

BEFORE THE NATIONAL GREEN TRIBUNAL,**PRINCIPAL BENCH, NEW DELHI****O.A. No. 97 of 2022****APPLICANT : SALMAN MIYA****VS.****RESPONDENTS : STATE OF U.P. AND OTHERS****REPORT SUBMITTED BY THE AMICUS CURIAE****(MR. PRANJAL AGRAWAL, Advocate)**

1. That, by virtue of order dated 04.02.2022 this Hon'ble Tribunal took suo moto cognizance of the pressing need to look into the matter where the Complaint was made by the Applicant who is a Resident of Village Hapur,, and some of the residents of Muradabad have settled in the Village Hapur and have set up the factories in which they are illegally doing business of chemicals and acids burning the industrial waste in open due to which poisonous gases are being transmitted into the environment due to which it is causing serious health issues amongst the children and old age persons and pollution is also being increased and the age of police station they are doing their illegal business and no legal proceedings is being taken against the concerned person.
2. That, looking into the complaint made by the applicant this Hon'ble Tribunal passed the order dated 04.02.2022 in which looking into the seriousness of the allegations, this Hon'ble Tribunal to the factual position of the matter the Hon'ble Tribunal ordered for constitution of a joint committee consisting Central Pollution Control Board herein after called as 'CPCB', State Pollution Control Board hereinafter called as 'State PCB', Superintendent of Police and District Magistrate of Hapur (Uttar Pradesh) in which the state PCB will be the nodal agency for coordination and compliance. And



the joint committee may meet within four weeks and undertake site visit and look into the grievance of the applicant.

3. That, the aforementioned case was listed on few occasions and the matter was adjourned on 13.05.2022 , 29.07.2022, 06.09.2022 and the matter was posted for 03.11.2022.
4. In compliance of the order dated 14th February 2022 report of the joint committee was filed by the U.P Pollution Control Board in which action has been taken by the joint committee consisting of various number of persons through which the inspection has been carried out in the village Hapur, and it was particularly mentioned that the area stated in the complaint is not residential but an approved industrial area of the Uttar Pradesh State Industrial Development Authority(UPSIDA) at Mussoorie Gulawathi Road. In which the following actions were taken :
 - A. Action was taken by the committee under the section 31A of the Air (Prevention and Control of Pollution) Act, 1981 and several closure orders to illegal units, operating in several plots were issued on illegal polluting units and;
 - B. Electricity connection was also disconnected for the purpose of compliance of closure.
5. Thereafter, on several occasions the case was adjourned on 13.05.2022, 29.07.2022, 06.09.2022 and further the matter was taken up for hearing on 03.11.2022 in which the Hon'ble Tribunal was pleased to issue notices to all the Respondents No. 1 to 12 seeking for their response/ Reply and the case was further posted for 16.02.2023.



6. That, in compliance of the order dated 16.02.2023 the Respondent UPPCB, Uttar Pradesh filed its response on 10.02.2023 in which status of 10 industrial plots mentioned in the complaint has been filed by the Joint Committee, constituted by the Hon'ble Tribunal in which the committee has particularly stated about the status of the industries, operation operational on the 10 industrial plots mentioned in the complaint in which it was found that no air pollution control devices were found to be installed and closure notices to the industries as well as this is for environmental compensation has been issued to the industries for non-compliance of the norms given under the statute and in some of the industries, it was also found that there was an unauthorized e-waste dismantling and dismantling work was found to be done.

7. It was also found that some of the industries after inspection were vacated and it was empty, and some of the industries closed its operation after inspection and submitted an affidavit that any activity shall be carried out after due permissions have been taken. And it was also submitted that in compliance of the orders of Hon'ble Tribunal seven units were included as parties specifically Respondent No. 6 to 12 and Respondent No. 9 and 10 have received the notices and for the rest it could not be served as they were closed.

8. That, on 11 February 2023 a Reply was filed by the State Level Environment, Impact Assessment Authority Uttar Pradesh in which they have submitted in compliance of the order dated 4 February 2022, a Joint Committee was constituted and action plan was prepared within a period of three months, and it is also submitted that as per the Ministry of Environment and Forest, Government of India as per notification dated 14 September 2006 it is mandatory to obtain prior environmental clearance before establishment or



expansion of such project or activity which is listed in the schedule of notification and also stated about the list of activities for which environmental clearance shall be required. **(Page 60)**. It was also submitted that SEEIAA is having limited power and jurisdiction and compliance is being done accordingly and it is only a delegated authority and the responsibilities from the Ministry of environment, forest and climate change.

