

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

**Original Application No. 453 of 2013
(M.A. No. 1114 of 2013& M.A. No. 1115 of 2013)**

And

**Original Application No. 111 of 2014
(M.A. No. 322 of 2014)**

And

Original Application No. 113 of 2014

IN THE MATTER OF :

Sh. Kalyan Bansingh&Ors. Vs. HIL Ltd. & Ors.

And

Environics Trust Vs.Union of India & Ors.

And

Amar Singh Vs.Union of India & Ors.

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

Present: **Applicant:** Mr. Rahul Choudhary and Mr. Utkarsh Jain, Adv.
Respondents: Mr. Shiv Mangal Sharma, AAG, Mr. Saurabh Rajpal, and Mr. Adhiraj Singh, Adv.
Mr. S. S. Shamsberry AAG and Mr. Amit Sharma, Adv. for state of Rajasthan
Mr. Pinaki Misra, Sr. Adv., Mr. Abhishek Bairahi and Ms. Vanita Bhargava, Adv.
Mr. Arvind Verma, Sr. Adv., Ms. Priyanka Sinha, Ms. Shristi Sinha and Ms. Viddhusshi, Adv. for State of Jharkhand
Mr. Kumar Anurag Singh and Ms. StutiVatsa, Adv.
Mr. Vikas Malhotra, Adv. for Ministry of Environment, Forest and Climate Change and IBM
Mr. Devraj Ashok, Adv. for State of Karnataka
Mr. Guntur Prabhakar, Mr. Guntur Pramod Kumar and Mr. Prashant Mathur, Adv. for State of A.P.
Mr. B.V. Niren and Mr. KshitijMudgal, Adv.
Mr. Dhananjay Baijal and Mr. Nikhil Nayyar, Adv. for APPCB
Mr. S. S. Shamsbery, AAG Rajasthan and Mr. Amit Sharma, Adv.
Mr. Rahul Pratap, Adv.for MoEF
Mr. Dhananjay Baijal and Mr. Nikhil Nayyar, Adv. for TSPCB and APPCB

	Date and Remarks	Orders of the Tribunal
	Item Nos. 03 to 05 August 14, 2018 dv& ss	1. This application seeks direction for restitution of in the area of the mining lease for asbestos and for creation of a trust fund for rehabilitation of the victims. Further prayer is to direct prosecution for allowing chromium and asbestos dust pollution from the asbestos mine during their operation under Section 27 of the National Green Tribunal Act, 2010.

