

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE.**

ORIGINAL APPLICATION NO: 60/2022

IN THE MATTER OF:

Aditya Roop Singh Chauhan Applicant

Versus

**Ministry of Environment and Forest and
Climate Change & Ors. 4 Respondents**

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Pune
Dated: -



**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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ORIGINAL APPLICATION NO: 60/2022

IN THE MATTER OF:

ADITYA ROOP SINGH CHAUHAN..... Applicant

Versus

Government of India and Ors. 4 Respondents

**REJOINDER AFFIDAVIT OF THE APPLICANT TO THE
REPLY OF THE RESPONDENT NO. 5.**

I, Aditya Roop Singh Chauhan, S/o Roop Singh Chauhan aged about 47 years, having office at 25/2, Jayshree Shopping Center GIDC, Vatva Road, Vatva, Ahmedabad – 382440, do hereby solemnly affirm and state that I have gone through the contents of the reply of Respondent No. 5 and this affidavit is my response to the same.

Preliminary Submissions:-

1. That the R- 5 is a one of the top 10 pesticide companies in India. It has 2 production facilities, located at Rohtak in Haryana and





Bahruch in Gujrat. It is offering a range of products including pesticides, herbicides, fungicides, acaricides, etc. Total Revenue for FY 2021-2022 was Rupees 13.01 B or 130.10 Crores, Gross profit was Rupees 4.59 B or 45.9 Crores Net Income was Rupees 1.76 B or 17.6 Crores.

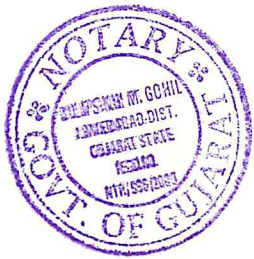
The averments in the reply are false and misleading. The cause of the accident enumerated in para 4 of their reply is mischievously false and same is evident from perusal of investigation report by Directorate of Industrial Safety and Health (hereinafter referred to as DISH) at internal page 174 &175 of the additional document filed by R-5 which states as under;

“ ..On 17/05/2022 at around 13;42 hrs in the first shift, the temperature controller of the energy recovery system for plant D failed at 109 degree centigrade temperature and as a result the valve of three way flow control valve system was fully opened and from the return line of the plant A and B circulation of oil with a temperature of about 215 to 220 degree centigrade started to accumulate in the cell side of the heat exchanger of the energy recovery system so that the temperature of the oil going to plant D would also be around 215 to 220 degree centigrade. Thus, as the temperature of circulating oil in plant D increased, the



temperature of reactor no. 527 increased and the mother liquor of Batch No. 53 and 54 held in it after atmospheric distillation, which still contained about 30% Hexane, also started heating up. According to Hexane's Material Safety Data Sheet (MSDS), it has a boiling point of 68 to 70 degree centigrade and an auto ignition temperature of 225 degree centigrade. At around 15:30 hrs, reactor no. 527 experienced a sudden explosion when the temperature reached around 225 degree centigrade, due to which reactor no. 527 and Reactor no. 516 adjacent to reactor no. 527 in which the atmospheric distillation of Hexane was in process, (At first Floor) collapsed down. R 563 also collapsed from the floor as the batch was running. Due to this a fire broke out in plant D. At this point there was no alarm system on the first floor of plant D.

In this incident, (1.) Mr. Sudhanshu ShekhraBamanShudhangi (Senior Manager, Production) aged about 41 years, dated 17.05.2022, (2) Mr. Kundan Kumar Jha (Senior Supervisor, Production) aged about 41 years, Dated 18.05.2022 (3) Mr. Arun Kumar Gautam (Operator) aged about 22 Years dated 20.05.2022, (4) Mr. DodiyaDarshikBhavsinhbhai (Operator) aged about 25 years dated 24.05.2022 (5) Mr. Krishna Kumar Yadav (Operator) aged about 21 years dated 25.05.2022 (6) Mr. Dragpal (operator) aged 27 years dated 25.05.2022 (7) Mr. Kirtan Kumar Bharat Bhai



Talaviya (apprentice) aged about 21 years dated 1.06.2022 (8) Mr. Amit Kailash Rao Bijwe (Senior Executive) aged about 37 years dated 7.06.2022 succumbed to their injuries.”

DISH held Respondent No.5 in breach of para 12 of Schedule 19 of Rule 102 of Gujrat Factories Rules, 1963 as hereunder:-

“ On the day of the incident, the temperature of Reactor No. 527 was likely to rise above the set temperature as the temperature of the oil circulating in the plant rose. Due to lack of proper audio and visual alarm systems, it could not be heard and seen in the plant. This temperature rise could have been prevented earlier had the alarm system been provided and this incident would not have happened. Thus, on the day of the incident, the temperature of the circulating oil in Plant D increased and the temperature of Reactor No. 527 was likely to rise above the prescribed temperature, due to which there was a possibility of fire and explosion. The occupying Manager has violated para 12 of Schedule 19 of Rule 102 of Gujrat Factories Rules, 1963...”

As per para 12 of Schedule 19 of Rule 102 of Gujrat Factories Rules, 1963...

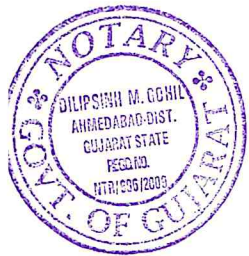


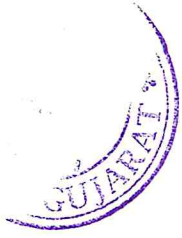


'Alaram System', Whenever the operational parameters go above the prescribed safe level or create a condition liable to cause fire or explosion, arrangement of process control rooms and strategies should be available. 1) A suitable and effective audible and visible signal alarm system should be provided over the area (location). This alarm system should be checked daily and its functionality should be tested once every month.

