

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

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**Original Application No. 126/2016 (CZ)**

**IN THE MATTER OF:**

1. Mangalam Cement Limited  
Aditya Nagar, P.O: Morak,  
Tehsil : Ramganj Mandi,  
District Kota, Through its  
Company Secretary Mr. R.C. Gupta  
S/o Late Shri Ram Chand Gupta,  
Aged 62 Years.

**.....Applicant**

Versus

1. State of Rajasthan  
Through the Chief Secretary,  
State Secretariat,  
Jaipur
2. Department of Environment and Forests,  
Government of Rajasthan,  
Through Chief Secretary, Secretariate,  
Jaipur
3. Principal Chief Conservator of Forest,  
Van Bhawan,  
Jaipur (Rajasthan)
4. The Director,  
Department of Forest,  
Kota, Rajasthan
5. Divisional Forest Officer,  
Department of Forest,  
Kota, Rajasthan

**.....Respondents**

**COUNSEL FOR APPELLANT:**

Shri Prakul Khurana, Adv.

**COUNSEL FOR RESPONDENT:**

Mr. Sandeep Singh, Adv. for RSPCB & State of Rajasthan

**JUDGEMENT**

**PRESENT:**

**Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)**

**Hon'ble Dr. Satyawan Singh Garbyal (Expert Member)**

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**Reserved on: 2<sup>nd</sup> November, 2017**

**Pronounced on: 7<sup>th</sup> November, 2017**

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

**DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

1. This Writ Petition No. 18545 of 2011 was received from the Hon'ble High Court of Rajasthan Bench at Jaipur and was registered as Original Application No. 126/2016 (CZ) and the notices were ordered to be issued on 7<sup>th</sup> October, 2016 to applicant as well as the respondents.
2. *M/s Keshoram Industries & Cotton Mills Ltd.* was granted mining lease for a period of 20 years on 18<sup>th</sup> November, 1976 for 895.42 hectares for excavation of cement grade limestone and out of this, 139 hectares was the forest area.

Subsequently, the mining lease was transferred in favour of the Manglam Cement Ltd. Applicant on 21<sup>st</sup> April, 1977. The applicant applied for renewal of mining lease on 30<sup>th</sup> October, 1995 and since 139 hectares of area was the forest land, application for diversion of 139 hectares of forest land for mining purposes was applied in the year 1996. Vide order dated 18<sup>th</sup> May, 2000 the applicant was ordered to pay 38,22,500/- (Thirty lakhs twenty two thousand five hundred) towards compensatory afforestation. Subsequently, in accordance with order dated 30<sup>th</sup> October, 2002 of the Hon'ble Supreme Court in Interlocutory Application 826 & 859 in I.A. No. 566 in Writ Petition (Civil) No. 202 of 1995 the applicant was ordered to pay the Net Present Value (NPV) of Rs. 12,78,80,000/- (Twelve Crores Seventy Eight Lakhs Eighty Thousand) @ Rs. 9.20 lakhs per hectares for 139 hectares of forest land, vide demand notice dated 22<sup>nd</sup> May, 2006.

3. The applicant had submitted that the rate of NPV varied between minimum of Rs. 5.80 lakhs per hectares and maximum of Rs. 9.20 per hectares as per the order of the Hon'ble Supreme Court and this was required to be decided depending upon the quality and density of forest land in question. The Applicant's contention is that the forest land in question is degraded having density of less than of 0.01, the NPV should have been charged at the minimum rate of Rs. 5.80 lakhs per hectare and not at the rate of Rs. 9.0 hectares.

The petitioner submits that on account of inordinate delay in grant of mining lease petitioner had made the payment of said demand notice for Rs. 12,78,80,000/- under protest vide his letter dated 25th November, 2006.

