

Item No. 01

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 35/2016/EZ

Debasish Banerjee Applicant(s)

Versus

West Bengal Pollution Control Board & Ors. Respondent(s)

Date of hearing: 09.07.2020

Date of uploading: 29.07.2020

**CORAM: HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Applicant(s): Mr. Somnath Roy Chowdhury, Advocate.

For Respondent(s): Mr. Sibojyoti Chakraborti, Advocate for Respondents No. 1, 2 & 3.
Ms. Madhumita Bhattacharjee, Advocate for Respondent No. 4.

JUDGEMENT

Per Justice S.P. Wangdi, Judicial Member

1. Case taken up by video conference on *Vidyo App*.
2. This Original Application has been filed under Section 18 read with Section 15 of the National Green Tribunal Act, 2010, seeking compensation for death of the deceased daughter of the Applicant alleged to have been caused due to suffocation resulting from leakage of gas from the

gas line belonging to the Respondent No. 4, the Greater Calcutta Gas Supply Corporation Limited (GCGSCL).

3. The Applicant is a resident of Paharipara, PO & District Jalpaiguri, West Bengal, whose daughter Ms. Sumantika Banerjee, a student of the Presidency College, Kolkata, where she was a first year student in MSC, Physics. She used to stay as a paying guest sharing a room with another student Ms. Subarna Lama, permanent resident of Spring site village, T.E Line Dhura, PO&PS-Kurseong, District Darjeeling, West Bengal in the ground floor of house of one Ms. Rama Debi Chowdhury at 8, Surendralal Pyne Lane (Arpuli Lane), Police Station-Muchipara, Kolkata-700010.
4. In the morning of 04.01.2015, which was a Sunday, the two girls were found in an unconscious state in the room by the landlady. As per the sequence of events narrated by various witnesses and also published in the newspaper reports, the deceased Ms. Sumantika Banerjee had returned from a brief visit to her home in Jalpaiguri during the Christmas vacations. According to the father of the deceased, the Applicant, he had spoken to her at about 10:30 PM on Saturday, i.e., on 03.01.2015, when

she had asked him to wake her up in the morning at around 07:30 AM. However, when he called her up there was no response which led him to call the landlady, Ms. Rama Debi Chowdhury at about 09:30 AM. Ms. Rama Debi Chowdhury then went to the room and knocked at the door and unsuccessfully tried to open it. Later, she broke open the door with the help of one Mr. Tapas Dutta and entered the room to find Ms. Sumantika Banerjee lying upside down on her chest on her cot and Ms. Subarna Lama unconscious. They were then rushed to the Calcutta Medical College and Hospital, where, as already noted, the deceased Ms. Sumantika Banerjee was declared dead while Ms. Subarna Lama was barely in a condition to talk and was admitted in the hospital for treatment.

5. The Muchipara P.S. registered a case no. G.D.E. No. 341 dated 04.01.2015 and commenced investigation into the case. Death of the deceased being unnatural, inquest of the body was carried out, post-mortem examination was done and other articles of Ms. Sumantika Banerjee and Ms. Subarna Lama seized. A team of experts of Forensic Science Laboratory (FSL), Belgachia visited the spot where

unpleasant abnormal obnoxious gas was detected inside the room by them and, according to them, prolonged period of inhalation of such type of gas being fatal to human beings, it could not be ruled out as being the probable cause of the death of the deceased. The source of the gas inside the room which the FSL experts had detected was traced to a crack in the pipeline of the GCGSCL laid underground just behind the window of the room where the deceased had died. Samples of the gas were collected from inside the room, and from the pipeline and, the pipeline in two parts was seized and sent to the FSL, Belgachia for examination. This also included the viscera of the deceased and biological substance of Ms. Subarna Lama. Samples were also sent to the MCH for histo-pathological test. The investigation officer also seized a sample of gas from the office of the GCGSCL, Respondent No. 4. The FSL in its report found the gas in the room and the one taken from the office of the Respondent No. 4 to be similar and also found presence of carbon monoxide in the viscera of Ms. Sumantika Banerjee, the deceased and the biological substance of Ms. Subarna Lama. The chemical composition of coal gas as per the opinion of South Eastern Coalfield Limited,

Dankuni Coal Complex, also comprises of carbon monoxide. The crack in the pipeline, according to the Police, was found to be due to natural wear and tear which signified negligence on the part of the Respondent No. 4 in maintaining the pipeline. No excavation work had been undertaken at the place in question by any authority which eliminated the probability of the damage to the pipeline being caused by other factors. The further case of the Applicant is that the Respondent No. 4 had been negligent in handling the hazardous substance like coal gas falling within Schedule 1 of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.

6. In their affidavit filed in response to the application, it is stated by the Respondent No. 4 that it had taken over the gas distribution system from 1990 and the gas it produced at Dankuni Coal Complex was supplied through underground pipelines. The gas pipelines run three feet underground and the company does not produce the coal gas so supplied. Specific gravity of coal gas according to the report of analysis of coal gas prepared by the Jadavpur University, is lighter than air and it was likely that coal gas will rise in the atmosphere

in case of leakage instead of entering any enclosed space like a closed room. The Respondent No. 4, M/s. GCGSCL, being the successor of erstwhile Oriental Gas Company, has been dealing with the coal gas for more than 150 years and is guided by an Act of 1857. It is contended that there is no leakage in the gas pipeline in question as it was laid under three feet the road surface. That there was no connection of gas pipeline to the house in question which was a pucca construction making it impossible for the gas being transmitted inside the house. Sh. M.K. Das, Foreman, who had checked the location for gas leakage on 29.08.2014 and on 17.02.2015, reported no leakage. There was also no report of any leakage from the consumers. Periodical maintenance of gas line is done for which the Respondent No. 4 maintains its own team. It is further contended that the GCGSCL does not deal with any hazardous substance although it is acknowledged that gas is inflammable. It is alleged that the application was filed based on assumptions and there was no negligence on the part of the GCGSCL.

7. The State PCB in its affidavit has stated that as per the provisions of the Manufacture, Storage and Import of

Hazardous Chemicals Rules, 1989, coal gas is categorized as a flammable and toxic gas and is used as industrial and household fuel gas. Transportation system of coal gas does not attract provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. It is, however, contended that the GCGSCL has not obtained Consent to Establish/Consent to Operate for gas supply and distribution lines.

