

Secretary UPPCB, Secretary CGWA, DM Prayagraj and to submits its report. The relevant part of the order is quoted below :

“In view of the issue raised in the original application, we deem it proper to constitute a Joint Inspection Committee comprising of the Director deputed by the Member Secretary, Central Pollution Control Board (CPCB); Member Secretary, State Pollution Control Board (SPCB), Secretary, Central Ground Water Authority (CGWA) and District Magistrate, District Prayagraj. The District Magistrate will act as a nodal agency”

(b) That pursuant to the direction of this Hon’ble Court a joint inspection committee was constituted which conducted its inspection of the unit of the Respondent No. 8 on 17-18 October 2023 and submitted its joint inspection committee report to which the present objection is being filed.

(c) That a perusal of the report at page 194 will evident that the report of the joint inspection committee is not submitted in consonance with the order of this Hon’ble Tribunal as the same has been submitted by a joint committee comprising of members other than the one directed by this Tribunal.

(d) That instead of a four member joint committee as directed by this Court the report is being submitted by a joint committee of eight members. Further, this Hon’ble Tribunal has constituted a team of four senior officers, i.e., Director CPCB, Member Secretary UPPCB, Secretary CGWA and District Magistrate Prayagraj. However, the joint inspection committee which submitted the report comprises of Scientist B, C, D, E and F of CPCB, SDM

Phulpur, Prayagraj, RO Prayagraj, and Hydrologist UPGWD. None of the said members were directed by this Tribunal to submit the report. Report filed by the said officers shows the casual approach of the Respondent authorities in matter relating of environment as well as the disregard for this Tribunal's order. Hence, at the outset it is submitted that the present joint inspection committee report dated 05.12.2023 deserves to be rejected with direction to submit afresh report by the joint inspection committee as formed by this Tribunal.

(e) That the disregard to the order of the Tribunal and extent of fraud played upon this Tribunal can also be considered that the though the joint inspection report is signed by Mr. Ajeet Kumar SDM, he was never present with the team for inspection. Rather in his place Lekhpal, Khudaypur R K Yadav was present, but he did not signed the report and it was signed by Ajeet Kumar SDM. This Tribunal specifically directed the member of the joint committee and the order did not allowed the members to appoint their representatives or nominate any other person. Hence, the joint inspection committee comprising of representatives of CPCB, UPPCB, UPGWB and District Administration is illegal and bad. Moreover, the UPGWB was not directed to be a party but it was Secy. CGWA who was directed to be a member in inspection committee.

(f) That it is further submitted that evidently the entire inspection was carried out by persons other than the persons signing the report at page 194. Though allegedly the

inspection was carried out by Agriculture department, Horticulture department, Medical Officials etc. but none of them have signed the report.

3. Observation on Consent to operate under Air and Water Act: That in respect of the consent to operate under the Air and Water Act provided at page 98 it is submitted that the summary of consent compliance at page 166 of report is incorrect and contrary to the records itself for the following reasons :

(a) **No Consent from 01.01.2022 to 31.12.2022** : As per the report of the joint inspection committee the unit has consolidated consent and authorization issued by the UPPCB dated 21.12.2022 valid from 01.01.2023 to 31.12.2027 (Annexure II pg 202). The Applicant submits that it has been stated in para 4.4 of the OA that the consent under the Water and Air Acts to Respondent No. 8 has already expired on 31.12.2021 (Annexure A-2 and A-3). Hence, the unit was being operated from 01.01.2022 to 31.12.2022 without any consent and clearly in violation of the Air Act and Water Act.

