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BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

APPEAL NO. 30 OF 2023 (WZ)

Ahmedabad District Cooperative Milk

Producers Union Limited (Uttam Dairy) .....Appellant

Versus

Gujarat Pollution Control Board .....Respondent

SUBMISSIONS ON BEHALF OF GUJARAT POLLUTION CONTROL BOARD

1. The bone of contention in the present appeal is the levy of Environment Damage Compensation to the tune of Rs. 25,00,000/- on the appellant on account of violation of conditions of consent and authorization granted to the appellant. The levy of Environmental Damage Compensation has been primarily challenged on two grounds namely, non-grant of opportunity of hearing and

reliance placed on order dated 11.01.2019 passed by this Hon'ble Court in Original Application No. 95 of 2018 by the Board for levying such Environmental Damage Compensation.

2. It is a matter of record that the Environmental Damage Compensation levied by the Board was interim in nature; however, without prejudice, during pendency of the present appeal, an opportunity of hearing was given to the appellant as recorded in order dated 16.05.2024 by this Hon'ble Tribunal. The Board after hearing the appellant and deliberating on the issue passed an order dated 09.08.2024 affirming the interim levy of Environmental Damage Compensation on account of breach of conditions of consent and authorization by the appellant and consequent harm caused to the environment. In view of the above the grievance of the appellant of not having been heard would not survive.

3. With regards to the issue regarding levy of Environmental Damage Compensation in accordance with criteria laid

down by this Hon'ble Tribunal in Original Application No. 95 of 2018 is concerned, the following orders are being filed for examination of the legal position:

S. No.	Particulars	Annexed as
1.	(i) Order dated 11.01.2019 passed by this Hon'ble Tribunal in Original Application No. 95 of 2018.	Annexure–A
	(ii) Copy of order dated 22.02.2019 passed by the Hon'ble Apex Court in Civil Appeal Diary No. 5264 of 2019.	Annexure–B
2.	(i) Copy of order dated 09.04.2019 passed in Original Application No. 95 of 2018.	Annexure–C
	(ii) Copy of order dated 13.05.2019 passed in Original Application No. 95 of 2018.	Annexure–D
3.	(i) Copy of order dated 28.08.2019 passed in Original Application No. 95 of 2018.	Annexure–E
	(ii) Copy of Civil Appeal Diary No. 43253 of 2019 [Civil Appeal No. 9398 of 2019] challenging the order dated 28.08.2019 passed by	Annexure–F

S. No.	Particulars	Annexed as
	this Hon'ble Tribunal in Original Application No. 95 of 2018.	
	(iii) Copy of order dated 25.10.2019 passed by the Hon'ble Apex Court in Civil Appeal Diary No. 34038 of 2019.	Annexure–G
	(iv) Copy of order dated 04.12.2019 passed by the Hon'ble Apex Court in Civil Appeal Diary No. 43253 of 2019.	Annexure-H
4.	(i) Copy of order dated 05.02.2021 passed in Original Application No. 95 of 2018.	Annexure–I
	(ii) Copy of order dated 24.02.2023 passed in Original Application No. 95 of 2018.	Annexure-J

Unit Head

Gujarat Pollution Control Board

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Annexure - A

Item No. 05 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 95/2018
(M.A. No. 1029/2018)

Aryavart Foundation Applicant(s)

Versus

M/s Vapi Green Enviro Ltd. & Ors. Respondent(s)

Date of hearing: 11.01.2019

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

For Applicant(s): Mr. Raj Panjwani, Senior Advocate with Dr. Surender Singh Hooda, Advocate

For Respondent (s): Mr. M.S. Kalra, Advocate for R-1
Mr. Shlok Chandra with Mr. Ritesh Kumar Sharma, Advocates for CPCB
Mr. Dhruv Pal, Advocate for GPCB

ORDER

1. The issue for consideration in this matter is discharge of untreated/partially treated trade effluents by more than 500 industrial units in Vapi Industrial Cluster into Daman Ganga River in District Valsad in Gujrat which meets the Arabian Sea. The effluents comprise of untreated coloured chemical liquids. Apart from Daman Ganga River, the other water body in which effluents are discharged is the *Bill Khadi* (a drain) which also falls into the Arabian Sea.

2. Case of the Applicant is that Common Effluent Treatment Plant (CETP) is being operated in the area by Respondent No. 1, M/s. Vapi Green Enviro Limited (Old name – Vapi Waste & Effluent Management Co. Ltd.) reportedly since 01.01.1997. The impact of discharge is serious threat to the aquatic life in the river as well as in the sea.