The Respondent No. 5 was called upon by DISH for explanation regarding aforesaid violation of Law and the respondent no. 5 replied to the same vide Annexure A-14 at page 177 & 178, wherein it admitted to the findings of DISH that the audio-visual alarm system was not installed on the reactors.

2. That the Respondent No. 5 for established and admitted failure to install alarm system has violated specific condition (x) of the Environmental Clearance dated 19.10.2020 and therefore the EC is liable to be cancelled. Condition 14A (x) of EC dated 19.10.2020 is reproduced herein below:-






“The unit shall make the arrangement for protection of possible fire hazard during manufacturing process in material handling.

The fire-fighting system shall be as per norms.”

Apart from above material violation condition no. 14.1(vii) and 14.1(viii) of EC have also been violated by Respondent No. 5. Under 14.1(vii) the Respondent No. 5 is under obligation to furnish the six monthly compliance status report of the EC on its website, to MoEF& CC, CPCB & GPCB but are not in compliance as same is not available on its website and the Respondent No. 5 has also not filed the same in the present proceedings. Under 14.1(viii) the Respondent No. 5 is under obligation to furnish the Annual Environmental Statement on its website and GPCB but have not been in compliance as same is not available on its website. The report filed in the present proceedings is not complete as Annexure 1 & 2 thereto have not been furnished and the said report is of latter date, i.e after the occurrence of accident.

3. That in exercise of powers conferred under section 6, 8 and 25 of the Environment Protection Act, 1986 the Central Government has notified the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 (hereinafter referred to as MSIHCRules,

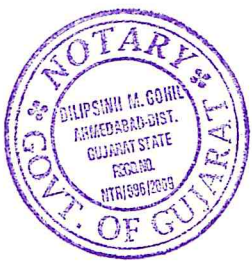




1989) for purpose of regulating the concerned industries as Respondent No. 5. Had Respondent No. 5 adhered to the said Regulation the accident dated 17.05.2022 would not have occurred, precious lives and environment would not have suffered. The Respondent No. 5 has not taken the mandatory approval under Rule 7 of MSIHCR, 1989 before commencing production of new chemicals or additional chemicals under EC dated 20.10.2022 or CTE dated 14.02.2018. Respondent No. 5 and has neither prepared nor filed safety report, safety audit etc. (Schedule 8) as per Rule 10 of MSIHCR, 1989 before commencing production of additional/new chemicals under EC dated 20.10.2022. Respondent No. 5 has neither filed the report of the mock drill conducted of the onsite emergency plan nor prepared the onsite emergency plan on commencing production of additional/new chemicals as per Rule 14(4) of MSIHCR, 1989 under EC dated 20.10.2022.

In light of the above, (CTE) Consent and Authorization dated 14.02.2018 (Page No. 376) condition nos. 7.1, 7.5, 7.13 and 8.3 have been breached by the Respondent No. 5 and said conditions are being reproduced herein below for ready reference:-

“7.1. The authorized person shall comply with the provisions of the Environment (Protection) Act, 1986, and the rules made there under.

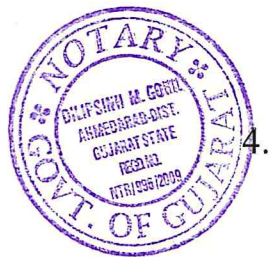


7.5. *The person authorized shall implement Emergency Response Procedure (ERP) for which this authorization is being granted considering all site specific possible scenarios such as spillages, leakages, fire etc. and their possible impacts and also carry out mock drill in this regard at regular interval of time.*


7.13. *Any other conditions for compliance as per the Guidelines issued by the Ministry of Environment, Forest and Climate Change or Central Pollution Control Board from time to time.*

8.3. *The applicant shall not carry out any activities for which the required clearance are not obtained.”*

The respondent no. 5 had been operating its plant devoid of all regulatory framework as law upon itself. These are very serious and grave violations on part of Respondent No. 5. The contempt for the mandatory rules and regulations on part of Respondent No. 5 has caused 8 deaths, numerous injured and irreparable harm loss and injury to the environment.




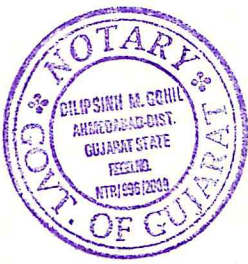
4. That the industry proponent is a big company with annual turnover of more than 130 Crores rupees and have no respect for this Hon'ble Tribunal, for Law in general or for any Statutory Authority. The industry proponent has lied that only 2 person died



in the accident and despite the directions of this Hon'ble Tribunal dated 29.11.2022 to place on record the reports relied upon in their reply have not complied with the order and has not filed the following amongst other documents, for which adverse inference needs to be drawn against the Respondent No.5:-

- (i) CTE (Consent to Establish) dated 16/12/2021 relied upon in para 11
- (ii) Compliance report of EC Conditions referred to in para 18 not on record
- (iii) Annexures 1 & 2 to Environmental statement referred to in para 19; Environment statement of the years prior to the accident have mischievously not been filed.
- (iv) Sample testing of emissions and effluents discharged from the unit, undertaken by GPCB referred to in para 20.
- (v) Material Safety Data Sheet of all the chemicals involved (under Schedule VII of Manufacture Storage and Import of Hazardous Chemical Rules, 1989) referred to in para 21 & 23.
- (vi) Respondent No. 5 has not taken the mandatory approval under Rule 7 of MSIHCR, 1989 before commencing production of chemicals under EC dated 20.10.2022. The said approval, if any, not filed.



