

**BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL AT  
CHENNAI (SZ)**

**ORIGINAL APPLICATION No. 161 OF 2021**

**BETWEEN**

TRIBUNAL ON ITS OWN MOTION

UNDER THE CAPTION PENALISE COMPANY FOR DUMPING TOXIC WASTE IN  
KODAIKANAL : ACTIVISTS AND HUL BEGINS SOIL- REMEDIATION WORKS  
IN KODAIKANAL

Versus

1. THE CHIEF SECRETARY TO GOVT. OF TAMIL NADU
2. THE CHAIRMAN CENTRAL POLLUTION CONTROL BOARD
3. THE SECRETARY TO GOVT. OF TAMIL NADU DEPARTMENT OF  
ENVIRONMENT CLIMATE CHANGE & FORESTS
4. THE CHAIRMAN TAMIL NADU POLLUTION CONTROL BOARD
5. HINDUSTAN UNILEVER LIMITED (HUL) REP. BY ITS CHAIRMAN &  
MANAGING DIRECTOR
6. THE DISTRICT COLLECTOR DINDIGUL DISTRICT

**PRELIMINARY AFFIDAVIT FILED ON BEHALF OF THE 5<sup>th</sup>  
RESPONDENT**

I, R.John George, son of P.Raj Swamidhas, aged about 64 years,  
having office at St.Mary's Road, Kodaikanal, having come down temporarily  
to Chennai, do hereby solemnly affirm and sincerely state as follows:.

1. I am an Authorised Signatory of Hindustan Unilever Limited (Formerly  
known as Hindustan Lever Limited), the 5<sup>th</sup> Respondent Company in  
the present suo-moto proceedings, and as such am well acquainted  
with the fact of the case.
2. The present affidavit is being filed on behalf of the 5<sup>th</sup> respondent  
company consequent to the order dated 30.07.2021 passed by this  
Hon'ble Tribunal taking *suo-motu* cognisance of the newspaper articles  
dated 24.06.2021 and 25.06.2021 that appeared in Deccan Chronicle

and New Indian Express respectively and in constituting a joint committee to primarily verify if the directions issued by the Hon'ble National Green Tribunal (NGT), New Delhi were being adhered to by the answering respondent company. While the answering respondent reserves its right to file a detailed affidavit setting out the true and complete facts relating to the Soil Remediation work presently undertaken at site after the Joint Committee Report as directed by this Hon'ble Tribunal on 30.07.2021 is filed and if deemed necessary, the answering respondent company for the purpose of aiding and assisting this Hon'ble Tribunal most humbly places on record the following facts pertaining to the soil remediation undertaken by it.

3. At the very outset, the respondent company most humbly respectfully states and submits that the allegations contained in the newspaper articles are ex-facie contrary to truth, erroneous, and without any proof.
4. Furthermore, the answering respondent company most respectfully states and submits that the issues pertaining to alleged damage to the environment on account of mercury contamination in the answering respondent company's erstwhile thermometer factory site was raised by an activist before the NGT under O.Appl.No.22 of 2017 (SZ) seeking the relief of restoration of damage to environment, restoration of damage to reserve forest, fixing liability for the damage, initiate prosecution for violation of inter-alia Hazardous Waste management Rules and direction for payment of environmental compensation. The Hon'ble NGT, Chennai vide order dated 20.04.2017, after hearing the parties at length, was of the view that preparatory works for soil remediation as well as part of Trial run should be commenced and continued, and accordingly directed all the participants to extend their



full co-operation for carrying on the Soil Remediation. All the grievances agitated from inter-alia alleged adverse environmental impact were considered in detail by the National Green Tribunal, Chennai as well the Principal Bench of the NGT, New Delhi during the course of its proceedings in O.Appl.No.22 of 2017 and found to be frivolous and baseless on an exhaustive verification of the numerous studies and reports, including the reports pertaining to the trial run of the soil remediation (PILOT SCALE), as well as the report furnished by a 8 member committee constituted by the Central Pollution Control Board at the instance of National Green Tribunal comprising of experts from *IIT Bombay, IIT Delhi (2 experts) , IIT Madras, Indian Institute of Toxicological Research , Lucknow, NEERI, Nagpur , AIIMS and Indian Council for Medical Research*, every relief sought in that regard were rejected on 01.11.2018. The said order of the Hon'ble NGT, New Delhi dated 01.11.2018 approved the report furnished by the said Expert Committee constituted by the Central Pollution Control Board (CPCB) at the directions of the Hon'ble NGT, New Delhi ('the Expert Committee') in its entirety and directed that the soil remediation be undertaken by the answering respondent company in terms of the recommendation filed by the CPCB. This order of the National Green Tribunal was also confirmed by the Hon'ble Supreme Court of India on 05.03.2019.