8. On 28.10.2016, after hearing the matter at some length, the Tribunal noted the facts that had emerged from the proceedings on that date which were as follows:

“Upon hearing this matter at some length the following facts have emerged:-

(1) Although opinion on the cause of death had been reserved pending receipt of pathological report of the preserved articles, the post mortem report clearly revealed as follows:-

1. Scalp-Skull and Vertebrae	2- Membrane	3-Brain & spinal Cord					
Scalp-healthy Skull Vertebra—intact	Congested	Brain at 1200 gm-congested with petechial Haemorrhage Spinal cord intact					
1-walls, ribs & cartilage	1.Pleurae	Larynx & traction	Right lung	Left lung	Pericardium	Heart	Vessels
Walls healthy, ribs etc. intact	Both congested with petechial haemorrhage spots on the visceral surface	Larynx Congested tracheal lumen congested with oedema of tracheal	Wt. 510 gm. Both intensely congested oedematous with presence of	Wt. 705 gm.	Petechial Haemorrhage	Wt. 290 gm. Healthy	congested

		& large bronchial with presence of line froth adherent with the wall of the respiratory passage	multiple petechial haemorrhage at the under surface of pleura, particularly at the interface of lobes, or cut section frothy fluid stained with blood came out Light grey areas present over distended lung on both sides				
1. Wall	2. Peritoneum	3. Mouth, Pharynx and oesophagus	4. Stomach and its contents	5. Small intestine and its contents	6. Large intestine and its contents		
Walls Healthy	Congested	Mucous Membrane congested	Wt. 140 gm, mm congested with evidence of submucosal haemorrhage in involving whole of the inner wall of the stomach . Content- 300 gm. Partly digested food particles yellowish in colour with peculiar smell	...mm congested with evidence of petechial haemorrhage areas of inner aspect of small intestine at places. Content gas and faces			
7. Liver	8. Spleen	9. Kidneys	10. Bladder	11. Organs of generation, internal and external			
Wt. 1400 gm. Congested	Wt. 200 gms. Healthy	Right side wt. 113 gm. Lt. Side wt.	Mm congested containing urine	Organ healthy- uterus 2 ¹ / ₂ " x 1 ¹ / ₂ " x	No gravity and no injury no foreign		

		98gm Both congested. Two small cysts present on right kidney-1 bear other near lower pole		1 ^{1/2}	body on naked eye exam.		
1. Injury	Disease or defirmly	Fracture	Dislocati on				
Xxx measuring 6.5"x0.3"and 0.4"x0.3"- 0.6" apart situated 25.6"x25" proximal to Rt. Heel. All the injuries were fresh antimerte m and showed evidence of vital reaction. No other injury was detected even with had lens	As noted	Nil	Nil				

(2) Materials Safety Data (MSDS) mentioning the composition and 3 characteristics of coal gas filed by the State PCB, i.e., Respondents No.1, 2 & 3, mention the following

Chemical Identity

Chemical Name: C.V.R. Gas

Chemical Classification:

Synonyms : L.T.C. Gas

Town Name : Town Gas

Formula CH4 : 15-22%

C.A.S.No.:78-82-8 U.N. No.:1971

630-08-0 1016

133-74-0 1966

CO : 15-19%

H₂ : 46-55%

CO₂ : 4-8%

O₂< : 1%

C_nH_M : 1-3%

N₂ : 2-5%

Xxxx xxxxx xxxxx xxxxx xxxxx

Hazardous Ingredients	C.A.S. No.	Hazardous Ingredients	C.A.S. No.
1. Methane	78-82-0	3. Hydrogen	133-74-0
2. Carbon monoxide	630-08-0	4. Hydrogen Sulphide	7783-06-4

xxxx xxxxx xxxxx

Constituents

Carbon Monoxide	-191.5 deg C	Gas	Nil	Nil
Methane	-162 deg C	Gas	Nil	Mild sweet
Hydrogen	-253 deg C	Gas	Nil	Nil
Hydrogen Sulphide	-60 deg C	Gas	Nil	Rotten Egg

3. The effects of exposure/symptoms of exposure to coal gas has been stated as follows:

C.V.R. gas has high toxicity due to the presence of carbon monoxide. The other components are simply as asphyxiation. Initial symptoms of CO exposure are shortness of breath and headache. Continued will lead to severe headache, mental confusion, dizziness, impairment of vision and hearing. Ultimately the victim collapse especially if there is exertion. Exposure to atmosphere containing less than 18% oxygen will give rise to symptoms of asphyxiation & cause ultimate unconsciousness and death.

4. The finding of the Forensic Science Laboratory on the viscera inter-alia is as under:-

“Carbon monoxide (poisonous in nature) has been detected in the liquid blood marked 1B and the blood soaked in blotting paper marked 5C said to be of the diseased Sumantika Banerjee.”

5. From the newspaper reports filed with the original application, the translation of which has been filed through a supplementary affidavit in pursuance of our order dated 4th May 2016, it would appear that the room where the deceased Sumantika Banerjee lived with her roommate, had a strong odour.

6. The sample of gas taken from inside the room (i.e., P.O.) and the control sample of the gas supplied by the Greater Calcutta Gas Supply Limited collected in bladders marked ‘A’ and ‘B’ respectively, on examination, contained some similar gaseous constituents.

7. As per the newspaper reports Ms. Subarna Lama, a student who shared the room with the deceased, also fell ill and had to be removed to the hospital on the day when the deceased Sumantika was admitted to the Hospital.

8. The newspaper reports also indicated that immediately after the death of the student, the workers of Gas Supply Company had gone to the lane for inspection of the gas line and that although they did not find anything on the first day, on the next day, i.e., on Saturday, when they visited again a crack in the very old pipeline was detected and the window of the room where the deceased lived was just above the pipeline passing 80 cm below the ground. This fact has been found corroborated by Mr. Pallab Kanti Ghosh, Head of the Detective Department, Calcutta Police, who reportedly stated that a crack in the gas pipeline just below the window of the Sumantika's room was found but, as to whether that had any link with the death of the deceased, was being investigated.

We are conscious of the fact that presently we are considering an application under Section 15 read with Section 17 of the NGT Act, 2010 and not a criminal case. However, in arriving at an adjudication under Section 15 and 17, it would be necessary for us also to examine the evidence to arrive at a finding as to whether the death of any person resulted from an accident or on the adverse impact of an activity or operation or process under any enactment specified in Schedule I to the Act.

Without expressing any opinion on the merits of the case at this stage, we are of the considered view that further evidence would be necessary for us to arrive at a conclusion. We find that the documentary evidence which are available are not supported by any oral evidence. The statement of Subarna Lama, the room-mate of the deceased, and that of Mr. Pallab Kanti Ghosh, the then Head of the Detective Department, Kolkata Police, in our view, are absolutely essential for our consideration.

It is stated that charge sheet in the case has been filed under section 304-A I.P.C and trial is in progress in the competent court having jurisdiction.

Mr. Bikas Kargupta, Id. Govt. Counsel has informed us that statements of the concerned witnesses recorded under Section 164 Cr.P.C. are available in the records. This would be of assistance to us.

