

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

Original Application No. 506/2019

(With Report dated 18.11.2019)

Mukund Dhote

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 21.11.2019

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
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s): Ms. Sharon Mathew, Advocate

For Respondent(s): Mr. Rahul Khurana, Advocate and Mr. J.B. Sharma, RO, HSPCB

ORDER

1. A joint report was sought from the MoEF&CC and State PCB with reference to the allegation that housing project 'Vesta Heights', Village Baselwa, Sector-86, Faridabad, Haryana operated by respondent no-5 was in violation of conditions of Environmental Clearance and the Water (Prevention and Control of Pollution) Act, 1974. According to the applicant, the project is a category-A project. Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 expired in March 2018. STP was not adequate and overflow was being discharged into the Agra Canal.

2. Accordingly, a joint inspection report dated 01.07.2019 has been filed with the status of compliance of conditions of Environmental Clearance (EC). It mentions the violations of EC conditions including non-installation of STPs, in terms of EC condition there being no water meters flow measurement device, absence of medical facilities at the project site, not providing noise monitoring data, not providing details of the green belt, non-construction of basement for parking and a copy of the NOC from CGWB to draw ground water. Substance of the deficiencies can be noted from the report which is as follows:-

“Compliance status of EC no. 21-324/2007-IA.III dated 14.11.2019 as follows:

S. No.	Condition	Compliance status
	<p>The project proponent is to construct a residential complex “Vesta Heights” at sector -86 Faridabad, Haryana at cost of Rs. 120 crores. The project comprises construction 662 dwelling units and 120 EWS house in six blocks with G+13, eight blocks with G+3 and six blocks with G+2 floors and 2 level basements for parking of vehicles and services. The plot area is 53,794,37 sq.m. Total water requirement will be 1200 cub. Mt/day and 727 cub.mt/day of waste water will be generated which will be treated in two sewage treatment plants of 380 cum./d capacity each. The treated water will be utilized for flushing and irrigation purposes and unused treated waste water will be discharge into public sewer. The solid waste generated (2325 kg/d) will be segregated into bio-degradable and non-bio degradable waste. The recyclable waste will be sold</p>	<p>Project proponent has obtained Environmental Clearance and consent to establish in the name of M/s Smart Housing Pvt. Ltd., 506, 5th Floor, D-4, District Centre, Saket, New Delhi – 110017. Project comprises of two blocks of G+13, 04 Blocks G+3, 1 Block with G+2 and no basement for parking of vehicle and services. No document has been furnished by the project authority for water consumption and waste water generation. There is only on STP installed in the premises having capacity of 400 KLD. Moreover, there is no flow meter installed for assessment of water consumption and waste water generation. No record furnished by the proponent regarding solid waste generation in the premises. No</p>

	<p>to the authorized vendors for recycling and remaining solid waste will be disposed of on HUDA approved land fill sites. The parking space for parking of 1240 cars has been provided in two level basements and on the surface.</p>	<p>provision of segregation of solid waste was found at project site. Project proponent informed that solid waste is being disposed of to HUDA vendors, but no such supporting document was provided by the unit during time of inspection. There is inadequate parking space of 700-800 cars in the premises and not as per required in the EC</p>
1.	<p>The information given in the documents indicate that there will be positive impact of proposed project on the land use and will improve the aesthetics of the area. There will be minor negative impact on ambient air quality during construction phase. There will be minor negative impact on ambient noise during construction phase.</p>	<p>Related to construction phase.</p>
2.	<p>The EAC after due construction of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations have awarded "gold" grading and recommended the grant of environmental clearance for the project mentioned above subject to compliance with the EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance under category 8(a) of EIA Notification 2006 for the project subject to the strict compliance with the specific and conditions mentioned below</p>	<p>Related to construction phase.</p>
<p>PART –A SPECIFIC CONDITIONS:</p>		
I	<p>Construction Phase</p>	
(i)	<p>Consent for establishment shall be obtained from the State Pollution Control Board/ Pollution Control Committee under Air and Water Act and a copy of the same shall be submitted to the Ministry before start of any construction</p>	<p>PP has obtained consent to establish from the HSCPB vide letter no. HSPCB/consent/ 2821 214FDBDCTE1005831 dated 26.06.2014</p>
(ii)	<p>For disinfection of waste water use ultra violet radiation and</p>	

