

Item No. 01

Court No. 1

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

Original Application No. 837/2018

(With affidavit of MoEF&CC dated 15.12.2020)

Sandeep Mittal

Applicant

Versus

Ministry of Environment, Forests &
Climate Change & Ors.

Respondent(s)

Date of hearing: 01.02.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent: Mr. Divya Prakash Pande, Advocate for MoEF & CC

ORDER

1. The question for consideration is the steps to be taken for effectiveness of monitoring mechanism for compliance of conditions of Environmental Clearance (EC) as per Notification dated 14.09.2006 under the Environment (Protection) Act, 1986. Environment Impact Assessment is an essential component of the 'Precautionary' as well as the 'Sustainable Development' principles. Laying down conditions for EC based on appraisal is not enough unless compliance thereof is duly monitored and ensured with a view to achieve the said object.

2. Faced with the grievance that there was flagrant violation of conditions of Environmental Clearance and adequate monitoring was not taking place, vide order dated 30.10.2018, the Tribunal observed that

compliance of conditions of Environmental Clearance must be monitored on periodical basis, atleast once in a quarter. Accordingly, the Ministry of Environment, Forest and Climate Change (MoEF&CC) was directed to review and strengthen the mechanism for the purpose and furnish a report.

3. The matter has thereafter been considered on several dates including 29.04.2019, 23.07.2019, 22.11.2019 and 31.7.2020. It has been repeatedly found that the mechanism for monitoring environmental norms is inadequate, as a result of which there is rampant violation of Environmental Clearance (EC) conditions, as noted by this Tribunal in several cases. The Tribunal also noted the observations in the Judgments of the Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SCC 61* and *Lafarge Umiam Mining Private Limited Vs. Union of India, (2011) 7 SCC 338* that power of the regulator under Section 3(3) of the Environment (Protection) Act, 1986 is coupled with duty and **there is a need for effective monitoring mechanism.** The Hon'ble Supreme Court also observed that there is poor monitoring and there are huge gaps in laying down of conditions and enforcement thereof. Such observations have also been made by the Comptroller and Auditor General of India (CAG), pointing out deficiencies on this aspect.

4. Vide order dated 22.11.2019, the Tribunal *inter-alia* observed:

9. ***The present scenario of monitoring once in 4.5 years and planned modification resulting in monitoring in 2.5 years is farce and does not meet the requirement of law by any standards. As already observed monitoring has to be, as far as possible, quarterly and in no case less than twice a year.***

10. ***Data of environmental degradation in the form of air, water and soil pollution reflected in the form of 351 polluted river stretches, 122 non-attainment cities and 100 polluted industrial clusters is eloquent testimony of such degradation***

and failure of monitoring mechanism. Statistics of deaths and diseases on account of such degradation are well known and need not be elaborated here.

11. On being asked, **learned counsel for MoEF&CC is unable to even mention the percentage of compliance as according to him there is no such data available, which is shocking.** With a view to plan such monitoring, the percentage of compliance must be ascertained. **Trend over a period of time in terms of increase in compliance or otherwise must be studied so that there can be corresponding review of mechanism based on correct data.** Experience so far shows that with the increasing developments, in absence of adequate monitoring mechanism it would be difficult to check such violations thereby defeating 'precautionary' principle.

12. In view of the above, remedial action may be planned at the earliest. **The plan should cover all the sub categories of projects, including B category. Monitoring mechanism needs a also to be evolved for SEIAAs, regional offices of the MoEF&CC and the regional offices of CPCB. Since these steps are inalienable constitutional obligations, steps need to be taken to suitably augment the requisite manpower in these establishments for effective monitoring by MoEF&CC, CPCB and SEIAAs.**

13. There is no information about the result of steps taken in terms of 'six monthly action plan' so far. Making of such plan may be of no value unless it is resulting in improvement of the ground situation in terms of strengthening of monitoring, which is not shown to be happening. Expressing difficulties in improving the situation is not a solution. If there is an EC regime, compliance has to be monitored. **The principle of Sustainable Development and the Precautionary principle, which have been held to part of 'Right to Life' require that EC conditions are fully complied.**

14. No satisfactory mechanism exists at present, as shown by the above affidavit itself. It is stated that, at present, **it takes 4.5 years for monitoring which means that for such long period the non-compliance continues making mockery of law.** There has to be speedy monitoring and speedy action, wherever necessary. There has to be a robust plan for the purpose which is the responsibility of the concerned Government Departments. We place on record our disapproval for the present sorry state-of-affairs and expect meaningful improvement.

15. We are, thus, of the view that for meaningful monitoring, all Category A projects are monitored not less than twice in a year and all Category projects are monitored not less than once in a year.

16. **Let the Secretary, MoEF&CC and Chairman, CPCB hold a meeting with such other experts as may be found necessary and establish and/or augment the institutional setups in MoEF&CC, CPCB and SEIAAs for meaningful monitoring of Category A and B projects in the light of the above observations.** Compliance report may be filed before this Tribunal by e-mail at judicial-ngt@gov.in by MoEF&CC and CPCB. The MoEF&CC may also furnish compliance status by SEIAAs.”