(b) **No consent for Ammonia plants** : (i) It is further submitted that the consolidated consent and authorization is granted for the production of Nano Urea/ Nano Sulphur/ Nano Micronutrients 36500 KL/ anum and Urea 5790 Mt/ day. However, no consent is granted for production of Ammonia 3300 MT/day or Carbon Dioxide 4310 MT/day. It is pertinent to mention that the consent only states that “*Ammonia 3300Mt/day and Carbon Dioxide 4310 MT/day*”

will be the Intermediate products during the process of manufacturing of Urea". Intermediate product is not a by product rather it is a individual product used as primary raw material for another product. It is for this reason that it has also been mentioned separately in the Environment Clearance to the Respondent no. 8. Ammonia is, therefore, an individual product which is separately produced in ammonia production plant I and II and requires consent under the respective Act.

(ii) It is pertinent to mention here that the provision of in this respect reads as follows :

Air Act 1981 :

"2. Definitions- (k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

21. Restrictions on use of certain industrial plants.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area."

U.P. Air (Prevention and Control of Pollution) Rules 1983 :

"26. Declaration of air pollution control areas. - Every area falling within the boundaries of an industrial plant situated in Uttar Pradesh shall be the Air Pollution Control Area under sub-section (1) of section 19"

Water (Prevention and Control of Pollution) Act 1974 :

"25. Restrictions on new outlets and new discharges.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage”

Thus, the aforesaid provisions under Air Act makes it clear that for any industrial plant it is necessary to obtain consent as the area within the boundaries of that industrial plant in State of U.P. is air pollution control area. Similarly, under the Water Act no discharge of effluent from any process can be done unless consent is obtained from the UPPCB. The report clearly mentions in paragraph II in details of the site that there are two Ammonia plants being operated as Ammonia I and Ammonia II. Therefore, merely stating that Ammonia is an intermediate product will not suffice. There is clear operation of Ammonia plant I and II without requisite consents from UPPCB.

(c) **Captive Power Plant operated without any consent** : It is revealed from the inspection report that the Respondent no. 8 is also operating a captive power plant using coal. The said power plant is of capacity more than 50 MW which requires not only EC but as well as consent under the Air Act and Water Act. The joint inspection committee clearly fails to take into account that the Respondent no. 8 does not have any consent for the said power plant and the same is being operated illegally.

(d) **Violation of the conditions of consent** : The salient conditions as stated in the report itself shows that the Respondent No. 8 is bound to ensure zero liquid discharge of its effluent outside the industry premises. However, the

unit is discharging its domestic as well as industrial waste outside the industrial premises. Further, storm water drain is being mixed with industrial and domestic effluent which is evident from the fact of traces of ammonia and other industrial effluent being found in it. The report itself says at page 149 that *the storm water drain carries the treated domestic wastewater joins the IFFCO drain within units boundary about 308 kms downstream from the unit.* This evident that not only condition of zero discharge is violated but storm water drain and IFFCO drain both are carrying discharge from the unit.

(e) **No consent for ammonia in years 2020 and 2021 :**

The Applicants have pleaded in OA that the Respondent No. 8 only had in year 2020 and 2021 consent under Air and Water Act for production of Urea. However, during the said period the Respondent No. 8 had also produced Ammonia in huge quantity without any consent under the Air Act or Water Act. Hence, the production activity was carried out illegally without requisite legal compliance being done.

(f) **No proof of any online connectivity with CPCB and UPPCB of flow meters :**

The joint inspection committee has made a bald assertion that the electromagnetic flow meters are provided at the source of water as well as the outlet of ETP with connectivity the CPCB and UPPCB. However, in the report submitted the committee has not been able to place on record the data available with itself but has only relied upon the data provide by the Respondent no. 8 as per its log book. The

joint committee has not even bothered to cross check and verify the log book data with the data it has through the online connectivity.

4. Observation on Environment Clearance: That the report of the joint committee in respect of the Environment Clearance (EC) obtained by Respondent no. 8 is selective and the findings regarding the compliance of EC at page 169 are incorrect. It is submitted that :

(a) **EC not obtained as per EIA Notification 2006 :**

Under the EIA Notification 2006 chemical fertilizer manufacturer of ammonia and urea falls under “category A” and, therefore, it requires EC from Central Government and is valid for 5 years only. As per the report at page 100 the unit obtained EC in 23.03.1995, thereafter on 14.07.2006 and, thereafter, on 14.03.2022. The subsequent EC were obtained on capacity enhancement. This itself shows that the Respondent no. 8 has been running the plant which is covered under “Category A” from 14.07.2011 to 13.03.2022 without any EC. Relevant provision of EIA Notification 2006 is quoted below :

“4. Categorization of projects and activities:-

(i) All projects and activities are broadly categorized in to two categories - Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources.