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- (vii) Respondent No. 5 is not in compliance of Rule 8 of MSIHCR, 1989. The said compliance, if any, not filed.
- (viii) Respondent No. 5 and has not filed safety report, safety audit etc. (Schedule 8) as per Rule 10 of MSIHCR, 1989 before commencing production of additional/new chemicals under EC dated 20.10.2022. (referred to in para 24 & 25). The said report, if any, not filed.
- (ix) Respondent has not filed compliance of Rule 11 of MSIHCR, 1989. (referred to in para 24 & 25). The said compliance, if any, not filed.
- (x) Respondent No. 5 has neither filed the report of the mock drill conducted of the onsite emergency plan nor prepared the onsite emergency plan on commencing production of additional/new chemicals as per Rule 14(4) of MSIHCR, 1989 under EC dated 20.10.2022. (referred to in para 26 & 27). The said report, if any, not filed.
- 
- (xi) Under 14.1(vii) of the EC the Respondent No. 5 is under obligation to furnish the six monthly compliance status report of the EC on its website, to MoEF& CC, CPCB & GPCB but are not in compliance as same is not available on its website and the Respondent No. 5 has also not filed the

same in the present proceedings. The said compliance, if any, not filed.

(xii) Under 14.1(viii) of the EC the Respondent No. 5 is under obligation to furnish the Annual Environmental Statement on its website and GPCB but are not in compliance as same is not available on its website. Seeing the conduct of the Respondent No. 5 it is very likely that must not have been complying with the said norm for periods prior to the date of the accident. The said compliance, if any, not filed.

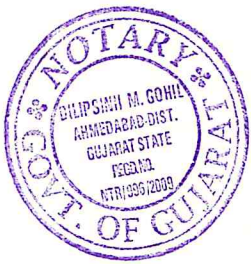
(xiii) License under Poison Act, 1919 referred to in para 30 not filed

License under Boiler Act, 1923 not filed

(xiv) The order of the DISH (Directorate of Industrial Safety and Health) dated 18.05.2022 referred to in para 45.

(xv) The order of the DISH (Directorate of Industrial Safety and Health) dated 23.05.2022, referred to in para 48.

(xvi) The letter dated 27.05.2022 from the Respondent No. 5 to DISH submitting revised plan for plant A, B & C and the approval thereof by DISH vide its order dated 1.06.2022 have not been filed by the Respondent No. 5. The electrical safety audit report dated 28.05.2022 has also not been filed by the Respondent No. 5 and neither the compliance status



of the recommendations filed are complete in all respect.

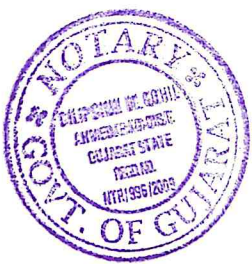
Referred to in para 49 & 50.

(xvii) Letter dated 2.06.2022 from Respondent No. 5 to DISH for revocation of closure order has not been filed; referred to in para 52.

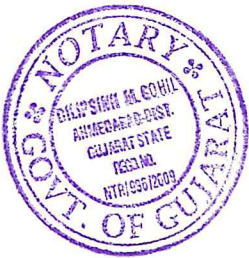
(xviii) Letter dated 4.06.2022 from DISH to Respondent No. 5 asking for further details on causes of major accident, log book of 5 days prior to the date of accident, records of DCS (Distributed Control System) back up data of 15 days prior to accident and DCS study of plant D referred to in para 53 have not been filed.

(xix) Letter dated 7.06.2022 from DISH to Respondent No. 5 asking it to provide compliance report of HAZOP Report submitted referred to in para 54 has not been filed;

(xx) Undertaking dated 8.06.2022 from Respondent No. 5 to DISH to strictly comply with the instructions/conditions provided under closure order dated 18.05.2022 and to comply with instructions/ suggestions issued by DISH dated 7.06.2022 and for providing compensation and other monetary benefits and best treatment to injured persons, referred to in para 55, has not been filed



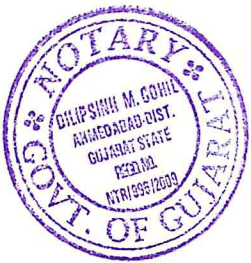
- (xxi) The Reply dated 9.06.2022 to the closure order dated 18.05.2022 and 7.06.2022 from Respondent No. 5 to DISH that there are four plants in the manufacturing unit, being plant A, B, C & D and out of the said plant, accident occurred in plant D and no damage has been suffered by A, B & C and other associated boilers, ETP, admin building etc., referred to in para 56, has not been filed
- (xxii) The revised plan submitted by the Respondent no. 5 on 27.05.2022 and approved by DISH on 11.06.2022 referred to in para no. 58, has not been filed;
- (xxiii) Reply dated 16.06.2022 of the Respondent No. 5 to letter dated 4.06.2022 of DISH providing details as third party investigation report on cause of major accident, logbook, Report of original Equipment Manufacturer of DCS system, DSC report of plant D products, referred to in para 60, has not been filed;
- (xxiv) The conditional permission for operating the boilers referred to in para 65 has not been filed;
- (xxv) The compliance report dated 20.05.2022 of the conditional permission for operating the boilers referred to in para 66 has not been filed;