3. A study was carried out in February 2017 by the National Environmental Engineering Research Institute (NEERI). It was found that:

> *"The fish bioassay study on the final treated effluent sample discharged from Vapi CETP into the river indicates 100% mortality at 50, 75 and 100% waste water concentrations within 24 h exposure time (Plate 4.56). The experimental results presented in Table 9.6 reveal toxic nature of the treated effluent from Vapi CETP. Thus, it can be concluded from the fish bioassay study that the final treated effluent from Vapi CETP with high colour intensity, organic and inorganic matters is having toxic effect on aquatic life of Daman Ganga River. Therefore, Vapi CETP effluent must be treated adequately to remove the pollution parameters before discharging into Daman Ganga River."*
>
> *"The final treated effluent discharge from the existing Vapi CETP (D-11A) has not only caused deterioration of the river water quality with respect to the colour and recalcitrant parameters but also has imparted toxic effect on aquatic life of Daman Ganga River (segment-II). Therefore, Vapi CETP must be scientifically upgraded for colour and recalcitrant pollutants removal including reject management with a final aim of achieving zero liquid effluent discharge as delineated under Section 11.0. This will result in recovery of good quality water, which can be reused as process water by the industries, leading to fresh water conservation."*

4. Further case set out in the application is that Respondent No. 2, Gujarat Pollution Control Board (GPCB), carried out inspection and tested the water quality from P-Equalization Tank (Inlet) on 25.10.2017 and found that the same was not meeting the standards. Samples were also taken from overflow of primary clarifier (Inlet) and the storage tank and similar results were noticed. Tests were also carried out on 06.11.2017, 28.11.2017, 07.12.2017, 27.12.2017, 30.12.2017, 23.01.2018, 29.01.2018, 31.01.2018 and 05.02.2018 and same results were found. From the final outlet also similar results were seen on 27.12.2017, 30.12.2017, 23.01.2018 and 29.01.2018.

5. GPCB issued show cause notice dated 25.10.2017 and 01.11.2017 and direction under Section 33A of the Water (Prevention and Control

of Pollution) Act, 1974 requiring steps to be taken so that inlet and outlet norms are maintained. Applicants have annexed letter of the GPCB dated 23.12.2013 under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 to the CETP unit for renewing consent to operate for the CETP for the period upto 06.09.2018, subject to the norms laid down therein being maintained. The letter specifies the standards of inlet to be met by the units as well as outlet for which CETP is responsible. Various steps/reports from October 2017 onwards, however, show that the prescribed norms were not maintained.

6. The applicant accordingly seeks direction for taking appropriate steps, including up-gradation of CETP, restraining the CETP from receiving effluents from member units not conforming to the norms, recovering cost of damage to the environment.

7. The application was filed before this Tribunal on 26.02.2018 and notice was issued.

8. The parties appeared before the Tribunal including the CETP operator, GPCB, MoEF&CC, Gujarat Industrial Development Corporation (GIDC) and the Central Pollution Control Board (CPCB). Due opportunity has been given to file pleadings.

9. The Respondent No. 1, CETP operator for the industrial area of Vapi has stated that the CETP was commissioned in the year 1997. By 2001, all waste water generated in the industrial area was linked to the CETP. It also caters to the domestic sewage. It has complied with the earlier directions of NGT, Pune Bench in O.A. No. 109/2014, order dated 01.04.2014 to lay pipeline from existing discharge point to downstream 4.5 km. It is maintaining discharge norms. The

discharge was on the higher side as tanks had not been cleaned for many years.

10. The GPCB has referred to the order of the NGT dated 01.04.2014 in O.A. No. 34/2013 directing the Respondent no. 1 to maintain the laid down standards of effluent discharge. The industrial units were directed to set up/up-grade treatment plants. The GPCB was directed to use Bank Guarantee regime for improvement in pollution control systems.

11. The GPCB further submitted that the Vapi industrial estate is spread over 1117 hectares and is largest industrial area in Asia. It has industrial units of small, medium and large size in diverse sectors, such as Chemicals, Pharmaceuticals, Pesticides, Dyes & Dyes Intermediate and Pulp & Paper. There is substantial consumption of water in the production processes and resultantly there is discharge of effluents. The CETP was set up in the year 1997 and is operated by Respondent No. 1. The industrial units are required to do basic treatment of their effluents in their own premises which refers to Primary Effluent Treatment Plant (PETP). The Respondent No. 1 collects effluents through underground pipeline network and after primary, secondary and tertiary treatment at CETP, discharges effluents into Daman Ganga River at designated place. Each member industry is to provide basic treatment facilities to meet CETP inlet norms. Five hundred and nineteen (519) industrial units are members of CETP. Due to unsatisfactory treatment of effluents by CETP, and also based on Comprehensive Environmental Pollution Index (CEPI), Vapi industrial cluster was declared critically polluted Area on 13.01.2010. Major up-gradation was undertaken by the CETP by investing Rs. 464 Crores which led to improvement in the quality of effluent discharge. Accordingly, vide order dated 25.11.2016, the MoEF&CC lifted the moratorium on setting up of new

industries and expansion of existing industries. Certain industries have been identified as generating high COD. Common spray dryers have been developed in March 2018.

12. On earlier hearing, the Tribunal had before it the Order dated 01.04.2014 in O.A. No. 34/2013 of this Tribunal which showed that the CETP was not satisfactorily working.[1] There was need to take innovative enforcement measures by the GPCB.[2] It was held therein that though the Pollution Control Board could not apply the of "Polluter Pays" Principle as a punitive measure, it could take Bank Guarantee for non-compliance for ensuring improvement since the CETP was continuously not meeting the norms and such norms could not be relaxed.[3] The CPCB in its reply dated 25.04.2018 stated that average value of inlet and outlet were not as per norms.[4]

13. In view of above, on 29.08.2018, the Tribunal directed the GPCB to take appropriate action in accordance with law in the matter for failure of mandatory requirements laid down by the Hon'ble Supreme Court in *Paryavaran Suraksha Samiti and Ors. vs. Union of India (UOI) and Ors.*[5], for operational and effective ETPs. CPCB was to oversee the compliance of the order and action taken report was required to be filed.