4. The applicant further submits that they had received a letter dated 25<sup>th</sup> November, 2006 from respondent no. 5, Divisional Forest Officer, Kota, State of Rajasthan informing about non acceptance of payment made by the petitioner under protest. The Applicant was directed to get appropriate order in this regard from the respondent no. 3, Principal Chief Conservator of Forest, State of Rajasthan. However, the applicant submits that the respondent no. 3 did not respond to the Petitioner and they made payment of Rs. 12,78,80,000/- on 4<sup>th</sup> December, 2006 stating that '*..... the forest density in the land approved for diversion to us is very low or less than .01, therefore, NPV calculation should be in accordance with the density of forest. The difference and that of actual as per density of forest of may please be written to us at a later date as soon as this issue is finalise by the Government or other appropriate authority.....*'
5. On 28<sup>th</sup> March, 2008 in the case of **T.N. Godavarman Thirumulpad vs. Union of India and Ors. [2008(6) SCALE 499]** the Hon'ble Supreme Court fixed the rate of NPV based on 'Eco Value class of the forest and directed that NPV be deposited in the Compensatory Afforestation Fund.

6. The order of Hon'ble Supreme Court dated 28<sup>th</sup> March, 2008 is reproduced below :

6. Based on this, the NPV was fixed and the following recommendations have been made :

(1). For non-forestry use/diversion of forest land, the NPV may be directed to be deposited in the Compensatory Afforestation Fund as per the rates given below:

(in Rs. )

<b>ECO-Value Class</b>	<b>Very Dense Forest</b>	<b>Dense Forest</b>	<b>Open Forest</b>
Class I	10,43,000	9,39,000	7,30,000
Class II	10,43,000	9,39,000	7,30,000
Class III	8,87,000	8,03,000	6,26,000
Class IV	6,26,000	5,63,000	4,38,000
Class V	9,39,000	8,45,000	6,57,000
Class VI	9,91,000	8,97,000	6,99,000

(ii) the use of forest land falling in National Parks / Wildlife Sanctuaries will be permissible only in totally unavoidable circumstances for public interest projects and after obtaining permission from the Hon'ble Court. Such permissions may be considered on payment of an amount equal to ten times in the case of National Parks and five times in the case of Sanctuaries respectively of the NPV payable for such areas. The use of non-forest land falling within the National Parks and Wildlife Sanctuaries may be permitted on payment of an amount equal to the NPV payable for the adjoining forest area. In respect of Non forest land falling within marine national parks / wildlife sanctuaries, the amount may be fixed at five time the NPV payable for the adjoin forest area;

**(iii) these NPV rates may be made applicable with prospective effect except in specific cases such as Lowar Subhanshri Project, mining leases of SECL, Field Firing Ranges, wherein pursuant to the orders passed by this Hon'ble Court,**

*the approvals have been accorded on lump sum payment / no payment towards the NPV; and*

*(iv) for preparation and supply of district level maps and GPS equipments to the concerned State / UT Forest Departments and the regional offices of the MoEF, the Ad-hoc CAMPA may be asked to provide an amount of Rs. 1.0 crore to the Forest Survey of India out of the interest received by it.*

7. The applicant had submitted that since the forest density of forest land in question approved for diversion is very low thus it is falling under the Eco Clause VI and, therefore, the NPV should be @ Rs. 6,99,000/- per hectares in accordance with the Hon'ble Supreme Court order dated 28<sup>th</sup> March, 2008 which comes to Rs. 9,71,61,000/- (Nine Crores, Seventy One Lakhs, Sixty One Thousand) for 139 hectares of land.
8. The Applicant filed a Civil Writ Petition No. 5878/2008 before the Hon'ble High Court of Rajasthan Bench at Jaipur and the Hon'ble High Court on 17<sup>th</sup> December, 2009 directed the petitioner to file representation to the State Government raising of claims which had been raised before the Hon'ble High Court and the petitioner preferred representation to the Secretary, MoEF & CC, State of Rajasthan and to the Government of Rajasthan on 22<sup>nd</sup> January, 2010. The Principal Secretary (Forest), State of Rajasthan decided the representation and ordered on 30<sup>th</sup> May, 2011 which is as below :

