

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

Original Application No. 204/2023

In re: News item published in Newspaper The Hindu dated 07.03.2023
titled **“Three children die during illegal mining in West Bengal”**

Date of hearing: 28.03.2023

**CORAM: HON’BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON’BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON’BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Respondent: Ms. Madhumita Bhattacharjee, Advocate for the State of West Bengal.

ORDER

1. Proceedings have been initiated *suo motu* in the light of captioned media report of about death of three children during illegal mining in West Bengal on 07.03.2023. They were crushed to death at Siliguri while loading illegally mined sand on truck on the bed of the river Balason in Tripalijot Matigara Police Station. Apart from the death of three children, one child was injured and admitted to hospital. They were hired for illegal loading activities on promise of being paid ₹350/- each per truck.

2. Advance notice dated 15.0.2023 was issued to the West Bengal Pollution Control Board, Mining Officer, Siliguri Zone, West Bengal, District Magistrate, Siliguri/Darjeeling and Inspector of Police, Siliguri Police Station.

3. In response to above, Ms. Madhumita Bhattacharjee, Advocate has entered appearance and filed statement of facts received from District Magistrate, Darjeeling, WB which is as follows:

“1) That this office has received a notice from the Deputy Registrar, National Green Tribunal that the instant suo-motu matter O.A 204/2023 "Three Children die during illegal mining in West Bengal will be listed before the Hon'ble National Green Tribunal, New Delhi on 28th March 2023 through Physical hearing (with Hybrid Option). Copy of the notice is annexed herewith as Annexure-1)

2) Regarding the above matter this office has asked the concerned Block Development Officer, Block Land and Land Reforms Officer, Matigara, and The Commissioner of Police, Siliguri Police Commissionerate, Siliguri to submit the report related to enforcement activities before and after on the above incident.

3) That the Block Development Officer, Matigara submitted the Preliminary Report of Baniakhari Tripalijote incident of 6th March 2023 where three people were reported dead and one injured. That in the said report it is found that the incident occurred at 3.00 am approx. on the 6th March 2023. Three people were buried alive namely i) Monu Kumar (Chauhan)- Aged 20. ii) Samal Sahani - Aged 15; iii) Rohit Kumar(Sahani)- Aged 15; the injured person- Akash Sahani, while working and piling up sand beside a big mound of mud and sand. Suddenly the mound of mud and sand fell upon the laborers accidentally and buried underneath the mound. The body was recovered with the help of police and local people and send to North Bengal Medical College& Hospital for Post Mortem. (Copy of the preliminary report of Baniakhari Tripali Jote vide Memo No.518/Mtg dated 20.03.2023 is enclosed herewith as Annexure-2)

4) It is submitted before the Hon'ble Tribunal that the District Administration provided a Financial Aid of Rs 2 Lakhs each to families of the deceased and Rs 25,000/-to the injured person for treatment and medicine. (Copy of certification of distribution of cheques to the affected family with respect to Baniakhari Tripalijote incident vide Memo No.531/MTG dated 21/03/2023 is annexed herewith as Annexure-3).

5) It is submitted before the Hon'ble Tribunal one joint co-ordination meeting was held on 09/03/2023 at the conference hall of Matigara Block Office in the presence of Sabhapati, Matigara Panchayat Samiti, Saha- Sabhapati Matigara Panchayat Samity, Block Development Officer, Block Land & Land Revenue Officer, Karmadhakshya (Bono-O-Bhumi) Matigara Panchayat Samity and Inspector In Charge of Matigara Police Station.

In the meeting the following decisions were unanimously taken and prioritized as follows-

- Two Nos. of check post are to be positioned at (a) Underpass at Phansidewa More (b) Infront of Barsana hotel. Temporary shed along with fan and light is to be installed at the Check post by Matigara Panchayat Samity and is to be fully functional by 12 noon of 13th March 2023.
- The Check posts are to be manned by at least 1(one) No. of Revenue Officer and Police force as per requirement 24*7.
- Fines for overloading, non availability of challan etc are to be carried out as per rules, norms and guidelines.