	<p>Item Nos. 03 to 05</p> <p>August 14, 2018 dv & ss</p>	<p>2. The case of the applicants is that Chromite, and Chrysotile asbestos (also known as “white asbestos”) was mined by horizontal shaft-mining and milled on-site to produce Chrysotile asbestos fibre by Hyderabad Asbestos Cement Product Limited (HACPL).</p> <p>3. The mining was stopped in the year 1983. However, before abandoning the mine, safety measures required for closure, restitution and removal of existing pollution which were necessary to mitigate adverse health or environmental impacts were not taken. The result was that asbestos dust based pollution continued. This resulted in asbestos related illness and damage to the environment. The diseases which resulted are the lung diseases due to long inhalation of asbestos dust. Asbestosis is notified disease under the Mines Act, 1952. Asbestos dust is hazardous for human health. It was the duty of the project proponent to inform the inhabitants of the dangers of asbestos dust. Neither the workers were informed of the said dangers nor any safety measures were adopted. No medical checks were conducted. The studies carried out in the area show that adverse impact had taken place on health of the inhabitants. The ponds and the streams had been contaminated by dump sites. The Waste material has spread into fields and foot hills. The children and elderly were exposed to the dust. The applicants relied upon several studies in support of the application including</p> <ol style="list-style-type: none"> i. “A Tale of Corporate Greed and Abandonment”. IJOEH, July/September 2003, ii. “The Blighted Hills of Roro”, Report of the Fact-finding Team to the Abandoned Asbestos Mines,
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	<p>Item Nos. 03 to 05</p> <p>August 14, 2018 dv & ss</p>	<p>February 2003,</p> <p>iii. “Contaminated by Orphaned Mine Waste-The Sorrow of Ror River”, Samit Kmar Carr, 2007,</p> <p>iv. “Expert Report on “Ultrahazardous Mining Wastes in the Roro Hills. Sources, Risks and Remedial Actions, September 2012,</p> <p>v. Expert Report on “Environmental Risk Assessment of Soil Chromium Levels near Abandoned Asbestos and Chromite Mines, Roro Hill, Jharkhand, July 2012”,</p> <p>vi. Expert Report on “Health Risk Management and Soil Asbestos Levels Near Abandoned Asbestos and Chromite Mines, Roro Hills, June 2012”</p> <p>vii. Chibasa Study, Secondary and environmental exposure-Cause of asbestosis. The medical reports diagnosed lung diseases.</p> <p>4. The case of the applicants is that action of the owner, agent or manager of the land in not notifying the disease is in violation of Section 25 (1) of the Mines Act and is also violation of requirement of monitoring mandatory medical examination for every person employed in the mines for more than six months. Workmen are also entitled to compensation. The mining was also in violation of express and implied conditions of mine being operated without any damage to the environment. It is further stated that there is violation of Section 22A of the Air (Prevention and Control of Pollution)Act, 1981 and Section 33 of the Water (Prevention and Control of Pollution)Act, 1974. If hazardous substance is used, the owner or the occupier of the premises has to be fastened with strict liability as</p>
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	<p>Item Nos. 03 to 05</p> <p>August 14, 2018 dv & ss</p>	<p>laid down in <i>M.C. Mehta v. Union of India</i> (1987 1 SCC 395) on the Principle of <i>Rylands v Fletcher</i>.</p> <p>5. In the affidavit filed by the State of Jharkhand by the Additional Director, Mines (H.Q.) in pursuance of the order of this Tribunal dated 29.10.2015, it is stated that a joint inspection team was constituted which has inspected the previous asbestos mines and nearby area of Roro hills district on 08.01.2016 and 09.01.2016. The constitution of the team was as follows:</p> <p>“ a) Chairman:</p> <p>Mr. S.I. Minz, Additional Director Mines, (HQ), Department of Mines and Geology, State of Jharkhand.</p> <p>b) Member</p> <p>Mr. B.P. Kerketta, Senior Assistant Controller of Mines, Indian Bureau of Mines, Kolkata.</p> <p>c) Member</p> <p>Mr. R.N. Kashyap, Board Analyst, Jharkhand State Pollution Control Board, Ranchi.”</p> <p>6. Report of the Joint Inspection Team has also been filed.</p> <p>7. At this stage, we may make a brief reference to the proceeding before this Tribunal.</p> <p>8. On 29.10.2015, the Tribunal considered the issue of closing of the asbestos mines in a scientific manner and directed the States of Rajasthan, Karnataka, Jharkhand and Andhra Pradesh to prepare a list of all abandoned asbestos mine and furnish such list to the Indian Bureau of Mines. The said States were directed to formulate a programme of inspection of each mine.</p> <p>9. It will be appropriate to reproduce the relevant part</p>
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	<p>Item Nos. 03 to 05</p> <p>August 14, 2018 dv & ss</p>	<p>of the order which is as follows:</p> <p><i>“We, therefore, direct that the States of Rajasthan, Karnataka, Jharkhand and Andhra Pradesh to prepare lists of all abandoned asbestos mines or the mines from where the associated minerals were extracted, furnish such lists to the Indian Bureau of Mines (IBM), and in consultation with the Indian Bureau of Mines (IBM) formulate a programme of the visit and inspection of each mine. We further direct that Joint Team each for the purpose of Joint Inspection of Mines in their respective States be constituted by each of the respective States in consultation with IBM. Each Team shall comprise of the Senior Scientists from the Indian Bureau of Mines (IBM), and Seniors Scientists from each Department of Mine and Geology and State Pollution Control Boards of the respective States. Every such Team comprising of Senior Scientists shall visit every mine, make detailed observations and submit it spragmatic recommendations for the Steps necessary to be taken in the interest of the environment and its restoration. The Joint Inspection Report of every State shall be presented before us on the next date of hearing. Each State shall bear the cost of survey/inspection that is carried out within their respective States. Programme of Inspection shall be published on the website of the IBM in advance.”</i></p> <p>10. At this stage, we may also notice that though Original Application No. 453 of 2013 was filed in the context of Jharkhand on 20.11.2013, Original Application No. 111 of 2014 was filed before this Tribunal on 21.05.2014 raising similar issue in respect of States of Rajasthan and Andhra Pradesh. Subsequently, the State of Karnataka was added in the O.A. No. 111 of 2014. Another application being Original Application No. 113 of 2014 was filed on 23.05.2014 with regard to the States of Rajasthan and Andhra Pradesh was filed.</p> <p>11. The State of Andhra Pradesh filed its affidavit dated 20.10.2014 stating that there were five asbestos mining leases but their operations have been stopped and as per inspection conducted on 25.06.2014, no mining activity was found to be in operation.</p> <p>12. A counter affidavit has also been filed by the</p>
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	<p>Item Nos. 03 to 05</p> <p>August 14, 2018 dv & ss</p>	<p>Directorate-General of the Mines Safety, Ghaziabad, UP which refers to closing of the mines in the State of Andhra Pradesh. In further affidavit of the State of Andhra Pradesh State Pollution Control Board on 06.01.2015, it is stated that though five mines had been closed, they have not undertaken restoration work which was required under the Minerals Conservation and Development Rules, 1988.</p> <p>13. The State of Rajasthan filed an affidavit on 24.02.2015 in response to the order of this Tribunal dated 23.12.2014 requiring status of asbestos mine being indicated. According to the said affidavit, the mines have been closed and rules have been complied.</p> <p>14. An affidavit has also been filed by the Chief Financial Officer of HIL Limited, Hyderabad admitting that the company was mining asbestos in the Roro hills of Jharkhand from 1963 to 1983. However, it is stated that since the mining was stopped before 32 years ago, no issue survived. Till 1983, asbestosis was not considered as an occupational disease. Statutory laws enacted after 1983 were not relevant for liability of the miner. It has also been stated that the medical reports and other reports could not be relied upon against the miner. All norms prevalent at the relevant time for closure of the mines were adopted. The tailings left at erstwhile mines do not have any adverse impact on the environment.</p> <p>15. At this stage, we may refer to the findings of the Joint Committee in its report dated 15.01.2016 followed by the recommendations which are as follows:</p> <p style="text-align: center;"><u>Findings</u></p> <p style="text-align: center;"><i>“One waste Asbestos dump consisting fine particles were lying along slope in southwest</i></p>
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direction in about 2.0 acres area and the waste dumps were estimated to be about 25,000m³, shown as D1 in the Toposheet (toposheet and google map enclosed). Waste Asbestos dump which is lying over for a period of more than 30 years, was observed disintegrated. During rainy season, there is possibility of carrying out fine particles of asbestos into nearby land, nallah and Roro river.”