14. In compliance of above order, the GPCB and the CPCB have filed their reports. The GPCB in its report dated 28.09.2018 states as follows:

> *"It is observed that Inlet quality - COD, NH_3-N and TSS are not meeting with inlet norms whereas COD and TSS at outlet of CETP are not meeting with Outlet norms.*
>
> *CPCB, RD, Vadodara carry out quarterly monitoring of CETP, Vapi. The latest monitoring carried out on 11.08.2018 and results are provided at Annexure-III. It is observed that Inlet quality - TSS, FDS, BOD, COD and NH_3-N are not meeting*

[1] Para 5
[2] Para 23
[3] Para 32 & 33
[4] Para 10
[5] (2017) 5 SCC 326

with inlet norms whereas TSS, FD, COD, NH_3-N & Phenols at outlet of CETP are not meeting with outlet norms.

M/s VGEL (CETP) reportedly takes internal actions among the defaulting member units as per M/s VGEL monitoring but so far not provided the list of defaulting industries to GPCB though it is expected as per the Hon'ble NGT Order dated 29.08.2018, and also as per notices of direction issued by GPCB.

M/s VGEL (CETP) has not provided any action plan to comply with both inlet as well as outlet norms during the above review."

15. GPCB has also stated that it has issued notice under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 for up-gradation of the CETP to achieve the standard of discharge and till then to take preventive action.

16. There is also a report dated 10.01.2019 of inspection carried out on 03.01.2019. The inspection team at the time of inspection comprised Regional Director, CPCB,-; Scientist-D, CPCB,-; Unit Head-Vapi, GPCB,-; Regional Officer, GPCB,-; AEE, GPCB, -; AGM, (Process) and CEO, VGEL(CETP) Vapi, -; three Directors of VGEL, Vapi and President Director, VIA, VGEL, Vapi

17. The frequency of compliance and non-compliance in the context of BOD, COD, NH_3N and TSS are as follows:

"

BOD			
Inlet		*Outlet*	
Compliance	*Non-compliance*	*Compliance*	*Non-compliance*
12	*1*	*6*	*7*
COD			
Inlet		*Outlet*	
Compliance	*Non-compliance*	*Compliance*	*Non-compliance*
0	*13*	*3*	*10*
NH3-N			
Inlet		*Outlet*	
Compliance	*Non-compliance*	*Compliance*	*Non-compliance*
0	*13*	*9*	*4*
TSS			
Inlet		*Outlet*	
Compliance	*Non-compliance*	*Compliance*	*Non-compliance*
4	*9*	*6*	*7*

"

18. As noted earlier, notice under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 was issued to the CETP while internal action is to be taken by the CETP itself.

19. We have heard the learned Counsel for the parties.

20. Learned Counsel for the applicant submitted that discharge of untreated effluents is beyond any doubt from the reports to which not only CPCB and GPCB but also the representatives of the CETP are party. The CETP operator, the polluting units and the GPCB may be made accountable for preventive and remedial steps, including punitive action and recovery of damages for restoration of the environment and by way of deterrent action.

21. Learned Counsel for Respondent No. 1 submitted that the operator of CETP is taking all such steps as are possible and no direction is called for. Learned Counsel for GPCB has not disputed the inspection reports which clearly demonstrates that the standards are not being met. On that basis, the GPCB has already issued notice to the CETP as well as to some of the industrial units for remedial actions. Thus, the GPCB has done its job. Learned Counsel for CPCB submitted that in view of the report of inspection carried out on 03.01.2019, CETP as well as the industrial units are clearly proved to be non-compliant with the laid down parameters for which appropriate directions may be issued by this Tribunal. There is continued failure of enforcement of law.

22. The questions that arise for consideration are as follows:

i. Whether the CETP operator and its member units have failed to comply with the conditions of consent and norms of environment and caused pollution? If so, the manner in which they are to be held accountable?

ii. Does the functioning of CETP in the present case and of CETPs in general in the country calls for review and modification?

iii. Whether the State Pollution Control Board in the present case and regulatory authorities have not performed their duties as per the expectation and if so, what are the steps necessary to achieve the objects for which the Pollution Control Boards/Committees have been constituted under the Water Air and the Air Act?

iv. What are the conclusions and what are the directions required to be issued by this Tribunal?

23. We now proceed to deal with the questions for consideration seriatim.

Re (i): Whether the CETP operator and its member units have failed to comply with the conditions of consent and caused pollution? If so, the manner in which they are to be held accountable?

24. We have reproduced the reports of inspections dated 28.09.2018 and 10.01.2019 clearly showing the CETP as well as the industrial units to be non-compliant. In support of the said reports, test reports have also been annexed. There is no reason to doubt the veracity of reports of inspections conducted by the joint team of representatives of CPCB, GPCB and the CETP operators. Thus, it is concluded that the CETP operator and the member units generally have failed to comply with the environmental norms for which they are held to be accountable.