5. The matter was last considered on 31.07.2020 in the light of an affidavit filed by the MoEF&CC on 01.02.2020 mentioning the proposals to strengthen the monitoring mechanism. The Tribunal found that the steps taken were hardly effective and further effective steps were required to discharge constitutional obligation to provide pollution free environment. The operative part of the order is:

“

5. *In pursuance of above, an affidavit has been filed by MoEF&CC on 01.02.2020 annexing the minutes of meeting dated 20.01.2020 which only mentions that there are certain proposals to strengthen the monitoring mechanism. **This only shows insensitivity to the vital constitutional obligation despite repeated directions. Repeated plea of merely having such proposals, without effective enforcement on the ground can hardly be held to be satisfactory. Learned Counsel for the MoEF&CC states that there has been further meaningful steps, after filing of the affidavit but the same could not brought on record. We cannot accept such a statement. If steps have been actually taken, we fail to understand why the same could not be produced atleast during the hearing. We record our dissatisfaction at the attitude of the MoEF&CC on the subject.***

6. *Let the MoEF&CC now take effective steps to discharge its Constitutional obligation to advance “Precautionary” and “Sustainable Development” principles and also the “Public Trust Doctrine”. We need not repeat the observations with regard to the acknowledged deficiencies in the existing mechanism which urgently needs to be remedied. Let affidavit of compliance be filed before the next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.”*

6. We may also note that the Tribunal has dealt with number of accidents resulting in deaths, injuries and damage to the environment on

account of non-compliance of safety norms by industrial establishments in the last six months.¹ We have found that by and large there is non-compliance to follow safety norms by the industries dealing with the hazardous chemicals, inspite of there being statutorily prescribed norms under the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 (1989 Rules) and Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 (1996 Rules).

¹

- i. Order dated 01.06.2020, relating to incident of gas leak dated 07.05.2020 in **LG Polymers India Pvt. Limited** at Vishakhapatnam, resulting in death of 11 persons and injuries to more than 100, apart from other damage (OA No. 73/2020, In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh);
- ii. Order dated 08.06.2020, relating to incident dated 03.06.2020 in a chemical factory, **Yashyashvi Rasayan Pvt. Ltd.** at Dahej, District Bharuch, Gujarat resulting in deaths and injuries and other damage (OA No. 22/2020(WZ) (Earlier OA 22/2020) (WZ), Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr.);
- iii. Order dated 02.07.2020, in relation to incident of **oil well blow out on 27.05.2020 at Baghjan in the Tinsukia District of Assam** resulting in deaths, injuries and damage to the environment (OA No. 43/2020(EZ), Bonani Kakkar vs. Oil India Limited & Ors.).
- iv. Orders dated 06.07.2020 and 22.12.2020, relating to incident dated 30.06.2020 on account of gas leakage at **Sainor Life Sciences** factory at Parawada in industrial area on the outskirts of Vishakhapatnam (OA No. 106/2020, 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...”);
- v. Orders dated 08.07.2020 and 22.12.2020, dealing with the incident dated 01.07.2020 resulting in death of 6 person and injury to 17 due to blast of boiler in **M/s Neyveli Thermal Power Station** (NLCIL), Cuddalore (OA No. 108/2020, News item published in the “Indian Express” dated 01.07.2020 titled “Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured”) and;
- vi. Orders dated 23.07.2020 and 22.12.2020, in relation to incident of **fire engulfed the chemical plant of Visakha Solvents Ltd**, Vizag on 13.07.2020 at Ramky CETP Solvents building in Pharma City resulting in injuries (OA No. 134/2020, 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”).
- vii. Order **dated 18.12.2020**, in relation to incident of **explosion in a plastic recycling factory at Sujapur in Malda on 1.12.2020** resulting in death of six persons, including two minors and serious injuries to four persons (OA 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”).
- viii. Order dated **18.12.2020**, in relation to incident of **methane gas leak in a sugar factory** called Lokenete Bapurao Patil Agro Industries Ltd. in Mohol Taluka of Solapur District, Maharashtra on 21.11.2020 resulting in deaths and injuries and other damage (OA No. 274/2020, News item published in the “Indian Express” dated 23.11.2020 entitled “Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory”).
- ix. Order dated 08.01.2021, in relation **to Gas Leak in Agro Company** (O.A No. 107/2020, 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”)
- x. Order dated 18.01.2021, in relation to News item published in Navbharat Times dated 24.12.2020 titled **“Gas leaks in IFFCO Plant, 2 Officers dead”** (O.A No. 04/2020, In re : News item published in Navbharat Times dated 24.12.2020 titled “Gas leaks in IFFCO Plant, 2 Officers dead”)

7. In order dated 01.06.2020 in O.A No.73/2020, *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village, Visakhapatnam in Andhra Pradesh*, the Tribunal dealt with an incident of gas leak in a chemical factory at Vishakhapatnam resulting in death of 12 persons and injuries to more than 100 on 07.05.2020. Since the incident was on account of failure to follow safety norms which were not being duly monitored, the Tribunal found that it was necessary that regulatory/oversight framework is strengthened to avoid such incidents. it was observed:-

“

36. *Safety of citizens and environment are of prime concern. Any economic or industrial activity, however necessary, has to be consistent with the safety of human beings and the environment. The damage to human life, human health and environment has to be restored by applying the ‘Sustainable Development’ principle, of which ‘Precautionary’ and ‘Polluter Pays’ principles are part. In this regard, significant role has to be played by the statutory authorities constituted under the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.*
37. *Dealing with environmental issues, including unfortunate incidents, the Tribunal has found need to revamp the existing regulatory framework quantitatively and qualitatively. The Tribunal has noted the observations of the CAG and parliamentary Committees on the subject. Reference may be made to order dated 22.11.2019 in O.A. No. 837/2018, Sandeep Mittal vs. Ministry of Environment, Forests & Climate Change & Ors. after noting the status of current monitoring mechanism of the MoEF:*