In order to ensure that all the evidences placed by the Investigating Agency is before us, we would direct the SHO, Muchipara Police Station, Kolkata, to place a copy of the report under Section 173 Cr.P.C. and the entire documents along with the statements of witnesses recorded u/s 161 and 164 Cr.P.C. filed along with the said report in the case arising out of FIR 100 dated 31.3.2015 under Section 304A IPC on or before the next date. The Commissioner of Police, Kolkata shall ensure that this direction is complied with by the concerned I.O.”

9. On 19.12.2016, it had been informed that charge sheet in the case was yet to be filed against the Respondent No. 4 due to the process being followed for grant of sanction to

prosecute under Section 197 of the Code of Criminal Procedure (Cr.P.C.). However, time was sought for on behalf of the Kolkata Police to file the entire report under Section 173 Cr.P.C which was done on 20.01.2017. Further documents as enumerated below were called for by order dated 04.05.2017:

- i. Seizure memo prepared by the IO during spot investigation;
 - ii. Seizure list;
 - iii. Letter of the IO referring the seized articles to the FSL for examination;
 - iv. Report of FSL.
10. It was further directed that *“it shall also be indicated as to whether or not sample of gas at the place of occurrence was collected and sent for examination of the FSL. If so, FSL report on those samples and such other report connected therewith”*.
11. Pursuant to the above directions, the documents were filed by the Kolkata Police in a sealed cover as would be evident from the order dated 26.10.2017. Thereafter the

case was fixed for hearing but due to want of Coram the case could not be taken up and was ultimately placed before the Tribunal only on 04.06.2020, after it was last heard on 18.01.2018.

12. The above are the sequence of events that have transpired in the case and the substance of the material pleadings of the respective parties filed in the form of affidavits. The case was first heard in part on 24.06.2020 and then on 01.07.2020 and, was finally on 09.07.2020.
13. Before proceeding further, we may note that although opportunity was provided to the parties to file their short written synopses of arguments, none has done so except for the Applicant.
14. Mr. Somnath Roy Chowdhury, learned counsel for the Applicant, asserted that the present case has been filed under Section 15(1)(a) of the National Green Tribunal (NGT) Act, 2010 for compensation against death of the daughter of the Applicant who was a victim of pollution arising under the enactments specified in Schedule 1 of the Act. It was contended that as the composition of coal gas handled by the Respondent No. 4 includes methane

and carbon monoxide which are hazardous chemicals included in part II of Schedule 1 to the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 at items No. 111 and 368 thereof, it would require the Respondent No. 4 to comply with all the safety measures provided under the said Rules more particularly Rule 13 and, by the authorities under Rule 14. Referring to the definition of industry provided under Rules 2(h)(i) and (iii) of the said rules, it was submitted that the activity of the Respondent No. 4 would fall within the meaning of the definition of “industrial activity” as the gas is supplied to the domestic consumers through a network of pipelines.

15. The other components and asphyxiates under Schedule 4 of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 which provides for installations for the production, processing or treatment of organic or inorganic chemicals used for this purpose, among others at Sl. No. 4, includes *“installations for production [use] or treatment of energy gases for example, LPG, LNG, SNG”*. Thus failure on the part of those dealing with “hazardous substance” as defined under the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 and

other cognate rules has to face the consequences of lapses on its part.

16. It is further contended that the provisions of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 alluded to above will have to be considered in the light of the omnibus definition of “hazardous substance” defined under Clause (e) of Section 2 of the Environmental (Protection) Act, 1986 under which the said rules had been framed. “Hazardous substance” according to the definition in the Environmental (Protection) Act, 1986, *means any substance or preparation which, by reason of its chemicals or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment.*
17. Thus, as per Mr. Roy Chowdhury, there can be no doubt that the composition of coal gas handled by the Respondent No. 4 includes chemicals which are hazardous and harmful to human beings. It is then contended that the Tribunal has exercised its powers to grant compensation to the victims of pollution in several

cases, one of which is order dated 08.06.2020 in O.A. No. 22/2020/WZ.¹

18. Referring to order dated 28.10.2016 in the present case, it was submitted that the facts which are germane for consideration has been succinctly set out in the said order. It has been established that the deceased had died due to inhalation of hazardous chemical which stands established by the FSL report on the viscera of the deceased according to which carbon monoxide had been detected in the liquid blood. The samples of gas taken from inside the room where the deceased had died and the control sample of the gas supplied by the GCGSCL (Respondent No. 4) contain similar gaseous constituents. The report of the police stated that there was a strong odour in the room which is also widely reported in the newspaper reports. Ms. Subarna Lama, also a student and who was the roommate of the deceased, had also fallen ill and was required to be moved to the hospital on the same day when the deceased, Ms. Sumanita Banerjee was taken. The newspaper reports and the report of the police brought out the fact that the workers of the gas

¹ *Aryavart Foundation through its President v. Yashyashvi Rasayan Pvt. Ltd. & Anr.*

supply company (Respondent No. 4) had gone to the lane for inspection of gas line and detected a crack in the very old pipeline at a place below the window of the room where the deceased slept.

19. In the above facts and circumstances, the learned counsel for the Applicant would submit that there was no doubt that the death of the deceased, Ms. Sumantika Banerjee, was caused due to inhalation of gas which had leaked out from the crack that had developed in the pipeline of the Respondent No. 4 by which coal gas is distributed to the consumers. He submits the fact that as the constituents of the odour in room and the control sample of the gas provided by the Respondent No. 4 were the same, it can reasonably be concluded that the gas entered the room from the leakage of the pipe polluting the air with toxic gas

20. Ms. Madhumita Bhattacharjee, learned Counsel for the Respondent No. 4, reiterated what has been stated in the written submission filed on behalf of the Respondent No. 4 and while doing so, orally questioned the maintainability of the Applicant only on the ground that the case filed by the Applicant was a case of negligence

which could only be adjusted by the competent Consumer Forum. The next contention was that the case suffered from want of evidence as much as no witnesses were examined to substantiate the facts set out in the application. Ms. Subarna Lama, the roommate of the deceased, who was the best witness, was not produced giving rise to adverse inference against the Applicant. It is then submitted that coal gas supplied by the Respondent No. 4 is a green gas which is considered to be eco-friendly and, therefore, the allegation of it being toxic would not stand. The next contention was that the leakage said to have taken place from a crack in the pipeline has not been proved as there is no evidence to that effect available in the records. It was urged that in order to prove the case of the Applicant, clinching evidence was required which the Applicant had failed to produce.

