

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
Principal Bench, New Delhi**

Original Application No. 359/2019

IN THE MATTER OF:

Mohammad Yusuf Abdullah Shaikh & Anr.

Applicant(s)

Vs.

State of Maharashtra & Ors.

Respondent(s)

INDEX

Sr. No.	Particulars	Page no.
1.	Status Report on Environmental and Health Studies in Malegaon in the matter of O.A. No. 359/2019, titled as Mohammad Yusuf Abdullah Shaikh & Anr. vs. State of Maharashtra & Ors. in compliance to the Hon'ble NGT order dated 09.07.2019.	
2.	Annexure-I: A copy of National Environmental Engineering Research Institute (NEERI) letter dated 18.01.2021 requesting for extension of duration on Environmental and health studies in Malegaon, Maharashtra.	
3.	Annexure-II: A copy of Hon'ble NGT orders dated 09.07.2019 and 15.10.2019.	



(Bharat Kumar Sharma)
Regional Director
Central Pollution Control Board
Regional Directorate, Pune
Row House No. -1, Nisarg Vihar
Balewadi, Pune - 411045

Date: 20.01.2021

Place: Pune

Status Report on Environmental and Health Studies in Malegaon in compliance with order dated 09/7/2019 of the Hon'ble National Green Tribunal in the matter of OA no. 359/2019 titled Mohammad Yusuf Abdullah Shaikh & Anr. Applicant(s) Versus State of Maharashtra & Ors.

1. In compliance with orders of the Hon'ble Tribunal in OA No. 359/2019 directing Joint Committee comprising representatives of Ministry of Environment, Forest and Climate Change (MoEF&CC), Central Pollution Control Board (CPCB), MSPCB and the Malegaon Municipal Corporation to undertake the following environmental and health studies in Malegaon:

- (i) Health survey and the carrying capacity assessment of the area and assess Comprehensive Environmental Pollution Index (CEPI) in and around Malegaon for taking decision regarding the permission for operation of polluting activities, and;
- (ii) Assessment of the damage to the environment and public health in the last three years;

NEERI was identified and engaged to conduct the aforesaid environmental and health studies and submit report by 31/12/2019. Since the studies were under progress, an Interim Report was submitted to the Hon'ble NGT vide email dated 15/1/2020 informing preliminary indicative observations & findings based on-going field studies and sampling & monitoring of various parameters in Malegaon and status thereof. Outlining various on-going activities along with time schedule, it was also submitted to the Hon'ble NGT for consideration of the final report submission on the same to the Hon'ble Tribunal by April 15, 2020.

2. However, NEERI has, vide letter dated 18/1/2021, informed status of various works/activities as below:

No.	Nature of Work	Action	Remarks
1	Emission Inventory of the city	Completed	Interim Report Submitted*
2	Ambient Air Quality	Completed	Interim Report Submitted*
3	CEPI for Malegaon city	Partly Completed	Interim Report Submitted*
4	Health status of the region through secondary data	Completed	Interim Report Submitted*
5	Noise Pollution Monitoring	Completed	Interim Report Submitted*
6	Primary survey Health data (collection of samples), Audiometry	Pending	Work order issued to Doctor at Nashik but got delayed due to COVID 19
7	VOC, Dioxin and Furan Monitoring	Pending	Monitoring and analysis delayed due to COVID 19
8	Environment and health damage cost assessment	Pending	After step 6 and 7.

*The Interim Report has been submitted to the Hon'ble Tribunal vide email dated 15/1/2020.

NEERI has also informed that after the submission of interim report in January 2020, further scheduled study could not be carried out despite various arrangements/planning. The analysis of VOC, Dioxin and Furan were scheduled to be carried out from Govt. Labs at Gandhinagar (GPCB) and Trivandrum (NIIST). Due to COVID-19 lock down, travel restriction and state Govt. advisories, it was not possible to travel to all these states in one stretch, thus the sampling and analysis could not be carried out. After sampling the gaseous emission from industrial activities of Malegaon, it needs to be carried immediately to Trivandrum and Gandhinagar. Therefore, all the routes should be clear of any travel restriction and the concerned lab at Trivandrum and Gandhinagar should function.

Once the pollutants of relevance are found in the atmosphere, its effect on human health needs to be studied. At this stage, health study is not advisable as the pathological effect of Corona may interfere with the planned urine and blood samples from selected sample population.

Now that the pandemic is diminishing, NEERI has planned the study from March and the draft report is expected to submit by May 2021 to the Joint Committee. In view of the above, NEERI has requested that the duration of the project be extended till May 2021.

Copy of the NEERI letter dated 18/1/2021 in the regard is given at Annexure-I for ready reference.

- 3.** In view of the above, the Joint Committee humbly prays for kind consideration of the Hon'ble Tribunal for extension of time for submission of report on the aforesaid environmental and health studies till 25/6/2021 as about two weeks would be required for the committee to review the draft report submitted by NEERI followed by one week for submission of the finalized report to the Hon'ble Tribunal.