“5. Further affidavit has been filed on 25.09.2019 on behalf of the MoEF&CC stating as follows:-

“1 to 6 xxx xxx xxx

7. ***That according, if only the projects issued EC during 2013-2019 are taken, then the best case scenario in terms of their monitoring could be 2.5 yrs with 50% enhancement in sanctioned staff strength and worst case scenario would be 4.5 years with Man in Position (MIP) which is 32 at present across the ten (10) ROs in the country. Accordingly, the repeat inspection of a unit can only happen after 2.5 yrs and 4.5 yrs, respectively in the above two scenarios. That if all the projects issued EC since 1994 onwards are taken then the best case scenario is 6.5 yrs with 50% enhancement in sanctioned staff strength and worst case scenarios is 13 years with MIP indicating that.***

The repeat inspection of a unit can only happen after 2.5 yrs and 4.5 yrs, respectively in these two scenarios.

8. That for Category 'B' projects for which compliance monitoring has been directed to be responsibility of SEIAA and SPCB, following to be taken note of:
 - a. ***Sanctioned staff strength and MIP of SEIAAs and SPCBs/PCCS are still not available.***
 - b. ***SEIAA and SPCBs are under the administrative control of State Government.***
 - c. ***There is ambiguity with respect to their present involvement in monitoring of EC conditions.***
 - d. ***Accordingly, it has been difficult to speculate the timeframe for taking up and completion of monitoring of Cat B projects at present.***
 - e. *The SEIAAs and SPCBs have been asked to provide information so that the above timeframe may be calculated.*
9. That as directed, a Six Monthly Action Plan has been prepared to reduce the timeline, enhance coverage and transparency, reduce requirement of additional human resources while ensuring comprehensive compliance of environmental conditions, thereby resulting in greater protection of the environment on a continuing basis. The Six Monthly Action Plan is placed at Annexure R-2.
10. That as enumerated in the Action Plan, the Ministry plans to carry out a thorough assessment of the quantum of work involved and available human resources and accordingly take up the initiatives for comprehensive refining of the existing monitoring mechanism. Based on this exercise the following action are to be undertaken:
 - a. ***Filling up of vacant posts wherever applicable.***
 - b. ***Creation of additional posts in all the agencies to be involved in monitoring and compliance viz. ROs, CPCB, SEIAA and SPCBs; if required.***
 - c. ***Hiring of young processionalists as per feasibility.***
 - d. ***Creation of new ROs, if required.***
 - e. ***Utilizing services of CPCB and SPCBs to effectively discharge responsibilities of monitoring.***
 - f. ***Strengthening Monitoring Cell within the Ministry.***
 - g. ***Develop web based online mechanism to automate the entire process of inspection and compliance monitoring.***
11. That the Action Plan provides a detailed roadmap for the coming months which includes:
 - a. ***Hiring of an Independent Agency to assess the work requirement.***

- b. Constitution of Monitoring Evaluation Committee (MEC) to steer and supervise a new monitoring mechanism.**
- c. Engagement of Consultant for development of web based mechanism for end to end digitization.**

12. That in the interim, till the larger Action Plan is implemented, in order to improve the monitoring process, following actions has been/will be taken up:

- a. Filling up on nine vacant posts of Scientists in the ROs.**
- b. Strengthening the Monitoring Cell in the Ministry.**
- c. Delegation of the action on monitoring reports of Category 'B' projects to SEIAA as per the Notification no. SO 637 (E) dated 28th February 2014.**
- d. Evolving a mechanism for online maintenance of monitoring and compliance data with regard to Category-A and Category-B projects and integrating it with the existing PARIVESH portal of the Ministry."**

6. We have considered the above averments as well as contents of annexures R-I and R-II giving data of the projects and 'six monthly action plan'. We are of the view that the mandate of law is not complied with by the above stand of the MoEF&CC. **It is well acknowledged that there is rampant violation of the Environmental Clearance (EC) conditions. This Tribunal has, in order dated 21.11.2019, noticed serious violations of EC conditions with respect to A Category 'housing projects' in Haryana and found monitoring of conditions of EC ineffective.² The said order also refers to earlier orders wherein similar serious violations have been noticed. The violations include absence of scientific management of sewage and solid waste, not having open spaces, illegal drawal of ground water, construction in excess of sanctioned plan etc. It is difficult to say such violations are limited to State of Haryana. In absence of adequate mechanism, such rampant violation are bound to continue defeating the environmental principle of precautionary and sustainable development. In this regard, it is apt to note that this aspect was considered by the Hon'ble Supreme Court in T.N. Godavarman Thirumulpad Vs. Union of India & Ors. (2014) 4 SCC 61. Reference was made to the observations in Lafarge Umiam Mining Private Limited Vs. Union of India, (2011) 7 SCC 338 that power of the regulator under Section 3(3) of the Environment (Protection) Act, 1986 is coupled with duty and that the monitoring mechanism for the clearance conditions was not satisfactory. The Hon'ble Supreme Court also referred to a report on 'Scope, Structure and Processes of National Environment**

² Order dated 21.11.2019, O.A. No. 506 / 2019, Mukund Dhote v. UOI & Ors.