	not chlorination.	
(iii)	Vehicles hired for construction activities should be operated only during non-peak hours.	
(iv)	All the top soil excavated during construction activities should be stored for use in horticulture/ landscape development within the project site.	Related to construction phase.
(v)	Ready mixed concrete must be used in building construction.	
(vi)	Water demand during construction shall be reduced by use of pre mixed concrete, curing agents and other best practices	
(vii)	Permission to draw ground water be obtained from competent authority prior to construction/ operation of the project.	PP is using two borewells to draw water from ground. No water meter/flow measurement device was found at bore well during the visit (photo 3). PP has also not submitted the NOC from the CGWB to draw water from the ground.
(viii)	Separation of gray and black water should be done by the use of duel plumbing line. Treatment of 100% gray water by decentralized treatment should be done.	PP has installed duel plumbing line for separation of gray and black water (Photo 4).
ix.	Fixtures for showers, toilet, flushing and drinking should be of low flow either by use of aerators or pressure reducing devices sensor based control.	No documents have been provided by PP in the compliance of this condition.
x.	Use of glass may be reduced up to 40 % to reduce the electricity consumption and load on air conditioning. If necessary use high quality double glass with special reflective coating in windows.	
xi.	Roof should meet the prescriptive requirement as per energy conservation building code by using appropriate thermal insulation material to fulfill requirement.	No documents have been provided by PP in the compliance of this condition.
xii.	Opaque wall should meet prescriptive requirement as per energy conservation building code by using appropriate thermal insulation material to fulfill requirement.	
xv.	All required sanitary and hygienic measures should be in place before starting construction activities and to	Related to Construction Phase

	be maintained throughout the construction phase.	
xvi.	Soil and ground water samples will be tested to ascertain that there is no threat to groundwater quality by leaching of heavy metals and other toxic contaminants.	
xvii.	A first aid room will be provided at the project site both during construction and operation of the project.	No. medical facility has been found at project site during the inspection.
xviii.	Adequate drinking water and sanitary facilities should be provided for construction workers at the site. The safe disposal of wastewater and solid waste generated during the construction phase should be ensured.	Related to Construction Phase.
xix.	Disposal of muck including excavated material during construction phase should not create any effects on the neighbouring communities and be disposed off taking the necessary precautions for general safety and health aspects of people.	
xx.	Diesel power generating sets used during construction phase should be of 'enclosed type' to prevent noise and should conform to rules made under Environment (protection) Act 1986, prescribed for air and noise emission standards.	
	Ambient noise levels should conform standard both during day and night when measured at boundary wall of the premises. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase.	PP has not provided noise monitoring data during the inspection.
xxi.	The construction agencies shall use fly ash based material/products as per the provisions of fly ash notification of 14.9.1999 and as amended on 27.8.2003	PP has not provided supportive documents in the compliance of this condition during the inspection.
xxii.	Vehicles hired for bringing construction material at site should be in good condition and should have valid "pollution under check" (PUC) certificate and to conform to applicable air and noise emission standards and should be operated only during non-	Related to construction Phase.

	peaking hours.	
xxiii.	Construction spoils including bituminous material and other hazardous materials must not be allowed to contaminate water courses and the dump sites for such materials must be secured so that they should not leach onto the ground water.	
xxiv.	Any hazardous waste generated during construction phase should be disposed of as per applicable Rules & norms with necessary approvals of the Haryana Pollution Control Board.	
xxv.	Regular supervision of the above and other measures for monitoring should be in place all through the construction phase so as to avoid disturbance to the surroundings.	
xxvi.	Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the project proponent if it was found that construction of the project had started without obtaining environmental clearance.	Presently not applicable.
II. Operation Phase		
i.	Diesel power generating sets as source of backup power for lifts and common area illumination should be of "enclosed type" and conform to rules made under Environment (Protection) Act 1986, prescribed for air and noise emission standards as per CPCB guidelines. Exhausts should be discharged by stack, raised to 4 meters above rooftop.	PP is running total 05 DG sets (750x02 KVA, 500x01 KV, 300x01 KVA) at project site. PP has not provided air and noise monitoring data around DG set area during the inspection. (Photo 5).
ii.	During night the noise levels measured at the boundary of the building shall be restricted to the permissible levels to comply with the prevalent regulations.	PP has not provided noise level monitoring data around the boundary of the building during the inspection.
iii.	A sewage treatment plants of adequate capacity should be provided and it should be Certified by an adequacy as well as efficiency and submit a report on this regard to the Ministry before the project is commissioned for operation. The waste water should be	PP has install only one STP having capacity of 400 KLD. However according to EC conditions PP need to install two STP. (Photo 1). PP has also not provided the certification for installation of STP by an independent expert for