25. Though, there are observations in order dated 01.04.2014 by the two-member Pune Bench of this Tribunal referred to earlier, that "Polluter Pays" principle cannot be invoked as a punitive measure and only 'Precautionary Principle' of requiring Bank Guarantee can be applied, the said view is in ignorance of the binding legal precedents in the judgment of the Hon'ble Supreme Court[6] which lay down that

[6] Indian Council for Enviro Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212 Para 16, Vellore Citizens Welfare Forum v. Union of India & Ors. (1996)5SCC647 Para 12 to 18 - holding that 'Polluter Pay' principle is

'Polluter Pays' principle is ingrained in the environmental jurisprudence of the country as well as statutory mandate under Section 20 of the NGT Act, 2010. This was considered in the recent order of the Tribunal (by four Member Bench) in *Paryavaran Suraksha Samiti and Anr. Vs. Union of India & Ors.*[7], *Parveen Kakar & Ors. Vs. Ministry of Environment & Forests & Ors.*[8] and in *News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels"*[9] wherein this Tribunal held that:

> *"11. Needless to say that it will be open to the SPCBs/Committees and CPCB to take coercive measures including recovery of compensation for the damage to the environment on 'Polluter Pays' principle as well as also to direct taking of such precautionary measures as may be necessary on the basis of 'Precautionary principle'."*

26. This Tribunal has to follow principles of natural justice if it is to finally assess the damages. The Tribunal can also require the statutory authorities to perform their duty in the matter. We have heard the CETP operators but we have not heard the individual industrial units though CETP represents such units. The reports indicate deficiency in inlet as well as outlet which is evidence of failure of CETP operators as well as individual industrial cluster. Thus, there is objective material available to act against both- CETP operator and individual units. While on proved facts, interim arrangement is proposed, statutory authorities may finally determine the extent of accountability of the industrial units and such units may be given opportunity of hearing by the SPCB and the CPCB. To enable this to be done, we propose to constitute a Committee to hear

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accepted principle and part of environmental law of the country, even without specific statute. M.C. Mehta v. Union of India & Ors., W.P.(C) No. 13029/2015 order dated 24.10.2017 of Supreme Court of India

[7] O.A. No. 593/2017 Order dated 03.08.2018: The Tribunal directed CPCB to take penal action against those accountable for failure in setting up CETPs/ETPs/STPs and to recover compensation for damage to the environment.

[8] O.A. No. 661/2018, Order dated 08.01.2019: The Tribunal stated that the Pollution Control Board had failed to perform its duties in taking statutorily mandated coercive measures under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 and 33B of the Water (Prevention and Control of Pollution) Act, 1974 or initiating prosecution. This Tribunal directed CPCB to exercise its statutory powers to determine and recover damages for violation of environmental norms by the respondent therein.

[9] O.A. No. 1038/2018, Order dated 13.12.2018.

individual polluting units not meeting the norms and to quantify the amount of liability on "Polluter Pays" principle which can clearly be invoked by the regulatory body to enforce pollution norms not only as a 'Precautionary Principle' but also as remedial action if the unit is found to be polluting and not meeting the prescribed norms. Any other interpretation would grant immunity to the polluters and will not be conducive to the protection of the environment. We answer the question accordingly.

Re(ii): <u>Does the functioning of CETP in the present case and of CETPs in general in the country calls for review and modification?</u>

27. CETP Scheme was developed primarily to meet specific objectives under the Environment (Protection) Rules, 1986. It has, however, been found that inspite of setting up of CETPs, the environmental norms have not been maintained at several places in the country. The MoEF&CC itself imposed a moratorium for grant of permissions for setting up of industries in critically polluted areas/industrial clusters identified by the CPCB as shown by letter dated 25.11.2016. Time bound action plans were required to be prepared for improvement of environment quality in such clusters/areas. Moratorium was, thereafter, lifted in respect of certain clusters from time to time based on CEPI score subject to certain conditions.

28. The recent experience shows that situation at several places in the country is far from being satisfactory. This Tribunal has taken cognizance of the serious pollution caused on account of failure of CETPs vide order dated 13.12.2018 in *News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels*". It was noted that 43 industrial clusters in 16 States were identified as Critically Polluted Areas and 32 industrial clusters were categorized as Seriously Polluted Areas. In 2017-18, the number of identified polluted industrial clusters went

upto 100. Accordingly, the Tribunal directed the State Pollution Control Board to finalize time bound action plan to restore the environmental quality as per norms laid down by the CPCB and directed CPCB and SPCBs /PCCs to take coercive measures against the violators on the basis of 'Precautionary Principle' and 'Polluter Pays' principle.

29. This apart, in *Arvind Pundalik Mhatre v. Ministry of Environment, Forest and Climate Change & Ors.*[10] the CETP was found not fully functional and effluents were being discharged at Taloja in the river *Kasaradi*. This Tribunal directed imposition of an amount of Rs. 5 Crores for severe impact on environment on account of non-functioning of the CETP resulting in imminent danger to the life of local population.

30. In *Rashid Ali Warsi Vs. UPSIDC & Ors.*[11], the Tribunal dealt with discharge of untreated effluents by textile units in Tronica City, Ghaziabad. CETP was not functional to the extent of requisite capacity and operating without valid consent. Member industries of CETP were directed to comply with PETP standards as prescribed by UPPCB.