- *Officer-in-Charge Bagdogra (Traffic) and Officer-in-Charge Salbari (Traffic) are requested to extend all necessary help to the B.L&LRO and I.C. Police.*
- *Flying raids/ Surprise raids are to be continued strictly.*
- *BL&LRO is requested to submit a report on daily basis to the Block Development Officer regarding the check post activities. (Copy of resolution of meeting is annexed herewith as Annexure-4).*

6) That the Block Land and Land Reforms Officer, Matigara submitted a detailed report mentioning relevant enforcement activities before and after the incident at Baniakhari Tripalijote, under Matigara Block. That in the said report, it is mentioned that after the expiry of mining lease of all the Ghats under the jurisdiction of the office of BL&LRO, Matigara, frequent raids or enforcement duty was conducted by the officials of BL&LRO, Matigara, along with the officials of BDO Matigara throughout the jurisdiction. Regular joints raids are being conducted with police personnel. After the incident on 06.03.2023; two Nos. of Naka Checkpoints were installed as a result of the Naka checkpoints all the vehicles carrying RBM are being thoroughly round the clock and till date no vehicle has been intercepted, since all the vehicles are plying on road with valid challan/royalty. A mobile team has also been formed comprising one Revenue Officer and two staffs of BL&LRO Matigara to prevent and curb the illegal extraction/transportation of RBM throughout the jurisdiction of the Matigara block.

(Copy of the detailed report vide Memo No. 1955/BLLRO-MTG/2023 dated 23.03.2023 is annexed herewith as Annexure-5). A copy of the Order vide No. 05/BLLRO-MTG/2023 Dated 10.03.2023 for the Naka Duty is also attached herewith as Annexure-5).

7) That the Commissioner of Police, 'Siliguri Police Commissionerate, Siliguri, submitted the detailed report related to enforcement activities before and after the incident that took place at Baniakhari Tripalijote, under Matigara Development Block, their report reveals one Naresh Sahani, S/O Ganesh Sahani of Baniakhari, Sahani Busty, PO Nimai, PS, Matigara had directed to the above deceased and injured to load his tractor with soil dug from the site for transporting illegally procured soil elsewhere for his monetary gain. Naresh Sahani did not have any permission for mining or transporting river bed materials or any other natural resources. Subsequently, Matigara PS Case No. 148/2023 dated 06.03.2023 U/S 188/304 IPC R/W Sec. 21 of Mines and Minerals (Development and Registration) Act and 14(1A) Of Child Labour(Prohibition and Regulation) Act has been registered case against the accused, Naresh Sahani. The accused was arrested on the same day and was forwarded before the Hon'ble Court on the next date i.e. on 07.03.2023.

The PS mobile vans have been directed to conduct random checking against the illegal extraction of riverbed materials at the said area as well as at the other vulnerable sites of Balason riverbed. Moreover over two round the clock special Nakas have been introduced which have been stated in above point No.5. Further strict vigil is being maintained at the Balason river bank area to ensure that minors are not engaged in hazardous work. Legal action will be taken against

any person who will be found to have engaged any minor in such work. Two special check-posts have been setup, where staff of BL&LRO office and police personnel is deployed.

(Copy of the detailed report vide Memo No. 561/SPC-E/PA/15 dated 23.03.2023 is annexed herewith as Annexure-6).

8) It is submitted before the Hon'ble Tribunal that no illegal sand mining from the river will be allowed. There will be installation of two numbers of Naka points with the help of BL&LRO and Police force, and also increase the number of raids strictly throughout the Matigara Block Jurisdiction and seizure of illegal vehicles from time to time. Strict rules and procedures will be followed and diligently complied.”

4. Thus, it is clear from para 3 that deceased have been identified as Monu, aged 20, Somal and Rohit, aged 15 each and injured has been identified as Naresh Sahani. Mining activity was illegal and children were illegally engaged. There was failure on the part of the State to enforce applicable regulatory regime for the hazardous activity in question. Compensation of ₹2 Lakh each has been given to the heirs of the three deceased and ₹25,000/- for the injured by the State. No steps have been taken for recovery of compensation from the violator as per environmental law nor compensation paid to the victims is as per any reasonable basis. Even criminal case against the violator is not for theft of mined material nor for violation of environmental norms. Thus, the State cannot avoid responsibility for compensating the victims in view of negligence of its authorities in enforcing the rights of the victims by using its regulatory authority in controlling illegal hazardous activities.