(xxvi) Neither the 5 suspension notices of Petroleum & Explosive Safety Organization (PESO) dated 18.07.2020, 26.10.2017, 12.10.2018, 25.11.2019 & 28.09.2020 nor the respective replies filed by Respondent No. 5 to the each of the aforesaid suspension notice, referred to in para 67 has not been filed

5. That the accident led to a huge fire and explosions in the premises of Respondent No. 5 when the manufacture of hazardous chemical was under process. The fire and explosions continued for more than 12 hours before it was doused. The Fire and explosions have caused enormous damage to the environment. In the accident 8 persons lost their lives and about 30 people were injured and large population residing near the factories must have been affected. The Respondent No. 5 has annual turnover of more than 130 Crores and has been found to be in violation of statutory norms in operating the factory due to which the unfortunate accident happened on 17.05.2022. The Respondent has merely deposited 1.5 Crores towards environment compensation.

6. That the fact finding enumerated in the DISH report (at internal page 174 of the additional documents filed by R-5) has explained



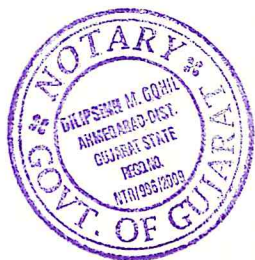
the mechanism, negligence of which on part of Respondent No. 5 resulted in explosion and fire on 17.05.2022, as here under:

“On 17.04.2022, in plant D of the factory, the manufacturing process for ethion cypermethrin, cypermethric acid fluoride, alphamethrin products was going on in different stages in different reactors. At this time, in the cypermethric acid chloride section of the plant, the reactors (No. R- 502, 503, 504, 508, 509, 507, 527, 512, 517, 519 and 520) were in various stages of production of cypermethic acid chloride.

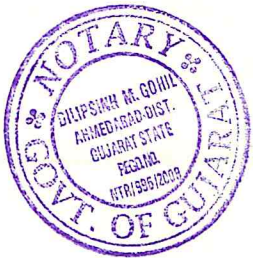
During the third shift (Night) on 16.05.2022 in R 57, Batch No. 53 & 54 underwent atmospheric distillation through mother liquor.

The mother Liquor is water sensitive and to heat it, hot oil is circulated in the reactor jacket. For this, thermopack system of factory is provided approximate temperature hot oil in plant A & B. At return line of plant A & B in which approx. 215 to 220 degree centigrade temperature of hot oil is provided by bypass line for energy recovery system.

In this energy recovery system, cold oil is circulated from the oil expansion tank made for plant B on the tube side of the heat exchange and heated to 130 degree centigrade with the help of hot oil (at 215 to 220 degree centigrade) coming from the return line



of the thermopack system of the cell side. For this, a three way flow control valve system is installed on the inlet line of the cell site. This Value system is interlocked with the temperature control system on the outlet line of the tube side of the heat exchanger. So, if the temperature of the oil coming from the oil expansion tank is less than 130 degree centigrade then through this three way flow control valve, the oil at the temperature 215 to 220 degree centigrade from the return line of the thermopack system is allowed to flow in the cell side of the heat exchanger. When the temperature reaches 130 degree centigrade, the value shuts off the oil supply to the heat exchanger and recirculates the oil in the thermopack system. If sufficient hot oil temperature is not achieved through the exchanger than an electrical heater is placed after the heat exchanger. The oil from plant D is recirculated to the oil extraction tank made for plant D... ”



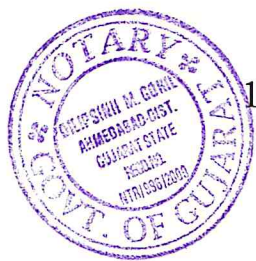
PARAWISE COMMENTS TO THE REPLY

7. That it is the averment of R 5 that his reply is pursuant to order dated 18.08.2022 of this Hon'ble Tribunal; whereas the reply supporting the affidavit is of prior date of 16.08.2022.

8. That the contents of para 2 are wrong and denied. The Respondent No. 5 is in breach of EC dated 20.10.2022, MSIHC Rules, 1989 as well as Gujrat Factory Rules, 1963. The contents of para 1 to 3 are reiterated and are not being repeated for sake of brevity.
9. That the contents of para 3 are wrong and denied. The Respondent No. 5 was not adhering to the statutory norms and operating his factory. The records shows that the Respondent No. 5 was only interested in getting his factory restarted. The Respondent No. 5 had the revocation order from GPCB by 5.06.2022 before being served with closure order on 6.06.2022.
10. That the contents of para 4 to7 are wrong and denied. The contents of para 1 to 6 are reiterated in its reply and are not being repeated herein for the sake of brevity.
11. That in regard to para 8 regarding employing 500 people directly and 600 indirectly, it is submitted that the Respondent No. 5 in pre-feasibility study for the project had undertaken to provide employment directly to 850 persons and further to 650 persons on contract basis. It was a solemn undertaking on basis of which the Respondent was granted Environment Clearance for the project. It speaks of the manner in which Respondent No.5 operates and the regard it has for Statutory Authorities and for Law.