31. In *Sidhgarbyang Kalyan Sewa Samiti, Sitargang, District – Udham Singh Nagar Vs. State of Uttarakhand & Ors.*[12], the Tribunal dealt with was pollution in Sitarganj by industries. The STPs/CETP were not functional and untreated effluents and hazardous chemical were being discharged in open drain. It was noted that CETP was working without valid Consent to Operate (CTO). CPCB was directed to carry out fresh inspection of the CETP and the industries. The State PCB

[10] *O.A. No. 125/ 2018* Order dated 11.07.2018
[11] O.A. No. 317/2015 Order dated 13.11.2018
[12] O.A. No. 123/2018 Order dated 13.11.2018

was directed to take appropriate legal action against CETP and erring industries.

32. In *Indian Council for Enviro-Legal Action & Ors. Vs. Jammu and Kashmir State Pollution Control Board & Ors.*[13], the Tribunal considered discharge of effluents by industries in river Basantar, Jammu. The industries were operating without valid consent. There was delay in establishment of CETP and STP. As a result, untreated sewage waste and effluents were discharged in the river. The SIDCO and Municipal Council were held liable to pay compensation for restoration of environment and failure in installing STPs respectively.

33. In *Paryavaran Suraksha Samiti and Anr. Vs. Union of India & Ors.*[14], the Tribunal dealt with the issue of establishment and functioning of CETPs/ETPs/STPs in all the States and the question whether the effluents were treated as per prescribed limits or not. This Tribunal noted the requirements of continuous monitoring of CETPs/ETPs/STPs by the statutory authorities and directed that CPCB to take penal action against those accountable for failure in setting up CETPs/ETPs/STPs and to recover compensation for damage to the environment.

34. In *Stench Grips Mansa's Sacred Ghaggar River (Suo-Motu Case) and Yogender Kumar*[15], the matter dealt with River Ghaggar which had turned into a polluted water body on account of discharge of effluents. The Tribunal noted failure of authorities in taking action against persons responsible for violation of law and directed to constitute Special Task Force to submit action taken report. The Tribunal directed that an action plan be prepared for preventing

[13] O.A. No. 483/2016 Order dated 22.11.2018
[14] O.A. No. 593/2017 Order dated 03.08.2018
[15] O.A. No. 138/2016 (Case No. 559/19/11/14) and O.A. No. 139/2016 (Case No. 600/19/11/14) (TNHRC) Order dated 07.08.2018

discharge of untreated effluents in the river by setting up CETPs/ETPs/STPs.

35. In *Hero Motocorp Limited Vs. Union of India & Ors.*[16], the Tribunal directed the Uttarakhand Pollution Control Board to regularly monitor the appellant unit for discharge of effluents.

36. From the above, it is clear that there is a large-scale failure of the CETP which calls for an extensive review regarding the functioning of CETPs in the country, reasons for its failure in meeting the prescribed norms and possible solutions to rectify the problems by the MoEF&CC and the CPCB. In the light of this, Expert Committee may be constituted for the purpose and be asked to submit its report in six months. Question No. (ii) is answered accordingly.

Re(iii): Whether the State Pollution Control Board in the present case and regulatory authorities have not performed their duties as per the expected norms and if so, what are the steps necessary to achieve the objects for which the Pollution Control Boards/Committees have been constituted under the Water Air and the Air Act?

37. The test reports compiled by a joint inspection team clearly shows the non-compliance by the CETP and industrial units as already noticed. We have also noted frequent failure of CETP mechanism while considering Question No. (ii). The SPCB has not shown that it took any stringent action as required which can act as deterrent against violation of pollution norms. Simply issuing notice has not brought about the desired results. No closures have been ordered, nor prosecution launched nor other adequate preventive and remedial measures, including assessment and recovery of damages taken. In this respect, there is failure of GPCB. We may only observe that even a regulatory authority may be held accountable if it colludes with polluters by being required to pay damages or errant officers being held liable for action, including prosecution. Frequent failures of

[16] Appeal No. 55/2018 Order dated 27.09.2018

regulatory bodies need to be remedied for meaningful enforcement of environmental norms. This Tribunal in *Threat to life arising out of coal mining in South Garo Hills district Vs. State of Meghalaya & Ors.*[17], held that State machinery is also required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. The polluters as well as colluding officers are to be made accountable not only by prosecution or closure of industry but also by assessing and recovering such damages for loss to the environment as it may not only compensate the environment or victims but also act as deterrent to prevent further damage.

38. It is well acknowledged that there is serious threat to the environment in this country. Studies show huge number of pollution related deaths and diseases[18]. Any violation of laid down environmental norms has to be seriously viewed and sternly dealt with.