Assessment and Monitoring Authority (NEAMA)' for the Ministry of Environment and Forests, Government of India prepared by Department of Management Studies, Indian Institute of Technology, Delhi. Therein it was found that there are huge gaps in monitoring and enforcement of clearance conditions which defeats the purpose of Environmental Clearance process. The said finding quoted in the judgment is as follows:

“Several studies have pointed toward the poor monitoring of the clearance conditions. Huge gaps in monitoring and enforcement of clearance conditions actually defeats the very purpose of grant of conditional environmental clearance.”³

- 7. We also note the observations from Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring 2016 that there are shortfalls in monitoring of environmental parameters. Reasons for such shortfalls are inadequate staff, inadequate database, not assigning clear responsibility for post EC monitoring, absence of monitoring at regular intervals particularly for critically polluted areas.**
- 8. Thus, there is dire need for revamping the monitoring mechanism by MoEF&CC as well as SEIAAs, CPCB and State PCBs Post EC monitoring processes need revamping in quantitative as well as qualitative terms. There is need to prioritize the projects where potential environmental degradation is high on account of nature of activity as well as area being ecologically sensitive. In respect of such projects and in such areas, monitoring may have to be more intensive and at higher frequency. In no case frequency of monitoring should be less than once in a year.**
- 9. The present scenario of monitoring once in 4.5 years and planned modification resulting in monitoring in 2.5 years is farce and does not meet the requirement of law by any standards. As already observed monitoring has to be, as far as possible, quarterly and in no case less than twice a year.**
- 10. Data of environmental degradation in the form of air, water and soil pollution reflected in the form of 351 polluted river stretches, 122 non-attainment cities and 100 polluted industrial clusters is eloquent testimony of such degradation and failure of monitoring mechanism. Statistics of deaths and diseases on account of such degradation are well known and need not be elaborated here.**
- 11. On being asked, learned counsel for MoEF&CC is unable to even mention the percentage of compliance**

³ Para 10

as according to him there is no such data available, which is shocking. With a view to plan such monitoring, the percentage of compliance must be ascertained. Trend over a period of time in terms of increase in compliance or otherwise must be studied so that there can be corresponding review of mechanism based on correct data. Experience so far shows that with the increasing developments, in absence of adequate monitoring mechanism it would be difficult to check such violations thereby defeating 'precautionary' principle.

- 12. In view of the above, remedial action may be planned at the earliest. The plan should cover all the sub categories of projects, including B category. Monitoring mechanism needs a also to be evolved for SEIAAs, regional offices of the MoEF&CC and the regional offices of CPCB. Since these steps are inalienable constitutional obligations, steps need to be taken to suitably augment the requisite manpower in these establishments for effective monitoring by MoEF&CC, CPCB and SEIAAs.**
- 13. There is no information about the result of steps taken in terms of 'six monthly action plan' so far. Making of such plan may be of no value unless it is resulting in improvement of the ground situation in terms of strengthening of monitoring, which is not shown to be happening. Expressing difficulties in improving the situation is not a solution. If there is an EC regime, compliance has to be monitored. The principle of Sustainable Development and the Precautionary principle, which have been held to part of 'Right to Life' require that EC conditions are fully complied.**
- 14. No satisfactory mechanism exists at present, as shown by the above affidavit itself. It is stated that, at present, it takes 4.5 years for monitoring which means that for such long period the non-compliance continues making mockery of law. There has to be speedy monitoring and speedy action, wherever necessary. There has to be a robust plan for the purpose which is the responsibility of the concerned Government Departments. We place on record our disapproval for the present sorry state-of-affairs and expect meaningful improvement.**
- 15. We are, thus, of the view that for meaningful monitoring, all Category A projects are monitored not less than twice in a year and all Category projects are monitored not less than once in a year.**
- 16. Let the Secretary, MoEF&CC and Chairman, CPCB hold a meeting with such other experts as may be found necessary and establish and/or augment the institutional setups in MoEF&CC, CPCB and SEIAAs for meaningful monitoring of**

Category A and B projects in the light of the above observations. Compliance report may be filed before this Tribunal by e-mail at judicial-ngt@gov.in by MoEF&CC and CPCB. The MoEF&CC may also furnish compliance status by SEIAAs.”

(emphasis supplied)

38. Similarly, vide order dated 11.01.2019 in O.A. No. 95/2018, *Aryavart Foundation vs. M/s Vapi Green Enviro Ltd. & Ors.*, following observations may be noted:

“37. ..The SPCB has not shown that it took any stringent action as required which can act as deterrent against violation of pollution norms. Simply issuing notice has not brought about the desired results. No closures have been ordered, nor prosecution launched nor other adequate preventive and remedial measures, including assessment and recovery of damages taken. In this respect, there is failure of GPCB. We may only observe that even a regulatory authority may be held accountable if it colludes with polluters by being required to pay damages or errant officers being held liable for action, including prosecution. **Frequent failures of regulatory bodies need to be remedied for meaningful enforcement of environmental norms.** This Tribunal in *Threat to life arising out of coal mining in South Garo Hills district Vs. State of Meghalaya & Ors.*⁴, held that **State machinery is also required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. The polluters as well as colluding officers are to be made accountable not only by prosecution or closure of industry but also by assessing and recovering such damages for loss to the environment as it may not only compensate the environment or victims but also act as deterrent to prevent further damage.**

38. It is well acknowledged that there is serious threat to the environment in this country. Studies show huge number of pollution related deaths and diseases⁵. Any violation of laid down environmental norms has to be seriously viewed and sternly dealt with.

⁴ O.A. No. 110(THC)/2012 Order dated 04.01.2019 para 28-29

⁵ https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf- India ranks 120th in 122 countries in Water Quality Index as per Niti Ayog Report, <https://www.thehindu.com/sci-tech/energy-and-environment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece>- Most pollution-linked deaths occur in India, <https://www.hindustantimes.com/india-news/delhi-world-s-most-polluted-city-mumbai-worse-than-beijing-who/story-m4JFTO63r7x4Ti8ZbHF7mM.html>- Delhi's most polluted city, Mumbai worse than Beijing as per WHO; http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf- WHO Water Quality Index.