12. That the contents of para 9 are wrong and denied. The contents of para 1 to 6 hereinabove are reiterated in its reply which is not being repeated herein for the sake of brevity.
13. That the contents of para 10 are matter of record.
14. That with regard to the contents of para 11 it is submitted that the Respondent no. 5 has not complied with the condition under Consent To Establish. Page No. 376 pertaining to CTE may be referred to where condition no. 7.1, 7.5, 7.13 and 8.3 has been breached by the Respondent No. 5 and in this regard the contents of para 1 to 6 herein above may be referred to and same is not being repeated herein for the sake of brevity.
15. That the contents of para 12 to 14 are matter of record.
16. That in regard to averments made in para 15 regarding Consent and Authorization (C & A) dated 14.02.2018 which was valid on the date of the accident, it is submitted that the conditions nos.(of CTE) 7.1, 7.5, 7.13 and 8.3 have been breached by Respondent 5 as stipulated in para 3 herein above.
17. That in regard to submissions made in para 16 it is humbly submitted that the said submissions of Form 3 & 4 were made on 31.05.2022, i.e, after the date of the accident. Seeing the conduct of the Respondent No. 5 it is very likely that it must not have been complying with the said norm for periods prior to the date of the



accident. Even the filing done on 31.05.2022 is not complete in the sense that it does not disclose as to whom the hazardous waste were sold out or handed over, which is mandatory disclosure to be made.

18. That in regard to submissions made in para 17 to 19 it is submitted that conditions of the said EC has been breached by the Respondent No.5, particularly 14 A (x), 14.1(vii) and 14.1(viii). The breach under 14 A (x) has been elaborately dealt with in para 2 hereinabove and is not being repeated herein for the sake of brevity. Under 14.1(vii) the Respondent No. 5 is under obligation to furnish the six monthly compliance status report of the EC on its website, to MoEF& CC, CPCB & GPCB but are not in compliance as same is not available on its website and the Respondent No. 5 has also not filed the same in the present proceedings. Under 14.1(viii) the Respondent No. 5 is under obligation to furnish the Annual Environmental Statement on its website and GPCB but have not been in compliance as same is not available on its website. The report filed in the present proceedings is not complete as Annexure 1 & 2 thereto have not been furnished and the said report is of latter date, i.e after the occurrence of accident. Seeing the conduct of the Respondent No. 5 it is very likely that it must



not have been complying with the said norm for periods prior to the date of the accident.

19. That in regard to submissions made in para 20 is concerned it is submitted that report of the sample testing by GPCB, NABL accredited and MoEF& CC approved laboratory, of the emissions and effluents discharged from the unit of Respondent No. 5 has not been filed by the Respondent No. 5 despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the said report.
20. That in regard to submissions made in para 21 is concerned it is submitted that the Respondent No. 5 is in breach of MSIHC Rules, 1989 as stipulated in para 3 herein above. The Material Safety Data Sheet of all the chemicals involved in the concerned unit of the unit of Respondent No. 5 has not been filed by the Respondent No. 5 despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the said report.
21. That the contents of para 22 are denied for want of documentary proof.
22. That in regard to submissions made in para 23 it is submitted that the said filing pertains to period 2012 for Manufacturing 34



chemicals; whereas Respondent No. 5 is producing 98 chemicals and 2 product formulations as per EC dated 19.10.2020 and 60 chemicals and 2 formulation products as per CTE dated 4.02.2018. The Respondent No. 5 was to file Schedule 7 afresh before commencing productions of the additional chemicals as per EC dated 19.10.2020 or CTE dated 4.02.2018. The Respondent No. 5 has indulged in unauthorized productions and are in grave violations of MSIHC Rules, 1989.

23. That in regard to submissions made in para 24 & 25, it is submitted that Respondent No. 5 has neither prepared nor filed safety report, safety audit etc. (Schedule 8) as per Rule 10 of MSIHCR, 1989 before commencing production of additional/new chemicals under EC dated 20.10.2022. The non-filing of the said reports in the present proceedings is despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the said report.

24. That in regard to submissions made in para 26 & 27 it is submitted that Respondent No. 5 has neither filed the report of the mock drill conducted of the onsite emergency plan nor prepared the onsite emergency plan on commencing production of additional/new chemicals as per Rule 14(4) of MSIHCR, 1989 under EC dated 20.10.2022. The non-filing of the said reports in the present



proceedings is despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the said report. The onsite emergency plan filed as Annexure R/8 is not credible and reliable.

25. That in regard to submissions made in para 28 it is submitted that the Respondent has done very large expansion of the factory in question and the concerned permission have to be for the increased installation. Some of the permissions filed are for old installation. From the documents filed by the Respondent No. 5 it is not clear as to whether the Respondent No. 5 has obtained requisite licenses under the Petroleum and Safety Organization (PESO) and from Chief Controller of Explosives for the increased installation.
26. That the contents of para 29 are matter of record.
27. That the contents of para 30 are denied for want of documentary proof. The non-filing of the said license in the present proceedings is despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.
28. That in regard to submissions made in para 31 it is submitted that the Respondent No. 5 is using a number of Boilers for the factory



in question and the respondent no. 5 has just permission for one boiler. This is grave breach on part of Respondent No. 5.

29. That in regard to submissions made in para 32 it is submitted that the same need no reply.
30. That the contents of paras 33 to 37 are wrong and denied. The contents of paras 1 to 6 are reiterated in its reply and same is not being repeated herein for the sake of brevity.
31. That the contents of para 38 needs no reply.
32. That the contents of para 39 are denied for want of documentary evidence. The said notice/ document, if any, is very material for adjudicating the instant case. The non-filing of the said notice/document license in the present proceedings is despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.
33. That the contents of para 40 are denied for want of documentary evidence. The said document, if any, is very material for adjudicating the instant case. The non-filing of the said document in the present proceedings is despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.