5. It is relevant to state herein that the recommendation/report of the Expert Committee inter-alia arrived at the following conclusions :
- i. *The mercury contained in the soil is in its elemental (zero valent) form;*
  - ii. *It is even more unlikely that the mercury will be present in the soil in its organometallic for such as methyl mercury halide;*

- iii. *It is not necessary to repeat the detailed site assessment and risk assessment studies;*
- iv. *Repeating the entire process of detailed site assessment and risk assessment may delay the process of remediation, which is pending since the year 2006;*
- v. *Repetition of site assessment and re-evaluation of risk assessment methodology may be more of an academic interest rather than pragmatic objective of remediation;*
- vi. *At this stage, execution of remediation work should be of primary focus rather than conducting further studies;*

Based on the said conclusion, the CPCB recommended as under :

- i. *To permit remediation of mercury contaminated soil in the premises of closed thermometer factory and its adjoining areas to the recommended remediation target level of 20 mg/kg (total mercury) with valid authorization from Tamil Nadu Pollution Control Board.*
- i. *Considering the reported environmental impacts in Pambar Shola river in down gradient of closed thermometer factory, it is proposed that a detailed site assessment be carried out to ascertain the extent of contamination and if required, an ecological risk assessment study may also be carried out.*

(Emphasis supplied)

- 6. The answering respondent Company humbly states and submits that the processes for soil remediation, including site preparatory works such as construction of soil retaining walls, silt settling tank, silt traps (4 nos.), drains with appropriate trap for soil, and tree cutting in the remediation area, have been undertaken and completed by it after obtaining due approvals from all the statutory authorities as required in law and as directed by the Hon'ble NGT, New Delhi. The details of the approvals applied for and obtained by the answering respondent company from the Tamil Nadu Pollution Control Board (TNPCB) and



other authorities for the purpose of undertaking the Soil Remediation are as under:

**I. Tamil Nadu Pollution Control Board**

Permission/Approval for	Date of Grant
Permission to commence Soil Remediation Work	04.06.2018
Consent to Establishment under Air Act	17.03.2020
Consent to Establishment under Water Act	17.03.2020
Consent to Operate under Air Act – Phase 1	28.12.2020
Consent to Operate under Water Act – Phase 1	28.12.2020
Consent to Operate under Air Act – Full Scale	05.05.2021
Consent to Operate – Full Scale Remediation	05.05.2021
Hazardous Waste Authorisation	10.08.2021

**II. Principal Chief Conservator of Forest and Chief Wildlife Warden**

Permission/Approval for	Date of Grant
Permit for Entering into Kodaikanal Wildlife Sanctuary and Collection of Samples (Weekly sampling during remediation period)	10.05.2019
Permission for detailed site assessment/ecological risk assessment in Pambar Shola including river in downgradient (Pre-monsoon sampling by NEERI)	13.01.2020
Extension of Permission for Site assessment & Collection of Soil, Water and Plant Samples from Pambar Shola & River (Pre-monsoon sampling by NEERI)	03.03.2021

**III. Directorate of Industrial Safety and Health**

Permission/Approval for	Date of Grant
Registration Certificate under Contract Labour Act, 1970 and Tamil Nadu Contract Labour Rules, 1975	29.04.2019
Approvals for Drawings under the Factories Act and the Tamilnadu Factories Rules	10.05.2019
Renewal of Factory License for 2019 - 2022	05.08.2019

**IV. TANGEDCO**

Permission/Approval for	Date of Grant
Single line Diagram Approvals for Electrical Installations	13.03.2019
Approval for commissioning of Electrical Installations	11.05.2021

Permission/Approval for	Date of Grant
Additional maximum demand for power consumption	15.05.2021

#### V. Tree-felling

Permission/Approval for	Date of Grant
District Collector permission for felling of trees	18.10.2019
District Forest Officer Permission for felling of trees	13.12.2019

#### VI. Approval for Use of Heavy Vehicles

Permission/Approval for	Date of Grant
District Collector permission use of heavy vehicles from 01.02.2020 to 31.01.2021	31.01.2020
District Collector permission use of heavy vehicles from 01.02.2021 to 31.01.2022	25.01.2021

#### VII. Local Government Approvals

Permission/Approval for	Date of Grant
Director, Town Planning - Letter to Commissioner, Town Planning	15.02.2019
Letter from Town Planning Directorate - Approval for carrying out Soil Remediation Trials along with NOC from Agriculture Department and notes from other authorities	31.05.2019
No-Objection Certificate from Department of Public Health & Preventive Medicine	09.03.2021
Permission/No-Objection Certificate from Kodaikanal Municipal Corporation for conducting Soil Remediation and Associated Civil Work	25.03.2021