21. We have perused the application, the replies and the documents that are available in the records. While dealing with the first objection raised on behalf of the Respondent No. 4 on the question of maintainability, it may be observed that the present case has been filed

under Section 15 of the NGT Act, 2010 for compensation for death of the deceased daughter of the Applicant caused by the gaseous emission that had leaked out from a crack that had developed in the pipeline of the Respondent No. 4 through which coal gas was distributed to the consumers. The application would thus fall within the ambit of Section 15(1)(a) and it would not be correct to state that the application would not be maintainable before the Tribunal. Moreover, the case is not of deficiency of service to fall within the ambit of the Consumer Protection Act, 1986. The contention would not stand even on this ground. Upon examination of the various provisions, analysis of coal gas supplied by GCGSCL filed by the Respondent No. 4 as Annexure 'A', Methane and Carbon Monoxide amongst others are stated to be constituent of the coal gas at the ratio of 31.13% by volume and 15.00% by volume respectively. Report on 'Analysis of coal gas supplied by M/s. Greater Calcutta Gas Supply, Rajabazar', filed as Annexure 'A' to the reply affidavit of the Respondent No. 4 is reproduced below:

***"REPORT ON ANALYSIS OF COAL GAS SUPPLIED BY M/S.
GREATER CALCUTTA GAS SUPPLY, RAJABAZAR***

- | | | | |
|-----------|------------|------------------------|--------------------------------|
| 1. | (a) | <i>Methane</i> | <i>31.13% by Volume</i> |
| | (b) | <i>Hydrogen</i> | <i>28.47% by Volume</i> |

, (c)	Carbon Monoxide	15.00 % by Volume
(d)	Unsaturated Hydrocarbons	5.73% by Volume
(e)	Oxygen	2.00% by Volume
(f)	Carbon dioxide	5.00% by Volume
(g)	Sulphur Compounds	0.92% by Volume
(h)	Nitrogen	7.06% by Volume
2.	Specific gravity	0.57 at 32° C
3.	Net Calorific value	3409 k.cals/Nm³
4.	Moisture content (Saturated)	4.69%
5.	Light oil Content	8.99 ml/m³
6.	Tar Content	Traces”

22. Further, Schedule 1 at entries 111 and 368 of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 provides *inter alia* for Carbon Monoxide and Methane respectively as hazardous chemicals and, under Rule 2(h) of the said Rules “industrial activity” has been defined as:

- “(i). **an operation or process carried out in an industrial installation referred to in Schedule 4 involving or likely to involve one or more hazardous chemicals and includes on-site storage or on-site transport which is associated with that operation or process, as the case may be; or**
- (ii). isolated storage; or**
- (iii). Pipeline;”**

23. Schedule 4 of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, provides for “Installations for production, processing [use] or treatment of energy gases for example, LPG, LNG, SNG.”

24. The Material Safety Data Sheet (MSDS) of coal gas mentioning the composition and characteristics of coal gas filed by the State PCB with their affidavit dated 11.07.2016 indicates *inter alia* as follows:

"Hazardous Ingredients	C.A.S. No.	Hazardous Ingredients	C.A.S. No.
1. Methane	78-82-0	3. Hydrogen	133-74-0
2. Carbon Monoxide	630-08-0	4. Hydrogen Sulphide	7783-06-4

2. PHYSICAL AND CHEMICAL DATA

Boiling Range/Point	Physical State		Appearance	
			Colour	Odour
C.V.R. Gas	Gas	Raw Gas :	Yellow	Pungent
		Cleaned Gas:	Nil	"
Constituents				
Carbon Monoxide	: -191.5 deg C	Gas	Nil	Nil
Methane	: -162 deg C	Gas	Nil	Mild sweet
Hydrogen	: -253 deg C	Gas	Nil	Nil
Hydrogen Sulphide	: -60 deg C	Gas	Nil	Rotten Egg

Effects of Exposure/Symptoms: C.V.R. Gas has high toxicity due to the presence of carbon monoxide. The other components are simply asphyxiates. xxxxxx symptoms of Co exposure are shortness of breath and headache. Continued will lead to severe headache, mental confusion, dizziness, and impairment of vision and hearing. Ultimately the victim collapse, especially if there is exertion. Exposure to atmospheres containing less than 18% Oxygen will give rise to symptoms of asphyxiation and causes ultimately unconsciousness & death.

Emergency Treatment: In case of inhalation remove victim to fresh air at once and start artificial respiration if breathing has stopped. Get the medical assistance. The rescue team must wear respiratory protection while recovering an unconscious victim. "

25. Considering the above, the application indubitably falls within the four corners of Section 15(1)(a) by which relief and compensation can be ordered by the Tribunal to the victims of pollution and environmental damage arising under the enactments specified in the Schedule I of the NGT Act, 2010 including accident occurring while handling any hazardous substance.

26. In O.A. No. 73/2020², the Tribunal *vide* order dated 01.06.2020 has *inter alia* held as follows:

“16. Section 15 of the NGT Act, 2010 enables the Tribunal to provide relief and compensation to the victims of pollution and other environmental damages, restitution of property and environment, and is as follows, in relevant part:

“15. Relief, compensation and restitution. –

- 1. The Tribunal may, by an order, provide-**
 - a. relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule 1 (including accident occurring while handling any hazardous substance);**
 - b. for restitution of property damaged;**
 - c. for restitution of the environment for such area or areas, as the Tribunal may think fit.”**

17. The Tribunal has power to regulate its own procedure (Section 19). In case of an accident, no-fault liability principle applies (Section 17). Rule 24 of the NGT (Practice and Procedure) Rules, 2011 confers discretion to pass such order as may be necessary to secure ends of justice. This has been considered *inter-alia* by the Hon’ble Supreme Court in *State of Meghalaya v. All Dimasa Students Union* (2019) 8 SCC 177. In relevant part, some pertinent observations are:

“157. Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to Tribunal to pass orders and issue directions to secure ends of justice. Use of words ‘may’, ‘such orders’, ‘gives such directions’, ‘as may be necessary or expedient’, ‘to give effect to its orders’, ‘order to prevent abuse of process’, are words which enable the Tribunal to pass orders and the above words confer wide discretion.