34. That in regard to submissions made in para 41 & 42 it is submitted that the said closure order has also been filed by the issuing authority, i.e. the Respondent No. 4 and same is undated. The order filed by the Respondent No. 5 bears a date of 31.05.2022 and has shown to be received on 6.06.2022, wherein they have been called upon to deposit interim environment compensation of Rs. 1.5 Crores. The Respondent No. 5 has deposited the said interim compensation of Rs. 1.5 Crores on 3.06.2022, i.e., before the date of receipt of the closure order. Further the revocation order dated 29.06.2022 has been received by Respondent No. 5 on 5.06.2022, i.e., one day before they received the closure order.

35. That in regard to submissions made in para 43 it is submitted that the letter dated 14.06.2022 is evasive and none of the issues flagged by the Respondent No. 4 has been replied therein.

36. That in regard to submissions made in para 44 it is submitted that closure order filed by the Respondent No. 5 bears a date of 31.05.2022 and has shown to be received on 6.06.2022, wherein they have been called upon to deposit interim environment compensation of Rs. 1.5 Crores. The Respondent No. 5 has deposited the said interim compensation of Rs. 1.5 Crores on 3.06.2022, i.e., before the date of receipt of the closure order. Further the revocation order dated 29.06.2022 has been received by



Respondent No. 5 on 5.06.2022, i.e., one day before they received the closure order. The Respondent No. 5 is wealthy industrialist and has no regard for Law.

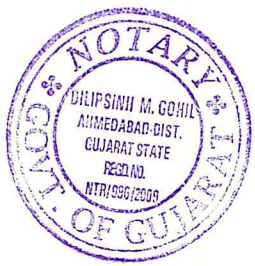
37. That in regard to submissions made in para 45 it is submitted that Form 21 under Rule 103 of the Gujrat Factories Act pertains to particulars of persons who dies or suffer grievous injury in an accident, which is very relevant for the purpose of adjudicating the present case. The said document reveals that a total of two persons died in the accident; whereas Respondent No. 4 has submitted that 8 people died in the accident. The order of the DISH (Directorate of Industrial Safety and Health) dated 18.05.2022 is very relevant but not filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.



38. That in regard to submissions made in para 46 it is submitted that the Respondent No. 5 has paid compensation only to 2 deceased; whereas a total of 8 people died in the accident. Annexure R/13 dated 21.05.2022 referred to in the para is a document filed by Respondent No. 5 with DISH and admits of 3 deaths. The Reply has been filed by the Respondent No. 5 in the present case 4

months after the date of accident but till the said date there is only assurance to provide employment to the dependent of the deceased.

39. That in regard to submissions made in para 47 it is submitted that the Annexure R/14 is not complete as the compliance report has not been placed on record.
40. That the contents of para 48 is denied for want of documentary evidence. The order of the DISH (Directorate of Industrial Safety and Health) dated 23.05.2022 is very relevant but not filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.
41. That the contents of para 49 & 50 are denied for want of documentary proof. Neither the letter dated 27.05.2022 from the Respondent No. 5 to DISH submitting revised plan for plant A, B & C nor the approval thereof by DISH vide its order dated 1.06.2022 has been filed by the Respondent No. 5. The electrical safety audit report dated 28.05.2022 has also not been filed by the Respondent No. 5 and neither the compliance status of the recommendations filed are complete in all respect. These are very relevant documents for the purpose of present case but not filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal



and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.

42. That in regard to submissions made in para 51 it is submitted that only one certificate of structural stability has been filed by the Respondent No. 5 and it does not pertain to Plant D.
43. That the contents of para 52 are denied for want of documentary evidence. It is relevant that it talks about RE-HAZOP study for new chemical products but same had to be filed much prior to the date of the accident before commencing their production for the first time and same is material breach of MSIHC Rules, 1989. Letter dated 2.06.2022 from Respondent No. 5 to DISH for revocation of closure order has not been filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.
44. That the contents of para 53 are denied for want of documentary evidence. Letter dated 4.06.2022 from DISH to Respondent No. 5 asking for further details on causes of major accident, log book of 5 days prior to the date of accident, records of DCS (Distributed Control System) back up data of 15 days prior to accident and DCS study of plant D referred to in para 53 have not been filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as



thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.

45. That the contents of para 54 are denied for want of documentary evidence. Letter dated 7.06.2022 from DISH to Respondent No. 5 asking it to provide compliance report of HAZOP Report submitted referred to in para 54 has not been filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.
46. That the contents of para 55 are denied for want of documentary evidence. Undertaking dated 8.06.2022 from Respondent No. 5 to DISH to strictly comply with the instructions/conditions provided under closure order dated 18.05.2022 and to comply with instructions/ suggestions issued by DISH dated 7.06.2022 and for providing compensation and other monetary benefits and best treatment to injured persons, has not been filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.
47. That the contents of para 56 are denied for want of documentary evidence. The Reply dated 9.06.2022 to the closure order dated 18.05.2022 and 7.06.2022 from Respondent No. 5 to DISH that



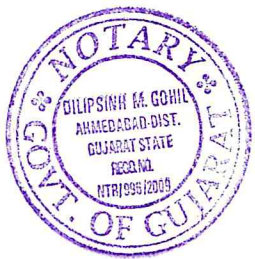
there are four plants in the manufacturing unit, being plant A, B, C & D and out of the said plant, accident occurred in plant D and no damage has been suffered by A, B & C and other associated boilers, ETP, admin building etc. has not been filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.