एस.बी. सिविल रिट पिटीशन संख्या 5878/2009 मैसर्स मंगलम सीमेन्ट लिमिटेड बनाम राजस्थान सरकार एवं अन्य में दिनांक 17.12.2009 को

माननीय उच्च न्यायालय जयपुर द्वारा पारित निर्णय के क्रम में मैसर्स मंगलम सीमेन्ट लिमिटेड द्वारा प्रस्तुत अभ्यावेदन की जानकारी कुछ समय पूर्व ही होने पर इस निर्णय की पालना में दिनांक 30.05.2011 को मैसर्स मंगलम सीमेन्ट लिमिटेड के प्रतिनिधि को व्यक्तिगत सुनवाई हेतु उपस्थिति होने का निवेदन किया गया। मैसर्स मंगलम सीमेन्ट लि. की तरफ से दिनांक 30.05.2011 को श्री आर.सी.गुप्ता, कम्पनी सचिव उपस्थित हुए।

कम्पनी सचिव श्री आर.सी.गुप्ता ने बताया कि माननीय उच्चतम न्यायालय द्वारा रिट पिटीशन संख्या 202/1995 की आई.ए.नं. 566 में पारित निर्णय दिनांक 30.10.2002 में एन.पी.वी. (Net Present Value) प्रत्यावर्तन की जाने वाली वनभूमि को ध्यान में रखते हुए उसकी गुणवत्ता एवं घनत्व के आधार पर 5.80 लाख रुपये से 9.20 लाख रुपये प्रति हैक्टर के बीच में रखे जाने का निर्णय लिया गया और हमसे इस प्रकरण में राशि 9.20 लाख रुपये प्रति हैक्टर से एन.पी.वी. वसूल की गयी है जो कि उचित नहीं है।

श्री आर.सी. गुप्ता, कम्पनी सचिव ने आगे बताया कि माननीय उच्चतम न्यायालय के निर्णय दिनांक 28.03.2008 द्वारा वन भूमि को विभिन्न ईको क्लासों में विभाजित कर अधिक घनत्व, घनत्व एवं ओपन वन की कैटेगरी के अनुसार एन.पी.वी. की दरें निर्धारित की गयी है इसलिए इस आधार पर ही एन.पी.वी. की वसूली की जानी चाहिये।

सुनवाई के दौरान श्री आर.सी.गुप्ता का ध्यान माननीय उच्चतम न्यायालय के निर्णय दिनांक 28.03.2008 के निम्न निर्देश की तरफ आकर्षित किया गया :-

"these NPV rates may be made applicable with prospective effect except in specific cases such as lower subhanshri Project, mining lease of SECL, Field Firing Ranges, wherein pursuant to the orders passed by this Hon'ble Court, the approvals have been accorded on lump-sum payment/no payment towards the NPV".

एवं, उनसे यह पूछा गया कि क्या माननीय उच्चतम न्यायालय के उपरोक्त आदेश जिसको अपने स्वयं आधार बनाया है, के अनुसार उनके द्वारा अभ्यावेदित दरों के अनुसार गणना किया जाना विधिसम्मत होगा। इस पर श्री गुप्ता माननीय उच्चतम न्यायालय का वर्णित आदेश दिनांक 28.03.2008 के बाद भी ऐसा कोई दृष्टांत नहीं बता सके जिसके अनुसार बाद की दरों को प्रभावी बनाया जाना विधिसम्मत बनता हो।

मैसर्स मंगलम सीमेन्ट लि. द्वारा प्रस्तुत अभ्यावेदन व्यक्तिगत सुनवाई एवं माननीय उच्चतम न्यायालय के निर्णय दिनांक 28.03.2008 में वर्णित व्यवस्था की नयी दरें **Prospective effect** से लागू होगी, पर मनन के

बाद में अभ्यावेदक से जमा करायी गयी एन.पी.वी. की राशि के किसी भी प्रकार के संशोधन करने का विधिक आधार नहीं बनता है एवं अभ्यावेदन निरस्त करने योग्य मानता हूँ।

9. Subsequently the Applicant had filed Civil Writ Petition no. 18548/2011 before the Hon'ble High Court of Rajasthan Bench at Jaipur and prayed that :

1. *Issue appropriate writ or pass appropriate orders for quashing the impugned Demand Notice/ Order dated 22.05.2006 and Order/Letter dated 05.09.2008 issued by the Respondent No. 5 and impugned order dated 30.05.2011*
2. *Issue appropriate order or direction or a writ in the nature of mandamus or any other writ directing the Respondents to determine the correct amount of afforestation charges in the form of NPV payable by the petitioner in accordance with the order of Hon'ble Supreme Court in case T.N. Godavarman Thirumulpad Vs. Union of India and Ors. [2008 (6) SCALE 499].*
3. *Issue appropriate order or direction or a writ in the nature of mandamus or any other writ directing the Respondents to determine the correct amount of afforestation charges in the form of NPV payable by the petitioner in accordance with the circular no. F.No. 5-1/98-FC dated 11.08.2003 issued by the Ministry of Environment & Forest, Government of India in the light of the judgment of the Hon'ble Supreme Court.*
4. *Issue appropriate order or direction or a writ in the nature of mandamus commanding / directing the Respondent to refund the amount recovered by the Respondents / paid by the petitioner in excess of the amount payable as per the order of Hon'ble Supreme Court dated 28.03.2008.*



5. *Grant such further relief / reliefs which in the facts and circumstance of this case may do complete justice to the petitioner.*
6. *Allow the Writ Petition with costs.*
7. *Any other order / direction, which the Hon'ble court deems appropriate.*

This Writ Petition was transferred by the Hon'ble High Court to this Tribunal on 20<sup>th</sup> September, 2016.

10. On the basis of the record placed before us we are of the view that in accordance with the demand notice for payment of NPV, the NPV was paid on 4<sup>th</sup> December, 2006 and therefore, the contention of the Applicant that the NPV should have been paid at the rate fixed by the Hon'ble Supreme Court vide its order dated 28<sup>th</sup> March, 2008, cannot be applied retrospectively in view of the fact that the Hon'ble Supreme Court in its order had made these rates applicable with prospective affect. Moreover, appeal against the order passed on 22<sup>nd</sup> May, 2006 is hopelessly barred by limitation as per the National Green Tribunal Act, 2010.
11. Moreover, initially a Writ Petition No. 5878/2008 was filed by the applicant against the order dated 22<sup>nd</sup> May, 2006 and order / letter dated 5<sup>th</sup> September, 2008 issued by respondent no. 5. The said Writ Petition stood decided by order of Hon'ble High Court of Rajasthan passed on 17<sup>th</sup> December, 2009, whereby the Writ Petition was decided with liberty to the petitioner to file a representation before the State Government. However, the State Government rejected the representation of

the petitioner vide its order dated 30<sup>th</sup> May, 2011. Now, the petitioner has once again, in the present Writ Petition No. 18458/2011, *inter alia* challenged the order dated 22<sup>nd</sup> May, 2006 and 5<sup>th</sup> September, 2008. In this manner, the petitioner / Applicant is time and again approaching the Court / Tribunal whereas he has no case on merits against the initial demand notice / order issued by the respondent.

12. In view of the above, the Original Application No. 126/2016 stands **dismissed**.

**JUSTICE RAGHUVENDRA S. RATHORE**  
**JUDICIAL MEMBER**

**DR. SATYAWAN SINGH GARBYAL**  
**EXPERT MEMBER**

**Bhopal**  
**November 7<sup>th</sup>, 2017**

**NGT**