#### VIII. Hill Area Conservation Authority - Related

Permission/Approval for	Date of Grant
Letter from Executive Engineer, Public Works Department regarding grant of No-Objection Certificate	05.10.2018
No-Objection Certificate from Chief Engineer, Agricultural Engineering Department	23.01.2019
No-Objection Certificate issued by District Forest Officer for Soil Remediation Works	25.01.2019
Letter from Kodaikanal Municipal Corporation to Town Planning Authority, Madurai	31.01.2019
Letter from District Environmental Engineer, TNPCB to Commissioner, Kodaikanal Municipality permitting Soil Remediation Works	15.02.2019

Permission/Approval for	Date of Grant
Geotechnical Report for soil remediation and civil work recommending to go ahead with the remediation process	15.02.2019
Letter from Director, Town Planning Authority asking for approval from HACA	15.02.2019
No-Objection Certificate issued by Hill Area Conservation Authority	20.02.2019
Letter from Town Planning Directorate - Approval for carrying out Soil Remediation Trials along with NOC from Agriculture Department and notes from other authorities	31.05.2019

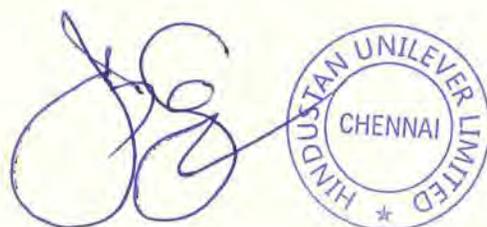
In furtherance to and in line with the above approvals granted, the answering respondent has installed the necessary equipment and machinery including soil washing plant, soil retorting plant, soil homogeniser, water treatment plants and air handling units, and has commenced the testing and commissioning trials of such newly installed machinery for undertaking the FULL SCALE soil remediation as directed by the Hon'ble NGT, New Delhi.

7. It may be pertinent to state herein that the soil remediation presently undertaken by the answering respondent company is the first of its kind in India and the machinery and equipment used during the PILOT SCALE was to evaluate the workability of the process / proof of concept (both soil washing and soil retorting). The capacity of machinery used in PILOT SCALE assessment was approx.2.5 ton per day for soil washing and 0.1 ton per day for soil retorting; and consequent to the successful implementation of the PILOT SCALE, the machinery that are installed newly for the purposes of undertaking the FULL SCALE remediation as directed by the NGT is approx.25 tons per day for soil washing plant (10 times the capacity) and approx.5 to 7.5 tons per day for soil retorting (50 to 75 times the capacity). Consequent to the above approvals obtained, the answering respondent has commenced installation, testing and commissioning trials of such equipment for commencing the FULL SCALE remediation

and is in the process of adjusting and fine tuning the said equipment and machinery. The remediated clean soil obtained during the undertaking of testing of equipment is ready for inspection and approval, after which the same will be landfilled.

8. In so far as the 2<sup>nd</sup> recommendation of the expert committee of the CPCP which has been approved by the Hon'ble NGT i.e "*Considering the reported environmental impacts in Pambar Shola river in down gradient of closed thermometer factory, it is proposed that a detailed site assessment be carried out to ascertain the extent of contamination and if required, an ecological risk assessment study may also be carried out*" is concerned, the answering respondent Company most humbly submits and states as under :

- As recommended, a detailed site assessment to evaluate the environmental impact in Pambar Shola River is being undertaken by National Environmental Engineering Research Institute (NEERI);
- For the purpose of undertaking such detailed site assessment, necessary permission was applied for and obtained on 13.01.2020 from the Principal Chief Conservator of Forests (PCCF) to collect the necessary samples from Pambar Shola;
- The pre-monsoon sampling in Pambar Shola was completed by NEERI between 23.09.2020 and 03.10.2020
- The post-monsoon sampling in Pambar Shola was completed by NEERI between 08.03.2021 and 16.03.2021
- The report regarding the detailed site assessment as directed by the Hon'ble NGT, New Delhi is awaited.