² *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh*

159. *The enabling power given to the Tribunal under Rule 24 is for purpose and object to decide the subjects which are to be examined, decided and an appropriate relief is to be granted by the Tribunal. Further, subjects contain wide range of subjects which require technical and scientific inputs. The Tribunal can pass such orders as it may think fit necessary or expedient to secure ends of justice.*
160. *The object for which said power is given is not far to seek. To fulfil objective of the NGT Act, 2010. NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects.*

(emphasis supplied)

18. *We may also refer to a three-judge bench judgment by the Hon'ble Supreme Court in Bhopal Gas Peedith Mahila Udyog vs UOI (2012) 8 SCC 326 noting that this Tribunal is a statutory and specialized forum to deal with any issues relating to environment. It was observed:*

- “40. *Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.*
41. *We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction*

*that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice.”
(emphasis supplied)”*

27. In the view of this, the objection of non-maintainability raised on behalf of the Respondent No. 4 stands rejected.
28. In so far as the contention as regards the Applicant's failure to produce witnesses and the necessity of clinching evidence to prove the case by him Applicant raised by the Respondent is concerned, it has to be borne in mind that the present case has been filed under Section 15 of the NGT Act, 2010 and is governed by the provisions thereof and the rules framed thereunder. Section 19 of the Act releases the Tribunal from the fetters of the procedures laid down under the Code of Civil Procedure (CPC), 1908 and mandated to be guided by the principle of natural justice. The Act vests the Tribunal with the power to regulate its own procedure and is not bound by the rules of evidence contained in the Evidence Act, 1872. This of course does not mean that

the Tribunal can act arbitrarily but is rather required to be guided by reason following the principle of the natural justice. But at the same time, the approach of the Tribunal in dealing with the environmental issues also cannot be pedantic or hyper technical. In this regard, we may refer to the following portion of the order dated 01.06.2020 in O.A. No. 73/2020 (*supra*) which is reproduced below for convenience:

“20. The approach of a Court in dealing with the environmental issues cannot be hyper technical, for that would defeat the ends of justice, especially in matters where Right to Life is implicated. Once patent violations affecting Right to Life are in public domain, the court cannot be debarred from remedying the same on the sole ground that the affected party has not moved the court. The court can devise its own procedure to investigate and give relief to the victims in appropriate cases. This jurisprudence can also be discerned from the judgment of a 3-judge bench of the Hon’ble Supreme Court in *M. C. Mehta v. UOI* (1987) 1 SCC 395 as follows:

“2. .. we cannot adopt a hyper-technical approach which would defeat the ends of justice. This Court has on numerous occasions pointed out that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a court of law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the court. If this Court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the

court for justice, there is no reason why these applications for compensation which have been made for enforcement of the fundamental right of the persons affected by the oleum gas leak under Article 21 should not be entertained. The court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form. We cannot therefore sustain the preliminary objection raised by Mr Divan.

.....

There is no reason to not follow the above approach in the context of exercise of NGT jurisdiction. Section 20 of the Act requires this Tribunal to enforce the principles of Sustainable Development, including Polluter Pays and Precautionary Principle. These have been held to be part of Right to Life inter-alia in Vellore Citizens' Welfare Forum v. UOI (1996) 5 SCC 647 (Para 11, 13, 16-18)."

29. In the present case due opportunity had been provided to the respondents including the Respondent No. 4 to file their objections by providing reasonable time and opportunity for the purpose. The respondents have accordingly filed their responses and produced all relevant documents relied upon by them. We may also take note of the fact that none of the respondents have denied the principal facts set out in the application except one by Respondent No. 4 where the factum of the leakage of the pipe and death being caused by such leakage have been denied. In order to reassure ourselves, we had called for the records of the police investigation pertaining to the incident which had been filed in the form of report

under Section 173 Cr.P.C. *vide* order dated 04.05.2017. We reject the contention made on behalf of the Respondent No. 4 that clinching evidence is required for establishing the claim of the Applicant which is applicable to a criminal trial. In cases of civil nature like the present one, it is the principle of preponderance of probability that would be applicable. Yet, in our considered opinion, the evidence placed on behalf of the Applicant can be considered to be clinching.

30. We have already examined at some detail the evidence available in the records keeping in view the principle of preponderance of probability from which the following facts stand established:

- i) The fact that the deceased Ms. Sumantika Banerjee lived in a room in the building of Ms. Rama Debi Chowdhury with Ms. Subarna Lama as her roommate at 8, Surendralal Pyne Lane (Arpuli Lane), Police Station-Muchipara, Kolkata-700010 stands established.

- ii) Ms. Sumantika Banerjee and Ms. Subarna Lama had to be rushed to the hospital in serious conditions.
- iii) Ms. Sumantika Banerjee was declared dead by the hospital on arrival and Ms. Subarna Lama was admitted for treatment.
- iv) There was strong odour of unpleasant obnoxious gas lingering in the room where Ms. Sumantika Banerjee and Ms. Subarna Lama lived the intensity of which became faint after the windows and the door of the room were opened and the fans put on.
- v) Crack was found in the old pipeline of the Respondent No. 4 which passes below the window of the room where Ms. Sumantika Banerjee and Ms. Subarna Lama lived.
- vi) There was crack in the pipeline.
- vii) The samples of gas provided by the Respondent No. 4 and the control samples of the odour taken

from the room had similar constituents as per the FSL report.

- viii) The viscera of the deceased was found to contain Carbon Monoxide which according to the FSL report was the probable cause of death of the deceased.
- ix) Investigation was undertaken by the Muchipara police station against the Officers of the Respondent No. 4 and charge-sheet has been filed after obtaining sanction under the *proviso* of under Section 197 of Cr.P.C for offence under Sections 304(A)/337/34 Indian Penal Code (IPC).
- x) During the course of the investigation, various witnesses were examined and statements recorded under Section 161 of IPC including that of Ms. Subarna Lama.

31. Thus, the only question that would require determination is as to whether the gas that had leaked into room of the deceased was from the crack in the pipeline of the Respondent No. 4. To answer this, we may first take note of the spot visit report submitted by the experts namely,

Dr. N. Ghatak, Senior Scientific Officer, (Toxicology) and Dr. Debashish Shah, Senior Scientific Officer (Chemistry Division) from FSL, West Bengal. The spot visit report which is of great significance is reproduced below:-

“ Spot visit Report

The undersigned officials along with some other scientific officials of this laboratory in presence of the senior police officials visited the place of occurrence on 05.01.2015 and 06.01.2015 to examine spot within a students' paying guest room at the ground floor at 8, Surendra Lal Pyne Lane, Kolkata 12 under Muchipara Police Station where an unnatural incident had happened causing one female student namely Sumantika Banerjee was found lying her bed with unconscious condition and later declared brought dead during removal to the Medical College and Hospital and another female student namely Subarna Lama was found lying in her bed with unconscious condition as reported by the enquiry officer of the case.

From our examination and observation, it was observed that the south facing room was on approx.. 16 ft. x 14 ft. have only one entrance door with two windows at the western side and one at southern side beside the only entrance door. One more door at the eastern side in between two rooms' remains closed and guarded by the furniture from both side. All the windows were closed and no provision for frequent openings due to obstruction of different furniture. Except the door and windows the room has no other ventilation system. Four single wooden chowki (cot) were placed in the floor at different places of the said room.

The chowki, where the worst affected victim (Sumantika Banerjee) occupied was placed near the window at the south-west corner along north-south direction and the less affected victim occupied the chowki that was placed near the window at north-west corner along north-south direction as reported by the owner of the house.

