

Item No. 02

Court No. 1

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

Original Application No. 1038/2018

(With report dated 01.11.2019)

News item published in "The Asian Age" Authored by Sanjay Kaw
Titled "CPCB to rank industrial units on pollution levels"

Date of hearing: 14.11.2019

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Respondent(s): Mr. Raj Kumar, Advocate
Ms. Nandini Sen, Advocate for State of West Bengal
Mr. Attin Shankar Rastogi, Advocate
Mr. Dhananjay Baijal, Advocate for TSPCB

ORDER

1. The question for consideration is remedial action for control of pollution in identified polluted industrial clusters in compliance of earlier order of this Tribunal dated 10.07.2019 requiring the statutory authorities to take action by way closure, prosecution and recovery of compensation from identified polluters in polluted industrial clusters. The said directions are set out in later part of this order.
2. The matter has been earlier dealt with inter alia vide orders dated 13.12.2018 and 10.07.2019 in the light of Comprehensive Environmental Pollution Index (CEPI) which includes weightages on nature of pollutants, ambient pollutant concentrations, receptors

(number of people affected) and additional high risk element prepared by the CPCB in exercise of its statutory functions under the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act), the Water (Prevention and Control of Pollution) Act, 1974, (the Water Act) and the Environment (Protection) Act, 1986 (the EPA Act). Based on the data with regard to pollution, the areas are ranked as 'critically polluted area' (CPA), 'severely polluted area' (SPA) and 'other polluted areas' (OPAs).

3. Vide order dated 13.12.2018, this Tribunal directed the Pollution Control Boards / Pollution Control Committees (PCBs/PCCs) to finalize time bound action plan to bring all the Polluted Industrial Areas (PIAs) within safe parameters as per the Air Act, the Water Act and the EPA Act. Accordingly, report was compiled by the CPCB and furnished to the MoEF&CC as shown by a letter dated 17.05.2019 which was handed over during the hearing before this Tribunal on 10.07.2019.

4. After considering the said data, this Tribunal in the order dated 10.07.2019 held that the Rule of Law required prohibiting polluting activities to protect the environment and public health. While remedial action may certainly be planned, current violation of law could not be ignored and was actionable by way of stopping polluting activities, initiating prosecution and recovering compensation on 'Polluter Pays' principle. The statutory authorities are accountable for performing their statutory duties. Referring to some of the earlier orders on the subject, this Tribunal observed:

"7. Ill effects of industrial pollution on the environment and public health are well acknowledged. This has made it necessary to strictly apply the principles of 'Sustainable

Development' and permit any activity to be carried out without degrading the environment. The statutory scheme under the Air Act, the Water Act and the EPA Act provides for standards for air and water quality which must be maintained and violation thereof is a criminal offence¹. Any violation has to be visited with stopping of polluting activity, prosecution and compensation for restoration of environment. Accordingly, in the order dated 13.12.2018 this Tribunal observed:

“5. Purpose of economic development in any region is to provide opportunities for improved living by removing poverty and unemployment. While industrial development invariably creates more jobs in any region, such development has to be sustainable and compliant with the norms of environment. In absence of this awakening or tendency for monitoring, industrialization has led to environmental degradation on account of industrial pollution. It is imperative to ensure that steps are taken to check such pollution to uphold statutory norms. Adequate and effective pollution control methods are necessary.

6. Dust, smoke, fume and toxic gas emissions occur as a result of highly polluting industries such as thermal power plants, coal mines, cement, sponge iron, steel and ferrow alloys, petroleum and chemicals unless right technology is used and precaution taken. Industry specific clusters have not only become hazardous but also cause irreparable damage to our ecology and environment, often breaching the environment's carrying capacity, adversely affecting public health.

7. In Karnataka Industrial Areas Development Board vs. C. Kenchappa & Ors², the Hon'ble Supreme Court observed, as guiding rules for Sustainable Development, that humanity must take no more from nature than man can replenish and that people must adopt lifestyles and development paths that work within the nature's limit. In Vellore Citizens Welfare Forum Vs. Union of India, the Hon'ble Supreme Court recognized the Precautionary Principle and explained that environmental measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

¹ Section 7 read with Section 15 of the EPA Act, Section 24 read with Section 41 and Section 45A of the Water Act, Section 21 and Section 22 read with Section 37 of the Air Act.

² (2006) 6 SSC 383

8. This Tribunal has applied the same principles in deciding matters before it in terms of Section 20 of the National Green Tribunal Act 2010.

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13. The action plan to be prepared in the States may be done by the Committee constituted by the Chief Secretary within one month from today as several Departments may be involved in the exercise. The final preparation of the action plan including its execution may be overseen by the Chief Secretary of the concerned State, along with the other connected major environmental issues of the States, such as pollution of river stretches, nonattainment cities in terms of air quality and solid waste management, utilization of treated sewage, covered by order of this Tribunal 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", order dated 08.10.2018 in Original Application No. 681/2018, 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", order dated 20.08.2018 in Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and order dated 27.11.2018 in Original Application No. 148/2016, Mahesh Chandra Saxena Vs. South Delhi Municipal Corporation & Ors. The Chief Secretary will take meetings on all these issues once in three months (quarterly) and will forward Report to NGT by e-mail."