(Bharat Kumar Sharma)
Regional Director
Central Pollution Control Board
Regional Directorate, Pune

Date: 18.01.2021
Place: Pune

National Environmental Engineering Research Institute



K. V. George

Ph.D. (IIT Delhi); M.E./B.E.(Env./Civil Engg.)

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Email : kv_george@neeri.res.in

January 18, 2021

Sub: Request for extension of project duration -reg.

Ref: Environmental and health studies in Malegaon as per the order of July 9, 2019 of NGT, Delhi in the matter of OA 359 /2019

With the above subject and reference the work status is as follows:

No.	Nature of Work	Action	Remarks
1	Emission Inventory of the city	Completed	Draft Report Submitted
2	Ambient Air Quality	Completed	Draft Report Submitted
3	CEPI for Malegaon city	Partly Completed	Draft Report Submitted
4	Health status of the region through secondary data	Completed	Draft Report Submitted
5	Noise Pollution Monitoring	Completed	Report Submitted
6	Primary survey Health data (collection of samples), Audiometry	Pending	Work order issued to Doctor at Nashik but delay due to COVID 19
7	VOC, Dioxin and Furan Monitoring	Pending	Monitoring and analysis is delayed due to COVID 19
8	Environment and health damage cost assessment	Pending	After step 6 and 7.

After the submission of interim report in January 2020, further scheduled study could not be carried out despite various arrangements / planning. The analysis of VOC, Dioxin and Furan were scheduled to be carried out from Govt. Labs at Gandhinagar (GPCB) and Trivandrum (NIIST). Due to COVID-19 lock down, travel restriction and state Govt. advisories, it was not possible to travel to all these states in one stretch, thus the sampling and analysis could not be carried out. After sampling the gaseous emission from industrial activities of Malegaon, it needs to be carried immediately to Trivandrum and Gandhinagar. Therefore, all the routes should be clear of any travel restriction and the concerned lab at Trivandrum and Gandhinagar should function.

Once the pollutants of relevance are found in the atmosphere, its effect on human health needs to be studied. At this stage, health study is not advisable as the pathological effect of Corona may interfere with the planned urine and blood samples from selected sample population.

Now the pandemic is diminishing, the study is planned from March and expected to submit the draft report by May 2021. In view of the above, it is requested that the duration of the project be extended till May 2021.

Thanks and regards

(K.V. George)

Dr. Bharat K. Sharma

Regional Director,
CPCB, Pune

Item No.06

Court No. 1

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

Original Application No.359/2019

Mohammad Yusuf Abdullah Shaikh &Anr.

Applicant(s)

Versus

State of Maharashtra & Ors.

Respondent(s)

Date of hearing: 09.07.2019

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

For Applicant(s):

For Respondent (s): Mr. Mukesh Verma, Advocate

ORDER

1. The issue for consideration is the remedial action against the air pollution on account of melting of plastic in the process of manufacturing gitti (recycled plastic granules) for use of plastic pipes at Malegaon in the State of Maharashtra. Though similar application was disposed of in absence of the polluting units being party, proceedings have been initiated on a fresh application vide order dated 02.04.2019. We are of the view that even in absence of polluting units, the Tribunal can ascertain facts and require regulatory authorities to perform their duties.¹ Any party aggrieved by the orders of a regulatory body has remedy to challenge such

¹Section 19 of the NGT Act 2010 provides that NGT is not bound by formal CPC procedure. Section 20 of the Act mandates that NGT is to be guided by 'Precautionary', 'Sustainable Development' and 'Polluter Pays' principles.

decisions on merits. The Tribunal sought a factual and action taken report from a Joint Committee comprising Central Pollution Control Board (CPCB), Maharashtra State Pollution Control Board (MSPCB) and Municipal Corporation with reference to the grievance of the complainant that there is huge damage to the environment by the polluting activities in violation of 'Precautionary' and 'Sustainable Development' principles and statutory authorities were not taking action.

2. Accordingly, a report dated 30.04.2019 has been filed by the MSPCB on behalf of the Committee. We proceed to deal with the issue on merits.

3. The report is to the effect that 185 units were involved in the plastic recycling, 146 units were operating without valid consent, 107 sizing units were operating using plastic as fuel and action was taken against those which were operating without valid consent and using plastic as a fuel in boilers. The Maharashtra Government had attempted to regularize the unauthorized units but the Bombay High Court stalled the process in view of damage to the environment.² Malegaon Municipal Corporation formed a team and collected fine of Rs. 1,15,000/- and seized 2.25 MT of banned plastic products.

²Rajiv Narayan Mishra v. City and Industrial Development Corporation of Maharashtra Ltd. And others (2018 SCC Online Bom 4132)

It was held that, regularising constructions contrary to town planning norms was in violation of Art. 21 of the Constitution of India as such regularising adversely affects environment and ecology which are part of fundamental right to life. (Para 19)

Power of regularisation was read down to mean that regularisation could be only of structures which were in accordance with planning norms. (Para 98)

Further, it was also stated in para 82 that,

"The principles of sustainable development have been incorporated in the MRTP Act with a view to protect the rights of citizens under Article 21. It cannot be disputed that the regularisation of such large number of illegal constructions will destroy the very concept of town planning which will violate the rights of the citizens guaranteed by Article 21 of the Constitution of India. It will put heavy burden on availability of civic amenities and infrastructure thereby affecting the life of citizens. Such a large-scale regularisation of illegal structures will violate the fundamental rights of the citizens under Article 21 of the Constitution of India."