39. It was in the year 1974 that the Water (Prevention and Control of Pollution) Act, 1974 was enacted after noticing that problem of pollution of rivers and streams had assumed considerable importance and urgency on account of growth of industries, threatening the sources of drinking water, the aquatic life and sources of irrigation. After considering the Expert Committee reports on the subject, the statutory framework was adopted giving enormous powers to the Pollution Control Boards (PCBs) for closure, prohibition or regulation of any industries operation or process as well as filing of complaints for prosecution. Minimum sentences have been laid down for violation

[17] O.A. No. 110(T_{HC})/2012 Order dated 04.01.2019 para 28-29

[18] https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf- India ranks 120th in 122 countries in Water Quality Index as per Niti Ayog Report, https://www.thehindu.com/sci-tech/energy-and-environment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece- Most pollution-linked deaths occur in India, https://www.hindustantimes.com/india-news/delhi-world-s-most-polluted-city-mumbai-worse-than-beijing-who/story-m4JFTO63r7x4Ti8ZbHF7mM.html- Delhi's most polluted city, Mumbai worse than Beijing as per WHO; http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf- WHO Water Quality Index.

of the norms. Polluter Pays Principle is an accepted norm within the purview of regulatory regime. The statutory functions of the PCBs, include programs for prevention, abatement and control of pollution and exercise all incidental powers. The CPCB has powers to issue directions to the State Boards. Needless to say, that similar provisions have been made for protection of air quality under the Air (Prevention and Control of Pollution) Act, 1981 as well as for other environmental issues under the Environment (Protection) Act, 1986.

40. As already noted, the SPCB is equally accountable for its failure and in appropriate cases can be prosecuted for conspiracy or collusion with other offenders causing pollution. The pollution cannot be allowed to be profitable activity and deterrent action must be taken wherever pollution is found so as to render causing of pollution unprofitable and unacceptable to prevent damage to the health and lives of the citizens. Any polluter must be subjected to heavy and deterrent economic sanctions. Unfortunately, this is not happening as expected for which failure the regulatory authority cannot disown their responsibility.

41. We note that the State of Environment in the country, even as per official figures, is alarming. As many as 351 river stretches have been declared to be polluted by the CPCB. Vide order dated 20.09.2018 in *Original Application No. 673/2018, News item published in 'The Hindu' authored by Shri. Jacob Koshy Titled "More river stretches are now critically polluted: CPCB*", this Tribunal considered the issue of such polluted stretches and noticed the directions of the Hon'ble Supreme Court from time to time for stopping discharge of untreated sewage and effluents in water bodies. Such discharge causes serious diseases, including Cholera and Typhoid. Sewage treatment capacity was disproportionate to the sewage generated. As per some studies noted in the order, 75 to 80% water is polluted in India. Pollution of

River Yamuna[19], Ganga[20], Hindon[21], Ghaggar[22], Sutlej and Beas[23], Son[24], Subarnarekha[25], Ami[26] were also noted. The States were directed to prepare action plans to make the water of the polluted river stretches atleast fit for bathing within six months from the dates of preparation of approved action plans. When the matter was reviewed on 19.12.2018, it was found that only 16 States had prepared action plans, most of which were not complete. The direction was issued for payment of environmental compensation per month by every State/UT for failure to prepare action plan and also to furnish Performance Guarantees for execution of the action plans within the stipulated time.

42. This Tribunal in *News Item Published in "The Times of India' Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15"*[27] has dealt with the issue of 102 air polluted cities identified by the CPCB. Taking into account eminent threat to human health as a result of air pollution, this Tribunal directed all the States/UTs with non-attainment cities to prepare action plans for bringing down the standards of air quality within the prescribed norms within six months. The Tribunal further constituted the Air Quality Monitoring Committee to ensure implementation of such action plans. The CPCB and the SPCBs were entrusted with the responsibility to design a robust nation-wide ambient air quality monitoring program to strengthen the existing monitoring network.

[19] Manoj Mishra Vs. Union Of India O.A. No. 6/2012 order dated 26.07.2018
[20] M.C. Mehta vs. Union of India O.A. No. 200/2014 order dated 06.08.2018
[21] Doaba Paryavaran Samiti vs. State of U.P. and Ors. O. A. No. 231/2014 Order dated 08.08.2018
[22] Stench Grips Mansa's Sacred Ghaggar River (Suo-Motu Case) and Yogender Kumar O.A. No. 138/2016 Order dated 07.08.2018
[23] Sobha Singh and Ors. Vs. State of Punjab and Ors. O.A. No. 916/2018 Order dated 14.11.2018
[24] Amarshakti vs. State of Bihar and Ors. O.A. No. 596/2016 Order dated 24.08.2018
[25] Sudarsan das vs. State of West Bengal and Ors. O.A. No. 173/2018 Order dated 04.09.2018
[26] Meera Shukla vs. Municipal Corporation, Gorakhpur and Ors. O.A. No. 116/2014 Order dated 25.10.2018
[27] Original Application No. 681/2018 Order dated 08.10.2018

43. In re: *Compliance of Municipal Solid Waste Management Rules, 2016*[28], the Tribunal directed preparation of action plans for solid waste management consistent with the Solid Waste Management Rules, 2016 in view of the fact that as per annual report of the CPCB prepared in April 2018, most of the States were not complying with the statutory rules.