8. We may also note that on 16.01.2019, while considering the issue of compliance of Solid Waste Management Rules, 2016 and other Waste Management Rules in O.A. No. 606/2018, Compliance of MSW Rules, 2016, the Tribunal required the presence of the Chief Secretaries in person after monitoring the subjects mentioned in the said order which included polluted industrial clusters.
9. Accordingly, the Chief Secretaries appeared before this Tribunal and filed their respective versions on the subject. They have been asked to take necessary steps to enforce the environment norms and furnish periodical reports to this Tribunal. The directions include monitoring of important environmental issues including the issue of polluted industrial clusters by a Central

Monitoring Committee with representatives from the Central Government and the Chief Secretaries of the States, undertaking carrying capacity study of the areas where violation of environmental norms is established, training programme of the officers concerned with the enforcement of the environmental norms, preparation of annual environmental plan for the country giving status of gaps in compliance of environmental norms.³ The Tribunal noted the private studies which may need to be verified assessing the number of deaths and diseases from pollution.⁴

“38. Death attributable to pollution to be 2.51 million in 2015, highest in the world. Air pollution, the number of deaths in India from ambient air pollution was 1.09 million, while deaths from household air pollution from solid fuels were 0.97 million. In the case of water pollution, 0.5 million deaths were caused by unsafe water source, while unsafe sanitation caused 0.32 million deaths. Deaths from air pollution were a result of diseases such as heart disease, stroke, lung cancer, and chronic obstructive pulmonary disease (COPD). Pollution has been responsible for the most non communicable disease deaths. India ranks a dismal 110 of 149 countries on the Sustainable Development Index. With rapid urbanization, the country is facing massive waste management challenge. Over 377 million urban people live in 7,935 towns and cities and generate 62 million tonnes of municipal solid waste per annum. Only 43 million tonnes (MT) of the waste is collected, 11.9 MT is treated and 31 MT is dumped in landfill sites. An alarming 80% of India’s surface water is polluted. Indian cities generate 10 billion gallons or 38 billion litres of municipal waste water every day, out of which only 29% of it is treated.

40. In case extent of convictions for the environment related offences do not correspond to the extent of crime, paradigm shift in policies and strategies for implementation of law may need to be considered. Similarly, the mechanism for recovery of compensation may need to be revised on that pattern. Such review of policy cannot be left to the Local Bodies or the Pollution Control Boards but has to be at highest level in the State and further review at the national level. As noted in some of the studies, the ranking of the country in compliance of environmental norms needs to be brought to respectable higher position which may be possible only if there is change in policies and

³ O.A 606/2018, order dated 17.05.2019, at para 27

⁴ Ibid

strategies for implementation of necessary norms at every level in right direction. The scale of compensation needs to be suitably revised so that the same is deterrent and adequate to meet the cost of reversing the pollution.”

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11. During the hearing today, a copy of the letter dated 17.05.2019 was handed over by the Learned Counsel for the CPCB, indicating the latest CEPI scores for 100 polluted industrial areas/clusters monitored during 2018. The said scores are as follows:

The CEPI Scores in descending order for Industrial Areas/Clusters monitored during 2018

Sl. No.	Name of Polluted Industrial Areas (PIAs)	Air	Water	Land	* CEPI Score	# Status of Environment
1.	Tarapur(Maharashtra)	72.00	89.00	59.25	93.69	Ac_Wc_Ls
2.	Najafgarh-Drain basin including Anand Parbat, Naraina, Okhla, Wazirpur(Delhi)	85.25	86.00	55.75	92.65	Ac_Wc_Ls
3.	Mathura(Uttar Pradesh)	86.00	81.00	45.00	91.10	Ac_Wc_Ln
4.	Kanpur(Uttar Pradesh)	66.00	85.00	45.00	89.46	Ac_Wc_Ln
5.	Vadodara(Gujarat)	82.00	80.75	48.75	89.09	Ac_Wc_Ln
6.	Moradabad(Uttar Pradesh)	76.00	71.50	68.75	87.80	Ac_Wc_Lc
7.	Varanasi-Mirzapur(Uttar Pradesh)	67.50	80.00	39.63	85.35	Ac_Wc_Ln
8.	Bulandsahar-Khurza(Uttar Pradesh)	79.50	76.00	36.75	85.23	Ac_Wc_Ln
9.	Gurgaon(Haryana)	70.00	80.00	36.75	85.15	Ac_Wc_Ln
10.	Manali (Tamil Nadu)	59.75	72.25	71.75	84.15	As_Wc_Lc
11.	Panipat(Haryana)	66.00	72.75	60.00	83.54	Ac_Wc_Lc
12.	Firozabad(Uttar Pradesh)	76.00	72.00	32.50	81.62	Ac_Wc_Ln
13.	Udham Singh Nagar (Uttarakhand)	33.00	79.50	26.00	81.26	An_Wc_Ln
14.	Jodhpur (Rajasthan)	67.00	66.00	65.00	81.16	Ac_Wc_Lc
15.	Pali (Rajasthan)	66.00	65.00	65.50	80.48	Ac_Wc_Lc
16.	Ankleshwar (Gujarat)	72.00	57.50	51.00	80.21	Ac_Ws_Ls
17.	Gajraula Area(Uttar Pradesh)	71.00	70.00	45.00	80.14	Ac_Wc_Ln
18.	Vapi (Gujarat)	66.00	75.00	30.00	79.95	Ac_Wc_Ln
19.	Siltara Industrial Area (Chhattisgarh)	76.00	51.75	31.75	79.94	Ac_Ws_Ln
20.	Bhiwadi (Rajasthan)	66.50	71.00	44.75	79.63	Ac_Wc_Ln
21.	Vellore -North Arcot	49.00	75.00	35.75	79.38	An_Wc_Ln