4. The report also makes reference to the earlier proceedings before the Western Bench of this Tribunal in OA No. 16/2018. Therein, CPCB was required to conduct an independent inspection of the area where polluting activities were being carried out. The State PCB was also to inspect each of the units and take steps against the said units including gitti manufacturers and sizing units. The Chief Secretary and Urban Development Secretary were required to take urgent measures to mitigate the pollution by the plastic manufacturing and sizing units.³ The matter was also dealt with by further order dated 13.07.2018 in respect of 185 plastic industries. MPCB was directed to categorize siting and the non-compliant units were to be dealt with under the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act, 1981.⁴ The Tribunal noted the statement made on behalf of the MPPCB that there was rampant pollution and urgent steps were required to be taken.

5. The report further mentions that scientific plastic waste disposal is required, to improve the sanitary hygiene in the plastic recycling area and to check air pollution. Air pollution control devices, segregation and storage of plastic waste and control of bio-medical waste are required for clean environment. Plastic waste trucks coming from outside are to be regulated. Mechanism is to be developed for proper health check-ups of industrial workers engaged in recycling of plastic and sizing units using plastic as fuel. An effort to inventorise the industrial units in the area has to be made. Discharge of waste water is to be regulated. Cotton lints are seen spread near the sizing and power looming units. Plastic waste is seen spread around the gitti

³ OA No. 16/2018 (WZ), Vide order dated 02.07.2018.

⁴ OA No. 16/2018 (WZ), Vide order dated 13.07.2018.

and granulation units. Road carpeting, road side plantation development are yet to be undertaken.

6. During the hearing, a status report has been handed over stating that plastic waste coming from cities like Mumbai, Pune, Aurangabad, Nagpur and other major urban centers was recycled at Malegaon. On the basis of survey, closure directions have been issued to certain units and some units have been allowed to restart subject to conditions. Closure direction to 135 units manufacturing gitties has only been recently issued vide order dated 06.07.2019, as the said units did not have consent to operate and air pollution control devices.

7. From the above, it is seen that there is acknowledged polluting activity which has been going on and it is only on 06.07.2019, some action is claimed to have been taken. The MPPCB was conscious of the rampant pollution and still failed to act. Moreover, there is nothing to show that any compensation has been recovered for the massive polluting activities from the units which are declared to be the polluters and closed and whether any prosecution has been initiated for offences under the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. Such inaction shows the MSPCB in poor light for failing in its statutory obligations. Cost of damage to public health and environment needs to be assessed and recovered from polluters and pending such final assessment, interim compensation needs to be recovered which should be deterrent. Actions of polluters causing diseases or deaths should not go unpunished in a civilized society governed by rule of law. The Municipal Corporation must also take action in exercise of its powers under Article 243W, Constitution of

India and the Solid Waste Management Rules, 2016 which has not been done.

8. Thus the MSPCB as well as other authorities in the State of Maharashtra have failed to comply with the 'Sustainable Development' and 'Precautionary' principles required to be applied by every regulatory authority.⁵ This requires carrying capacity assessment before permitting any activity having potential for pollution such as the plastic recycling/manufacturing activities or using plastic as fuel. The carrying capacity must take into account the health impact of the activities on the inhabitants in the area where such activities are allowed to be commenced or continued. Any industrial activity without consent to establish under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 is a criminal offence of which cognizance must be taken by the statutory authorities.

9. Polluting Industries cannot be allowed in a residential area, Town Planning authorities have to adopt and enforce appropriate regulatory measures.⁶ Land holding authorities must be held accountable for their failure. Similarly, wherever polluting activities found, steps have to be taken to stop such activities and to recover compensation and restoring the environment. Regulatory authorities must perform their

⁵In Vellore Citizens Welfare Forum v. Union of India and Others[(1996)5 SCC 647]

Hon'ble Supreme Court held,

The 'Precautionary Principle' and the 'Polluter Pays Principle' are essential features of "Sustainable Development". The Precautionary Principle in the context of the municipal law means-

- i) Environmental measures by the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.
- ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- iii) The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign.

⁶ M.C Mehta v. Union Of India [(2004) 6 SCC 588]

Hon'ble Supreme Court held, All industrial units that have come up in residential/non-conforming areas in Delhi on or after 1-08-1990 shall close down and stop operating.

duties.⁷ Reference may also be made to some of the orders of this Tribunal dealing with somewhat similar situations.⁸

10. Apart from the observations in some of the orders of this Tribunal in OA No. 16/2018, the level of pollution in Malegaon which is in public domain may be noted. Malegaon is a densely populated city, and has a huge industrial activity which includes red and orange category of industries. River Girna receives huge pollution from activities in Malegaon. Use of plastic wastes by these industries is a contributor to the damage to the environment. It may also be noted that the general level of pollution in the state of Maharashtra is high and has been noted in the previous order of this Tribunal.⁹ There are polluted industrial clusters¹⁰, non-functional CETPs¹¹, polluted river

⁷Techi Tagi Tara v. Rajendra Singh Bhandari [(2018)11 SCC 734]

Hon'ble Supreme Court discussed several issues pertaining to the expert and professional appointments to the SPCBs and stated that,

"The concern really is not one of a lack of professional expertise there is plenty of it in the country, but the lack of dedication and willingness to take advantage of the resources available and instead benefit someone close to the powers that be. With this couldn't care less attitude, the environment and public trust are the immediate casualties. It is unlikely that with such an attitude, any substantive effort can be made to tackle the issues of environmental degradation and issues of pollution."