39. *It was in the year 1974 that the Water (Prevention and Control of Pollution) Act, 1974 was enacted after noticing that problem of pollution of rivers and streams had assumed considerable importance and urgency on account of growth of industries, threatening the sources of drinking water, the aquatic life and sources of irrigation. After considering the Expert Committee reports on the subject, the statutory framework was adopted giving enormous powers to the Pollution Control Boards (PCBs) for closure, prohibition or regulation of any industries operation or process as well as filing of complaints for prosecution. Minimum sentences have been laid down for violation of the norms. Polluter Pays Principle is an accepted norm within the purview of regulatory regime. The statutory functions of the PCBs, include programs for prevention, abatement and control of pollution and exercise all incidental powers. The CPCB has powers to issue directions to the State Boards. Needless to say, that similar provisions have been made for protection of air quality under the Air (Prevention and Control of Pollution) Act, 1981 as well as for other environmental issues under the Environment (Protection) Act, 1986.*
40. *As already noted, the SPCB is equally accountable for its failure and in appropriate cases can be prosecuted for conspiracy or collusion with other offenders causing pollution. The pollution cannot be allowed to be profitable activity and deterrent action must be taken wherever pollution is found so as to render causing of pollution unprofitable and unacceptable to prevent damage to the health and lives of the citizens. Any polluter must be subjected to heavy and deterrent economic sanctions. Unfortunately, this is not happening as expected for which failure the regulatory authority cannot disown their responsibility.*
41. **We note that the State of Environment in the country, even as per official figures, is alarming. As many as 351 river stretches have been declared to be polluted by the CPCB. Vide order dated 20.09.2018 in Original Application No. 673/2018, News item published in ‘The Hindu’ authored by Shri. Jacob Koshy Titled “More river stretches are now critically polluted: CPCB”, this Tribunal considered the issue of such polluted stretches and noticed the directions of the Hon’ble Supreme Court from time to time for stopping discharge of untreated sewage and effluents in water bodies. Such discharge causes serious diseases, including Cholera and Typhoid. Sewage treatment capacity was disproportionate to the sewage generated. As per some studies noted in the order, 75 to 80% water is polluted in India. Pollution of River**

Yamuna⁶, Ganga⁷, Hindon⁸, Ghaggar⁹, Sutlej and Beas¹⁰, Son¹¹, Subarnarekha¹², Ami¹³ were also noted. The States were directed to prepare action plans to make the water of the polluted river stretches atleast fit for bathing within six months from the dates of preparation of approved action plans. When the matter was reviewed on 19.12.2018, it was found that only 16 States had prepared action plans, most of which were not complete. The direction was issued for payment of environmental compensation per month by every State/UT for failure to prepare action plan and also to furnish Performance Guarantees for execution of the action plans within the stipulated time.

- 42. This Tribunal in News Item Published in “The Times of India’ Authored by Shri Vishwa Mohan Titled “NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15”¹⁴ has dealt with the issue of 102 air polluted cities identified by the CPCB. Taking into account eminent threat to human health as a result of air pollution, this Tribunal directed all the States/UTs with non-attainment cities to prepare action plans for bringing down the standards of air quality within the prescribed norms within six months. The Tribunal further constituted the Air Quality Monitoring Committee to ensure implementation of such action plans. The CPCB and the SPCBs were entrusted with the responsibility to design a robust nation-wide ambient air quality monitoring program to strengthen the existing monitoring network.***
- 43. In re: Compliance of Municipal Solid Waste Management Rules, 2016¹⁵, the Tribunal directed preparation of action plans for solid waste management consistent with the Solid Waste Management Rules, 2016 in view of the fact that as per annual report of the CPCB prepared in April 2018, most of the States were not complying with the statutory rules.***
- 44. As already noted earlier, this Tribunal considered the matter of polluted industrial clusters in News Item published in “The Asian Age” Authored by***

⁶ Manoj Mishra Vs. Union Of India O.A. No. 6/2012 order dated 26.07.2018

⁷ M.C. Mehta vs. Union of India O.A. No. 200/2014 order dated 06.08.2018

⁸ Doaba Paryavaran Samiti vs. State of U.P. and Ors. O. A. No. 231/2014 Order dated 08.08.2018

⁹ Stench Grips Mansa’s Sacred Ghaggar River (Suo-Motu Case) and Yogender Kumar O.A. No. 138/2016 Order dated 07.08.2018

¹⁰ Sobha Singh and Ors. Vs. State of Punjab and Ors. O.A. No. 916/2018 Order dated 14.11.2018

¹¹ Amarshakti vs. State of Bihar and Ors. O.A. No. 596/2016 Order dated 24.08.2018

¹² Sudarsan das vs. State of West Bengal and Ors. O.A. No. 173/2018 Order dated 04.09.2018

¹³ Meera Shukla vs. Municipal Corporation, Gorakhpur and Ors. O.A. No. 116/2014 Order dated 25.10.2018

¹⁴ Original Application No. 681/2018 Order dated 08.10.2018

¹⁵ Original Application No. 606/2018 Order dated 31.08.2018

Sanjay Kaw titled “CPCB to rank industrial units on pollution levels” vide order dated 13.12.2018. It was noted that 43 industrial clusters in 16 States were identified as Critically Polluted Areas and 32 industrial clusters were categorized as Seriously Polluted Areas. In 2017-18, the number of identified polluted industrial clusters went upto 100. Accordingly, the Tribunal directed the State Pollution Control Board to finalize time bound action plan to restore the environmental quality as per the norms laid down by the CPCB and directed CPCB and SPCBs to take coercive measures against the violators on the basis of ‘Precautionary Principle’ and ‘Polluter Pays Principle’.