	(Tamil Nadu)					
22.	Sanganer Industrial Area (Rajasthan)	65.00	71.88	39.50	79.10	Ac_Wc_Ln
23.	Byrnihat (Assam)	67.00	70.50	39.50	78.31	Ac_Wc_Ln
24.	Peenya(Karnataka)	41.00	66.00	70.00	78.12	An_Wc_Lc
25.	Jaipur (Rajasthan)	61.88	71.88	31.75	77.40	Ac_Wc_Ln
26.	Surat (Gujarat)	46.00	68.25	56.00	76.43	An_Wc_Ls
27.	Chandrapur (Maharashtra)	75.00	23.75	23.75	76.41	Ac_Wn_Ln
28.	Agra(Uttar Pradesh)	60.00	66.88	47.00	76.22	Ac_Wc_Ln
29.	Pattancheru Bollaram (Telangana)	56.00	70.00	32.25	75.42	As_Wc_Ln
30.	Jalandhar (Punjab)	53.50	66.88	44.50	74.76	As_Wc_Ln
31.	Ludhiana (Punjab)	53.50	71.00	16.00	73.48	As_Wc_Ln
32.	Tiruppur (Tamil Nadu)	33.00	65.00	64.00	72.39	An_Wc_Lc
33.	Ghaziabad(Uttar Pradesh)	57.50	66.00	32.25	72.30	As_Wc_Ln
34.	Mettur (Tamil Nadu)	41.25	19.38	69.38	71.82	An_Wn_Lc
35.	KIADB Industrial Area, Jigini, Anekal (Bengaluru)	52.00	66.00	28.25	70.99	As_Wc_Ln
36.	Vatva(Gujarat)	57.00	66.00	25.50	70.94	As_Wc_Ln
37.	Raipur (Chhattisgarh)	67.00	45.75	25.00	70.77	Ac_Wn_Ln
38.	Rajkot(Gujarat)	51.75	61.50	45.75	70.62	As_Wc_Ln
39.	Aurangabad(Maharashtra)	45.00	65.38	28.75	69.85	An_Wc_Ln
40.	Dombivali (Maharashtra)	62.00	63.50	27.25	69.67	Ac_Wc_Ln
41.	Nashik(Maharashtra)	56.50	60.00	42.00	69.49	As_Wc_Ln
42.	Batala (Punjab)	63.00	62.75	25.50	68.92	Ac_Wc_Ln
43.	Noida(Uttar Pradesh)	59.75	62.75	27.00	68.76	As_Wc_Ln
44.	Baddi(Himachal Pradesh)	63.00	63.75	19.75	68.26	Ac_Wc_Ln
45.	Vijayawada(Andhra Pradesh)	60.50	49.25	38.75	68.04	Ac_Wn_Ln
46.	Bandel (West Bengal)	59.50	47.00	42.75	67.64	As_Wn_Ln
47.	Ramgarh(Jharkhand)	56.75	50.00	46.25	66.75	As_Ws_Ln
48.	Kukatpally (Telangana)	43.75	61.00	32.00	66.46	An_Wc_Ln
49.	Ib-Valley (Orissa)	48.75	59.00	36.75	66.35	An_Ws_Ln
50.	Tuticorin (Tamil Nadu)	29.75	46.00	61.00	66.34	An_Wn_Lc
51.	Navi Mumbai(Maharashtra)	56.00	63.00	16.00	66.32	As_Wc_Ln
52.	Meerut(Uttar Pradesh)	52.00	65.00	6.00	66.09	As_Wc_Ln
53.	Parwanoo(Himachal Pradesh)	19.00	61.88	53.75	65.77	An_Wc_Ls
54.	Kala Amb(Himachal Pradesh)	17.00	64.00	27.75	65.70	An_Wc_Ln
55.	Bidar(Karnataka)	31.00	60.00	45.50	65.64	An_Wc_Ln
56.	Durgapur (West Bengal)	62.50	43.50	18.75	65.56	Ac_Wn_Ln