⁸i) Satish Kumar v. Union of India &Ors (Original Application No. 56(THC)/2013, order dated 03.12.2018)

The Tribunal directed, Delhi Government to deposit a sum of Rs. 25 Crores towards the cost of damage to the environment for its failure to regulate the activities of illegal industrial clusters.

ii) News item published in "The Times of India" authored by Paras Singh Titled "Ignoring NGT orders, Mayapuri 'graveyard' spews toxic fumes"(Original Application No. 807/2018, Order dated 29.01.2019)

The Tribunal observed that, to uphold the Rule of Law and accountability of those who are trustees of environment, it is necessary that the state machinery is required to compensate for their negligence and failure which may act as a deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators.

iii) Aryavart Foundation vs. M/s. Vapi Green Enviro Ltd. &Ors. (Original Application No. 95/2018, order dated 11.01.2019) The Tribunal stated that, lack of effective governance in the present case is patent from absence of steps for prosecution of the guilty persons or recovery of damages for restoration of the environment which is primary responsibility of the SPCB. Appointment process does contribute to such ineffectiveness.

iv) All India Lokadhikar Sangathan Vs. Govt. of NCT of Delhi & Ors. (Original Application No. 159/2013, order dated 16.10.2018) The Tribunal directed the Delhi Government to pay a sum of Rs. 50 Crores as compensation for damage caused to the environment by allowing the operation of stainless steel pickling industries covered in prohibited/negative list of the industry as per Master Plan of Delhi 2021.

⁹Compliance of Municipal Solid Waste Management Rules, 2016 (Original Application No. 606/2018, order dated 08.04.2019)

¹⁰ News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" (O A No. 1038/2018, order dated 13.12.2018) The Tribunal, directed the SPCBs/ Committees to finalize the time bound action plans with regard to identified polluted industrial clusters in accordance with the revised norms laid down by the CPCB to restore environmental qualities within norms.

¹¹Arvind Pundalik Mhatre Vs. Ministry of Environment, Forest and Climate Change &Ors. (OA No. 125/2018, order dated 17.08.2018) The Tribunal directed that, appropriate action be taken under the civil and criminal laws against the erring industries as well as for failure of MIDC and the CETP Cooperative Society, to perform their duties.

stretches¹², non-attainment cities in terms of Air Pollution¹³, non-compliance of Municipal Solid and other Waste management Rules¹⁴, illegal sand mining evidencing high pollution level in the state of Maharashtra.

11. We may note that in view of failure of the authorities to enforce environment norms on various fronts, the Tribunal, vide order dated 16.01.2019 in *O.A. No. 606/2018* sought appearance of Chief Secretaries of all States, Chief Secretary, Maharashtra appeared on 08.04.2019 and directions were issued for personal monitoring at his level once a month and by District Magistrates twice a month, so as to ensure compliance of environmental norms and furnish quarterly reports to this Tribunal. Let the Chief Secretary monitor this important aspect also at his level and give his report thereon while submitting a report to the Tribunal in terms of order dated 08.04.2019.

12. We also direct a Joint Committee comprising representatives of Ministry of Environment, Forest and Climate Change (MoEF&CC), Central Pollution Control Board (CPCB), MSPCB and the Malegaon Municipal Corporation to undertake health survey and the carrying capacity assessment of the area and assess Comprehensive Environmental Pollution Index (CEPI) in and around Malegaon for taking decision regarding the permission for operation of polluting activities. The Committee may make an assessment of the damage to

¹² News item published in "The Hindu" authored by Shri Jacob Koshy titled "More river stretches are now critically polluted: CPCB (OA No. 673/2018, order dated 08.04.2019) The Tribunal directed the CPCB with SPCBs and PCCs to launch nationwide programme on biodiversity monitoring and indexing of the rivers to assess the efficacy of river cleaning programme.

¹³ News Item Published In 'The Times of India' Authored by Shri. Vishwa Mohan Titled "NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15" (OA No.681 of 2018, order dated 08.10.2018) The Tribunal stated that, CPCB and all the State Pollution Control Boards and Pollution Control Committees shall collectively workout and design a robust nationwide ambient air quality monitoring programme in a revised format by strengthening the existing monitoring network with respect to coverage of more cities/towns.