5. The Tribunal has dealt with number of cases of deaths and injuries to victims by failure to follow environmental norms and enforce right to environment which is part of right to life, heirs of the deceased and the victims have been held entitled to compensation on the principle of absolute liability arising out of doing hazardous commercial activity. Though such liability basically is of violator of law, where law violator is

not made to pay compensation, the State has also been held to be liable to pay compensation as per its duty as welfare State to protect the citizen and also for failure to take steps to protect the citizens against hazardous illegal activities to prevent which is duty of the State. The Tribunal has acted consistently with *parens patriae* duty of the State in terms of law laid down inter alia in *MCD v. Uphaar Tragedy Victims Association*, (2011) 14 SCC 481 and *Vadodra Municipal Corporation v. Purshottam v. Murjani & Ors.* (2014) 16 SCC 14. Some of the observations from Supreme Court judgements are:

“T.N. Centre for Public Interest Litigation v. State of T.N., (2017) 6 SCC 734

The State stands on the position of a loco parentis to the citizens and when there are so many deaths of farmers in the State of Tamil Nadu, it becomes obligatory on the part of the State to express concern and sensitiveness to do the needful and not allow the impecunious and poverty-stricken farmers to resign to their fate or leave the downtrodden and the poor to yield to the idea of fatalism. The concept is alien in the welfare State and the social justice which is required to be translated in a democratic body polity. As is manifest from the assertions and the grievances that have been agitated, deaths are due to famine backdrop and other natural causes and also due to immense financial problem. The State, as the guardian, is required to see how to solve these problems or to meet the problems by taking curative measures treating it as a natural disaster. Silence is not the answer.

MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481

The law is well settled that a constitutional court can award monetary compensation against the State and its officials for its failure to safeguard fundamental rights of citizens but there is no system or method to measure the damages caused in such situations. Compensatory damages are intended to provide the claimant with a monetary amount necessary to recoup/replace what was lost, since damages in tort are generally awarded to place the claimants in the position he would have been in, had the tort not taken place; which are generally quantified under the heads of general damages and special damages. Punitive damages are intended to reform or to deter the wrongdoer from indulging in conduct similar to that which formed the basis for the claim. Punitive damages are not intended to compensate the claimant which he can claim in an ordinary private law claim in tort. Punitive damages are awarded by the constitutional court when the wrongdoer’s conduct was egregiously deceitful.”

6. We may also refer to some earlier orders of the Tribunal dealing with industrial and other accidents on account of violation of environmental

norms in the State of West Bengal¹, where the Tribunal awarded compensation to the victims. Some extract from order dated 18.12.2020 in O.A. No. 272/2020, News item published in the “Times of India” dated 20.11.2020 entitled “Six killed as blast tears through Malda Plastic recycling factory” is reproduced below:-

“xxx.....xxx.....xxx

6. The Tribunal dealt with the issue by requiring payment of compensation to the victims, restoration of environment and adopting suitable safety measures to avoid such recurrence in the light of Expert Committee reports. In the present case, the State PCB has acknowledged that the activity was illegal and the unit has now been found to be demolished. This cannot be sufficient step for enforcement of law and for remedy to the victims. The Tribunal fixed minimum interim compensation in such cases at Rs. 15 Lakhs in case of death, Rs. 5 Lakhs in case of serious injury and Rs. 2.5 Lakhs for simple injuries as follows²:

“6. ... we assess interim compensation for death to be 15 lacs each (taking into account multiplier of around 16 and loss of earning of about one lac a year, taking the minimum wage, apart from conventional sums), for grievous injury Rs. 5 lac per person, for other injuries of persons hospitalized Rs. 2.5 lac per person and for displacement at Rs. 25000/- per person.”

7. The State is under obligation to secure atleast this amount of compensation to the victims and if it is not able to do so, the State must pay this much amount of compensation out of its own funds, with liberty to recover the same from the persons responsible for the situation.

8. Accordingly, we direct the District Magistrate, Malda to give compensation in above terms to the victims within three months out of the State funds, excluding the amount already paid. It will be open to the District Magistrate to recover the amount from the concerned violators by taking coercive measures, as per law. The victims will be at liberty to seek any other relief in appropriate proceedings. This direction is without prejudice to the criminal liability of the management and the operators of such activities.”