44. As already noted earlier, this Tribunal considered the matter of polluted industrial clusters in *News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels*" vide order dated 13.12.2018. It was noted that 43 industrial clusters in 16 States were identified as Critically Polluted Areas and 32 industrial clusters were categorized as Seriously Polluted Areas. In 2017-18, the number of identified polluted industrial clusters went upto 100. Accordingly, the Tribunal directed the State Pollution Control Board to finalize time bound action plan to restore the environmental quality as per the norms laid down by the CPCB and directed CPCB and SPCBs to take coercive measures against the violators on the basis of 'Precautionary Principle' and 'Polluter Pays Principle'.

45. In *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[29], the Hon'ble Supreme Court noted that the State Pollution Control Boards (SPCBs) continued to be manned by persons not having expertise or

[28] Original Application No. 606/2018 Order dated 31.08.2018

[29] (2018) 11 SCC 734 para 3-4, 28-34: The judgment takes into consideration various Committees appointed laying down guidelines for the functioning of SPCBs viz.,

(a) Bhattacharya Committee (1984) proposed that the structural organization of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts, training cell and research and development.

(b) The Belliappa Committee (1990) - Recommended (i) introducing elaborate monitoring, reporting and organizational systems at the national level along with four regional centres and one training cell in each Board, (ii) effecting suitable changes in the Boards recruitment policy to enable them induct persons with suitable academic qualifications, and (iii) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years.

(c) The Administrative Staff College of India (1994) - Recommended, inter alia, that (i) the SPCBs be reoriented for implementing the instrument mix of legislation and regulation, fiscal incentives, voluntary agreements, information campaigns and educational programmes.

(d) The Menon Committee – Recommending that the State Governments should not interfere with recruitment policies of the SPCBs, especially where the Boards are making efforts to equip their institutions with more and better trained engineering and scientific staff.

professional experience. The State Governments were not able to appoint qualified, impartial, and politically neutral persons of high standing to the crucial regulatory posts. Political appointments were being made in blatant violation of Apex Court guidelines to debar favorable persons being appointed.[30] The appointments being made did not inspire the confidence of the people. The Hon'ble Supreme Court directed all the States to frame guidelines and recruitment rules within six months. It may be pertinent to lay emphasis on the following observations of the Hon'ble Supreme Court in the aforesaid judgment:

> *"Unless corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such."*

46. In addition to this, the Parliamentary Standing Committee on Science and Technology, Environment and Forest, August 2012 in its recommendations on the working of the SPCBs was perturbed to note that the SPCBs were not performing their duties vigilantly and recommended that MoEF&CC must ensure proper and effective coordination between the CPCB and SPCBs and take necessary steps to make the Pollution Control Boards functional and ensure that the discharge their duties effectively and efficiently.[31]

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[30] *Ibid.* The judgment notes the report of the Tata Institute of Social Sciences published in 2013 titled "Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards" which stated about the appointments to the SPCBs that time and again across state governments have not been able to choose a qualified, impartial, and politically neutral person of high standing to this crucial regulatory post. The recent appointments of chairpersons of various State Pollution Control Boards are in blatant violation of the Apex Court guidelines. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non-transparent unilateral decision. Many senior environmental scientists and other officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the Board.

[31] Accessible at: http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20S%20and%20T,%20Env.%20and%20Forests/230.pdf

47. During the hearing it was stated by the learned Counsel for the GPCB that guidelines in terms of Techi Tagi Tara (supra) have been issued and thus, the judgment has been complied with. However, he has not been able to dispute that the persons appointed are not having technical or professional qualifications or background as expected.

48. This Tribunal, on 20.07.2018, in *Satish Kumar vs. U.O.I & Ors.*[32] also observed that persons of judicial background may be required in key position in PCBs as several functions of the SPCBs are quasi-judicial.

49. The order of this Tribunal dated 07.08.2018 in *Stench Grips Mansa's Sacred Ghaggar River (Suo-Moto Case)*[33] noted that a task force must be constituted in every district and State to give reports on the environmental issues which should be published on the websites.

50. The Tribunal in the order on 08.08.2018 in *Doaba Paryavaran Samiti Vs. State of U.P. & Ors.*[34] noted that statutory authorities had miserably failed and were required to be held accountable for their failure.

51. In view of the fact clean environment, apart from other statutory provisions, is a mandate of Article 21 of the Constitution, causing of pollution having serious implications on health of the citizens cannot be accepted and no responsible authority could simply throw its hands in despair.[35]

52. Thus, there being far from satisfactory governance on the part of the SPCBs, as depicted by the compiled data, resulting in large number of deaths and diseases in the country, remedial measures are required. Lack of effective governance in the present case is patent from absence of steps for prosecution of the guilty persons or recovery of

[32] O.A No. 56 (THC) of 2013
[33] O.A. No. 138/2016 (T_{NHRC})
[34] O.A. No. 231/2014
[35] *Supra* note 18

damages for restoration of the environment which is primary responsibility of the SPCB. Appointment process does contribute to such ineffectiveness.

53. There is, thus, urgent need to review the qualification and appointment procedure so as to realistically comply with the mandate of the judgment of the Hon'ble Supreme Court. There is also need to carry out performance audit of functioning of all the Pollution Control Boards and Pollution Control Committees in the country and to identify remedial steps required in manning and functioning of SPCBs and PCCs or otherwise. Unless strong effective regulatory regime is in place, and shortcomings identified and remedied to expect clean environment would be unrealistic and merely a dream.

