

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7043/2022

GMR KAMALANGA ENERGY LIMITED

Appellant(s)

VERSUS

SATYA NARAYAN SAMANTA & ORS.

Respondent(s)

O R D E R

1. This statutory appeal arises out of the decision of the National Green Tribunal¹, Eastern Zone Bench, Kolkata dated 28.04.2022. By the order impugned before us, the Tribunal enhanced the compensation to Rs. 3 crores. The Tribunal only referred to the decision of *Sterlite Industries Ltd. v. Union of India* [(2013) 4 SCC 575] for enhancing the amount of Rs. 3 crores. The only reason supplied by the Tribunal is that the enhanced compensation amount must be related to the financial capacity of the polluter.

2. Mr. Siddharth Dave, learned Senior Counsel appearing for the appellant contests the principle on the basis of which the compensation has been enhanced.

¹“Tribunal”

3. In this case we are not intending to lay down any principle to be followed for determining the compensation, particularly in the context of the 'financial capacity of the polluter'. We will deal with this issue in an another case.

4. The Tribunal by its order dated 30.05.2018 directed the Indian Council of Forestry Research and Education ("ICFRE") to assess the damage caused by the appellant by its disposal of fly ash. Accordingly, a report was submitted by ICFRE indicating the damage and the restoration work that the appellant needs to adopt. Following the report, the Tribunal by its order dated 25.10.2021 directed the Central Pollution Control Board, Regional Office, Kolkata and the State Pollution Control Board, Odisha to submit a report regarding the action taken by the appellant and for computation of environmental compensation amount along with cost of restoration and penalty. The report was eventually submitted on 22.02.2022.

5. Relevant portion of the above referred report is as under:-

"ASSESSMENT OF POLLUTION LEVY CHARGES

As per office order issued by State Pollution Control Board, Odisha vide letter No. 1300, dated 29.01.2021, pollution levy charges for illegal dumping of solid waste (non-hazardous waste) was fixed as Rs.1000/- per unit to discourage illegal dumping of solid waste by the industrial units by the committee constituted by the State Pollution Control Board for fixation of pollution charges.

Computation of charges:

1) Site located at- Plot No. 3630

Area of the dump site: 1.01 Acres or 4087.32m²

Depth of fly ash: 3-4m (Approx.) or say 3.5m as per previous committee report

Volume of ash dumped at the site illegally: 14305.62 m³ or say 14306 m³

Weight of ash dumped at the site illegally: 17167.2 Ton or say 17167 Ton (Considering bulk density of compacted ash as 1.2T/m³)

As per clause 5.5 of 'Guideline for Levy of Pollution Charge' issued by SPCB, the number of pollution units for each parameters will be calculated by dividing the quantity of pollutant being discharged by the quantity defined as one pollution unit for each parameter under consideration and Pollution units for improper disposal of solid waste is defined as 20 Ton in the guideline.

Total pollution units: 858.35 units or say 858 units
Pollution levy charges: 858 x Rs.1000=Rs.8,58,000.00

2) Site located at Plot No.352

Area of the dump site: 1.04 Acres or 4208.72 m²

Depth of fly ash: 4-5m (Approx.) or say 4.5m as per previous committee report

Volume of ash dumped at the site illegally: 18,939.24 m³ or say 18,939 m³

Weight of ash dumped at the site illegally: 22,726.8 Ton or say 22,727 Ton (Considering bulk density of compacted ash as 1.2T/m³)

Pollution units for improper disposal of solid waste: 20 Ton Total pollution units: 1136.35 units or say 1136 units Pollution levy charges: $1136 \times \text{Rs.}1000 = \text{Rs. } 11,36,000.00$

Thus, total pollution levy charges for illegal dumping of ash is calculated for both sites as Rs.19,94,000.00.

ASSESSMENT OF ENVIRONMENTAL COMPENSATION

In response to the Hon'ble NGT order environmental compensation is calculated by following formula which was already defined in Report of the CPCB in-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to utilize the Fund."

6. In view of the above, the Committee also proceeded to calculate the Environmental Compensation and concluded as under:-

"CONCLUSION AND RECOMMENDATIONS:

a) Computation of cost to the environment:

As per CPCB, New Delhi guidelines, Environmental Compensation is calculated as **Rs. 24,93,750.00 (Rupees twenty four lakh ninety three thousand seven hundred fifty only).**

b) Action taken on the recommendation made by the Committee.