¹⁴ OA No. 606/2018, order dated 16.01.2019 and 08.04.2019.

the environment and public health in the last three years. The Committee may consider the air quality of the area. The Committee may visit the site after public notice and hear the members of the public who may choose to appear. The Committee may ascertain the status of actual closure of the units on record and recommend preventive safeguards and remedial action to be taken having regard to the ground situation. The District Magistrate will provide necessary security or other support. The representative of the CPCB will be the nodal agency for coordination and the compliance. The Committee may file its report within two months by e-mail at judicial-ngt@gov.in.

13. A copy of this order be sent to MoEF&CC, CPCB, MSPCB, Malegaon Municipal Corporation, District Magistrate, Malegaon and the Chief Secretary, Maharashtra by e-mail for compliance.

List for further consideration on 15.10.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

July 09, 2019
Original Application No.359/2019
DV

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

Original Application No. 359/2019
(I.A. No. 658/2019 & I.A. No. 659/2019)

(With report dated 09.09.2019)

Mohammad Yusuf Abdullah Shaikh & Anr.

Applicant(s)

Versus

State of Maharashtra & Ors.

Respondent(s)

Date of hearing: 15.10.2019

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

For Respondent(s): Mr. Divya Prakash Pandey, Advocate for CPCB
Mr. Mukesh Verma, Advocate for MPCB

ORDER

1. The issue for consideration is the remedial action against the air pollution on account of melting of plastic in the process of manufacturing *gitti* (recycled plastic granules) for use of plastic pipes at Malegaon in the State of Maharashtra.
2. The Tribunal sought a factual and action taken report from a Joint Committee comprising Central Pollution Control Board (CPCB), Maharashtra State Pollution Control Board (MSPCB) and Municipal Corporation with reference to the grievance of the complainant that there is huge damage to the environment by the polluting activities in violation of 'Precautionary' and 'Sustainable Development' principles and statutory authorities were not taking action.

3. The matter was considered on 09.07.2019 in the light of the report furnished by a joint Committee comprising of the CPCB, MSPCB, Malegaon Municipal Corporation dated 30.04.2019 as follows:

“3. The report is to the effect that 185 units were involved in the plastic recycling, 146 units were operating without valid consent, 107 sizing units were operating using plastic as fuel and action was taken against those which were operating without valid consent and using plastic as a fuel in boilers. The Maharashtra Government had attempted to regularize the unauthorized units but the Bombay High Court stalled the process in view of damage to the environment.¹ Malegaon Municipal Corporation formed a team and collected fine of Rs. 1,15,000/- and seized 2.25 MT of banned plastic products.

4. The report further mentions that scientific plastic waste disposal is required, to improve the sanitary hygiene in the plastic recycling area and to check air pollution. Air pollution control devices, segregation and storage of plastic waste and control of bio-medical waste are required for clean environment. Plastic waste trucks coming from outside are to be regulated. Mechanism is to be developed for proper health check-ups of industrial workers engaged in recycling of plastic and sizing units using plastic as fuel.

¹ Rajiv Narayan Mishra v. City and Industrial Development Corporation of Maharashtra Ltd. And others (2018 SCC Online Bom 4132) It was held that, regularising constructions contrary to town planning norms was in violation of Art. 21 of the Constitution of India as such regularising adversely affects environment and ecology which are part of fundamental right to life. (Para 19) Power of regularisation was read down to mean that regularisation could be only of structures which were in accordance with planning norms. (Para 98) Further, it was also stated in para 82 that, “The principles of sustainable development have been incorporated in the MRTP Act with a view to protect the rights of citizens under Article 21. It cannot be disputed that the regularisation of such large number of illegal constructions will destroy the very concept of town planning which will violate the rights of the citizens guaranteed by Article 21 of the Constitution of India. It will put heavy burden on availability of civic amenities and infrastructure thereby affecting the life of citizens. Such a large-scale regularisation of illegal structures will violate the fundamental rights of the citizens under Article 21 of the Constitution of India.”

An effort to inventorise the industrial units in the area has to be made. Discharge of waste water is to be regulated. Cotton lints are seen spread near the sizing and power looming units. Plastic waste is seen spread around the gitti and granulation units. Road carpeting, road side plantation development are yet to be undertaken.

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7. *From the above, it is seen that there is acknowledged polluting activity which has been going on and it is only on 06.07.2019, some action is claimed to have been taken. The MPPCB was conscious of the rampant pollution and still failed to act. Moreover, there is nothing to show that any compensation has been recovered for the massive polluting activities from the units which are declared to be the polluters and closed and whether any prosecution has been initiated for offences under the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. Such inaction shows the MPPCB in poor light for failing in its statutory obligations. Cost of damage to public health and environment needs to be assessed and recovered from polluters and pending such final assessment, interim compensation needs to be recovered which should be deterrent. Actions of polluters causing diseases or deaths should not go unpunished in a civilized society governed by rule of law. The Municipal Corporation must also take action in exercise of its powers under Article 243W, Constitution of India and the Solid Waste Management Rules, 2016 which has not been done.*

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9. *Polluting Industries cannot be allowed in a residential area, Town Planning authorities have to adopt and*

enforce appropriate regulatory measures². Land holding authorities must be held accountable for their failure. Similarly, wherever polluting activities found, steps have to be taken to stop such activities and to recover compensation and restoring the environment. Regulatory authorities must perform their duties³ Reference may also be made to some of the orders of this Tribunal dealing with somewhat similar situations.⁴

10. *Apart from the observations in some of the orders of this Tribunal in OA No. 16/2018, the level of pollution in Malegaon which is in public domain may be noted. Malegaon is a densely populated city, and has a huge industrial activity which includes red and orange category of industries. River Girna receives huge pollution from activities in Malegaon. Use of plastic wastes by these industries is a contributor to the damage to the environment. It may also be noted that the general level of pollution in the state of Maharashtra*

2 M.C Mehta v. Union Of India [(2004) 6 SCC 588] Hon'ble Supreme Court held, All industrial units that have come up in residential/non-conforming areas in Delhi on or after 1-08-1990 shall close down and stop operating.