At the time of our 1st day visit the said room was closed from outside. On entering into the room an abnormal unpleasant obnoxious smell of gas was recognized but could not find any trace of its source both inside and outside the room. However the smell could be feeling physically stronger at the south-western corner of the room. No such smell could be identified physically in the adjacent eastern side room. By the way of our discussion with senior police officials and owner of the house we came to know that a gas distribution pipe line of Greater Calcutta Gas Distribution Company is laid under the road just beside the said room. At the spot we along with police officials took decision to call expert from the gas company along with the gas detection device. At the end of our 1st day investigation we advised the enquiry officer to keep

open all the windows and door of the room and run the fans until smell become faint. As per the opinion of the enquiry officer about 4 hours continuation of this process (after that room was kept closed as before) the smell became faint, however thereafter presence of same smell was gradually increasing as before.

In the very next day (about 24 hours later) while we entered in that room it was feeling physically the presence of such type of unpleasant smell more than the first day of our visit. A team of Greater Calcutta Gas Distribution Company was also present with an instrument of combustible gas detector. The instrument indicated the presence of combustible gas inside the room and particularly with a greater density more than a danger level of explosion at the south-western corner of the room.

Strikingly it was revealed that from a gap between a wooden vertical window frame and northern side brick wall of the south-west window beside of the chowki of the victim the existence of obnoxious smell was emitting with a greater density than any other point of source detected that was also provided by the instrument. The instrument was also indicated the presence of combustible gas outside, between the road and the wall of the said room just below the said window. At the spot it was decided that the gas supply through the underground pipe line had to be stopped by the officials of the Gas Company to verify whether the force of emitting gas either decreased or remained in same condition. About half an hour after stopping supply of gas the instrument indicated presence of gas in comparatively lower density than detected before.

The obnoxious smell of the gas irritating also suffocating in nature could be identified by human nasal organ quite easily with a first introduction of it but human nasal organ gradually losses its sensitivity to recognize the smell of gas emitting for a long period of time. Meanwhile it had already reached into a level of concentration which could be endangering for human life. So it could not be ruled out the possibility of fatal effect to the human being on inhalation of such type of gas for prolonged period.

However the enquiry officer of the case was advised to send the collected clue materials from the spot to our laboratory for further in-laboratory examination.”

32. The spot inquiry report, which was prepared after two visits on the 4th and 5th January, 2016, brings out certain vital facts which are as follows:-
- i. On entering the room, unpleasant obnoxious smell of gas was recognized but the source of it could not

be traced within and outside the room. The smell was stronger at the south-western corner of the room. There was no such smell in the adjacent room on the eastern side.

- ii. Distribution pipeline of GCGSCL is laid under road below the window of the said room.
- iii. At the end of the first day, the Inquiry Officers of the case was advised to keep all windows and doors of the room open and run the fans until the said smell became faint. The Inquiry Officer had informed that room was aired for 4 hours continuously and locked after which the smell became faint but, after that the smell gradually increased to its earlier intensity.
- iv. After 24 hours, i.e., the next day, the presence of unpleasant obnoxious smell had persisted and had become stronger than it was on first day.
- v. The team of GCGSCL found presence of combustible gas inside the room when measured with a combustible gas detector and that the density of the gas was at a level of explosion at the south-western corner of the room.

vi. A gap between a wooden vertical window frame and northern side brick wall of the southern-west window beside the *chowki* used by the victim to sit. Obnoxious smell was found to be emitting with greater density at that spot than at any other point of source as detected by the instrument. The presence of combustible gas was also detected outside between the road and the wall of the room below the window.

vii. Supply of gas was stopped to verify the source of emission after which the instrument indicated presence of gas at a comparatively lower density than before. The level of concentration of the smell could, according to the experts, endanger human life due to its inhalation.

33. The next is the statement of Ms. Subarna Lama, recorded by the Police under Section 161 Cr.P.C., the relevant portion of which will may also be reproduced below:-

***“I have done B. Tech from Kalyani Govt. Engineering College in 2014. Presently, I am taking classes to appear in Govt. exam at Mahindra Banking Institute situated near Moulali. Here in Calcutta I used to reside as a Paying-guest along with some other mates i.e. Sumantika, Shewli who are the students of Presidency College and others mates at the house of Rama Chowdhury situated at 8, Arpuli Lane, Kolkata-12, since last two (2) months.*”**

On 03.01.2015 at about 07.30 PM I came to 8, Arpuli Lane, Kolkata-12 after spending one week at one of my relative house. When I came at 8, Arpuli Lane, then Sumantika opened the door and we both went inside. Sumantika was along with me and informed me that she returned back 8, Arpuli Lane at about 09.00 hrs on 03.08.2015 and also informed me that she became faint twice at that residence and was medically treated at home therewith as the help of landlady Rama Chowdhury. After that I told that she will be o.k. and to take her medicine I went outside and after that returned back again. Then she took some Horlicks and took medicine. I and Sumantika were only present at the room. Then as usual 'Manju Mashi' served both of us dinner at our room which was taken by us. I took pumpkin the Sabji, rice, dal in my dinner but consume only some part of it as because I was feeling unwell due to suffering from fever. Sumantika took Roti, Dal Pumpkin, Omelette in dinner. She also told me that she would consume the whole food as because she had been feeling weak and was suffering from low blood pressure. After taking dinner Sumantika went to her bed to sleep and I also went to my bed and was checking my mails and doing facebook in my Laptop. After that I went to sleep and the windows and the door of the room where locked from inside. At about 2 o'clock when I woke up from my sleep I noticed Sumantika was sitting on her bed. I asked her the reason then she told me that she is not feeling well. At that time, I was also feeling uneasy and was feeling vomiting. Then again I went to sleep. Then in the morning on 04.01.2015 my sleep was disturbed due to some sound. I heard somebody was knocking the door from outside but unable to move then due to some weakness and was calling Sumantika who was sleeping on her bed. But Sumantika did not gave any reply to my calls. After that I became unconscious and could not remember anything. When I became conscious I noticed myself on a bed of Kolkata Medical College Hospital and also noticed Doctors were treating me. Police recorded my statement."