	treated upto tertiary level and after treatment reused for cooling, flushing, landscaping and gardening, etc. However, discharge of treated sewage, if any, shall conform to the norms and standards prescribed by Haryana Pollution Control Board.	adequacy and efficiency. PP has also informed to the joint inspection team that they are discharging 07-08 nos of tankers/day of treated STP waste water into the unknown land. PP has not provided any information/permission to discharge treated STP waste water into unknown land.
iv	Rain water harvesting and ground water recharging shall be practiced. The ground water levels and its quality should be monitored regularly in consultation with the Central Ground Water Authority. Oil & Grease trap shall be provided to remove oil and grease from the surface run off and suspended matter shall be removed in a settling tank before its utilization for rainwater harvesting.	PP has installed 06 nos of rain water harvesting pits having dimension 15x15x15 m ³ . It was looking that RWH pits not cleaned since a long time. (Photo 6). No practices have been adopted by PP for ground water recharging and separation of oil and grease from the surface run off.
v.	The solid waste including e-waste generated should be properly collected and segregated. Biodegradable waste should be composted and non-bio degradable solid waste should be disposed of to municipal landfill sites after recovering recyclable waste. STP sludge shall be used as manure for gardening.	PP also not provided the details of generation of e-waste, bio-degradable and non-biodegradable waste. PP has also not provided the STP sludge generation and disposal details
vi	Any hazardous waste including biomedical waste should be disposed of as per applicable Rules and norms with necessary approvals of the Haryana Pollution Control Board.	PPS has not provided the authorisation of vendor for disposal of hazardous waste.
vii.	The green belt design along the periphery of the plot shall achieve attenuation factor confirming to the day and night noise standards prescribed for residential land use. The open spaces inside the plot should be suitably landscaped and covered with vegetation of indigenous variety.	PP has developed the green belt in the premises in single layer. PP has not provided the details of green belt area cover map and variety of vegetation/species of plant.
viii.	Incremental pollution loads on the ambient air quality, noise and water quality should be periodically monitored after commissioning of the project.	PP has not provided the monitoring data of the air, noise and water quality during the inspection.
ix.	Prior permission of the Central Ground water Authority should	PP is using two bore wells to draw ground water. PP

	be obtained for the construction of tube well and utilization of ground water.	is not provided the copy of NOC obtained from CGWB to draw ground water.
x.	The solar energy shall be used for water heating as well as lighting common areas and verifiable measures shall be adopted for energy conservation and water conservation.	PP has installed solar energy panel's water heating at roof of the each block.
xi.	Report on the energy conservation measures should be prepared incorporating details about building materials and technology, R & U Factors etc and submitted to the Ministry in three months time.	PP has not submitted the report of the energy conservation measures incorporating details about building materials and technology, R & U Factors to the regional office MoEF&CC Chandigarh.
xii	The values of R & U for the building envelope should meet the requirements of the hot and humid climatic location. Details of the building envelope should be worked out and furnished in three months time.	PP has not submitted the details of values of R&U to meet for the building envelope should meet requirements of the hot and humid climatic location to the regional office MoEF&CC Chandigarh.
xiii	Circulation plan for vehicles should be redesigned to decongest the area.	No such plan provided by PP at the time of inspection.
PART-B GENERAL CONDITIONS		
1.	The environmental safeguards contained in the documents should be implemented in letter and spirit.	PP has not submitted monitoring data of air, water and noise regularly to the RO, MoEF&CC, Chandigarh.
2.	Provision should be made for the supply of kerosene or cooking gas and pressure cooker to the laborers during construction phase.	Related to Construction Phase.
3.	All the laborers to Ate engaged construction works should be screened for health and adequately treated before the issue of work. permit. Adequate preventive and	

	protective measures shall be taken to protect workers, labours etc during construction and operation phase of the project.	
4.	6 monthly monitoring reports should be submitted to the Ministry and its Regional Office.	As per file record PP has submitted last compliance report dated 08.06.2015 to the RO, MoEF&CC, Chandigarh.
5.	Additional 20% car parking should be provided. Adequate car parking should also be provided near shopping area.	No additional 20% car parking space provided by the PP in the shopping area. (Photo 9).
6	Officials from the Regional Office of MOEF, Chandigarh who would be monitoring the implementation of environmental safeguards should be given full cooperation, facilities and documents/data by the project proponents during their inspection. A complete set of all the documents submitted to MOEF should be forwarded to the CCF, Regional Office of MoEF, Chandigarh.	PP has not provided the documents during and after the joint inspection.
7	In case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry.	No such appraisal has been received.
8	The Ministry reserves the right to add additional, safeguards measures subsequently, if found necessary and to take action including revoking of the environment clearance under the provisions of the Environment (Protection) Act, 1986, to ensure effective implementation of the suggested safeguards measures in a time bound and satisfactory manner.	Noted.
9	All the statutory clearances such as the approvals for	PP has not provided the copy of NOC obtained from

	storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department, wildlife Act, 1972 etc. shall be obtained by project proponents from the competent authorities.	Chief Controller of Explosives, Fire Department, Civil Aviation Department, wildlife Act, 1972 etc. as per requirement.
10	A copy of the environment clearance letter would be marked to the local NGO(s) for their information	No such document has been furnished at the time of inspection.
11	The project proponent should advertise in at least two local Newspapers widely circulated in the region, one of which shall be in the vernacular language informing that the project has been accorded environmental clearance and copies of clearance letters are available with the Haryana Pollution Control Board and may also be seen on the website of the Ministry of Environment and Forest at http://www.envfor.nic.in . The advertisement should be made within 7 days from the day of issue of the clearance letter and a copy of the same should be forwarded to the Regional Office of this Ministry at Chandigarh.	
12	These stipulations would be enforced among others under the provisions of the Water (Prevention and Control of Pollution) Act, 1974, the Environment (Protection) Act, 1986 and the Public Liability (Insurance) Act, 1991.	Noted.

General comments:

- i. It is mention in the EC that residential colony is with the name of “Vast Heights” but it is the name of “Summer Palm”. PP has not prior informed to the concern offices regarding the name change of Society.
- ii. PP has not submitted the copy of consent to operate from HSPCB.”

3. It is, thus, clear that there is blatant violation of conditions of EC, including absence of requisite number of STPs and Consent conditions under the Water and the Air Act, apart from non-compliance by way of disposal of sewage through tankers at unauthorized locations, not having permission for drawal of ground water, not operating DG sets as per norms/guidelines and improper disposal of municipal solid waste.
4. An action taken report dated 20.11.2019 has also been filed by the State PCB which confirms that the water discharge from the STP was not as per norms and DG sets were sealed. It is further stated that for the defaults in the year 2017, environment compensation was recovered, and prosecution was initiated in the year 2017.

With regard to the action on observations in the joint report mentioned above, it is stated that DG sets have been sealed /resealed, Police Department has been asked to lodge FIR for tampering of earlier seal, common building is still sealed, further compensation has been assessed at Rs. 46 Lakhs for the defaults noticed in the joint report. Directions have been issued to the project proponent and the welfare association to ensure proper functioning of STP, compliance of Solid Waste Management Rules, 2016 and providing a copy of permission for extraction of ground water.

5. The above shows serious and consistent defaults in compliance of EC conditions and complete disregard for environmental norms. As against requirement of two STPs, only one has been

installed, creating environmental hazard. Water discharged from the STP is not as per norms. Treated water was to be used for flushing and unused water is to be sent to public sewer, which was not being done. Ground water is being illegally extracted. There is no provision of segregation of solid waste. Parking and green belt have not been provided and solid waste is not being properly handled. Noise level monitoring data is not being maintained. STP waste water is being discharged into unknown land. Water harvesting pits are not clean. Consent to Operate has not been renewed, apart from other defaults as noted in the above report.

Action taken by the State PCB is not adequate. It is pointed out on behalf of the applicant that the State PCB could have sealed the available public utility spaces and taken other coercive measures against the project proponent. Compensation should be realistic to recover the cost of restoration of the environment. As per judgment of the Hon'ble Supreme (2018)18 SCC 257, *M/s Goel Ganga Developers India Pvt. Ltd. v. Union of India*, normally environmental compensation in such cases should be 5% of the project cost. The project cost is said to be about Rs. 300 Crores. The project proponent could also have been black listed. Occupancy certificate should not have been given by the authorities of the State of Haryana.

6. We find merit in the submissions made on behalf of the applicant. There are other instances of non-compliance in the

construction projects in Haryana dealt with by this Tribunal¹. In view of such defaults, having potential for damage to environment and public health, the State needs to focus on remedial steps against such violations by the housing projects after evolving an appropriate monitoring mechanism. In this regard, SEIAA and State PCB may conduct a survey of such projects in the State and furnish a status report.