45. In Techī Tagī Tara Vs. Rajendra Singh Bhandari & Ors.¹⁶, the Hon’ble Supreme Court noted that the State Pollution Control Boards (SPCBs) continued to be manned by persons not having expertise or professional experience. The State Governments were not able to appoint qualified, impartial, and politically neutral persons of high standing to the crucial regulatory posts. Political appointments were being made in blatant violation of Apex Court guidelines to debar favorable persons being appointed.¹⁷ The appointments being made did not inspire the confidence of the people. The Hon’ble Supreme Court directed all the States to frame guidelines and recruitment rules within six months. It may be pertinent to lay emphasis on the following observations of the Hon’ble Supreme Court in the aforesaid judgment:

¹⁶ (2018) 11 SCC 734 para 3-4, 28-34: The judgment takes into consideration various Committees appointed laying down guidelines for the functioning of SPCBs viz.,

- (a) Bhattacharya Committee (1984) proposed that the structural organization of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts, training cell and research and development.
- (b) The Belliappa Committee (1990) - Recommended (i) introducing elaborate monitoring, reporting and organizational systems at the national level along with four regional centres and one training cell in each Board, (ii) effecting suitable changes in the Boards recruitment policy to enable them induct persons with suitable academic qualifications, and (iii) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years.
- (c) The Administrative Staff College of India (1994) - Recommended, inter alia, that (i) the SPCBs be reoriented for implementing the instrument mix of legislation and regulation, fiscal incentives, voluntary agreements, information campaigns and educational programmes.
- (d) The Menon Committee – Recommending that the State Governments should not interfere with recruitment policies of the SPCBs, especially where the Boards are making efforts to equip their institutions with more and better trained engineering and scientific staff.

¹⁷ *Ibid.* The judgment notes the report of the Tata Institute of Social Sciences published in 2013 titled “Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards” which stated about the appointments to the SPCBs that time and again across state governments have not been able to choose a qualified, impartial, and politically neutral person of high standing to this crucial regulatory post. The recent appointments of chairpersons of various State Pollution Control Boards are in blatant violation of the Apex Court guidelines. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non-transparent unilateral decision. Many senior environmental scientists and other officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the Board.

“Unless corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such.”

46. In addition to this, the Parliamentary Standing Committee on Science and Technology, Environment and Forest, August 2012 in its recommendations on the working of the SPCBs was perturbed to note that the SPCBs were not performing their duties vigilantly and recommended that MoEF&CC must ensure proper and effective coordination between the CPCB and SPCBs and take necessary steps to make the Pollution Control Boards functional and ensure that the discharge their duties effectively and efficiently.¹⁸

47. During the hearing it was stated by the learned Counsel for the GPCB that guidelines in terms of Techī Tagī Tara (supra) have been issued and thus, the judgment has been complied with. However, he has not been able to dispute that the persons appointed are not having technical or professional qualifications or background as expected.

48. This Tribunal, on 20.07.2018, in Satish Kumar vs. U.O.I & Ors.¹⁹ also observed that persons of judicial background may be required in key position in PCBs as several functions of the SPCBs are quasi-judicial.

49. The order of this Tribunal dated 07.08.2018 in Stench Grips Mansa’s Sacred Ghaggar River (Suo-Moto Case)²⁰ noted that a task force must be constituted in every district and State to give reports on the environmental issues which should be published on the websites.

50. The Tribunal in the order on 08.08.2018 in Doaba Paryavaran Samiti Vs. State of U.P. & Ors.²¹ noted that statutory authorities had miserably

¹⁸ Accessible at:

<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20S%20and%20T,%20Env.%20and%20Forests/230.pdf>

¹⁹ O.A No. 56 (THC) of 2013

²⁰ O.A. No. 138/2016 (T_{NHRC})

²¹ O.A. No. 231/2014

failed and were required to be held accountable for their failure.

51. *In view of the fact clean environment, apart from other statutory provisions, is a mandate of Article 21 of the Constitution, causing of pollution having serious implications on health of the citizens cannot be accepted and no responsible authority could simply throw its hands in despair.²²*
52. *Thus, there being far from satisfactory governance on the part of the SPCBs, as depicted by the compiled data, resulting in large number of deaths and diseases in the country, remedial measures are required. Lack of effective governance in the present case is patent from absence of steps for prosecution of the guilty persons or recovery of damages for restoration of the environment which is primary responsibility of the SPCB. Appointment process does contribute to such ineffectiveness.*
53. *There is, thus, urgent need to review the qualification and appointment procedure so as to realistically comply with the mandate of the judgment of the Hon'ble Supreme Court. There is also need to carry out performance audit of functioning of all the Pollution Control Boards and Pollution Control Committees in the country and to identify remedial steps required in manning and functioning of SPCBs and PCCs or otherwise. Unless strong effective regulatory regime is in place, and shortcomings identified and remedied to expect clean environment would be unrealistic and merely a dream."*

(emphasis supplied)

