

# Kamal Khan vs State Of Jharkhand on 31 October, 2022

Item No.01

Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
(Through Video Conferencing)

Original Application No.146/2022/EZ

In the matter of:

Kamal Khan  
Aged about 67 years,  
Son of late Besarat Ali Khan,  
Resident of Village Komarpur,  
P.O. Md. Bazar,  
P.S. Md. Bazar,  
District Bribhum (West Bengal)

.....Applicant(s)

Versus

1. The State of Jharkhand  
Service through the Chief Secretary,  
Government of Jharkhand,  
Project Building,  
P.O. Dhurwa, P.S. Jagannathpur,  
District-Ranchi

2. Principal Secretary,  
Department of Mines and Geology,  
Government of Jharkhand,  
Nepal House, (Yojna Bhavan),  
Doranda, Ranchi-834002

3. District Mining Officer, Dumka  
Dumka Mining Office Bhavan,  
Near Lal Pokhar,  
P.O., P.S. & District Dumka,  
Pin-814101, Jharkhand

4. Jharkhand Pollution Control Board,  
Served through the Member Secretary,  
Jharkhand State Pollution Control Board,  
H.E.C., Dhurwa, Ranchi-834004 (Jharkhand)

.....Respondent(s)

Date of hearing: 31.10.2022

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER  
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Appellant(s) : Mr. Rachit Lakhmani, Advocate

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ORDER

1. Mr. Rachit Lakhmani, learned Counsel is present for the Applicant.
2. This Original Application has been filed seeking quashing of the Impugned Demand No. B-1790 dated 05.09.2022, Annexure-B to the Original Application, wherein a sum of Rs.17,85,714/- (Rupees Seventeen lakhs eighty-five thousand seven hundred fourteen only) has been imposed against the Applicant by way of Environmental Compensation.
3. It appears that this impugned order has been passed in pursuance of an order passed by this Tribunal on 30.05.2022 in Original Application No.50/2021/EZ, Debasish Das vs. State of Jharkhand & Ors. The order of the Tribunal of 30.05.2022, copy of which has been filed as Annexure-C to the Original Application, refers to the affidavit of the Deputy Commissioner-cum-Collector, Dumka dated 21.05.2022 wherein it is stated that notices have been issued to Tohid Alam @ Mansur Alam @ Mansur Mian and Kamal Khan (Applicant herein) requesting them to deposit the demanded amount of Rs.1,05,00,000/- (Rupees One crore five lakhs only) within a week otherwise Certificate Case will be filed against them for recovery of the said amount. The affidavit further mentioned that a Certificate Case has been filed against Tohid Alam and Kamal Khan before the Certificated Officer-cum-Additional Collector, Dumka.
4. Learned Counsel for the Applicant informs that this demand of Rs.1,05,00,000/- (Rupees One crore five lakhs only) has been challenged by the Applicant before the Hon'ble High Court of Jharkhand as stated in paragraph-6 of the Original Application.
5. The impugned order issued by the Jharkhand State Pollution Control Board further mentions that after the order of the Tribunal dated 30.05.2022 a letter was sent to the District Mining Officer, Dumka for providing necessary information to revise the sum of the Environmental Compensation which has to be levied upon Tohid Alam @ Mansur Alam @ Mansur Mian, and Kamal Khan individually, vide Board's letter dated 21.06.2022 but no information had been received so far from the District Mining Officer, Dumka. But the impugned order thereafter mentions that the District Mining Officer, Dumka has only informed vide his letter dated 18.07.2022 that 5,40,000 cubic feet of sand has been illegally extracted by Tohid Alam @ Mansur Alam @ Mansur Mian and 1,60,000 cubic feet of sand has been illegally extracted by the Kamal Khan (Applicant herein).
6. The case of the Applicant is that before raising any demand for Environmental Compensation against the Applicant, no opportunity to show cause against the impugned demand has been given to him and straightaway on the basis of the letter of the District Mining Officer dated 18.07.2022, Environmental Compensation of Rs.17,85,714/- (Rupees Seventeen lakhs eighty-five thousand seven hundred fourteen only) has been imposed against the Applicant.

7. We have carefully gone through the impugned order which clearly mentions that though information was not received from the District Mining Officer, Dumka when it was earlier sought by the Board vide its letter dated 21.06.2022 but subsequently, the District Mining Officer, Dumka did submit information, already mentioned hereinabove, vide his letter dated 18.07.2022. The impugned order does not mention whether any enquiry was held in respect of the claims made by the District Mining Officer, Dumka, involving the Applicant or that the Applicant was given any opportunity to participate in such an enquiry by issuing appropriate show cause notice to him. The impugned order straightaway proceeds to impose Environmental Compensation and directs the Applicant to deposit the same within 30 days otherwise he will be saddled with interest on the said amount at the rate of 12% per annum.

8. We find that the impugned order on the face of it, is in violation of the principles of natural justice. We, therefore, do not propose to call for any counter-affidavit in the matter since, the impugned order is self-speaking in its arbitrariness.

9. We, accordingly quash the impugned order dated 05.09.2022 and remit the matter to the Jharkhand State Pollution Control Board with the direction to hold an enquiry with the District Mining Officer, Dumka, giving the Applicant a show cause notice and to submit his representation with regard to the claim made by the District Mining Officer, Dumka, and only thereafter, the Jharkhand State Pollution Control Board shall proceed to pass a reasoned order, if any, against the Applicant in accordance with law.

10. In view of the above, the Original Application No.146/2022/EZ is accordingly disposed of.

11. There shall be no order as to costs.

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B. Amit Sthalekar, JM .....

Saibal Dasgupta, EM October 31, 2022 Original Application No.146/2022/EZ MN