57.	Aligarh(Uttar Pradesh)	56.25	61.88	11.88	64.42	As_Wc_Ln
58.	Hajipur(Bihar)	57.50	41.13	39.25	64.36	As_Wn_Ln
59.	Hazaribagh(Jharkhand)	61.00	20.00	41.00	64.20	Ac_Wn_Ln
60.	Coimbatore (Tamil Nadu)	47.25	53.75	45.25	63.64	An_Ws_Ln
61.	Singrauli (UP & MP)	45.00	57.25	27.75	62.59	An_Ws_Ln
62.	Cuddalore (Tamil Nadu)	25.00	58.25	41.25	62.56	An_Ws_Ln
63.	Faridabad(Haryana)	55.25	53.75	28.75	62.17	As_Ws_Ln
64.	Bhavnagar (Gujarat)	61.00	15.50	15.50	61.94	Ac_Wn_Ln
65.	Howrah (West Bengal)	60.50	20.00	16.00	61.76	Ac_Wn_Ln
66.	Paradeep (Orissa)	43.00	57.50	17.00	60.61	An_Ws_Ln
67.	Erode (Tamil Nadu)	34.13	47.00	52.75	60.33	An_Wn_Ls
68.	Saraikela (Jharkhand)	57.75	17.50	34.00	60.26	As_Wn_Ln
69.	Kattedan(Telangana)	42.25	50.75	45.25	60.17	An_Ws_Ln
70.	Dhanbad(Jharkhand)	43.00	57.50	12.50	59.78	An_Ws_Ln
71.	Indore(Madhya Pradesh)	18.50	56.88	20.75	58.53	An_Ws_Ln
72.	Bhadravati(Karnataka)	45.00	52.00	30.00	58.48	An_Ws_Ln
73.	Mandideep (Madhya Pradesh)	56.00	55.25	10.00	58.43	As_Ws_Ln
74.	Mangalore(Karnataka)	15.00	54.50	54.25	58.20	An_Ws_Ls
75.	Barajamda(Jharkhand)	51.88	25.63	46.75	57.64	As_Wn_Ln
76.	Korba (Chhattisgarh)	43.75	17.75	54.00	57.57	An_Wn_Ls
77.	Ahmedabad(Gujarat)	53.50	48.50	16.00	57.11	As_Wn_Ln
78.	Haridwar (Uttarakhand)	50.75	52.38	13.75	55.70	As_Ws_Ln
79.	Asansol (West Bengal)	54.00	16.25	13.75	55.03	As_Wn_Ln
80.	Chembur(Maharashtra)	52.25	50.75	10.00	54.67	As_Ws_Ln
81.	Morbi (Gujarat)	51.00	47.25	14.00	54.24	As_Wn_Ln
82.	Mandi Govindgarh (Punjab)	23.75	53.75	1.50	53.91	An_Ws_Ln
83.	Raichur(Karnataka)	32.75	47.88	32.50	53.42	An_Wn_Ln
84.	West Singhbhum(Jharkhand)	51.88	25.88	11.25	53.28	As_Wn_Ln
85.	Greater Kochin (Kerala)	47.38	35.88	29.50	52.94	An_Wn_Ln
86.	Pimpri-Chinchwad(Maharashtra)	52.00	6.25	5.25	52.16	As_Wn_Ln
87.	Gwalior (Madhya Pradesh)	50.00	43.13	7.75	51.67	As_Wn_Ln
88.	Junagarh (Gujarat)	47.00	25.00	35.00	51.64	An_Wn_Ln
89.	Jajpur (Orissa)	43.50	26.25	41.25	49.62	An_Wn_Ln
90.	Nagda -Ratlam (Madhya Pradesh)	12.00	47.00	28.00	48.78	An_Wn_Ln
91.	Jamshedpur(Jharkhand)	46.00	19.25	20.25	48.10	An_Wn_Ln
92.	Mahad(Maharashtra)	41.00	35.75	29.00	47.12	An_Wn_Ln

93.	Bhillai-Durg (Chhattisgarh)	43.00	32.75	19.75	46.69	An_Wn_Ln
94.	Angul Talchar (Orissa)	44.75	13.25	23.00	46.43	An_Wn_Ln
95.	Haldia (West Bengal)	45.00	35.00	3.75	45.72	An_Wn_Ln
96.	Vishakhapatam (Andhra Pradesh)	27.25	12.75	42.75	44.74	An_Wn_Ln
97.	Dewas (Madhya Pradesh)	28.00	31.63	31.75	37.79	An_Wn_Ln
98.	Jharsuguda (Orissa)	36.00	21.50	8.75	37.20	An_Wn_Ln
99.	Digboi (Assam)	23.50	25.25	6.50	26.39	An_Wn_Ln
100.	Pithampur (Madhya Pradesh)	13.50	19.50	6.75	20.23	An_Wn_Ln

12. Question for consideration is whether mere making of action plans obviates the requirement of enforcing the law. Continued polluting activities are criminal offences under the law of the land. The rule of law requires prohibiting such activities to⁵ safeguard the environment and the innocent victims.⁶

13. The answer has to be in the negative. Once the industrial clusters have been notified as polluting, while action plans may certainly be prepared, the polluting activity, which is a criminal offence, cannot be allowed to be continued. The essence of rule of law is that no activity which is against the law is allowed to continue and the person violating the law is punished according to law.⁷ Thus merely requiring improvement does not obviate the need for punishing the law violators/polluters; stopping polluting activity and recovering compensation for the damage already caused so as to recover the cost of restoration⁸ is the

⁵ Under Section 5 of the EPA Act, Section 31A of the Air Act and Section 33A of the Water Act, the power of Board to give directions includes the power to direct the closure, prohibition or regulation of any industry, operation or process; or the stoppage or regulation of the supply of electricity or water or any other service.

⁶ [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(18\)30261-4/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(18)30261-4/fulltext) stating 1.24 million deaths in India in 2017, which were 12.5% of the total deaths, were attributable to air pollution, including 0.67 million from ambient particulate matter pollution and 0.48 million from household air pollution. ⁷ Goa Foundation Vs. Union of India and Ors., (2014) 6 SCC 590, at para 72-75, the Supreme Court noted the power that rests with the Pollution Control Board under Section 31 A of the Air Act and Section 33 A of the Water Act and directed that the authorities should take stringent actions in line with these power in cases of polluting industries. ⁸ Tirupur Dyeing Factory Owners Association Vs. Noyyal River Ayacutdars Protection Association & Ors., (2009) 9 SCC 737, in paras 26, 27, 33 & 34, the Supreme Court emphasis on developmental activities to be such that it does not compromises with the ability of the future generation to meet their needs and in this regard, authorities are to take into consideration the macro effect of wide-scale land and environmental degradation caused by absence of remedial measures.

⁷ Goa Foundation Vs. Union of India and Ors., (2014) 6 SCC 590, at para 72-75, the Supreme Court noted the power that rests with the Pollution Control Board under Section 31 A of the Air Act and Section 33 A of the Water Act and directed that the authorities should take stringent actions in line with these power in cases of polluting industries.