39. *Vide order dated 28.08.2019 in O.A. No. 95/2018, Aryavart Foundation vs. M/s Vapi Green Enviro Ltd. & Ors., following observations may be noted:*
 - "13. *Report dated 10.07.2019 filed by the CPCB is on the subject of performance audit of the State PCBs/PCCs. The report merely ranks the PCBs/PCCs, without proper assessment of the functioning.*
 14. ***What is expected is performance audit on issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, scientific equipments, logistics support, competence etc. rather than ranking the States. Let the same be done and state-wise reports submitted based on thorough analysis in terms of statutory functions. CPCB may devise an appropriate mechanism for the purpose. We also direct that all vacant positions in the SPCBs/PCCs may be filled up at the within four months and the***

²² *Supra* note 18

Chief Secretaries of the States/UTs may ensure that there is no embargo in doing so, so that effective steps for protection of environment can be taken. It is also necessary to direct that the laboratories established by the SPCBs/PCCs, at headquarters as well as regional centers, are duly recognized for purposed of enforcement of environmental laws. The concerned authorities may take further steps accordingly. The CPCB may compile a report and file before the next date. SPCBs/PCCs may utilize the funds available with them, under EC/Consents or other heads instead of approaching other authorities and on that pretext not performing their essential function. The MoEF&CC may consider constituting an appropriate authority for the purpose with representatives from Central and State authorities on the pattern of Compensatory Afforestation Fund Management and Planning Authority (CAMPA) or otherwise. A compliance report be filed by the MoEF&CC before the next date.

.... ...

Directions:

- iii. *Performance audit be done with reference to issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, adequacy of laboratories and scientific equipments, logistics support, competence etc. rather than ranking the States and state-wise reports submitted along with recommendations based on thorough analysis in terms of statutory functions before the next date. CPCB may devise an appropriate mechanism for the purpose. CPCB and MoEF&CC may file a compliance report with reference to observations in para 14 above.”*

(emphasis supplied)”

8. In Original Application No. 85/2020, (Earlier O.A.No.22/2020 (WZ)), *Aryavart Foundation through its President v. Yashyashvi Rasayan Pvt. Ltd. & Anr.*, the Tribunal dealt with an incident of blast in a chemical factory in Gujrat resulting in death of 11 persons and injuries and displacement of large number of persons. The Tribunal appointed an Expert Committee, headed by Justice B.C. Patel, former Chief Justice Delhi to look into the causes of an industrial accident and to suggest remedial measures to avoid such accidents in future. The Committee found that safety protocols were not being followed and there was no adequate oversight by the statutory

authorities. It was also found that while granting permission to set up such units it was necessary to ensure availability of health services in the vicinity. The Committee suggested periodical safety audits and other measures for strengthening the oversight mechanism by the statutory regulators. The extract from the report is as follows:

“SECTION 8

**STEPS REQUIRED TO AVOID SUCH INCIDENT
(NATIONALDISASTER MANAGEMENT AUTHORITY)**

55. *The question is how such accidents can be avoided. There is National Disaster Management Authority (NDMA) of the Government of India, which has issued guidelines for Chemical Disasters (Industrial).*

56. *The common causes for chemical accidents, deficiencies, safety management system and human errors are noted. The chemical accidents fire, explosion and/or toxic release were resulting irreversible pain, suffering and death. To minimise such accident and to improve emergency preparedness at all levels, substantial efforts are still required to predict the occurrence of disaster. (Page xvii)*

57. *It is also stated that it has been realised that effective Chemical Disaster Management (CDM) is possible by the adoption of preventive and mitigation strategies as most chemical disasters are preventable in comparison to natural disasters that are difficult to predict and prevent. Statutory inspection, safety audit and testing of emergency plan, onsite emergency plan, offsite emergency plans, medical emergency plans, information on chemical, technical information have been given importance.*

58. *It is indicated that the disclosure of information via Material Safety Data Sheets (MSDS) by occupiers to workers on chemical hazards is a statutory requirement. The information in MSDS is generally complex and exhaustive, therefore, supervisory staff and workers find it difficult to comprehend the information available to them. (In the instance case, the workers have not been questioned by the officers of the DISH in this regard. Why? If they would have been questioned, the officers would have known that the unit is conveying about the hazardous chemicals).*

59. *It is specifically indicated that No Objection Certificates (NOCs) for establishing a storage facility often lack sufficient scientific knowledge and need to undergo appropriate training.*

Before granting the permission of tank farm by the relevant authority, if they would have studied the effect of mixing the chemicals even by accident, they would have realized that certain acids cannot be kept nearby, if they would not have allowed Nitric Acid in the tank farm area and would have asked to store at separate place the accident could have been avoided.

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SECTION 12

RECOMMENDATIONS

5. Shortage and training of manpower:

- i. It is necessary to appoint adequate number of Scientists and other officers as well as other staff considering the number of industries so as to effectively monitor the manufacturing units. Shortage of staff is also referred in the report of the Comptroller and Auditor General of India on Environmental Clearances and Post Clearance Monitoring 2016 that there are shortfalls in monitoring of environmental parameters. One of the reasons mentioned in the report is the shortfall/inadequate staff. Considering the numbers of Environmental clearance by MoEF & CC, New Delhi as well as SEIAA Gujarat (No. of ECs issued by MoEF & CC, New Delhi- Approx. 1500 & by SEIAA Approx. 8300 for the state of Gujarat only), the scientific staff in Ministry's regional offices should be strengthened for post EC monitoring at regular intervals. Thus, for having an eye over all the units, the Committee feels that the government should take appropriate steps for appointing adequate staff. The PESO also pointed out the same concerned the Gujarat being most industrialized state having about 40,000 licensed premises covered under various Acts and Rules including 1800 Major Accident Hazards premises, this is one of the pressing problems.***