48. That the contents of para 57 are matter of record.
49. That the contents of para 58 are denied for want of documentary evidence. The revised plan submitted by the Respondent no. 5 on 27.05.2022 and approved by DISH on 11.06.2022 referred to in para no. 58, has not been filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.
50. That the contents of para 59 are matter of record.
51. That the contents of para 60 are denied for want of documentary evidence. Reply dated 16.06.2022 of the Respondent No. 5 to letter dated 4.06.2022 of DISH providing details as third party investigation report on cause of major accident, logbook, Report of original Equipment Manufacturer of DCS system, DSC report of plant D products, which are very material for the present case , has



not been filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.

52. That the contents of para 61 are wrong and denied. The Report is an indictment of the callous and reckless conduct of Respondent No. 5 which has resulted in the accident. The averments in para 1 to 6 herein above may be referred to and same is not being repeated herein for the sake of brevity.
53. That the contents of para 62 is blatantly false and misleading. In its reply dated 7.07.2022 the Respondent No. 5 has admitted that correctness of the finding of the DISH report that the audio visual alarm system was not installed and was the cause of the accident and same shall be installed before restarting the factory.
54. That in regard to submissions made in para 63 it is submitted that the Respondent No. 5 obtained CTE on 20.06.2013 for 34 chemicals and the said CTE expired on 10.09.2017. The Respondent No. 5 obtained EC for expansion on 20.10.2020 and obtained CTE on 14.02.2018 in respect of 61 chemicals and 2 formulation products, which was valid for 11.10.2022. The Respondent No. 5 had mandatory obligation to undertake HAZOP study in respect of each of the chemical before venturing to manufacture any of them. The Respondent No. 5 has not complied



with any provision of MSIHC Rules, 1989 and it is only after the accident that it has started the exercise of conducting HAZOP study. The Respondent No. 5 is guilty of criminal negligence.

55. That in regard to submissions made in para 64 it is submitted that same is intimation regarding closure of only one boiler, must be pertaining to plant D; whereas directions were for closure of the complete manufacturing unit comprising of plant A, B, C & D.
56. That the contents of para 65 are denied for want of documentary evidence. The conditional permission for operating the boilers referred to in para 65 is very material for the present case but has not been filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same. Fire in the factory continued till 4:00 a.m on 18.05.2022 killing 8 people and same day the Respondent No. 5 obtains a conditional permission for restarting the boiler same day and such action speaks loud and clear that the only thing that matters for Respondent No. 5 is profit at any cost.
57. That the contents of para 66 are denied for want of documentary evidence. The compliance report dated 20.05.2022 of the conditional permission for operating the boilers referred to in para 66 is very material for the present case but has not been filed



despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same.

58. That the contents of para 67 are denied for want of documentary evidence. Neither the suspension notices of Petroleum & Explosive Safety Organization (PESO) dated 18.07.2020, 26.10.2017, 12.10.2018, 25.11.2019 & 28.09.2020 nor the respective replies filed by Respondent No. 5 to the each of the aforesaid suspension notice, referred to in para 67 has not been filed despite the directions dated 29.11.2022 of this Hon'ble Tribunal and as thus adverse inference needs to be drawn against the Respondent No. 5 regarding the same. The Revocation orders R-/17 are not speaking orders.
59. That in regard to submissions made in paras 68 to 72 it is submitted that the Respondent No. 5 has admitted to the enquiry and findings of DISH regarding the cause of accident (at internal page 178 of the additional document filed by Respondent No. 5) and therefore and even otherwise any enquiry at the instance of the accused (Respondent No. 5) which is not subject to scrutiny of any independent authority has no relevance for the purpose of present proceedings. The Respondent No. 5 has complied with statutory requirements and was operating the plant in question in an illegal



manner without adhering to the safety requirements mandated under the Factories Act and associated Rules, MSIHC Rules, 1989, EC and CTE conditions.

60. That in regard to submissions made in paras 73 it is submitted that the Respondent No. 5 has not complied with statutory requirements and was operating the plant in question in an illegal manner without adhering to the safety requirements mandated under the Factories Act and associated Rules, MSIHC Rules, 1989, EC and CTE conditions. The Respondent No. 5 has concealed material particulars as essential as number of casualties from this Hon'ble Tribunal as also other important documents. If this is the conduct / respect that Respondent No. 5 has for this Hon'ble Tribunal then its conduct towards other statutory can well be gauged. For an accident of this scale an environment compensation of Rs. 1.5 Crore and other compensation(s) are very meager.
61. That in regard to submissions made in paras 74 it is submitted that the Respondent no. 5 on one hand submits that a total of Rs. 2,81,46,791 has been disbursed of which Rs. 1,59,91,791 has been paid to family of deceased employees and Rs. 1,21,55,000 has been deposited in labour court on account of workman compensation and on the other hand it submits that an interim compensation of Rs. 12,50,000 has been paid to 34 employees, i.e., a total of Rs.



4,25,00,000. Particulars of expenses on account of treatment of employees who scammed and on account of boarding and lodging of family members of injured employees are not in good taste.

62. That in regard to submissions made in paras 75 to 80 it is submitted that details of expenses made have not been furnished. Also the nature of expenses suggest that these are mandatory expenses, which the Respondent No. 5 was not doing prior to the date of the accident. Had Respondent No. 5 done this expenses and complied with mandatory safety requirements, the accident most likely would not have occurred. The Respondent No. 5 is yet to compensate fully for the death & injury and devastation caused to the environment.
63. That the contents of paras 80 & 81 needs no response.
64. That in regard to submissions made in para 82 it is submitted that the contents are false and frivolous. Respondent No. 5 has not complied with statutory requirements and was operating the plant in question in an illegal manner without adhering to the safety requirements mandated under the Factories Act and associated Rules, MSIHC Rules, 1989, EC and CTE conditions.
65. That in regard to submissions made in paras 83 it is submitted that the interim environment compensation is very meager and not consummate with the negligence on part of Respondent No. 5



which led to the accident, causing death, destruction and huge damage to the environment.