9. That thereafter on 6 March 2023, the Respondent No. 8 – owner of plot numbers, G45, Phase 1 , MG Road, District Hapur, submitted his reply **(Page 159 onwards)** the present order came to the knowledge of the present respondent on 20 February 2023 and it was submitted by the respondent that property of the respondent was lying vacant since lockdown period and the answering respondent used to live in Vasundra Ghaziabad and earlier the respondent used to do some manual hand work in the plot and due to lockdown, respondent has shut down his work and the guard without the knowledge of the answering respondent has let out the property to some Mr. Shami and he was not having any knowledge about the same, and after the first inspection, the answering respondent came to more about the illegal industrial activity, which was carried out in his plot without his knowledge and as soon as he got the knowledge about the same, the Respondent got the plot vacated immediately and fired the guard.
10. It was also submitted by the respondent that a recovery certificate for an amount of Rs. 13,80,000/- was issued against him for violating the environmental norms due to polluting activity being carried out in his plot and he was not knowing about the activity which was being carried on his plot and he is unable to pay such compensation and the same may kindly be waived and also in



support of the reply an application for stay of recovery certificate was also filed respondent No. 7.

11. That, on 10th March 2023 the Respondent No. 9 also filed its response who is the owner of the Plot No. G-71 , M.G. Road, District Hapur, U.P. that the notice received by the Respondent is of some other person and the name of Respondent named Mohd. Yameen is mis joined in the present case and for the closure order of the industry has been passed without following due process of law by UPPCB and UPSIDA and thereafter a recovery of Rs. 25,00,000 has been issued against the respondent for recovery of same without any justified reasons without following procedure of law. And thereafter the respondent in reply filed all the documents in support of the reply that no activities which are the part of complaint has been carried out by the present respondent and therefore he has further prayed to dismiss the complaint against the plot owner or his name from the instant case and also may be permitted to open factory as early as possible and other reliefs against the respondent for refund of the amount which has been given as per penalty and compensate the loss be by the plot owner.
12. That, in compliance of the order passed by Learned NGT, Delhi , the District Magistrate, Hapur in compliance of the order dated 3 November 2022 filed his compliance report in which it was particularly stated that he has issued necessary directions to the officers for the issuance of notice to all the respondents and thereafter joint inspection committee, as constituted inspection was done on the sides, their operation of illegal acid and chemical factories which were running without license which were alleged in the complaint , the action was taken against them as per law. Thereafter, 'UPPCB' appointed as the nodal agency for compliance of the order passed by this Hon'ble Tribunal which had already



submitted a detailed report vide email dated 10.02.2023 and it was also submitted that total number of initially two units were only served with the notices and the remaining five units were performed to be closed at the time of services of notice. Therefore, the notices could not be served as per the report submitted by the Tehsildar pm 18.01.2023.

13. It was also submitted that fresh notices were issued again to the respective respondents on 03.03.2023 further the compliance of the order passed by this Hon'ble Tribunal.

14. That, on 13.03.202, the Respondent No. 6, who owner of Plot No . E-59 submitted its memo, particularly stating that an amount of ₹6,90,000 has been deposited as environmental compensation on 15th of October 2022 through RTGS mode, and no work is being carried upon in the plot and also gave an assurance that no such type of illegal activities if any shall be carried upon by the respondent in near future. **(Pg. 234 Onwards)**.

15. That, on 13.03.2023, the Respondent No. 7, who is the owner of Plot No. G-45, filed a reply before this Hon'ble Tribunal stating that he is the owner of Plot No. G-45 and since he has not been arrayed as a party in the instant case, he would not be able to facilitate or make submissions before this Hon'ble Tribunal and therefore, name of may kindly be taken on record being owner of the Plot No. G-45.

16. **That, the Instant case came up for hearing on 16.03.2023**, in which this Hon'ble Tribunal directed the joint committee to undertake requisite visits, verify the factual position and submit its report regarding compliance with environmental norms by any other hazardous chemical industries, operating in industrial/ Non



conforming area of District Hapur, within a month, and thereafter the matter was taken up on **11.05.2023** in which this Hon'ble Tribunal directed the matter to be taken up on 31.07.2023.