Industry has not removed the dumped fly ash from Gramya Jungle. However, dump area has been fully covered with soil over which grass has grown. At present industry is utilizing more than 100% of ash generated (as per reports submitted by industry to

SPCB, Odisha.

c) Cost of restitution/restoration of the environment:

As far as the cost of restitution/restoration of the environment is concerned, it is submitted that the area in question is Revenue Forest (Gramya Jungle) and similar assessment of cost of restitution/restoration of forest & revenue land has been done by Divisional Forest Officer, Dhenkanal in the matter of OA No. 110 of 2020 (EZ), Santanu Kumar Bhukta Vs. State of Odisha & Others. Therefore, it is proposed that DFO may be requested for computation of cost of restitution/restoration of the area in this matter also.

d) Penalty:

As per SPCB, Odisha, Pollution Levy charges is calculated as **Rs.19,94,000.00 (Rupees nineteen lakh ninety four thousand only)**.

7. We are of the opinion that the report submitted by the committee comprising of two expert members, being the Environmental Scientist-cum-Regional Officer, State Pollution Control Board, Angul, Odisha and the expert of the Central Pollution Control Board, Eastern Region, Kolkata have gone through the matter in detail and applied the principles for determination of the compensation (Rs.24,93,750.00) and submitted the report including penalty (Rs.19,94,000.00), totalling Rs.44,87,750/-.

8. The learned counsel for the appellant has stated that an

amount of Rs. 45 lakhs has already been deposited. In view of the fact that the amount as determined by the Committee has already been deposited, we are of the view that the additional compensation imposed by the Green Tribunal is not justified.

9. In view of the above, we set-aside the order passed by the National Green Tribunal, Eastern Zone Bench, Kolkata in Original Application No. 172/2017/EZ dated 28.04.2022 to the extent that it imposed an additional compensation of Rs. 3 crores. We make it clear that we have not interfered with the other directions issued by the Tribunal. We further direct that the appellant shall earnestly comply with all the other directions that the authorities may issue from time to time for restoration of the site as per the plan indicated in paragraph 7 of the judgment of the Tribunal.

10. The Civil Appeal is disposed of accordingly.

11. Parties shall bear their own costs.

.J.
[PAMIDIGHANTAM SRI NARASIMHA]

.J.
[ARAVIND KUMAR]

New Delhi
January 8, 2024.

ITEM NO.52

COURT NO.16

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 7043/2022

GMR KAMALANGA ENERGY LIMITED

Appellant(s)

VERSUS

SATYA NARAYAN SAMANTA & ORS.

Respondent(s)

(IA No. 137874/2022 - EX-PARTE AD-INTERIM RELIEF
 IA No. 137876/2022 - EXEMPTION FROM FILING O.T.)

Date:08-01-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
 HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s)

Mr. Siddhartha Dave, Sr. Adv.
 Mr. Vishrov Mukherjee, Adv.
 Mr. Pukhrambam Ramesh Kumar, AOR
 Mr. Yashawi Kant, Adv.
 Mr. Karun Sharma, Adv.
 Mr. Anamika Rana, Adv.

For Respondent(s)

Ms. Aishwarya Bhati, A.S.G.
 Mr. Gurmeet Singh Makker, AOR
 Mr. Prasanjeet Mahapatra, Adv.
 Mr. Nithin Chowdary Pavuluri, Adv.
 Mr. Madhav Sinha, Adv.
 Mr. Shaurya Rai, Adv.

Mr. Ashok Kumar Panda, Sr. Adv.
 Mr. Tejaswi Kumar Pradhan, AOR
 Mr. Manoranjan Paikaray, Adv.
 Mr. Shashwat Panda, Adv.

Mr. Kiran Kumar Patra, AOR
 Mr. Biswajit Kumar Patra, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

**The Civil Appeal is disposed of in terms of the signed
order.**

Pending applications, if any, shall stand disposed of.

**(INDU MARWAH)
COURT MASTER (SH)**

**(NIDHI WASON)
COURT MASTER (NSH)**

(signed order is placed on the file)