⁸ Tirupur Dyeing Factory Owners Association Vs. Noyyal River Ayacutdars Protection Association & Ors., (2009) 9 SCC 737, in paras 26, 27, 33 & 34, the Supreme Court emphasis on developmental activities to be such that it does not compromises with the ability of the future

mandate of law. This having not been done, the Tribunal is under a duty to direct the statutory regulators to perform their functions and take steps forthwith for stopping polluting activities, initiating prosecutions against the polluters and assessing and recovering compensation from such identified polluters at least for five years which is the period specified under Section 15(3) of the National Green Tribunal Act, 2010.

14. We reiterate that economic development is not to be at the cost of health of the public and in violation of law of the land. Unless the polluting industries tackle the problem they have created, their operations have to be stopped/suspended.⁹ Reference may be made to the judgement in the case of Indian Council for Enviro Legal Action & Ors. Vs. Union of India & Ors.:¹⁰

“Respondents 4 to 8 have earned the dubious distinction of being categorised as “rogue industries”. They have inflicted untold misery upon the poor, unsuspecting villagers, de-spoiling their land, their water sources and their environment – all in pursuance of their private profit. They have forfeited all claims of any consideration by this Court. Accordingly, we herewith order the closure of all plants and factories of Respondents 4 to 8 located in Bichhri village. The RPCB is directed to seal all factories/units/plants of the said respondents forthwith.”

15. We may note that this Tribunal has dealt with cases of industrial pollution and exercising its jurisdiction under Sections 14, 15 and 20 of the NGT Act, 2010 directed the regulatory authorities to prohibit polluting activities, prosecute the polluters and assess and recover compensation. In the case of Morbi Industrial Cluster,¹¹ which ranks at 81 based on its CEPI score, (where air pollution is critical though overall index places it in OPA), the Tribunal noted the air quality as shown in the inspection report furnished in the said case, to be as follows:

generation to meet their needs and in this regard, authorities are to take into consideration the macro effect of wide-scale land and environmental degradation caused by absence of remedial measures.

⁹ M.C Mehta (Badkhal and Surajkund Lakes Matters) vs. Union of India & Ors., (1997) 3 SCC 715 at para 10 & 11, where the Supreme Court prohibited any construction activities around the said lakes on account of precautionary principle to protect these lakes; Vellore Citizens Welfare Forum Vs. Union of India & Ors., (1996) 5 SCC 647 at para 9, where the Supreme Court discussed the rights guaranteed under Article 21 of the Constitution of India and directed that all tanneries which have not obtained the consents will be not reopened and that no new tanneries will be permitted to be open in the prohibited area.

¹⁰ (1996) 3 SCC 212 at para 70.

¹¹ Order dated 06.03.2019 in Original Application No. 20/2017 (WZ), Babubhai Ramubhai Saini Vs. Gujarat Pollution Control Board & Ors.

“Ambient Air Quality Status: As per National Green Tribunal committee report average ambient air quality (7 Stations) monitored PM10 = 552.66 µg/m³, PM2.5 = 289.61 µg / m³, SO₂ = 152.81 µg /m³. Compared to that, Average ambient air quality monitored (4 Stations) in last 3 months (Aug- 18 to Nov-18) is PM10 = 199.1 µg /m³, PM2.5 = 60.6 µg /m³. Though not meeting with standards, this shows improvement in air quality of MorbiWankner Region.”

16. *Since the industries in the said area were operating in violation of Air Act, having adverse consequences on health and environment, applying the Sustainable Development and Precautionary principles, the Tribunal directed the GPCB to close all the coal gasifier industries and take steps for prosecution of such industries which violated the law and recover compensation for the damage to the public health to be assessed by a Joint Committee of GPCB, CPCB and NEERI, taking into account the cost of restoration of the environment and the element of deterrence.¹²*

17. *The Tribunal observed:*

“22. Purpose of economic development in any region is to provide opportunities for improved living by removing poverty and unemployment. While industrial development invariably creates more jobs in any region, such development has to be sustainable and compliant with the norms of environment. In absence of this awakening or tendency for monitoring, industrialization has led to environmental degradation on account of industrial pollution. It is imperative to ensure that steps are taken to check such pollution to uphold statutory norms. Adequate and effective pollution control methods are necessary.

23. We may also note that as per data compiled by the CPCB Morbi Wankaner is one of the polluted industrial clusters. Vide order dated 13.12.2018 in Original Application No. 1038/2018, this Tribunal considered the subject matter of critically polluted industrial clusters and directed preparation of action plans by the respective States for remedying the situation.

24. Even though, this area is polluted but not ‘critically polluted’, the same may not be covered by the said order, but the fact remains that there is high amount of pollution as shown by the latest report of the GPCB quoted above in para no. 13. PM10 is equal to 552.66 and PM2.5 is equal to

¹² Order dated 06.03.2019 in Original Application No. 20/2017 (WZ), Babubhai Ramubhai Saini Vs. Gujarat Pollution Control Board & Ors

289.61. Stringent measures are, thus, required in the interest of protection of environment and public health.

25. Accordingly, we allow the applications and direct the GPCB to close all coal gasifiers industries and units operating with the help of coal gasifiers without prejudice to such units switching over to non-coal gasifiers or PNG or technology consistent with the above report. The GPCB must initiate immediate steps for prosecution of the industries which have operated in violation of law and recover compensation for causing damage to the environment and public health. This amount may be assessed by a Committee with representatives of CPCB, GPCB and NEERI. The CPCB will be the nodal agency for coordination and compliance. The Committee may suggest restoration plan.”