17. That, on 22.07.2023 the Respondent No. 9 again submitted an Application under Order 6 Rule 17 read with Section 151 of Code of Civil Procedure for amendment of their reply and also filed the amended copy of the Reply in which a detailed reply was submitted by the Respondent No. 9 denying all the averments of the notices which was issued to the Respondent No. 9 and therefore, prayed for deletion of name from the complaint .
18. That, in compliance of the order passed by the Hon'ble Tribunal the "UPPCB" filed its compliance report dated 01.08.2023 in which it was particularly submitted that the inspection was done in the areas in question on 23.04.2022 and 29.08.2022 and thereafter action was taken against them consisting of as many as 52 plots in which action was taken by the UPPBC accordingly and being done in an ongoing manner as much it can be done. Summary of Chart of Industries (Page 332 onwards).
19. **That, thereafter the matter was taken up on 11.10.2023** in which it was particularly observed by this Hon'ble Tribunal that there was partial compliance of the orders passed by this Tribunal and thereafter, directed the UPPCB to submit its response with reference to the environmental compensation orders passed along with copies of such orders and proceedings for realization taken pursuant thereto and in compliance of the aforementioned order dated 11.10.2023 the UPPCB filed its response on 12.11.2023 for compliance of the order passed by this Hon'ble Tribunal in which the UPPCB filed all the consent form along with the Hazardous waste Management authorization issued to several industries and



notice regarding plantation and CSR which was issued to the industries were filed by the UPPCB.

20. That, after the permission was granted to the Respondent No. 7, a detailed reply was filed by the Respondent No. 7 who is the owner of the Plot No. G- 54 , Phase I, Industrial Area, M.G. Road, Hapur, U.P. denying the averments against which action was taken by the UPPCB against the Respondent No. 7 and during inspection as well no activity was found to be undertaken at the site and the property was found to be closed and sought that the complaint may kindly be dismissed qua the Respondent No. 7. **(Page 1060 onwards)**
21. Thereafter, the Hon'ble Tribunal on 20th November 2023 directed UPPCB to submit an action plan within 10 days for utilization of the Environmental Compensation realized from the violators for remediation of environmental damage caused in the area and further directed the Regional Officer, Hapur, UPPCB to be personally present before on the next date of hearing before the Hon'ble Tribunal and the matter was further posted for 5th December, 2023 in which the Hon'ble Tribunal was further pleased to order that objections to the report of the Joint Committee/ UPPCB or reply/ response by the project proponents if so desired.
22. That, in compliance of the order dated 20.11.2023 the UPPCB filed its compliance report in which it was particularly stated that an amount of 12,60,000 has been imposed as environmental compensation and ₹12,76,250 is under process and environmental compensation of ₹9,70,000 has been recovered and ₹2,90,000 is not recovered till 03.12.2023 also, a detailed chart of the inspection carried out by the joint committee has been filed by the UPPCB Divisional Forest Officer was also requested vide letter



dated 01.12.2023 for providing details regarding general plantation as well as Miyawaki Forestation.

23. Further, posted on 13.02.2023 and further posted on 20.03.2024 and the matter was heard and the Respondent No. 1 to 5 to file their reply.

CONCLUSION

- I. With the ongoing progress in the society and the inquisitive, innovative and keen attribute of human beings has led to a life full of luxuries bestowed by nature and also generation of e-waste in the society. From the mainstream of the village to the Metropolitan cities, not only India but also around the globe, e-waste has become a foremost danger to health and pollution free environment.
- II. That the pinnacle of progress of the civilization of mankind is undoubtedly considered to be a benchmark achievement for the human beings, but due to the development which is taking place in the society, it is leading to some of the harmful effects which is coming out in the form of e-waste which is causing ecological degradation on the environment, which could be considered as draining out water from ground level, excavating oil from ground, using chemicals for certain purposes, which is rather unavoidable for carrying out activities, but shall give rise to adverse impact in the society and the environment.
- III. The present case is one of the incident which has been considered by this Hon'ble Tribunal in which at District Hapur, Uttar Pradesh there are several industries which are using several type of materials as well as chemicals for the production of the finished item, which generates some waste material which is not being regulated or properly treated so that it does not cause harm to the



environment, but it is being burned in the public area, which is causing degradation in the environment and causing problem to the persons living nearby in the form of E waste which is majorly being caused by the emission of harmful/toxic gases and pollution by the industries.