(ii) All projects or activities included as Category ‘A’ in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and

Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

“9. Validity of Environmental Clearance (EC):

The “Validity of Environmental Clearance” is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities. However, in the case of Area Development projects and Townships item 8(b), the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer. This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be.

(b) **No EC granted for Captive Power Plant** : The EC dated 14.03.2022 is not granted for the captive power generation plant of 53.5 MW which also falls under category A. The said plant uses coal for power generation and under clause 1(d) it requires EC. The present EC was not granted for the purpose of captive power generation as it is evident that no discussion has been done in respect of the emission and discharge from the said power plant. Hence,

the captive power plant is being operated in utter disregard to the law and allowed by the official Respondents illegally.

(c) **EC dated 14.3.2022 is granted for Modernisation and expansion only** : The EC presently was granted for the modernization and expansion of existing plant only. The earlier of 2006 having expired in 2011, present EC cannot be said to be granted for entire plant of IFFCO unless the proposal was submitted afresh for the entire plant including expansion and modernization. However, in present case the joint committee utterly failed to appreciate that the Respondent submitted proposal only for Modernization and Expansion of Existing Fertilizer Plant for Manufacturing of Nano Fertilizer. Hence, the as on date the manufacturing of Urea and Ammonia are without any EC and is being done illegally.

(d) **Non compliance of the EC conditions**: the findings of the joint inspection committee regarding the compliance of EC at page 169 is clearly an attempt to save the skin of its officers from being prosecuted for permitting the Respondent no. 8 to operate in violation of the EC. However, it may be pertinent to mention that the joint committee report itself does not mention that the Respondent no. 8 unit has been running with a valid EC even prior to 14.03.2022. It merely mentions the earlier EC of 2006. The condition no xii and xiii are clearly not complied with by the Respondent no. 8 and rather the report had tried to cover up the same by its comments. The flow of water in storm water drain evidents that rain water

harvesting is not being done and the observation at page 127 bottom shows that the Respondent is using more than 35290 KLD of fresh water.

It will also be pertinent to mention that the joint inspection committee has further failed to state the compliance of para 10 of the EIA notification in para no. 10 of the general conditions. The Respondent no 8 was required to publish the grant of EC in two widely circulated local newspaper. However, the said condition is stated to have been complete by publication in some newspaper called “Hindustan Samvad”, “Swantra Prabhat” and “Pioneer News Service“ and “Jeevan Express News”. This also evidents the extent of disregard to law by the Respondent no. 8. Further till date the Respondent no. 8 does not shows the same on its website. The inspection report fails to take the said violations in account.

(e) **EC obtained on false proposal by Unit :** At page 224 of the report containing the EC dated 14.03.2022 in para 10 the conditions of the proposal of the Respondent no. 8 is elaborated. It is clear from the same that the EC has been obtained by playing fraud and by making incorrect statement. In any other circumstances it cannot be denied that the Respondent no. 8 is operating against it owns proposal. The requirement of water after modernization was only upto 35290 KLD where as the unit is utilizing almost double of the said quantity.

5. Observation on NOC for Groundwater extraction :

(a) **No groundwater extraction permission for period before 15.02.2022** : The report of the joint inspection committee regarding the permission for extraction and industrial use of ground water is incomplete and eye wash. It may be pertinent to mention that the unit has obtained all the authorization under section 14 of the U.P. Groundwater Management and Regulation Act from 15.02.2022 till 14.02.2027. However, the as per these 18 authorizations wells were constructed between 1997 to 2019 suggesting that the unit was extracting fresh groundwater without any prior NOC from the central ground water department for the period earlier than 15.02.2022.