It may however be relevant to state herein that the detailed site assessment in Pambar Shola, which is off site, was not a condition precedent for commencing the soil remediation. In fact, the expert committee has categorically arrived at the conclusion that "*execution of remediation work should be of primary focus rather than conducting further studies*" and that "*Repeating the entire process of detailed site assessment and risk assessment may delay the process of remediation, which is pending since the year 2006*". It may be also relevant and pertinent to state herein that the "detailed site assessment" and the qualified "ecological risk assessment" as recommended by the Hon'ble NGT, New Delhi was in-fact undertaken in the past on 4 occasions, and at no point of time was any adverse impact on the environment or flora or fauna reported. The details of the studies undertaken as under :

S No	Description	Institutions / Agency	Dated	Subject Matter of Study
1	Environmental Site Assessment and Risk Assessment for Mercury	URS Dames & Moore	May 2002	Factory Site as well as off-sites including Pambar Shola
2	Total Mercury content in sediment, surface water & Fish samples drawn from area surrounding Kodaikanal	Environmental Resource Management (ERM)	June 2005	Off-sites including Pambar Shola
3	Protocol for remediation of mercury contaminated site	National Environmental Engineering Research Institute (NEERI)	February 2007	Factory Site as well as off-sites including Pambar Shola



S No	Description	Institutions / Agency	Dated	Subject Matter of Study
4	Assessment of Mercury Levels in Soil, Sediment and water samples from the Off-site Area of Hindustan Unilever Limited Factory (HUL), Kodaikanal, Tamil Nadu	National Environmental Engineering Research Institute (NEERI)	October 2015	Soil, Sediment and water samples from the Off-site Area Pambar Shola

It may be also relevant to state herein that the detailed site assessment of in Pambar Shola was undertaken by NEERI (1) in February 2007 pursuant to directions of SCMC dated 10.12.2004, 05.09.2005 and 07.02.2006, and (2) in October 2015 pursuant to the recommendation of CPCB on 29.04.2015 and direction of TNPCB and Scientific Expert Committee (SEC) on 28.05.2015

9. The above would amply demonstrate that there is no iota of truth in the allegations contained in the news-paper articles and in fact the detailed study and reports that undertaken over several years, which are detailed here below for transparency and better appreciation, the TNPCB officials have yet again undertaken site visits independently and have satisfied themselves of the remediation work undertaken by the respondent.
10. Even before the listing of the present case, there have been further newspaper articles pertaining to felling of trees that have appeared apparently in furtherance to complaints from some activists. In order to be transparent and to update this Hon'ble tribunal of the true facts, the answering respondent also places on record the following facts:
  - The answering respondent's subject site is a classified industrial area totally admeasuring 20.03 acres, out of which



an area admeasuring about 4 acres adjacent to the then mercury thermometer manufacturing area has been earmarked for remediation at 20mg/kg;

- The TNPCB, Scientific Expert Committee and NEERI, after detailed discussions and deliberations in February 2019, have recommended the removal of 440 trees in the work area of soil remediation after getting necessary approvals from the relevant authorities on account of safety issues;
- The identified 440 trees comprises of Eucalyptus-215, pine-72, beri-80, savakku-63, Rubber-5 and Gloria-5, and permission has been granted by the District Forest Officer on 13/12/2019, and such permission was valid till 15/02/2020;
- As against the statutory requirement of replanting trees in 1:1 ratio, the answering respondent has undertaken to restore the site after the remediation work by replanting native trees in 2:1 ratio i.e. to replant 880 trees in place of 440 trees. Further, the answering respondent has also undertaken to plant further as many trees as may be required by the authorities.
- In furtherance to the recommendation by the expert committee and the statutory approvals obtained, the answering respondent Company has removed only 425 tress and all the logs and branches of such cut trees have been stored in the factory premises and have not been disposed yet.
- It may not be out of place to state herein that the Kodaikanal is a hill area which has faced acute water scarcity. Out of the 440 trees that have been permitted to be removed, 215 are Eucalyptus trees, which have been directed not be planted by

the NGT on account of their nature to make the soil infertile and consequent to the recommendation of experts in a public interest litigation.

It is therefore submitted that the answering respondent Company has followed the due procedure in each step/activity of the soil remediation process as directed by the Hon'ble NGT, New Delhi, and is committed to follow the applicable law throughout the entire process of remediation.

Hence, it is most humbly prayed that the present proceedings may be closed.

Solemnly affirmed at Chennai on this the 30<sup>th</sup> day of August 2021 and signed his name in my presence.

A handwritten signature in blue ink is written over a circular blue stamp. The stamp contains the text "HINDUSTAN UNILEVER LIMITED" around the top edge and "CHENNAI" in the center.

BEFORE ME

*Siddharth L. Nms 4056/19*  
*No-2 Law Chambers*  
*Madras High Court*

ADVOCATE, CHENNAI

BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL AT  
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PRELIMINARY AFFIDAVIT FILED ON BEHALF OF THE 5<sup>th</sup>  
RESPONDENT  
(Hindustan Unilever Limited)

**M/s.** R.Parthasarathy (1A/1995)  
Rahul Balaji (670/1995)  
Madhan Babu (1450/2002)  
Vishnu Mohan (2572/2012)  
Rangasaran Mohan (4026/2019)

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