7. Management & study:

- ii. HAZOP study direction / instruction must be carried out strictly and regularly by the unit.*
- iii. Management to educate the staff on Materials Safety Data Sheet (MSDS) and engineers & operators in the plant must study the same.*

7. DCG, Hospitals:

- iv. All Industrial Zone/SEZ should have their own Local Crisis Group. The District Crisis Group should give surprise visit to the factories regularly at least once in a quarter and check the operation of factories. At the end of the visit, they should generate a report and submit to the State Crisis Group.*
- v. As per the Chemical Accidents (Emergency, Planning, Preparedness, Response) Rules, 1996, brought out under the*

Environment Protection Act 1986, it is mandatory to have State Crisis Group (SCG) and District Crisis Group (DCG) to help the State Disaster Management Authority (SDMA) and District Disaster Management Authority (DDMA) under the Disaster Management Act, 2005 in advisory roles to deal with Chemical Disaster Management (CDM). There is no emergency response centre / disaster management centre within the SEZ. Therefore, the authorities must provide urgently such centers. As the Industry in the instant case failed to report in this behalf there must be a provision for not reporting immediately to the DCG and DDMA or at emergency control room for chemical disasters in the state (as in the instant case it is at Vadodara). The Rule making authority though having prescribed 48 hrs. time limit within which the competent authority is required to be informed but there is no provision for the breach with regard to non-informing immediately or within 48 hrs. (In the instant case it is admitted the report was submitted on 9th June, 2020 against the incident on 3rd June, 2020).

- vi. **The requirement of a Hospital in an industrial zone or SEZ and particularly industries are engaged in hazardous chemicals is a must. Even Hospitals at distance of 50 kms are general hospitals and not specialised in chemical burns and injuries arising out of accident on account of hazardous materials.**
- vii. District crisis group must undertake mock drill under off site emergency plan and crisis management in every industrial cluster or SEZ on failure action should be taken against DCG. (In the instant case they were satisfied with mock drill in one place in a district. In the instant case in one district there are more cluster of industries. Therefore, in each cluster an exercise aforesaid is a must – DISH has admitted that such exercise is not carried out in all clusters).
- viii. As at other places in the state of Gujarat in the industrial clusters, the GPCB has provided tower for air quality monitoring and same is being monitored by the GPCB. Dahej – I & II or the SEZ being an industrial town and factories are particularly engaged in hazardous chemicals, the committee is of the opinion that there should be Continuous Ambient Air Quality Monitoring Systems (CAAQMS) at all strategic locations. So that everyone in that area is aware about the air pollution.

8. **Safety audit:**

- ix. **For the purpose of auditing the safety, the government must make a panel of safety auditors to inspect the factory independently twice in a year and they should submit their report directly to the DISH. The safety auditor should be made answerable to the government.**
- x. The committee is of the opinion that sub-rule (9) of Rule 68(J) of the Gujarat Factories Rules 1963, refers to safety report and safety audit reports, under that Rule sub rule 2 gives a choice to industry to select the auditor for the purpose of the safety audit. The committee of the opinion that the state government be requested to consider the case and particularly safety

report from independent auditor and to amend the Rule as below:

2). After the commencement of these Rules, the occupiers of both the new and existing industrial activities and isolated storage must be checked by the government through the safety auditor which is accredited by an accreditation board to be constituted by the Ministry of labour, Government of India.

3). The auditor within 30 days of audit shall send the report to the chief inspector with respect to the audit recommendations and which shall be examined by the government within a period of 1 month and the industry shall be directed to carry out within the period specified the recommendation that may be made by the Government in this behalf.

9. **For SEZ / Industrial zone:**

- xi. Ordinarily a buffer zone of 500 meter is provided if there is a residential zone. **But in case of hazardous chemicals the buffer zone should be of 1000 meter minimum in view of the nature of the chemicals hazards associated with it. (In the instant case it is found that industries are close to village Luvara & Lakhigam). In a buffer zone, industries as well as government should provide proper plantation for pollution free atmosphere to the residents.**
- xii. **In SEZ or industrial zone for the benefit of the residents in that area the government should provide sewerage network so that the domestic wastewater generated by the residents treated in the sewage treatment plant.**

10. **Other recommendation:**

- xiii. **Constant monitoring is required under the direction of the Hon. Tribunal to the urgent need for expediting the matter of providing effluent pipeline (4.5 km) for deep sea discharge by GIDC as per NIO recommendation to ensure adequate dilution and dispersion of effluent (Despite reminders GIDC has failed)."**

9. Apart from other measures, the MoEF&CC needs to consider the above recommendations and take urgent measures to revamp the monitoring mechanism in a time bound manner in the interest of safety and health of the citizens and protection of the environment so as to ensure monitoring of compliance of EC conditions of atleast 'red' category industries, not less than once in a quarter. MoEF&CC may give due attention for proper constitution of DEIAAs in the States to ensure the projects of category 'B' and 'B-1' are properly scrutinized. The CPCB and

the State PCB/PCCs may also take measures to conduct monitoring of EC conditions at their level atleast once every quarter for all 'Red' category units, in the interest of safety of the citizens, which may also be looked into by the Chief Secretaries of the all States/UTs.

The Application is disposed of.

A copy of this report be forwarded to the MoEF&CC, CPCB, Chief Secretaries of all the States/UTs and the State PCBs/PCCs.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

February 01, 2021
Original Application No. 837/2018
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