¹ 1. News item published in the “Times of India” dated 20.11.2020 entitled “Six killed as blast tears through Malda Plastic recycling factory”, OA No. 272/2020 decided on 18.12.2020.

2. In re: News item published in The Economic Times dated 21.12.2021 titled “3 dead, 44 injured in flash fire at IOC’s Haldia refinery”, OA No. 440/2021 decided on 07.01.2022.

² Order dated 08.06.2020 in O.A. No. 22/2020 (WZ), Aryavart Foundation through its President v. Yashyashvi Rasayan Pvt. Ltd. and Anr.

7. In the present case, death of the children is patently due to violation of established norms. The State Authorities failed to enforce the law and prevent the incident. Apart from illegal engagement of children, the mining in the river bank is not shown to be by any Authority of Law, such as, mining lease, replenishment study, DSR and Environment Clearance. No safeguards have been used in the process. Thus, the State cannot escape liability for violation of environmental norms. While primary liability is of the persons engaged in illegal mining on 'Absolute Principle' laid down in *M.C. Mehta vs. Union of India & Ors.*, (1987) 1 SCC 395, when the violators have not been made to pay, it is the liability of the State to pay the compensation and recover the same from the violators. Liability for compensation is in addition to liability under the Criminal Law.

8. Further, vide order dated 11.06.2021 passed in O.A. No. 44/2021 titled as *In re: News item published in The News Indian Express dated 12.02.2021 titled "At least 19 dead in Virudhunagar firecracker factory blast, more than 30 injured"* the Tribunal held:-

“xxxxxx.....xxx

9. ...Compensation can be assessed on reasonable basis guided by restitution principle atleast at floor level, leaving other remedies of the victims open. Thus, **broadly agreeing with the Committee, we direct that the scale of compensation should be Rs.20 lakhs in respect of each of the deceased victims and Rs.15 lakhs to persons who have burns in excess of 50% and Rs.10 lakhs for persons who have burns from 25 to 50% and Rs.5 lakhs for persons who have injuries between 5 to 25%. Victims who were treated as outpatients and who had but minor degree of burns or other forms of simple injuries shall be paid Rs.2 lakhs.**”

9. The Tribunal had dealt with series of industrial and accidental matters directing environmental compensation for deceased and injured in recent past³.

³ 1. *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh*, OA No. 73/2020 decided on 01.06.2020.

10. In view of above, we direct the District Magistrate, Siliguri/Darjeeling to ensure payment of compensation @ ₹20 Lakh each to the heirs of the deceased and ₹5 Lakh to the injured, after deducting the amount already paid. The payment may be made within one month and make the violators