IV. In *Mahabir Coke Industry v. Pollution Control Board & Others*¹, the Guwahati High Court has opined that “pollution, be that air, water, noise is a menace to the society and the developed and developing countries like India are facing environmental hazards. With the industrialization of the country, problem of pollution comes in and if it is allowed to go unabated there will be serious health hazards to the mankind.”

V. In *M.C. Mehta v Union of India*² the Hon’ble Supreme Court has held that;

“When science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there will be certain element of hazard and risk inherent in the very use of science and technology”.

VI. After having perusal of the joint committee report submitted by the UPPCB, it could be observed that most of the industries which are running in the area being industrial area situated at District Hapur, Uttar Pradesh are not following the norms which are required as per the law, not having any unit to treat the e-waste which is been released by the industries in the environment for which several show cause notice, closure notice as well as notice for recovery of environmental compensation has been issued, which carries significance in the instant matter as realisation of

¹ AIR 1998 GAU 10

² AIR 1987 SC 965



environmental compensation is not the remedial measure to be implemented in the society of the industrial areas, but it is being levelled upon the factory owners just to make them realise that for running business, there should be norms which particularly prescribes for treating those e waste as it causes various issues to the public at large and the environment.

VII. E- WASTE MANAGEMENT LAWS IN INDIA

India has indirect laws to tackle the problems of environmental pollution at national level. The issues of pollution free environment and regulation of disposal of wastes that is presumed to be hazardous. The Environmental Protection Act, 1986 first omnibus power to Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution including measures to lay down standards for the quality of environment, procedures and safeguards for handling of hazardous substances, manufacturing process and materials. And apart from this Act, there are several other rules, policies and related laws which directly or indirectly relates to the waste and e-waste management which are as follows :

- i. MoEF Guidelines for Management and Handling of Hazardous Wastes, 1991
- ii. Guidelines for Safe Road Transport of Hazardous Chemicals, 1995
- iii. The Public Liability Act, 1991
- iv. The National Environmental Tribunal Act, 1995
- v. Bio Medical Wastes (Management and Handling) Rules, 1998



- vi. Municipal Solid Wastes (Management and Handling) Rules, 2002
- vii. E-Waste (Management) Rules , 2016

VIII. RECOMMENDED ACTIONS WHICH CAN BE TAKEN

- i. A Master plan may be implemented for the regularization of industries situated at District Hapur, Uttar Pradesh so that it may not affect the public at large and cause major health issues and other diseases due to the emission of industrial waste and other harmful toxic chemicals in the environment.
- ii. Monthly or quarterly visits of the requisite officers of the UPPCB should be there for inspection of the Industries situated at District Hapur, Uttar Pradesh and action should be taken against instant owners of the plots/ land on which such illegal activities are being taken place under the provisions of law.
- iii. To stop the illegal functioning of the industries in the residential area, no industrial electricity connection should be supplied in the residential area.
- iv. There should be some measures by the joint committee for regulation of the industries and owners of the plots/ lands should be directed to supply their papers with respect to how they are following the due procedure of law.
- v. That the joint committee should look into the fact that all the laws prevailing in the country are being followed by the owners of the respective plots/land operating the industries.



- vi. An action plan should be made by the CPCB for the UPPCB regular implementation of the procedure laid down by the central government for protecting the environment.
- vii. The State Government should impart its duties towards planting more and more trees over the industrial area so that the environment could be protected.
- viii. That, before coming into operation of a new industry, there should be a certificate which should be granted by the UPPCB to the industries in which an undertaking has been given by the industry owners that they are keen towards protecting the environment and shall not release any toxic materials in the environment, which shall cause degradation to the environment.
- ix. Mechanism for Levying the environmental compensation for the violation of the rules should be finalized and procedure for recovery of the same should be finalized.
- x. Joint committee of the UPPCB may plan and develop a mechanism for utilization of the Environmental Compensation for the utilization of the area under the industrial sector and throughout the district.
- xi. Constant vigilance and monitoring should be done by the UPPCB forming a committee consisting of the District Magistrate and a person who is known to the Enviro- Legal matters, who must be aware about the Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016.



- xii. Keeping in view all the recommendations and report of the U.P. Pollution Control Board it would be just and proper to direct the U.P. Pollution Control Board to form a committee with the aid of the State Government for the Purpose of vigilance and monitoring of the industries so that the environment can be protected and mechanism be developed for violation of the rules and for the recovery of the Environmental Compensation within a stipulated period of time.



PRANJAL AGRAWAL
Advocate

Date: 16.05.2024