34. The statement though is recorded under Section 161 Cr.P.C. has been taken into consideration as a collateral piece of evidence to lend assurance to other cogent evidence available in the records. The statement corroborates the statement of the landlady, Ms. Rama Debi Chowdhury and the police report on the factum of the deceased Ms. Sumantika Banerjee being roommates in the house at 8, Surendralal Pyne Lane (Arpuli Lane),

Police Station-Muchipara, Kolkata-700010. Further the deceased had informed her that she had fainted twice in the room and was medically treated at home with the help of the landlady Ms. Rama Debi Chowdhury. Later, in the night of 04.01.2015, food was served to them which they could not consume fully due to indisposition. At 2:00 AM in the morning, Ms. Sumantika Banejee was found sitting up on her bed and when asked, she had stated that she was not feeling well. Ms. Subarna Lama herself was also feeling uneasy and nauseated. In the morning of 04.01.2015, she was woken up by the sound of knocking at the door but she was unable to move due to weakness. She then called out to the deceased, who was sleeping on her own bed but did not respond. Thereafter she fell unconscious and when she regained conscious, she found herself on a bed in the Calcutta Medical College and Hospital, where she was being treated.

35. The next document of relevance is the FSL report in respect of the viscera and liquid blood taken from the deceased and biological substance taken from Ms. Subarna Lama. As per the report, Carbon Monoxide (poisonous in nature) was detected in the liquid blood.

From the exhibits (viscera) taken from the deceased, no poison was detected from the deceased. The samples of gas taken from the room (the place of occurrence) and the control sample provided by the GCGSCL contained similar gas constituents. Several newspapers reported *inter alia* “that immediately after the death of the student, the workers of Gas Supply Company had gone to the lane for inspection of the gas line and that although they did not find anything on the first day, on the next day, i.e., on Saturday, when they visited again a crack in the very old pipeline was detected and the window of the room where the deceased lived was just above the pipeline passing 80 cm below the ground. This fact has been found corroborated by Mr. Pallab Kanti Ghosh, Head of Detective Department, Calcutta Police who reportedly stated that a crack in the gas pipeline just below the window of the Sumantika’s room was found but, as to whether that had any link with the death of the deceased, was being investigated”.

36. Contrary to the assertion of the learned Counsel for the Respondent No. 4, the factum of discovery of a crack in the old pipeline reported in the newspapers stand

corroborated by the spot visit report dated 09.02.2015 of the Dr. N. Ghatak, Senior Scientific Officer, (Toxicology) and Dr. Debashish Shah, Senior Scientific Officer (Chemistry Division) from FSL, West Bengal reproduced to earlier which reveals discovery of a gap between the wooden vertical window frame and northern side brick wall of the south-west window of the *chowki* used by the victim to sit from where obnoxious smell was detected at greater density than any other point of source by the combustible gas detector when examined by the team of GCGSCL (Respondent No. 4).

37. The question that now confronts the Tribunal is, as to whether the Respondent No. 4 can be held liable for the death of the deceased? The available evidence before us clearly manifests that the probable cause of the death of the deceased was the gas that had leaked from the pipeline of the Respondent No. 4 into the room, severely polluting the air where the deceased slept.
38. It is undeniable that the coal gas supplied by the Respondent No. 4 contains hazardous chemicals as defined under the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989. In E.A. No. 05/2018

(T_{HC}) arising out O.A. No. 40/2014³, a four Member Bench of the Tribunal headed by the Hon'ble Chairperson, following the case of *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Others*⁴, has held that "even a suspect polluter can be held accountable". On the question of *burden of proof*, the Hon'ble Supreme Court in *A.P. Pollution Control Board (supra)*, deemed it essential to adopt the principle of precaution and placed the *burden of proof* on the developer/industrialist to show that the action is environmentally benign. Reliance was placed upon the case of *Vellore Citizens' Welfare Forum v. Union of India*⁵ whereby a new concept of '*burden of proof*' in environmental matters was adopted. The relevant portion of the *A.P. Pollution Control Board (supra)* reads as follows:

"The special burden of proof in Environmental cases

36. We shall next elaborate the new concept of burden of proof referred to in the Vellore case at p.658. In that case, Kuldip Singh, J. stated as follows: (SCC p. 658, para 11)

(ii) "The `onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign."

37. It is to be noticed that while the inadequacies of science have led to the `precautionary principle', the said `precautionary principle' in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed, - is

³ *Charudatt Pandurang Koli & Ors v. M/s. Sea Lord Containers Ltd. & Ors.*

⁴ (1999) 2 SCC 718.

⁵ (1996) 5 SCC 647

placed on those who want to change the status quo [Wynne, Uncertainty and Environmental Learning, 2 Global Env'tl. Change 111 (1992) at p.123]. This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the change would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less-polluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden. [See James M. Olson: "Shifting the Burden of Proof", 20 Env'tl. Law p. 891 at 898 (1990)]. [Quoted in Vol.22 (1998) Harv. Env.Law Review p.509 at 519, 550].

38. *The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment. (See Report of Dr. Sreenivasa Rao Pemmaraju, Special Rapporteur, International Law Commission, dated 3.4.1998, para 61).*

39. *It is also explained that if the environmental risks being run by regulatory inaction are in some way "uncertain but non-negligible", then regulatory action is justified. This will lead to the question as to what is the 'non-negligible risk'. In such a situation, the burden of proof is to be placed on those attempting to alter the status quo. They are to discharge this burden by showing the absence of a 'reasonable ecological or medical concern'. That is the required standard of proof. The result would be that if insufficient evidence is presented by them to alleviate concern about the level of uncertainty, then the presumption should operate in favour of environmental protection. Such a presumption has been applied in Ashburton Acclimatisation Society vs. Federated Farmers of New Zealand⁶. The required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable persons' test. [See Precautionary Principle in Australia by Charmian Barton) (Vol. 22) (1998) Harv. Env. L.Rev. 509 at 549].*

39. In the present case, the Respondent No. 4 has failed to discharge the *burden of proof* of its claim that its activities are environmentally benign. Except for a bald statement that it does not manufacture chemical substance and

⁶ (1988) 1 NZLR 78

mere denial that the allegations made by the Applicant are not correct, no evidence have been produced in support of such assertions. The Respondent No. 4 also has failed to even whisper a suggestion of there being some other possible source of the gaseous substance detected in the room, where the deceased had been living with her roommate. Also just because there was no public complaint about leakage of gas as asserted on behalf of the Respondent No. 4, it does not necessarily mean that there was no such leakage.

40. None of the material evidence has been rebutted. We have already dealt with the ambit of the law within which the Tribunal is mandated to act. The facts and circumstances emerging from the evidence and the nature of coal gas adumbrated in paragraphs 21 to 24 of this order clearly points at Respondent No. 4 being culpable for causing the death of the deceased. The preponderance of evidence unerringly leads us to a reasonable conclusion that the death of the deceased, Ms. Sumantika Banerjee, took place on account of severe pollution caused by the leakage in the old pipeline of the Respondent No. 4 through which coal gas was being supplied to consumers. The crack from where the gas

had leaked, as per the investigation conducted by the police, was on account of wear and tear signifying negligence on part of the Respondent No. 4 in maintaining the pipeline in good order.