We have also found inadequacy in monitoring mechanism of compliance of EC conditions and directed the MoEF&CC to monitor such projects with regard to compliance of conditions of EC effectively and furnish a compliance report. Monitoring is being done after years while violations are rampant.²

7. As regards adequacy of compensation, we find merit that compensation in the present case is inadequate. It has neither taken into account the cost of the project nor the cost of restoration nor the repeated and continuing defaults, adversely affecting the environment and public health with impunity.

¹ Vide order dated 23.10.2019 in *Kissan Udey Samiti Vs. State of Haryana & Ors.* - O.A. No. 764/2018, the Tribunal observed: "5. From the above report, violations of Environment laws by the units in question can be briefly summed up as follows:

- a) No prior Environmental Clearance & CTE was obtained
- b) The projects have been constructed without obtaining Environmental Clearance and without CTE/CTO from HSPCB.
- c) In terms of STP, the deficiencies observed during sampling relates to absence of flow meter at the inlet of STPs, non-maintenance of log book, the outlet of STPs are exceeding the prescribed limits of board, etc.
- d) Untreated effluents from STPs are being discharged either through tanker or on open land near village Nagal for percolation.
- e) The units are non-complying with SWM Rules and no facility for collection segregation and disposal of solid waste exists.

Vide order dated 13.09.2019 in OA 661 of 2018, the Tribunal noted serious violation of environmental norms by Ansal Properties, Sushant Lok Phase - I, Gurgaon, and directions for remedial action were issued.

² O.A. NO. 837/2018, Sandeep Mittal v. MoEF&CC

8. Legal position in this regard is well settled. In *Vellore Citizens Welfare Forum vs. Union of India (UOI) and Ors*³, the Hon'ble Supreme Court interpreted "Polluter Pays" principle by stating that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. It was further observed on the basis of principle laid down in *M.C. Mehta and Anr. vs. Union of India and Ors.*⁴ that a person undertaking an activity involving hazardous or risky exposure to human life is strictly liable for injury suffered by another person, irrespective of any negligence or carelessness on part of the managers of such undertaking. Pollution cannot be allowed to be profitable activity. The environment is priceless. Intentional violations have to be visited with more stringent damages than accidental or unintended.
9. Principles for determining quantum of damages laid down, *inter-alia*, in *Sterlite Industries (India) Ltd. v. Union of India* (2013) 4 SCC 575 : ¶ 47, *T.N. Godavarman Thirumulpad v. UOI*

³ (1996) 5 SCC 647

⁴ (1987) 1 SCC 395

& Ors. (2006) 1 SCC 1 : ¶ 1, *Indian Council for Enviro-Legal Action & Ors. v. Union of India & Ors.* (1996) 3 SCC 212 : ¶ 67, *Vellore Citizens Welfare Forum v. UOI*, (1996) 5 SCC 647 : ¶ 11 to 13, *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388 : ¶ 10, *Public Trust Doctrine*, ¶ 24, *M.C. Mehta v. UOI & Ors.*, W.P (C) No. 13029/1985 order dated 24.10.2017, *MCD v. Uphaar Tragedy Victims Association* (2011) 14 SCC 481 : ¶ 99, 100, *Vadodra Municipal Corporation v. Purshottam v. Murjani & Ors.* (2014) 16 SCC 14 : ¶ 17 and *M. C. Mehta & Anr. v. Union of India* (1987) 1 SCC 395 : ¶ 32. These above principles have also been referred to in order of this Tribunal dated 13.09.2019 in OA No. 661/2018.

10. Accordingly, we direct State of Haryana and the State PCB to take further remedial action by way of appropriate coercive measures including black listing of the project proponent from undertaking such projects in future till environmental norms are fully carried out, sealing and taking possession of public utility spaces in the project, sealing and taking over of vacant flats if any, requiring compliance of other remedial steps. A representative of Town and Country Planning, Haryana may also be associated. Revised compensation may be assessed and recovered on the pattern of earlier orders of this Tribunal noted above by a joint Committee MoEF&CC, CPCB and State PCB. State PCB will be the nodal agency. We determine interim compensation of Rs. 10 Crores to be deposited by the project proponent with the CPCB within one month subject to final assessment of such compensation by the Committee after giving due opportunity to the project proponent. Interim

compensation is determined on the basis of size of the project, financial capacity of the project proponent and magnitude of the violations. A further action taken report may be furnished before the next date by e-mail at judicial-ngt@gov.in by the State PCB.

A copy of this order be sent to the Chief Secretary, Haryana, MoEF&CC, CPCB, Director, Town and Country Planning, Haryana and the State PCB.

List for further consideration on 02.03.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

Saibal Dasgupta, EM

November 21, 2019
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