“Recommendation:-

- (1) Adoption of suitable schemes for not disturbing the streams/river flowing nearby area.
- (2) Notifying the local people about the restrictions and precautions against exposure to Hazardous Asbestos dust through display board. The display board should be provided near the dump area showing the hazards associated with asbestos in local/ Hindi language with danger sign so that no person goes inadvertently to the dump site.
- (3) The dump site should be properly fenced with barbed wire.
- (4) Retaining wall should be made all along the foothill of the dump to prevent run off in the adjoining area.
- (5) Coir matting may be put over to the dump area and considerable amount of soil may be spread over it. Seeds of plant of local species/shrubs/grass may be sprayed over it for its stabilization.
- (6) A series of Check Dams of suitable strength may be constructed in the downstream of the seasonal nallah from the foothill of the dump upto the road about 500 meter to contain/arrest the flow of asbestos mixed waste material.
- (7) Massive plantation around the dump area as well as at the foot hill should be done to arrest air borne dust moving away from the dump site. The revegetation strategy should be use plants which are native to the area and the site should eventually return to the forest common to the region.
- (8) Grasses and legumes facilitate phytoremediation of metalliferous soils. Phytoremediation relies on suitable plants with metal scavenging properties, Grass legume cover namely Cynodondactylon, Sorghastrumnutans and Acacia concinna and Cajanuscajan may be planted along the waste dump and agricultural land as a barrier.
- (9) Regular medical surveillance of the local community may be provided involving physical examination that includes a chest roentgenogram and pulmonary functions tests for early detection of lung cancer and impaired lung function.
- (10)(10) A general hydro-seeding of the Asbestos mixed dump area may be undertaken operating remotely from a helicopter as a slope is very steep.
- (11) Since the Roro hill falls under the Protected Forest, hence restoration should be carried out under the supervision of Forest Department Govt. of Jharkhnad.”