41. Having thus decided on the first question, the next that require our determination is on the “quantum of compensation”.
42. The Applicant has claimed ₹20,00,000/- as compensation for death of his daughter. According to the Applicant, the case is of unliquidated damage and for assessment of such damage the principle laid down by the Tribunal in *Aryavart Foundation (supra)* can reasonably be adopted where it has been held that “*even while assessing the interim compensation multiplier of around 16 and loss of earning about ₹1,00,000/- a year, taking minimum wages, apart from the conventional sums was adopted*”. It is also urged that the deceased daughter of the Applicant had a fair chance to achieve a prosperous professional career in future had she been alive as would be evident from the score-sheets in every stage of her academic career filed with the supplementary affidavit on 18.06.2020. Thus taking this into account,

on a very conservative estimation also her future income potential would not be less than ₹3,00,000/- per annum considering the present fiscal index if multiplier of 16 is applied by taking reference from the order of this Tribunal in *Aryavart Foundation (supra)*. The amount of compensation would be ₹3,00,000/- x 16 = ₹48,00,000/- only. Referring to *Nagappa v. Gurudayal Singh and Ors.*⁷, it is submitted that under the Motor Vehicles Act, 1988 there was no restriction to restrict the quantum of compensation to the amount claimed by the claimant and, in appropriate cases, it can exceed the amount claimed in the application if the Tribunal considers that the claimant is entitled to get more. The only consideration that ought to be taken care of should be the principle of 'Just' compensation that is it should neither be arbitrary nor fanciful nor unjustified. As per the learned Counsel, though the case of *Nagappa (supra)* arises out of claim made under the Motor Vehicles Act, 1988, the principle enunciated by the Hon'ble Supreme Court in that case can also be applied in cases of compensation under the NGT Act, 2010 as, even under the NGT Act, there is no restriction in awarding

⁷ (2003) 2 SCC 274, paragraph 7

compensation in excess of the amount claimed by the claimant. It is thus submitted by Mr. Roy Chowdhury, learned Counsel for the Applicant, that compensation of ₹48,00,000/- is just and reasonable having regard to the facts and circumstance of the case. There is no counter affidavit on this from the respondents leaving it upon the Tribunal to consider and determine its correctness.

43. We are inclined to agree with the submission of the learned Counsel for the Applicant that the present case is of claim against unliquidated damage which means “*not ascertained in amount, not determined, remaining un-assessed or unsettled; as unliquidated damages; Davies v. Turner, 61 Ga.App. 531, 6 S.E. 2d 356, 358*”.
44. The other aspect of the matter is the responsibility of the Respondent No. 4 to deal with the hazardous substance. Undeniably, the constituents of the coal gas supplied by the Respondent No. 4 company contains substance which falls within the meaning of hazardous substance under the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989. It also falls within the meaning of the omnibus definition of “hazardous substance” under

⁸ Black’s Law Dictionary

Clause (e) of Section 2 of the Environmental (Protection) Act, 1986 and, the rules enjoins those handling such substance to take precautions and safety measures prescribed under the rules. The gas is supplied to the consumers through pipeline which is considered to be an industrial activity under Section 2(h) of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989. It is also acknowledged by the Respondent No. 4 in its reply that the gas is produced by the company at its Dankuni Coal Complex. These are substantiated by the Material Safety Data Sheet (MSDS) of coal gas which contain the composition and characteristics of coal gas that clearly indicates that the effects of exposure to such gas are of high toxicity due to the presence of Carbon Monoxide. The other components and asphyxiates under Schedule 4 of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 which provides for installations for the production, processing or treatment of organic or inorganic chemicals used for this purpose, among others at Sl. No. 4, includes *“installations for production [use] or treatment of energy gases for example, LPG, LNG, SNG”*. Thus failure on the part of those dealing with “hazardous substance” as defined under the

Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 and other cognate rules has to face the consequence of lapses on its part. It is also of relevance to note that the Respondent No. 4 Company has not obtained Consent to Operate which by implication would lead to a reasonable inference that the pollution norms were not being complied with by the Respondent No. 4 in carrying out its activities. Apart from this, it is also not clear as to whether the Respondent No. 4 has obtained necessary authorization to handle hazardous substance.

45. It is trite that the liability of the industry engaged in the hazardous or dangerous activities when deaths or injuries occur on account of accident in operation of such activities to pay compensation to affected person is strict and absolute. In the case of *M.C. Mehta and Another v. Union of India and Others*⁹, it has *inter alia* been held as under:

“31. The rule in *Rylands v. Fletcher*¹⁰ was evolved in the year 1866 and it provides that a person who for his own purposes being on to his land and collects and keeps there anything likely to do mischief if it escapes

⁹ (1987) 1 SCC 395

¹⁰ (1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1

must keep it at his peril and, if he falls to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury Laws of England, Vol. 45 para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry out part of the developmental programme. This rule evolved in the 19th Century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in this context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly

prepared to receive light from whatever source it comes but we have to build up our own jurisprudence and we cannot countenance an argument that merely because the new law does not recognise the rule of strict and absolute liability in cases of hazardous or dangerous liability or the rule as laid down in Rylands v. Fletcher as is developed in England recognises certain limitations and responsibilities. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and no delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such

hazardous or inherently dangerous activity as an appropriate item of its over-heads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard- against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher (supra).

32. *We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deferent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.*

(underlining supplied) ”

46. Keeping the above principle in view and the fact that the deceased had been pursuing post-graduate course in Physics and was only 19 years old at the time of her death, it can be reasonably assumed in the natural course for the deceased to have a bright career prospect

had she been alive. Therefore, in our considered opinion, it would be reasonable to follow the principle adopted by the Tribunal in *Aryavart Foundation (supra)* and assess the compensation by applying multiplier of 16 prescribed in the second Schedule to the Motor Vehicles Act, 1988 on the loss of earning estimated at a conservative amount of ₹4,00,000/- per annum having regard to the present and anticipated future market index. The amount of compensation thus works out to be ₹4,00,000/- x 16 = ₹64,00,000/-.

47. We, therefore, direct the Respondent No. 4 to pay to the Applicant compensation of ₹64,00,000/- for the death of his daughter Ms. Sumantika Banerjee, within a period of one month from hence and, if the payment is not made within the period stipulated, simple interest at the rate of 12% per annum shall be computed after one month until the amount is fully liquidated in favour of the Applicant.
48. Considering the facts and circumstances of the case, the Applicant is exempted from paying additional Court fee on the amount in excess of the claim of ₹20,00,000/- paid by him at the time of filing the application.

49. In the result the application is allowed.

50. No order as to costs.

S.P. Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

29th July, 2020
O.A. No. 35/2016/EZ
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