(b) **Authorisation/ NOC from UPGWA against EC** : It is also pertinent to mention that the NOC/ authorization obtained by the Respondent no. 8 for 74880 KLD of groundwater is clearly in contract to the EC which allows the unit to extract only 35290 KLD. The joint inspection committee has made a highly illegal and perverse observation in column no. 12 at 173 of the report. At page 127 of the report it is stated that the average use of the groundwater from the 01.07.2023 to 15.10.2023 as per the log book was 65048 KLD. Thus, it is admittedly in violation of the EC. Having NOC from the UP groundwater department for a higher quantity will not supersede the conditions of EC as EC being granted under EIA Notification issued under the provisions of EP Act will prevail over the State Legislature and will have to be followed in any case. The report of the joint committee is apparently malafide and unreliable.

(c) **Conditions of NOC from UPGWA also violated :**

Table no. 25 at page 127 provides that the unit has extracted more than the permitted quantity per day by NOC. For instance in month of July total extraction was 3386 KLD from borewell No. 1 while permitted is 3200 KLD Similarly for August it was 3451 KLD. The said excess quantity of water drawn on daily basis has been averaged on monthly basis by the joint inspection committee illegally. Thereafter, in further illegality the figures for random 3 ½ months from 01.07.2023 to 15.10.2023 has been taken and further averaged for each of 18 borewell which has been added to come to a figure of 65048.49 KLD against the total authorization for 18 borewell of 74880 KLD.

It is pertinent to submit that each of the 18 NOCs/authorizations are independent permissions. The permissions for 18 borewells cannot be clubbed to come to final figure of 74880 KLD as done in present case. The Respondent no. 8 was bound to maintain logbook on daily basis of water withdrawal for each borewell and for that it is required to install meters at each borewell. Further, the permission of per day withdrawal cannot be averaged as the NOC does not permit any carry forward of unutilized quota of any day. Hence, the Respondent No. 8 is not only extracting groundwater in violation of EC but it also doing so in violation of NOC from UP groundwater department.

It is also submitted that the joint committee further failed to appreciate that the NOC provides for the maximum annual quantity of water extraction. The highest quantity in

all the 18 NOC is 911360 KLD. Going by the principle of the joint committee taking average of the each day the quantity cannot exceed $911360/365 = 2496.87$ KLD. Though the quantity in other NOC are much less but even if the same quantity is taken for all 18 NOCs then quantity cannot exceed $2496.87 \times 18 = 44943$ KLD, whereas the quantity utilized is almost 50% higher. Thus, Respondent is also violating the maximum annual quantity by extracting 65000 KLD.

6. **Discharge being down outside the unit through storm water drain** : (a) The report at page 149 states that stagnant water was found in IFFCO drain, the storm water drain carries treated domestic waste water from the unit and joins the IFFCO drain along with the photographs which shows good amount of water being present in the storm water drain. This fact shows that the Respondent is not adhering to the zero liquid discharge and is discharging the untreated effluent through the storm water drain in river ganga.
- (b) Table no. 37 at page 146 provides the laboratory analysis results of samples collected from drain. On one hand the report asserts that there is no violation of any of the norms of environmental laws or of the permission granted and the Respondent no. 8 is maintaining zero liquid discharge, however, on the other hand the said table clearly show that there are traces of industrial effluent in storm water drain. As per the said table there is presence of high TSS, TDS, Ammonical Nitrogen, TKN, sulphate etc.

(c) That in the event the Respondent no. 8 is not discharging any trade effluent outside the premises of the unit, then there was no reason for presence of said chemicals in storm water drain. The Page 197 and 198 contains pictures of the storm water drain near urea and ammonia plants I and II. The presence of storm water drain at these points itself suggest foulplay by the Respondent No. 8 by discharge of the trade effluent in the said drain. This fact has proven the case of the Applicants that the Respondent is discharging trade effluent outside its premises through the drain to river ganga and on overflowing it spread to their farms damaging the crops.