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22. In view of water pollution caused by absence/dysfunctional CETPs/ETPs/STPs, the Tribunal has, in the case of Aryavart Foundation Vs. M/s Vapi Green Enviro Ltd. & Ors,¹³ directed all defaulting industries, other than green and white category, connected with CETP, to make deposits with the CPCB towards interim environmental compensation, pending assessment of actual compensation and further action¹⁴

- (i) Large Industries – Rs. 1 crore each
- (ii) Medium Industries – Rs. 50 Lakhs each
- (iii) Small Industries – Rs. 25 Lakhs each

23. **In the present case, in view of massive exercise already done by CPCB, it is not necessary to require any further verification about the existence of pollution in the said PIAs.** The Tribunal can direct that the polluting activities cannot be allowed to continue till adequate measures are taken as the Tribunal is bound to apply the ‘Sustainable Development’¹⁵ ‘Precautionary’¹⁶ and ‘Polluter Pays’¹⁷

¹³ O.A 95/2018, order dated 11.01.2019

¹⁴ Para 55, of O.A 95/2018, order dated 11.01.2019

¹⁵ M.C Mehta Vs. Union of India (1997) 2 SCC 353, where the Supreme Court of India held – The development of industry is essential for the economy of the country, but at the same time the environment and the ecosystems have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystem.

¹⁶ M.C Mehta vs. Union of India & Ors., (2009) 6 SCC 142, at para 23, 30 & 46, the Supreme Court addressed the issue of wide threat to forest ecology vis-à-vis the mining activities in the Aravalli hills and explained that it is important to evoke the precautionary principle to impose complete ban on mining in the Aravalli Range in state of Haryana

¹⁷ Indian Council for Enviro Legal Action & Ors. Vs. Union of India & Ors., (1996) 3 SCC 212 Para 16, Vellore Citizens Welfare Forum Vs. Union of India & Ors. (1996) 5 SCC 647 Para 12-18 – holding that “Polluter Pay” principle is ‘accepted principle and part of environmental law of the country, even without specific statute. M.C Mehta Vs. Union of India & Ors., W.P (C) No. 13029/2015 order dated 24.10.2017 of the Supreme Court of India., O.A 95/2018, order dated

principle under Section 20 of the National Green Tribunal Act, 2010 to protect the environment and the victims. **The statutory regulatory bodies can be required to straightaway identify the particular industrial units in the said PIAs that are causing pollution, particularly those units which fall under the red and orange category and take action against them by way of closing the polluting activity, initiating prosecution and assessing and recovering compensation. Pending such assessment, interim compensation may be recovered on the scale adopted by this Tribunal in the case of Vapi industrial area.**¹⁸

24. CPCB has compiled data of industrial clusters which are polluting in terms of air, water and other norms together. Under the law, even air pollution or water pollution or other pollution, are independent offences. The sustainable development and precautionary principle require any polluting activity to be prohibited and compensation recovered for damage caused from polluters. If there is air pollution, actionable under the Air Act, even if there is no violation of Water Act or EPA Act, such pollution cannot be ignored. There has to be prosecution, stopping of polluting activity and recovery of compensation for restoration of the environment. We have seen that even when norms of air, water and other pollution are being violated, prosecution, stopping of polluting activities and recovery of compensation is not taking place for which there is no justification. **Likewise action to prohibit polluting activity, initiating prosecution and recovery of compensation is required not merely for the PIAs based on violation of norms under all the heads, but also for areas where air, water or other pollution is found individually. Thus areas not covered by PIAs are also required to be governed by our directions for enforcing the law by way of stopping polluting activity and taking other steps. The fact that such pollution is taking place is evidenced by there being acknowledged pollution in the form of 351 polluted river stretches.¹⁹ and 102 non-attainment cities.²⁰**

25. CPCB must compile data of polluted industrial areas not confined to more than one parameters as is now being done, but also with respect to polluted areas based on water, air or other pollution individually. Compiling data

11.01.2019 & O.A No. 593/2017, order dated 03.08.2018: The Tribunal directed CPCB to take penal action against those accountable for failure in setting up CETPs/STPs/STPs and to recover compensation for damage to the environment.

¹⁸ Supra 15

¹⁹ O.A. 673/2018, News Item Published in 'The Hindu' authored by Shri. Jacob Koshy titled "More river stretches are now critically polluted: CPCB", Order dated 20.09.2018

²⁰ O.A. 681/2018, 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" order dated 08.10.2018

for categorizing areas as polluted areas based on water pollution alone, or air pollution or other pollution alone may be a step in the right direction. Let this be now done in the next three months, with the assistance of State PCBs/PCCs or other experts. In this regard we may note that dealing with the industrial water pollution, this Tribunal directed the CPCB to compile its monitoring report with reference to 97 CETPs installed in different states as this was linked to 100 PIAs also.²¹

26. Needless to state that there is no right to carry on business in violation of pollution norms and right of statutory authorities is coupled with duty. Such right, does not carry any unlimited discretion of not taking action when pollution norms are violated.