Re(iv): <u>What are the conclusions and what are the directions required to be issued by this Tribunal?</u>

54. The above observations lead us to conclude as follows:

i. CETP operator and the concerned industrial units have failed to comply with the pollution norms and are required to be made accountable for their failure within the framework of the regulatory regime with the assistance of experts making the CPCB as nodal agency to determine the extent of damage caused to the environment and cost of restoration.

ii. The CETP and polluting industrial units must be required to deposit an interim amount for damage to the environment and for the cost of restoration pending further orders to be passed in the light of Expert Committee Report proposed to be constituted.

iii. Functioning of CETP in the country generally calls for review in view of the fact that there are large number of failures in the existing CETP mechanism, as earlier noted. The abovementioned cases cannot be taken to be only isolated

cases. As many as 100 industrial clusters have been identified by the CPCB itself as critically polluted which supports the need for review.

iv. The regulatory regime in the form of SPCBs has not been as effective as expected as noted by the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors*. (supra). This is partly on account of appointments not being upto the mark as well as absence of audit of performance and monitoring mechanism. This needs to be remedied in light of performance audit and study by an Expert Committee.

55. Accordingly, we direct as follows:

(i) We direct constitution of following Committee to assess the extent of damage and cost of restoration of the environment and individual accountability of CETP and polluting industrial units:

a) Representative of CPCB.

b) Representative of IIM, Ahmadabad.

c) Nominee of IIT, Ahmadabad.

d) Scientist nominated by NEERI.

e) Representative of GPCB.

(i.a) The Committee may give its report within three months. The Committee will be entitled to take any factual or technical inputs in the manner found necessary. CPCB will be the nodal agency for the purpose. The Committee may also suggest steps for restoration of the environment.

(i.b) The Committee may give hearing to the CETP operator and the units identified as polluting by the GPCB for which list will be furnished by the GPCB to the Committee indicating the period and nature of default within one month.

(i.c) The GPCB may inform the defaulting units for compliance of this order.

(i.d) The Committee may also consider data already available with it since the affidavit filed by the CPCB does indicate availability of such data with the CPCB.

(i.e) The GPCB may also consider exercise of its statutory powers of prosecution which power is coupled with duty.

(ii) Having regard to entirety of factual situation in the present case, we direct that except the green and white categories of industries, other category of defaulting industries connected to the CETP must make deposit with the CPCB, towards interim compensation within one month as follows:

a) Large Industries – Rs. 1 Crore each.

b) Medium Industries – Rs. 50 Lakhs each.

c) Small Industries – Rs. 25 Lakhs each.

(ii.a) The CETP may deposit a sum of Rs. 10 Crores with the CPCB towards interim compensation within one month.

(iii) The amount may be utilized by the CPCB for restoration of the environment.

(iv) The CPCB shall undertake jointly with GPCB extensive surveillance and monitoring of CETPs and at regular interval of three months and submit its report to this Tribunal.

(v) We direct constitution of following Committee to review the functioning of the CETP in the country and to suggest modifications, if necessary:

a) Representative of the MoEF&CC.

b) Representative of the CPCB.

c) Representative of NEERI.

(v.a) The representative of the CPCB will be the nodal agency. The report may be furnished within three months.

(vi) The CPCB may conduct Performance Audit of all the SPCBs and Pollution Control Committees (PCCs) within six months by constituting appropriate expert inspection teams and furnish a report to this Tribunal. The CPCB may consider making Performance Audit at suitable intervals a regular feature of its working.

(vii) We direct the MoEF&CC to constitute a three-member Expert Committee to consider steps to be taken to comply with the mandate of directions of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors. (supra)* and suggestions for improvement, if any to remedy the existing deficiencies in the effective functioning of the regulatory bodies for meaningful protection of the environment.

(vii.a) The Committee may suggest guidelines for functioning of the SPCBs and broad steps required for bringing air and water quality in polluted stretches and cities and industrial clusters and coastal/eco-sensitive zones within the prescribed norms and measures to be adopted, including recovery of damages, prosecution of offenders, restitution of contaminated and degraded environmental sites.

(vii.b) The report of the Committee may be furnished before the next date.

(viii) The CPCB may consider issuing appropriate directions in exercise of its statutory powers in the light of expert studies which may be carried out.

56. Copy of the order may be sent to CPCB by email and all reports in pursuance of the above directions be sent to this Tribunal at filing.ngt@gmail.com

List for further consideration on 19.08.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 11, 2019
Original Application No. 95/2018
DV

Annexure - B

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). /2019
(@ CIVIL APPEAL Diary No(s). 5264/2019)

VAPI INDUSTRIES ASSOCIATION APPELLANT(s)

VERSUS

ARYAVART FOUNDATION & ORS. RESPONDENT(s)

O R D E R

Permission to file appeal is granted.

The National Green Tribunal (NGT) has vide impugned order inter alia passed the following directions:

> (ii) Having regard to entirety of factual situation I n the present case, we direct that except the green and white categories of industries, other category of defaulting industries connected to the CETP must make deposit with the CPCB, towards interim compensation within one month as follows:
>
> a) Large Industries – Rs.1 Crore each.
> b) Medium Industries – