

**BEFORE THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY,
NEW DELHI**

DATED 30TH AUGUST, 2010

**PRESENT:
HON'BLE MEMBER SHRI J.C. KALA**

APPEAL No. 34 OF 2009

IN THE MATTER OF :

Pratap Singh Thakur
Village Udanal, PO Bagshar
The – Karsog, Dist Mandi,
Himachal Pradesh

VERSUS

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APPELLANT

1. Ministry of Environment and Forests,
Through the Secretary,
Paryavaran Bhawan, C.G.O Complex,
Lodhi Road, New Delhi – 110 003

2. Himachal Pradesh Pollution Control Board,
Through Member Secretary,
Him Parivesh, Phase III, New Shimla,
Himachal Pradesh

3. Lafarge India Pvt. Ltd.,
101B, Sunny Towers,
Ashutosh Chaudhary Avenue,
Kokatta, West Bengal – 700 019

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RESPONDENTS

APPEAL NO. 35 OF 2009

IN THE MATTER OF :

1. Harinder Verma S/o Sh. B.L Verma,
Village Shakrori, P.O Chaba, Tehsil Suni,
Distt. Shimla, H.P - Pin Code 171 301

2. Reva Singh S/o. Sh. Pkhlu Ram
R/o vil. Shaoungi,
P.O. Bagshar, Tehsil Karsog,
Distt. Mandi, H.P Pin Code – 171 302

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APPELLANT

VERSUS

1. Ministry of Environment and Forests,
(IA – II (I) Division) Through the Secretary,
Paryavaran Bhawan, C.G.O Complex,
Lodhi Road, New Delhi – 110 003



2. Principal Secretary to the Govt. of Himachal Pradesh,
(Environment and Pollution)
Shimla, Himachal Pradesh
 3. The State of Himachal Pradesh
Through Secretary (Forests),
Department of Forests,
Shimla, Himachal Pradesh
 4. Himachal Pradesh Pollution Control Board,
Through Member Secretary,
Him Parivesh, Phase III, New Shimla,
Himachal Pradesh
 5. Lafarge India Pvt. Ltd.,
101B, Sunny Towers,
Ashutosh Chaudhary Avenue,
Kokatta, West Bengal – 700 019
- RESPONDENTS

COUNSEL FOR APPELLANTS/ APPELLANTS

- | | | |
|-------------------------|---|--|
| (i) Appeal No. 34/2009 | : | Shri Ritwick Dutta, Advocate
Shri Rahul Choudhary, Advocate |
| (ii) Appeal No. 35/2009 | : | Shri Ganga Singh Thakur, Adv. |

COUNSEL FOR RESPONDENTS

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|---|---|--|
| (i) Rep. for MoEF | : | Shri P.R. Sakhace, R.O, MoEF |
| (ii) Representative of HPPCB | : | Shri R.K Nadda, Env. Eng., HPPCB |
| (iii) Counsel for Lafarge India Pvt. Ltd.
Appeal No. 34/2009 | : | Shri Syed Shahid Husain Rizvi, Adv.
Shri Ajay Bhargava, Advocate
Ms. Vanita Bhargava, Advocate |
| Appeal No. 35/2009 | : | Shri Akhil Sibal, Advocate
Shri Ajay Bhargava, Advocate
Ms. Vanita Bhargava, Advocate |
| (iv) Principal Secretary, HP, E & P | : | Not Present |
| (v) State of HP, Deptt. of Forests | : | Not Present |

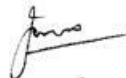
ORDER

The above appeals were filed under section 11(1) of the National Environment Appellate Authority Act, 1997 by the above Appellants against order no. J-11011/241/2007-IA II (I) dated 8th June, 2009 of Respondent-1 i.e. Ministry of Environment and Forests (MoEF) conveying 'Environmental Clearance'(EC) for setting up of Integrated Cement Plant (Cement 3.0 MTPA & Clinker 2.0 MTPA) at Village DPF Ghanger and Captive Limestone Mine (3.0 MTPA 800 ha) at Village Alsindi, Tehsil Karsog, District Mandi, H.P by M/s. Lafarge India Pvt. Ltd., with a prayer to quash the Environmental Clearance(EC).

2. The National Environment Appellate Authority (NEAA) registered the above Appeals as Appeal No. 34 of /2009 and 35/2009 and notices were issued to concerned parties by listing case for hearing on the application for condoning the delay as well as on admission. The Authority heard the parties on different dates as mentioned in the daily proceedings of the Authority and admitted the Appeals for hearing on merit on 19.04.2010. Appellants referred above are challenging the Environment Clearances order (EC) J-11011/241/2007-IA II (I) dated 8th June, 2009 of Ministry of Environment and Forests (MoEF) and their grounds of appeals are common. Therefore, at the instance of the Counsels for Appellants it is decided to deal with these appeals together. Accordingly, the above cases were taken up for hearing on merit on 13.05.2010. Upon hearing the parties and going through the submission made by the parties concerned, the Authority felt the need for site visit considering the issues involved in the matter. The Authority inspected both mining and Plant sites on 22-24th June, 2010 and held discussions with people of the area along with the officials of State Government and Pollution Control Board. After field inspection, parties were heard finally on 13.07.2010 on merit. Two weeks time was given to the parties to file their written submission, if any. Based on the points raised in the Appeals, documents filed by the parties to the Appeal, arguments made by the Learned Counsels for the Appellants, Appellants and the Respondents, the Appeal is considered in succeeding paragraphs.

GROUND OF APPEAL AND PRAYER

3. Environmental Clearance dated 08-06-2009, granted to M/s Lafarge India Pvt Ltd for its cement plant and lime stone mining in Mandi district, Himachal Pradesh, is being challenged by the Appellants on the following grounds that:



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- (i) The Additional District Magistrate chairing the public hearing panel, in an arbitrary manner, down played the overwhelming opposition during the public hearing and recorded the views of those not belonging to the area and made his concluding recommendations which is against the Notification. No opportunity was given to the appellants before issue of EC;
- (ii) The Environment Impact Assessment (EIA) has failed to take in to account the impacts of cement plant on fertile agricultural lands in villages under Thalli , Shakra and Shakrori Panchayats. Even Sunni town and Tehsil headquarters including the Naldhera, the World renowned golf course and the Shimla town would be affected. Government of India is spending Rs 80 Crores for land preservation activities engaging even the army personnel;
- (iii) The limestone mining spread over 800 hectare will affect agriculture in 16 villages under Balindi, Bagshyad and Bindia Panchayats as they will lose part of their agricultural lands and most of their forest lands;
- (iv) At both plant and mining site, communities depend on fuel wood, fodder and grass for their sustenance. Mushrooms and Anardana which sells at good price will get affected as also the vegetable market of the area besides sheeps and cattle. EIA provides no details of livelihood practised by the people;
- (v) Downstream impact of drawal of 22 lakh litre of water from Satluj on population , the river fauna and ecology and on Hydro power projects have not been assessed;
- (vi) Air and noise pollution even though claimed within limits will affect the serene environment of the area with movement of trucks and crushers. EIA severely underplays the impact of effluents and solid waste discharges in to the river and in turn on the tourism. Just 5 Km below is Tattapani -a popular tourist resort;
- (vii) Project proponent will receive thousands of tonnes of hazardous liquid waste which will have serious environmental impacts;

(viii) EIA has not taken in to account the TORs proposed by the Ministry in respect of high calorific hazardous waste in the kiln, its storage and the disaster management plan; and

(ix) No clearance has been obtained about forest and water from the competent authorities.

4. Denying all the allegations of the Appellants, Respondent-3 (Project Proponent) referred to 35 views recorded in the proceedings of PH held on 4th December, 2008 (of which 22 in favour) submitted that the news paper clippings cited by the Appellant were published 6 months after hearing and were engineered; that detailed impact study of area of 10 Km radius in respect of air, water, noise, soil and socio-economic components comprising of both positive and negative were undertaken and necessary safeguards provided; that 56.43% of people living within 10 Km radius are engaged in working category and the rest are practising horticulture and thus incorrect to state that they will lose their agricultural land; that the plant and mine area comprise of rocky terrain and are not cultivable lands and thus the EIA has not under-played the dependence of people on it; that there will not be any downstream impact of drawal of water from the river which is just .029% during the lean season and .001% during the peak season besides additions by the Khuds in between hydro project site and the plant site thereby minimising it still further; that the impact on air environment has been duly assessed and necessary control measures including shutting off mechanisms in critical areas provided; that issues like land resources damage, social disturbance, severance and increased congestion, noise and air pollution and the mitigation measures thereof, development of basic infrastructure, generation of employment, improvement of drinking water supply and sanitation facilities, setting up of schools, health centres, hospital and shopping complex, resettlement and rehabilitation plan etc are part of detailed study/EIA; that the cement will be manufactured by dry process technology using minimal water and based on zero discharge concept and any surplus waste water will be duly treated and solid wastes from treatment plant will be disposed off environmentally sound manner; that the kiln is designed to use the high calorific value hazardous waste that is being generated by chemical and pharma firms in the country and MoEF is looking up to cement plants for this purpose; that there is no possibility of encountering ground water which lies 30 meters below the normal ground level where as the mining area is located 1000 meter above



on the hillock; that no hazardous wastes are generated by the cement industry as such there is no need to have a disaster management plan; that no historical site or sensitive areas like sanctuaries or National parks are located within 10 Km of the project site; that as per EC, the Respondent will take necessary clearance for forest and water; and that the EC was granted after site visit by the officials of MoEF on 1st May, 2009.

In the additional affidavit, the Project Proponent has claimed that there is no mention of Majhatal wild life sanctuary within 8 Km in the report of District Forest Officer addressed to the Nodal officer of the Forest Department and the document produced by the Appellant is fabricated.

5. Respondent- Pollution Control Board, in its affidavit has submitted that the hearing was conducted as per Ministry's Notification with due intimation to all concerned including the concerned surrounding Gram Panchayats on 1-11-2008; true reflection of discussions recorded in the minutes; and the Ministry has imposed necessary safeguards in the EC.

6. At the request of Appellants and the Respondent, Authority inspected both mining and Plant site and also the adjoining villages on 23rd June, 2010, held discussions with cross section of people of the area and independently assessed the impact of mining and plant on land, water and air environment in order to make up its mind whether as a whole, EC is Good or Bad. The Authority has observed as follows-

- (i) According to EC, mining area is located in Alsindi village (Alsindi limestone deposit area). However, the Project Proponents have decided to delete Alsindi and Buckshaud areas as they were found to contain thick growth of Chir pine and has confined it to Talehan village located around 1400 meter above the plant area. The ore is to be evacuated through a 6 Km long conveyor belt. Mining area is expected to include the entire Talehan village consisting of around 80 house hold. There was near total opposition from the villagers to the mining. They are content and do not like to leave their village. Neither the Respondent nor their supporters questioned the bonafides of these opposing villagers. Their dependence is on agriculture and