7. **Amount of water utilized by Respondent no. 8 does not justify or explain its adherence to zero liquid discharge:**

The Respondent is allegedly allowed to utilized 74880 KLD of fresh water from the underground. Out of the said alleged allowed quantity of fresh water extraction as per report 65000 KLD is extracted on average rate. Apart from the alleged recycled/ treated water put in use. As per the report at page 185 the Respondent has storage of 2400 KLD of untreated water and utilizes only 4080 KLD for ETC. Other than this there is 3000 KLD of STP. Thus, such a huge quantity of wastewater generated is not being treated completely by Respondent No. 8 and the same is discharged through the storm water drain, the outlet of which is shown in photograph at page no. 48 of the OA. This also stands fortified from page 149 of report which says that storm water drain carries treated domestic waste.

8. The questionnaire submitted by the joint committee in annexure with the report is denied to be true and correct. The Applicants submits that they are not aware of any questionnaire being filled by any of the villagers at the time of inspection. The said questionnaire is in English and the villagers are unable to speak or understand English. There is no mention in the report or in the form itself that the villagers were read out in Hindi and explained the questions put to them. Hence, the questionnaire is not admissible and it clearly false.
9. The Material balance of Ammonia and Urea plant given at pg 109 onwards, shows a widescale discrepancy in the figures. The material balance provided by the unit, log book and the material balance on day of inspection were not in tally. Leaving aside the minor discrepancy, there are major differences also. The said discrepancy shows that the Respondent no. 8 is maintaining the records of the material accurately and it is producing more than the permitted quantity.
10. For the reasons above stated it is necessary that the conclusion of the joint committee in the report shall not be accepted and appropriate directions be passed against the Respondent No. 8 as violations of the Air/ Water Act is evident, production is also evidently being done in absence of EC and that the illegal groundwater extraction is also being established. The claim of the Applicant pertaining to

damage of crop from over flow of effluent from drain is also established.

पारशी ताम
Applicants

Through Counsel



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BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI

ORIGINAL APPLICATION NO.544 OF 2023

IN THE MATTER OF:

PARAS NATH AND ANOTHERAPPLICANTS

VERSUS

UTTAR PRADESH POLLUTION
CONTROL BOARD AND OTHERSRESPONDENTS

AFFIDAVIT

I, PARAS NATH, aged about 68 years, Son of Sri Gajadhar, Resident of Vill. Khodaypur, Tehsil Phulpur, Post Office Bagae Khurd, District Allahabad, U.P. - 212404, presently at New Delhi, do hereby state on solemn affirmation as under:-

1. That the deponent is the Applicant No. 1 in the present Original Application as such I am well conversant with the facts and circumstances of the present case and hence, competent to swear this affidavit. The Deponent is also authorized to swear the affidavit on behalf of the Applicant No. 2
2. That I have gone through the Objection/Reply and say that the contents there of are true and correct to my knowledge and belief and I believe the same to be true.

Solemnly affirmed on this 10th day of February, 2024 at New Delhi.

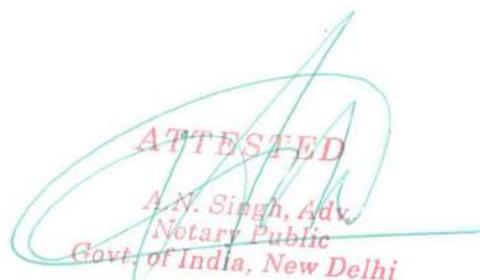

DEPONENT

VERIFICATION :

Verified at New Delhi on this 10th day of February, 2024 that the contents of my above affidavit are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.


DEPONENT




ATTESTED
A.N. Singh, Adv.
Notary Public
Govt. of India, New Delhi

10.02.2024

I Identify the deponent who has
Signed/Put T.I. in my presence