66. That para 84 needs no response.
67. That in regard to submissions made in paras 85 it is submitted that it bares open the wild way of functioning of Respondent No. 5. The industry proponent has no regard for rules. The submissions that pre-feasibility Report is submitted at the time of taking permission for EC and that terms and conditions mentioned in the pre-feasibility Report is not required to be complied with and even if there is any breach thereof, no case is made out against the Respondent No. 5, speaks volume about the manner in which Respondent No. 5 conducts its business. The pre-feasibility report submitted by Respondent No. 5 to the MoEF& CC is at page 96 for the purpose of obtaining EC for expansion of the manufacturing facility of the Respondent No. 5 in question in the present proceedings. The said document was considered by the MoEF& CC and was a ground for MoEF& CC to grant permission to Respondent No. 5 for the proposed expansion.

The EC condition no. 11 at page 120 states

"..If any part of data/ information submitted (by Respondet No. 5) is found to be false/ misleading at any stage, the project will be



rejected and the Environmental Clearance given, if any, will be revoked at the risk and cost of project proponent..”

The EC condition no. 16 at page 123 states:-

“..16. Concealing factual data or submission of false/ fabricated data and failure to comply with any of the conditions mentioned above may result in withdrawal of this clearance and attract action under the provisions of Environment (Protection) Act, 1986”

68. That in regard to submissions made in paras 86 it is submitted that condition no. 14A (x), 14.1(vii) and 14.1(viii) of EC have been violated. The breach under 14 A (x) has been elaborately dealt with in para 2 hereinabove and is not being repeated herein for the sake of brevity. Under 14.1(vii) the Respondent No. 5 is under obligation to furnish the six monthly compliance status report of the EC on its website, to MoEF& CC, CPCB & GPCB but are not in compliance as same is not available on its website and the Respondent No. 5 has also not filed the same in the present proceedings. Under 14.1(viii) the Respondent No. 5 is under obligation to furnish the Annual Environmental Statement on its website and GPCB but have not been in compliance as same is not available on its website. The report filed in the present proceedings



is not complete as Annexure 1 & 2 thereto have not been furnished and the said report is of latter date, i.e after the occurrence of accident.it is submitted that the conditions nos. 7.1, 7.5, 7.13 and 8.3 of CTE have been breached by Respondent 5 as stipulated in para 3 herein above.

That the cause of the accident has been because of the failure of the Respondent No. 5 in installing suitable and effective audible and visible signal alarm system, which was to be checked daily and tested once every month and same has been admitted by the Respondent No. 5 (internalpage 178 of additional documents filed by respondent no. 5) and as such has violated para 12 of Schedule 19 of Rule 102 of Gujrat Factory Rules, 1963.

The Respondent is in complete violations of MSIHC Rules, 1989, particularly Rule 7, Rule 8, 10, 11, 13, 14, 15, 16, and 17. The Respondent No. 5 has not taken mandatory permission under Rule 7 before commencing production of the chemicals and has not submitted safety reports mandatory under Rule 10 before commencing production of each of the chemicals. The Respondent No. 5 has not prepared on site emergency plan or off site emergency plan on how to deal with any major accident and conducted mock drill as per the said plans as mandatory under Rule 13 and Rule 14 respectively.



The Respondent has not placed necessary documents to support his contentions that he has complied with the provisions / permission under PESO under Petroleum Act, 1927, Explosives Act 1884, factories Act, 1948, Gujrat Factory Rules 1963, Boiler Act 1923. Further the contents of paras 1 to 6 are reiterated in its reply.

69. That the contents of para 87 that there is nothing left to adjudicate in the present case is blatant lie. The contents of paras 1 to 6 hereinabove are reiterated in its reply and same is not being repeated herein for the sake of brevity.
70. That the contents of pars 88 are wrong and denied and the averments made in paras 13 to 21 of the Original Application are reiterated.
71. That the contents of para 89 are wrong and denied. The Respondent no. 5 is in breach of Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, Public Liability Insurance Act, 1991 and Rules made thereunder as also of Hazardous Waste (M & TM) Rules, 2016. The Respondent has not come to this Hon'ble Tribunal with clean hands and has concealed important and basic information like the number of deaths in the accident etc. The contents of the paras above regarding specific breach on part



of the Respondent No. 5 is reiterated and not being repeated for the sake of Brevity.

72. That the contents of the para 90 are wrong and denied and the reliefs as prayed for in the Original Application may be granted in the interest of justice.

Alankar
Deponent

Verification

20 MAR 2023

Verified at _____ on this _____ day of March 2023 that the contents of the above affidavit are true and correct to my knowledge, no part of it is incorrect and nothing material has been concealed there from. Legal submissions made are based on advice received and believed to be correct.

Alankar
Deponent

SR NO. 105 /2023

D M Gohel

DILIPSINH M. GOHEL
NOTARY
GOVT. OF GUJARAT

20 MAR 2023

SOLEMNLY AFFIRMED
BEFORE ME

D M Gohel

DILIPSINH M. GOHEL
NOTARY
GOVT. OF GUJARAT

20 MAR 2023