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livestock. The claim of the Project Proponent that the mining area is not cultivable was found to be untrue. Besides food crops, the area is abundant in Pomegranate (Anardana) which has a good market. An approach road to the village from the main road to a length of 10 Km which could have provided access and given economic boost to the area is incomplete for want of Forest Clearance. State Government has initiated the process of acquiring the land in Telehan village for the Proponent Company. The Company claims that it will secure consent of over 70% of household. As of date, the company said to have got the consent of 16 out of 381 land owners. Be that it may, the overwhelming opposition of the villagers merits reconsideration by the State Government and in any case does not call for forcible rehabilitation and resettlement. The dispossession, impoverishment and trauma attached to the displacement have neither been captured by EIA nor appreciated by the Expert Appraisal committee (EAC) or the State Government. Mining in the area would also affect grazing from nearby villages like Alsindi and Buckshaud. The mining area is generally steep but its exit precipitous. As a result rainwater/ storm water draining from the area will carry over burden silt to the river Satluj through 2nd and 3rd order streams merging with main streams. Because of topography and terrain, measures to contain this are likely to have limited effect. The Sub-committee of EAC has seen the site from a distance. They did not meet the people of the area.

(ii) Plant site was also inspected by the Authority and discussions held with surrounding villagers. The site, located at Ghangar, is a Demarcated Protected Forest which needs clearance from forestry angle. It is close to river Satluj in the foot hills, surrounded by hills and abutting villages viz. Shakra, Sunni, Thalli, Thattapani, making the gaseous emission dispersal a slow and difficult process. There was strong protest from the villagers against locating this plant that it will affect their agriculture,


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horticulture and livestock besides the calm and serene environment. Their protest is valid. In the absence of escape route, gaseous emission would fill up the valley affecting adversely the agriculture which is currently flourishing in the area. Thattapani is a tourist spot close by and is bound to bear the brunt of plant including the traffic congestion caused by it. Majathal wildlife sanctuary is less than 5 km as the crow flies. Discussions with the Chief Wildlife Warden reveal that the plant is bound to create disturbance to the animals. Even though the Company has plans to construct a bridge across river Satluj and widen the facing road, one can foresee the heavy congestion of trucks and in turn severe noise and air pollution, given the experience of other plants (A similarly placed Plant of M/s Ambuja Cements not far from this place was visited by the Authority on 24th and witnessed chaotic conditions). A group of people together with local MLA and some Pradhans and Up-Pradhans supported setting up of the plant on the grounds of employment generation, expanding business etc. but their arguments belied the emotions of the locals and at times were found contradictory. For example the Up- Pradhan of Shakrori village, when present with the MLA, gave a written consent on behalf of villagers which, however, was denied by the lady Pradhan present with large number of villagers. The same Up- Pradhan of Shakrori earlier opposed the project in a written Panchayat resolution dated 5th April, 2009. The group of pro-mining people present at plant site also accompanied the Authority to the mining site and supported the excavation for limestone but, except for two, none belonged to the village Talehan. The sole argument and grievance of these two persons (exceptions) is the lack of approach road and facilities which prompts them to vacate and support the project. This, however, would get redressed once the road is complete. Authority also viewed the CD of Public Hearing which did indicate the imbalance in video recording of the proceedings. Concluding


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recommendations of the Additional District Magistrate in the minutes were uncalled for.

7. Taking in to consideration all the relevant aspects, the Authority is convinced that on environmental and social considerations it is neither desirable to mine the Telehan village nor put up cement plant at Ghanger. Both EAC and the Ministry have not correctly assessed the impact of the project on land, water and air and failed to appreciate its effects on the livelihood of the people of the area. It is a fit case to quash the EC.

8.1 Accordingly, the Environmental Clearance for setting up of Integrated Cement Plant (Cement 3.0 MTPA & Clinker 2.0 MTPA) at Village DPF Ghanger and Captive Limestone Mine (3.0 MTPA 800 ha) at Village Alsindi, Tehsil Karsog, District Mandi, H.P by M/s. Lafarge India Pvt. Ltd., is **quashed imposing no cost on Respondents.**

8.2 In order to fulfil the long pending demand for an approach road to Telehan and adjoining villages, MoEF should take speedy action to finalise diversion of forest land for this road which remains unfinished over less than 2 Km. The unfinished portion was found to contain no significant growth.



J C KALA

MEMBER NEAA

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