27. **In view of the material compiled by the CPCB, with the assistance of SPCBs/PCCs, in respect of polluted industrial areas, where action is not being taken by statutory authorities, the Tribunal has to exercise its jurisdiction of directing performance of statutory functions and duties by the State boards/committees, following similar direction by the Apex Court.**²²

28. **Accordingly, we direct the CPCB in coordination with all State PCBs/PCCs to take steps in exercise of statutory powers under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974, Environment (Protection) Act, 1986 or any other law to prohibit operation of polluting activities in the said CPAs and SPAs within three months and furnish a compliance report to this Tribunal. The Central Pollution Control Board, in coordination with the State Boards/PCBs may make assessment of compensation to be recovered from the said polluting units for the period of last 5 years, taking into account the cost of restoration and cost of damage to the public health and environment and the deterrence element. The scale of deterrence may be related to the period and the frequency of defaults. Such other factors as may be found relevant may also be taken into account. No further industrial activities or expansion be allowed with regard to 'red' and 'orange' category units till the said areas are brought within the prescribed parameters or till**

²¹ O.A No. 593/2017, order dated 19.02.2019, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.

²² M.C Mehta (Calcutta Tanneries' Matter) Vs. Union of India & Ors., (1997) 2 SCC 411, at para 17, the Supreme Court directed the Board to take action against defaulting tanneries which, including those which had not complied with the conditions under Water Act as mentioned in their consents. In M.C Mehta Vs. Union of India & Ors., (2004) 6 SCC 588, paras 37,48, 517 69, the Supreme Court passed direction on closure of industrial units which were illegally operating and were in violation of the Master Plan

carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms. Pending assessment of compensation, interim compensation be recovered at the scale adopted by this Tribunal in the case of Vapi Industrial area as mentioned in para 22 above.

29. We further direct CPCB, with the assistance of SPCBs/PCCs or other experts, to compile information with regard to polluted industrial areas based on water pollution norms separately, air pollution norms separately and other pollution norm separately and notify such information on public domain within three months. On completing this exercise, action against identified individual polluters may be initiated on the same pattern on which direction have been issued in para 28 and furnish a report to this Tribunal in this regard also, before the next date.

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31. Thus, while CPCB was to compile data separately with reference to different type pollution in addition to comprehensive pollution, the State Boards /Committees or other regulatory bodies were to take action against the polluters in the said areas where data already compiled established existence of pollution so that load of pollution could be brought down for compliance of law and for protection of environment and health.”

5. The above order was clarified vide order dated 23.08.2019 as follows:-

“10. What the Tribunal has directed is inter alia to “identify the particular industrial units in the said PIAs that are causing pollution, particularly those units which fall under the ‘red’ and ‘orange’ category and take action against them by way of closing the polluting activity, initiating prosecution and assessing and recovering compensation” 9. No ground whatsoever has been shown to review the said direction. Further direction of the Tribunal is that “No further industrial activities or expansion be allowed with regard to ‘red’ and ‘orange’ category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and

environmental norms.” 10 Objection to this direction is that there may be ‘red’ or ‘orange’ category units which may not in any manner add to the pollution. If it is so, all that is required is to determine viability of such units on ‘Precautionary’ principle by an appropriate mechanism. Reasons for doing so are that the area as per data available is polluted and ‘red’ and ‘orange’ category have higher potential for pollution. There is no absolute bar to such units being set up if they are found to be viable. This clarification should take care of any possible apprehension that the order of the Tribunal will obstruct any legitimate industrial activity. The MoEF&CC can forthwith devise an appropriate mechanism to ensure that new legitimate activity or expansion can take place after due precautions are taken in the areas in question by ‘red’ and ‘orange’ category of units.

11. Coming to the apprehension of the CPCB, it is clear from paras 28 and 32 of the order reproduced above that action has to be taken only against polluting activities. If any unit is compliant with the norms, such unit is not affected. There is no basis for apprehension that compensation may have to be paid twice. The provisions of Air Act, Water Act and EPA Act and the rules or other environment norms are to be enforced not only against the industrial units but also against every polluting activity whether the same has already been set up or is yet to be set up in terms of provisions of the law in question. This being the undisputed legal position, no further clarification remains necessary.”

6. Status report dated 01.11.2019 has been filed by the CPCB as follows:

“2.0 Action taken by CPCB

Actions taken for complying Hon'ble NGT orders in the matter of OA No. 1038/ 2018 are as follows:

- Since CEPI report including CEPI score, industrial areas covered under CPA & SPA, list of critical pollutants in CPA & SPA etc. is under consideration of MoEF&CC, CPCB requested MoEF&CC vide letter dated 9/9/2019 seeking approval to share the information with SPCBs **(Annexure V).**

- To comply point no. (i) to (iii) of order dated 10/7/2109, CPCB requested all concerned SPCBs/PCCs vide letter dated 23/9/2019, to ensure that environmental surveillance mechanism is in place particularly in polluted industrial areas and steps taken against polluting activities not-complying with prescribed norms **(Annexure-VI)**. Further, CPCB requested all concerned SPCBs/PCCs vide letter dated 25/10/2019, to provide the updated status on the action taken for compliance of Hon'ble NGT Order **(Annexure-VII)**.
- To comply point no. (iv) of the order dated 10/7/2019, CPCB compiled information with regard to polluted industrial areas based on water pollution norms separately, air pollution norms separately and ground water pollution norm separately and the list was submitted to MoEF&CC on 26/9/2019 for consideration and approval.
- To comply point no. (iii) of the order dated 23/8/2019, CPCB has requested MoEF&CC vide letters dated 13/9/2019 and 3/10/2019 to devise an appropriate mechanism to ensure that new legitimate activity or expansion can take place after due precautions are taken in the areas in question by Red and Orange category of units and circulate to SPCBs/PCCs for implementation **(Annexure-VIII & IX)**.
- MoEF&CC vide letter dated 9/10/2019 asked CPCB to hold a consultation meeting with stakeholders to finalise mechanism. Accordingly, a meeting was organised with concerned stakeholders to consult draft mechanism prepared by MoEF&CC for environmental management of Critically Polluted Areas (CPAs) and Severely Polluted Areas (SPAs) and consideration of projects listed in Red & Orange categories in those areas. The minutes of the meeting along with mechanism evolved after consultation with stakeholders were sent to MoEF&CC vide letter dated 18/10/2019 for necessary action.
- MoEF&CC vide letter dated 24/10/2019 asked CPCB to share the mechanism with the State /UT Govts. and SPCB/PCCs for implementation **(Annexure-X)**. Accordingly, CPCB vide letter dated 25/10/2019 communicated the mechanism to the concerned State /UT Govts. and SPCB/ PCCs for necessary action **(Annexure-XI)**.