3 Techi Tagi Tara v. Rajendra Singh Bhandari [(2018)11 SCC 734] Hon'ble Supreme Court discussed several issues pertaining to the expert and professional appointments to the SPCBs and stated that, "The concern really is not one of a lack of professional expertise there is plenty of it in the country, but the lack of dedication and willingness to take advantage of the resources available and instead benefit someone close to the powers that be. With this couldn't care less attitude, the environment and public trust are the immediate casualties. It is unlikely that with such an attitude, any substantive effort can be made to tackle the issues of environmental degradation and issues of pollution."

4 i) Satish Kumar v. Union of India &Ors (Original Application No. 56(THC)/2013, order dated 03.12.2018) The Tribunal directed, Delhi Government to deposit a sum of Rs. 25 Crores towards the cost of damage to the environment for its failure to regulate the activities of illegal industrial clusters. ii) News item published in "The Times of India" authored by Paras Singh Titled "Ignoring NGT orders, Mayapuri 'graveyard' spews toxic fumes"(Original Application No. 807/2018, Order dated 29.01.2019) The Tribunal observed that, to uphold the Rule of Law and accountability of those who are trustees of environment, it is necessary that the state machinery is required to compensate for their negligence and failure which may act as a deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. iii) Aryavart Foundation vs. M/s. Vapi Green Enviro Ltd. &Ors. (Original Application No. 95/2018, order dated 11.01.2019) The Tribunal stated that, lack of effective governance in the present case is patent from absence of steps for prosecution of the guilty persons or recovery of damages for restoration of the environment which is primary responsibility of the SPCB. Appointment process does contribute to such ineffectiveness. iv) All India Lokadhikar Sangathan Vs. Govt. of NCT of Delhi & Ors. (Original Application No. 159/2013, order dated 16.10.2018) The Tribunal directed the Delhi Government to pay a sum of Rs. 50 Crores as compensation for damage caused to the environment by allowing the operation of stainless steel pickling industries covered in prohibited/negative list of the industry as per Master Plan of Delhi 2021. 9 Compliance of Municipal Solid Waste Management Rules, 2016 (Original Application No. 606/2018, order dated 08.04.2019)

is high and has been noted in the previous order of this Tribunal.⁵ There are polluted industrial clusters⁶, non-functional CETPs⁷, polluted river stretches⁸, non-attainment cities in terms of Air Pollution⁹, noncompliance of Municipal Solid and other Waste management Rules,¹⁰ illegal sand mining evidencing high pollution level in the state of Maharashtra.”

5. The report filed by the CPCB on 09.09.2019 *inter alia* is as follows:

A. Findings

(a) Plastic related activities

(i) List of 203 units reported (by Malegaon Municipal Corporation) to be engaged in plastic related activities is not comprehensive. There could be more units engaged in plastic related activities in Malegaon. Further, such list does not have information about type of activities being carried out in terms of storage or sorting or recycling of waste plastics or manufacturing of pipes from plastic lump (Gitti) derived from waste plastic recycling.

5 Compliance of Municipal Solid Waste Management Rules, 2016 (Original Application No. 606/2018, order dated 08.04.2019)

6 News item published in “The Asian Age” Authored by Sanjay Kaw Titled “CPCB to rank industrial units on pollution levels” (O A No. 1038/2018, order dated 13.12.2018) The Tribunal, directed the SPCBs/ Committees to finalize the time bound action plans with regard to identified polluted industrial clusters in accordance with the revised norms laid down by the CPCB to restore environmental qualities within norms

7 Arvind Pundalik Mhatre Vs. Ministry of Environment, Forest and Climate Change &Ors. (OA No. 125/2018, order dated 17.08.2018) The Tribunal directed that, appropriate action be taken under the civil and criminal laws against the erring industries as well as for failure of MIDC and the CETP Cooperative Society, to perform their duties.

8 News item published in “The Hindu” authored by Shri Jacob Koshy titled “More river stretches are now critically polluted: CPCB (OA No. 673/2018, order dated 08.04.2019) The Tribunal directed the CPCB with SPCBs and PCCs to launch nationwide programme on biodiversity monitoring and indexing of the rivers to assess the efficacy of river cleaning programme.