16. We asked the learned Counsel for the parties

	<p>Item Nos. 03 to 05</p> <p>August 14, 2018 dv & ss</p>	<p>whether there is any challenge to the above report. Learned Counsel for the State of Jharkhand fairly stated that since the report is by a Committee headed by a senior Officer of the State of Jharkhand itself, apart from Senior Officer of the Government of India and an Officer of the Jharkhand State Pollution Control Board, Ranchi, there can be no objection to the said report.</p> <p>17. Learned Counsel for the Respondent No. 1-HIL Limited also stated that he has no objection to the recommendations but to the findings. He has objection to the finding that the dump was lying even after 30 years or that there was a possibility of fine particles of asbestos going into the land or the river after such a long time. We reject the objection to the said findings. Objection is not based on any scientific basis to rule out what has been found by the experts on the ground. We, thus, accept the finding as well as the recommendations.</p> <p>18. Accordingly, we are of the view that the recommendations of the Committee ought to be acted upon in full and appropriate scheme is required to be framed so that the stream/river flowing in the area is not disturbed and the inhabitants are not exposed to the hazardous asbestos dust, the dump site is fenced with a barbed wire, retaining wall is made around the foothill of the dump, coir matting is put over to the dump area, check dams are constructed, massive plantation is done around the dump area, suitable plants are grown, medical surveillance is done, hydro-seeding of the asbestos mixed waste dump is undertaken and restoration work is carried out in the area under the supervision of the Forest Department, as recommended</p>
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	<p>Item Nos. 03 to 05</p> <p>August 14, 2018 dv & ss</p>	<p>by the Committee.</p> <p>19. To give effect to the above recommendations, to enable the Action Plan to be prepared and implemented, we constitute the following Committee:</p> <ol style="list-style-type: none"> i. Representative of the Director General of Mines and Safety, Government of India. ii. Representative from Department of Mines and Geology, State of Jharkhand. iii. Representative from CPCB. iv. Nominee of the Indian School of Mines, Dhanbad. v. District Magistrate, Chaibasa. vi. Representative from the National Institute of Occupational Health, Ahmedabad. vii. Representative from Forest Department, Jharkhand. <p>The Chief Secretary, Jharkhand will facilitate and extend all necessary help to the Committee to execute this direction. Finally, the cost can be recovered from the polluter.</p> <p>20. The Action Plan be prepared within one month and timeline be laid down for implementation. Execution of the Action Plan may be overseen by the Committee in a suitable manner.</p> <p>21. A compliance report in this regard be sent to this Tribunal by E-mail at filing.ngt@gmail.com on or before 30.04.2019.</p> <p>22. As regards monetary compensation for damage to the environment as well as to individual victims, there is no recommendation in the report. Recommendations relates to steps to be taken for restoring damage to the</p>
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	<p>Item Nos. 03 to 05</p> <p>August 14, 2018 dv & ss</p>	<p>environment. Accordingly, the cost of the damage can be recovered from the polluter on Polluter Pays' Principle. In absence of specific data or claims, it is not possible for this Tribunal to assess or award such damage.</p> <p>23. The State of Jharkhand may lay down a mechanism for assessment and recovery of such damage. Beyond general studies of adverse effect on the health of workers or inhabitants, there is no data for identifying the victims. No individual victim is before the Tribunal. In such situation, the State of Jharkhand may provide a forum to enable any such victim to make claims. Constitution of such forum will depend on number of claimants and nature of claims. To enable the State to take a decision in this regard, the claims may be put forward in the first instance before the District Magistrate, Chaibasa within one month from today. Thereafter, the State of Jharkhand may take a decision to confer power for adjudicating such claims on a sitting or retired officer. The State may also consider appointing a suitable retired District Judge, if the situation so justifies. Such decision may be taken within one month of expiry of period of filing of claims before the District Magistrate, as directed above. Such decision may be put on the website of the State. Claims, if any, may be decided within one year.</p> <p>24. The competent authority for determining compensation will be at liberty to take assistance of such expert, as may be considered necessary, and the State of Jharkhand may extend all co-operation and help in this regard.</p> <p>25. The sittings of such authority may as far as possible be at Chaibasa and if so permissible, at the</p>
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	<p>Item Nos. 03 to 05</p> <p>August 14, 2018 dv & ss</p>	<p>District Court complex.</p> <p>26. It will also be open to the State of Jharkhand to claim compensation for the the damage to the environment before such authority and the amount required for reversing the damage before the competent authority.</p> <p>27. Any objection to the final decision of the competent authority may be before this Tribunal.</p> <p>28. As regards the States of Rajasthan, Karnataka and Andhra Pradesh, we are not issuing any specific directions in absence of any study ofclaim. However, if the Secretary Environment of the said States finds that there is damage to the environment for which compensation is required to be claimed and recovered, it will be open to them to take appropriate action in accordance with law.The said States may also take such steps as may be considered necessary for restoration of the mine sites and the surrounding areas.</p> <p>29. The applications stand disposed of.</p> <p>Put up for consideration, of the Compliance Report or any other communication which may be received, on 15th May, 2019, unless required earlier.</p> <p>.....,CP (Adarsh Kumar Goel)</p> <p>.....,JM (Dr. Jawad Rahim)</p> <p>.....,JM (S.P. Wangdi)</p> <p>.....,EM (Dr. Nagin Nanda)</p> <p style="text-align: right;">14.08.2018</p>
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