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2. *Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr.*, OA No. 85/2020 (Earlier OA 22/2020) (WZ) decided on 03.02.2021.
 3. *Bonani Kakkar vs. Oil India Limited & Ors.*, OA No. 43/2020(EZ) decided on 19.02.2021.
 4. News item published in the local daily "Economic Times" dated 30.06.2020 titled "Another Gas Leakage at Vizag Factory kills two, critically injures four...", OA No. 106/2020 decided on 22.12.2020.
 5. News item published in the "Indian Express" dated 01.07.2020 titled "Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured", OA No. 108/2020 decided on 22.12.2020.
 6. News item published on 13.07.2020 in the local daily named "India Today" titled "Massive fire engulf Vizag chemical plant, explosions heard, injuries reported", OA No. 134/2020 decided on 22.12.2020.
 7. News item published in the "Times of India" dated 20.11.2020 entitled "Six killed as blast tears through Malda Plastic recycling factory", OA No. 272/2020 decided on 18.12.2020.
 8. News item published in the "Indian Express" dated 23.11.2020 entitled "Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory", OA No. 274/2020 decided on 16.08.2021.
 9. In RE: News item published in the local daily "Indian Express Sunday Express" dated 28.06.2020 titled "Gas Leak in Agro Company Claims life of one", O.A. No. 107/2020 decided on 08.01.2021.
 10. In re : News item published in Navbharat Times dated 24.12.2020 titled "Gas leaks in IFFCO Plant, 2 Officers dead", O.A. No. 04/2021 decided on 04.06.2021.
 11. In re: News item published in The Indian Express dated 07.01.2021 titled "Four workers dead due to toxic gas leak in Rourkela Steel Plant", O.A. No. 09/2021 decided on 11.02.2021.
 12. In re: News item published in The News Indian Express dated 12.02.2021 titled "At least 19 dead in Virudhunagar firecracker factory blast, more than 30 injured", O.A. No. 44/2021 decided on 03.03.2022.
 13. In re: News item published in Times Now News dated 23.02.2021 titled "Karnataka: Six killed in quarry blast in Hiremagavalli, Chikkaballapur", O.A. No. 59/2021 decided on 22.04.2022.
 14. In re: News item published in The Hindu dated 23.02.2021 titled "Two dead, 5 missing in fire at UPL Plant", O.A. No. 60/2021 decided on 14.12.2021.
 15. In re: News item published in The Times of India dated 28.02.2021 titled "Delhi : Man charred to death as illegal factory catches fire", O.A. No. 65/2021 decided on 31.08.2021.
 16. In re: News item published in The Hindu dated 14.03.2021 titled "Safety lapses led to reactor blast at pharma unit", OA No. 79/2021 decided on 31.08.2021.
 17. In Re: News item published in the "Indian Express" dated 04.11.2020 titled "Ahmedabad: Nine killed as godown collapses after factory blast", OA No. 258/2020 decided on 23.03.2021.
 18. In re: News item published in The Times of India dated 08.06.2021 titled "18, mostly women, killed in fire at Pune chemical unit", OA 130/2021 decided on 01.02.2022.
 19. *Rakesh Suresh Chandra Kapadia v. Gujarat Pollution Control Board & Ors.*, OA No. 31/2021 (WZ), decided on 08.11.2021.
 20. In re: News item published in The Hindustan Times dated 17.06.2021, titled "Blast in firecracker unit in Maharashtra's Palghar, at least 10 injured", OA No. 134/2021 decided on 25.06.2021.
 21. In re: News item published in The Indian Express dated 12.07.2021 titled "Six killed in factory fire: Owner held, raids on to nab second accused", OA No. 171/2021 decided on 07.09.2021.
 22. In re: News item published in The Indian Express dated 07.01.2022 titled "Gujarat: At least 06 dead, 20 sick after gas leak at industrial area in Surat", OA No. 05/2022 decided on 18.01.2022.
 23. In re: News item published in India Today dated 26.12.2021 titled "7 dead in boiler explosion at noodle factory in Bihar's Muzaffarpur, probe ordered", OA No. 02/2022 decided on 22.04.2022.
 24. In re: News item published in The Economic Times dated 21.12.2021 titled "3 dead, 44 injured in flash fire at IOC's Haldia refinery", OA No. 440/2021 decided on 07.01.2022.
 25. In re: News item published in The Tribune dated 22.02.2022 titled "7 killed in blast at firecrackers factory in Himachal Una", OA No. 143/2022 decided on 08.03.2022.
 26. In re: News item published in Hindustan Times dated 05.03.2022 titled "Bhagalpur: 14 dead in firecracker unit blast", OA 198/2022 decided on 27.05.2022.
 27. In re: News item published in The Times of India dated 12th April, 2022, titled "Six killed in chemical factory blast in Gujarat", OA No. 272/2022 decided on 12.04.2022.
 28. In re: News item in NDTV dated 14.04.2022 titled "6 killed, 12 injured after fire breaks out at Andhra Pradesh Pharma Unit", OA No. 284/2022 decided on 20.04.2022.
 29. In re : News item published in Business Standard dated 09.02.2023 titled "Blast at JSPL's Raigarh plant kills two workers, two others injured", OA No. 110/2023 decided on 28.02.2023

accountable under Environmental Law be taken simultaneously at the earliest.

11. The State PCB may exercise its regulatory authority under the environmental laws - the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, the Environment (Protection) Act and Rules 1986, in coordination with any other concerned authority.

The application is disposed of.

A copy of this order be forwarded to State PCB and District Magistrate, Darjeeling by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

March 28, 2023
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