9 News Item Published In ‘The Times of India’ Authored by Shri. Vishwa Mohan Titled “NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15” (OA No.681 of 2018, order dated 08.10.2018) The Tribunal stated that, CPCB and all the State Pollution Control Boards and Pollution Control Committees shall collectively workout and design a robust nationwide ambient air quality monitoring programme in a revised format by strengthening the existing monitoring network with respect to coverage of more cities/towns.

10 OA No. 606/2018, order dated 16.01.2019 and 08.04.2019.

(ii) Of all plastic waste recycling units, whom closure directions have been issued by Maharashtra Pollution Control Board (MPCB) and power supply disconnection has reportedly been done by Maharashtra State Electricity Distribution Corporation Ltd. (MSEDCL), not all units have closed their operations effectively.

Further, plastic waste recycling units are also operational which are not in inventory list of MMC/MPCB.

(iii) None of the units visited were having display board displaying the unit's name and address;

(iv) Plastic waste recycling activities are carried out with low investment in small sized area (as small as of about 1000 sq. feet) having temporary built structures. Non-installation of Display Board outside such recycling units makes identification of the unit difficult.

(v) Some of the plastic (not plastic waste) related activities like manufacturing pipe from recycled plastic (plastic lump i.e. Gitti derived by recycling plastic waste) procured from outside, are operating without possessing Consent to Operate from MPCB and also without air pollution control devices.

(vi) Plastic related activities are also located in vicinity of residential houses.

(b) Sizing units and use of plastic waste as fuel

(i) Of 127 sizing units, 24 sizing units, who were refused CTO or not applied for CTO, are operational. MPCB informed that closure direction to such units are under progress.

(ii) Use of plastic waste as fuel was found in one of the four visited units and, therefore, it may be implied that use of

plastic waste as fuel in a few of the sizing units are going on.

B. Preventive safeguards and remedial action to be taken

(a) Plastic related activities

Since no plastic waste recycling unit in Malegaon has been granted Consent to Operate and Registration (as required under under Rule 13(3) of the Plastic Waste Management Rules 2016) by MPCB, operation of any plastic waste recycling unit needs to be closed until the said Consent to Operate and Registration are granted by MPCB. For effective stoppage of illegal recycling of waste plastic, the following is recommended:

- (i) Nos. of units engaged in plastic related activities in Malegaon be jointly inventoried by Malegaon Municipal Corporation, MPCB and MSEDCL by 25.09.2019. During such inventorization, owner's details, detailed address of the unit with survey no., gut no., electricity connection owner's name, distance from nearest residential building, etc. and type of activities may also be listed.*
- (ii) Installation of Display Board at the gates of units engaged in plastic related activities (whether open or closed) may be ensured by MMC/MPCB for their easy identification.*
- (iii) Upon the above inventorization, MPCB may immediately issue closure directions to remaining units, who are illegally engaged in plastic related activities. MSEDCL may also disconnect power supply to such units.*
- (iv) The closure be implemented in field by sealing of the gates and permanent disconnection of power supply with the help of Police and District Administration.*

- (v) As preventive measures for effective closure of illegal plastic waste recycling, till such recycling units are permitted in Malegaon in accordance with law, plastic waste storage godowns shall also be closed.
- (vi) Till MPCB grants Consent to Operate and Registration for recycling of plastic wastes, Police, Road Transport Authority and Malegaon Municipal Corporation to ensure that no vehicles carrying plastic waste enter into Malegaon city area for unloading the same.
- (vii) District Administration, Police and Malegaon Municipal Corporation may ensure that the plastic waste recycling activities do not scatter at other places once such activities are closed/sealed in Malegaon.
- (viii) MPCB may publish warning in local newspapers that plastic waste recycling and pipe manufacturing are not permitted unless requisite Consent to Operate has been obtained by MPCB. Non-compliances shall attract imprisonment up to five years with fine as stipulated under section 15 of the Environment (Protection) Act, 1986.

(b) Use of plastic waste in boiler of Sizing units

- (i) To check use of plastic waste as fuel along with wood, MPCB may become more vigil. A warning in local newspapers may be published by MPCB that plastic waste as fuel in any of the activities including sizing units is not permitted. Non-compliances shall attract imprisonment up to five years with fine as stipulated under section 15 of the Environment (Protection) Act, 1986.
- (ii) The 24 operational sizing units, who have not applied for Consent to Operate (CTO) or CTO was refused by MPCB, shall immediately be closed by MPCB. The status of 04 units found closed during survey by MPCB is also required to be properly verified by MPCB and MMC.
- (iii) All sizing units (whether open or closed) may be directed to install display board at their gates displaying the unit's name and address for their easy identification.

