proponent and in this case, whether it is the Respondent No. 4 or Respondent No. 6 which is now the custodian under the orders of the Hon'ble High Court of Delhi, is liable to carry out the CSR activities. We are of the firm view that even though the Hon'ble High Court of Delhi may have made the Coal India Ltd. as the custodian with the permission "to ensure continuity in coal mining operations and production of coal" with the further direction that all the coal produced on or from 01.04.2015 shall belong to Coal India Ltd. and they shall be entitled to dispose of the same in any manner they deem fit" would require the Coal India Ltd. to comply with the EC condition of CSR particularly in view of the fact that even the amount to be spent on CSR has been specifically mentioned in the EC conditions. Apart from the above, provision has also been made for the Condition No. XXXX for the rate at which such amount shall be charged i.e. Rs. 5/T of coal or Rs. 2.6 crores (whichever is higher) for being spent on CSR activity has to be complied with as per the EC conditions. It cannot be that Coal India Ltd. can be allowed to carry out the operations and step into the shoes of the Project Proponent / Respondent No. 4 without complying with the EC conditions. We would accordingly, therefore, direct Respondent No. 6 / Coal India to ensure the compliance of the EC conditions for the benefit of the project affected persons as laid down in the EC of 2004 and 2012.

We have noted that the EC which was granted in 2004 to the Respondent No. 4 / M/s Jindal Steel & Power Ltd. was for the captive Thermal Power Plant and subsequently in 2012 for increasing the capacity in respect of the same as a captive plant. We would expect the Respondent No. 1 / Ministry of Environment & Forest, Govt. of

India to examine whether the order of the Hon'ble High Court of Delhi appointing Coal India as a custodian and for keeping the mine in a functional capacity with liberty to dispose of the mineral in any manner as they may deem fit, is in accordance with the original EC granted for this purpose. Learned Counsel for the Respondent No. has today not been able to explain that in view of the cancellation of the lease for the coal block activity in favour of Respondent No. 4, which is now in the custody of Respondent No. 6, from where they are extracting the coal for running the power plant of Respondent No. 4 because it was part of the draft EIA report submitted by the Respondent No. 4 for a captive coal block. Responsibility for compliance of EC conditions needs to be specified in the light of duality of control of mine and the power plant at present.

M.A.No. 54/2015

Heard on M.A.No. 54/2015 raising the objection on the ground of delay and non-compliance of Form No. 1 of NGT Rules, 2011. However, in view of what we have noticed in our earlier order with regard to specific objections and the issues raised by the Applicant, we are not inclined to accept the aforesaid prayer. The M.A. is accordingly dismissed.

It would be open for the Respondent to raise the issue in their main reply.

M.A.No. 623/2014

This M.A stands disposed of in view of the directions given hereinabove to the District Collector, Raigarh as also in view of our earlier order dated 17.12.2014 directing the Collector provide the necessary information.

M.A.No. 55/2015

This M.A. has been submitted by the Respondent for taking on

record the document which have been filed to support the contention that the Applicant and other residents have been living on the area in question since long and controvert the submission of Respondent No. 4 as contained in the M.A.No. 54/2015 that the Applicants and such persons are encroachers and trespassers on the leased area of Respondent No. 4.

Since, we have already disposed of M.A.No. 54/2015 with the direction that it would be open for Respondent No. 4 to raise their contention in the main reply, we direct that these documents be taken on record.

M.A.No. 55/2015 accordingly stands disposed of.

M.A.No. 249/2015

This M.A. filed by the applicants already stands disposed of in view of our order of 22.04.2015.

M.A.No. 318/2015

This M.A. was filed by the applicants for a direction to the Respondents to place on record the approved mining plan as well as the water drainage data of the mining lease area. Since the direction with regard to the same has already been issued in our order of 17.12.2014, no fresh direction needs to be issued.

M.A.No. 318/2015 accordingly stands disposed of.

M.A.No. 319/2015

This M.A. was filed by the applicants for seeking directions to the Respondents to issue stringent guidelines for taking effective measures to mitigate the air pollution and raging fires. Since the issue has already been dealt with in our above order, no fresh direction needs to be issued.

M.A.No. 319/2015 accordingly stands disposed of. The matter shall be dealt with in terms of our above order.

For noting the compliance and steps taken in pursuance of our above order, let the matter be listed on **8th October, 2015**.

.....,JM
(DALIP SINGH)

.....,EM
(BIKRAM SINGH SAJWAN)