MoEF&CC also asked CPCB that report regarding CEPI and EPI assessment study may be put up to Ministry for further deliberation, which has been done (Annexure-XII).”

7. Mechanism circulated by the CPCB by letter dated 24.10.2019 proposes environmental management of CPAs and SPAs and the mitigation measures proposed.
8. As already noted, while every mitigation measures must be taken, this cannot be ground not to take any legal action for violation of law. The status report does not refer to compliance of directions for taking coercive measures for enforcement of the Air Act, the Water Act and the EPA Act by prohibiting operation of polluting activities and assessing and recovering compensation on 'Polluter Pays' principle, including interim compensation of which scale was specified in the said order.
9. In view of the above, since the data compiled so far shows increasing trend of air, water and soil pollution, meaningful action must result in reversing such trend and the violators of law cannot be allowed to have a free run at the core of environment and public health. Inaction by the statutory authorities is also at the cost of Rule of Law which is the mandate of the Constitution and is necessary for meaningful enforcement of legitimate constitutional rights of citizens and basic duty of a welfare State under the Constitution.
10. We may note the observation of the Hon'ble Supreme Court in the subject of accountability of authorities for failing to discharge their duties. In **M.C. Mehta v. UOI & Ors.**, W.P Civil No. 13029/1985 vide order dated 04.11.2019, the Hon'ble Supreme Court observed:

“.....Obviously, it is writ large that the State Governments, Government of NCT of Delhi and civic bodies have miserably failed to discharge their liability as per the directive principles of State Policy which have found statutory expression, they are being made statutory mockery and also the directions of this Court and High Courts in this regard are being violated with impunity.

.... Time has come when we have to fix the accountability for this kind of situation which has arisen and is destroying right to life itself in gross violation of Article 21 of the Constitution of India.

.... Everybody has to be answerable including the top state machinery percolating down to the level of gram panchayat. The very purpose of giving administration power up to the panchayat level is that there has to be proper administration and there is no room for such activities. The action is clearly tortuous one and is clearly punishable under statutory provisions, besides the violation of the Court’s order.”

In **Techi Tagi Tara vs. Rajendra Singh Bhandari and Ors., (2018) 11 SSC 734**, it was observed:

“2..... There can be no doubt that the protection and preservation of the environment is extremely vital for all of us and unless this responsibility is taken very seriously, particularly by the State Governments and the SPCBs, we are inviting trouble that will have adverse consequences for future generations. Issues of sustainable development, public trust and intergenerational equity are not mere catch words, but are concepts of great importance in environmental jurisprudence.

4. One of the principal attributes of good governance is the establishment of viable institutions comprising professionally competent persons and the strengthening of such institutions so that the duties and responsibilities conferred on them are performed with dedication and sincerity in public interest. This is applicable not only to administrative bodies but more so to statutory authorities—more so, because statutory authorities are the creation of a law made by a competent legislature, representing the will of the people.”

11. The Tribunal has thus no option except to reiterate that meaningful action has to be taken by the State PCBs/PCCs as already directed and action taken report furnished showing the number of identified polluters in polluted industrial areas mentioned above, the extent of

closure of polluting activities, the extent of environmental compensation recovered, the cost of restoration of the damage to the environment of the said areas, otherwise there will be no meaningful environmental governance. This may be failure of rule of law and breach of trust reposed in statutory authorities rendering their existence useless and burden on the society. On default, the Tribunal will have no option except to proceed against the Chairmen and the Member Secretaries of the State PCBs/PCCs by way of coercive action under Section 25 of the National Green Tribunal Act, 2010 read with Section 51 CPC. Such action may include replacement of persons heading such PCBs/PCCs or direction for stopping their salaries till meaningful action for compliance of order of this Tribunal. The Tribunal may also consider deterrent compensation to be recovered from the State PCBs/PCCs. Such action taken reports strictly in terms of law and order of this Tribunal referred to above may be furnished by the State PCBs/PCCS on or before 31.01.2020 to the CPCB. The CPCB may prepare a tabulated analysis of the same and file a consolidated report before this Tribunal before February 15, 2020 by email at judicial-ngt@gov.in. The CPCB may also revise its mechanism for expansion and new activities by red and orange category of industries in critically/ severely polluted areas consistent with the spirit of the earlier orders of this Tribunal and principles of environmental law to bring down the pollution load and ensure that activities do not further add to such load.

12. A copy of this order may be communicated by the CPCB to all the State PCBs/PCCs forthwith.

List for further consideration on 04.03.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

Saibal Dasgupta, EM

November 14, 2019
Original Application No. 1038/2018
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