4. With regard to pollution and health impact from other sources/activities such as Power looms; Dyeing; Municipal waste dumping site at Sangameshwar, Chandanpuri road, Malegaon; Solid waste and sewage in municipal area, and; Road dust and emissions from vehicles plying; as represented by public during the aforesaid public hearing conducted on 22/8/2019 in Malegaon, observations/findings of the joint committee are given in the Minutes of the public hearing and Report on site visits by the Joint Committee based on the said public hearing as at Annexure II and Annexure III respectively. Preventive measures and remedial safeguards, as suggested by the committee in the said minutes/report, are as below:

- (i) PPE such as Mask and ear plugs shall be used by workers in power loom;
- (ii) MPCB may carry out feasibility studies of noise control measures such as noise barriers, technology interventions in power loom machine, etc. and lint management through expert institute which can be implemented in power loom units being operated even in households so as to comply with noise standards prescribed under the Noise Pollution (Regulation and Control) Rules, 2000.
- (iii) Inventory of power loom and yarn dyeing in Malegaon (with name of owners, detailed address, nos. of power loom, etc.) may be carried out jointly by MMC, MPCB and MSEDCL.
- (iv) Since power loom operation and yarn dyeing require Consent from MPCB, the same may not be allowed unless the said Consent is given by MPCB. However, large number of people are engaged in power looming activity in Malegaon. While issuing consent, MPCB may ensure that the power loom unit has noise control measures (as

suggested under (ii) above) and lints management in place and dyeing operation has proper emission control arrangement and ETP.

(v) MMC shall:

(a) Collect municipal solid waste on regular basis, and;

(b) Commission the proposed sanitary landfill site at the site within the expected schedule of 28.02.2021.

The above may be monitored by the Divisional Commissioner who conducts monthly review meetings of ULBs for review and monitoring of the progress of the implementation of the Solid Waste Management Rules, 2016 (as per report of the matter of OA No. 606/2018). Upon commissioning of the said landfill, the solid waste dumpsite at Sangameshwar need to be remediated.

(vi) The proposed sewage treatment plant may be commissioned within the expected schedule of December 2021 by MMC. The Project Management Consultant under the Department of Water supply sanitation, Govt. of Maharashtra, may ensure the completion within the said time frame.

MMC may ensure time bound commissioning of underground sewage network instead of open sewage drains. Till the same is commissioned, MMC shall carry out control measures such as spray of insecticides, cleanup of drains, etc. regularly.

(vii) Though no significant road dusts were observed because of monsoon season despite existence of non-metallic roads. The concerned agency of Malegaon may ensure regular sweeping of roads and time bound development of metallic roads in Malegaon.

(viii) Traffic Department may study hotspots of vehicle congestion, if any, in Malegaon and take necessary control measures.

(ix) Minutes of the hearing and this verification report along with recorded proceedings of the of the of the hearing be

sent to MMC, District Administration, Traffic Police and MMC for taking effective measures as raised by the public.

5. TIME FRAME FOR COMPLETION OF VARIOUS STUDIES ASSIGNED TO THE COMMITTEE

That with regard to other tasks assigned to the committee of assessing Damage to public health in last three years, Health survey; Carrying capacity assessment of the area; Assessment of CEPI, and; Assessment of damage to the environment in and around Malegaon, the following submission (as given at Annexure I) has been made by the committee:

"In view of non-availability of primary environmental data (air, water and soil quality) which require to be generated by field monitoring/sampling & analysis after monsoon (i.e. September/October 2019) and that expert institute/Lab would require to be identified, their ToR be finalized followed by award of work, the expected time schedule for completing various studies viz. assessment of the area, Damage to the environment and; CEPI; may be as below:

S I	Activities	Completion schedule
1.	Environmental/Health Sampling & Monitoring	Nov-Dec 2019
2.	Laboratory analysis of samples	Mid of Jan. 2019
3.	Scientific analysis of data and draft report preparation by expert institute	Mid of Feb. 2020
4.	Review and discussion by the Committee on the draft report	Feb. 2020

5.	<i>Finalisation of reports and submission to the Hon'ble Tribunal</i>	March 15, 2020
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The above time schedule may be submitted for kind consideration of the Hon'ble Tribunal. Along with the aforesaid study reports, the committee can also submit updated status as (on January 2020) of action taken by various agencies on plastic waste handling activities and sizing units in Malegaon vis-à-vis recommendations of made by this committee based on visits made on 22.8.2019 and 24.8.2019 or as directed by the Hon'ble Tribunal."

It is humbly prayed that the Hon'ble Tribunal may kindly consider the above submissions of the joint committee."

6. In view of seriousness of facts found by the Committee noted above, the timelines for further action need to be preponed so that action proposed is completed positively by 31.12.2019. In the meanwhile, the State PCB, who is the regulatory body, must take steps to prevent further polluting activities by disconnecting the electricity supply and adopting other measures, apart from recovering compensation. While polluting activities cannot be allowed to continue on the ground that alternative sites may have to be explored, it is open to the authorities to take steps in that direction. The Chief Secretary, Maharashtra may look into the matter and take such steps as may be necessary to ensure sustainable development. The industrial activity ought to be allowed without causing damage to the environment. The existing proposal for shifting of the units from residential area to any other area may be considered on its own merit. The State must provide adequate security for enforcement of regulatory measures for

protection of public health and environment. The District Magistrate, Malegaon may look into this aspect.

7. A copy of this order be sent to the MoEF&CC, CPCB, MSPCB, Malegaon Municipal Corporation, District Magistrate, Malegaon and the Chief Secretary, Maharashtra by e-mail for compliance.

List for further consideration on 21.01.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

October 15, 2019
Original Application No. 359/2019
(I.A. No. 658/2019 & I.A. No. 659/2019)
AK

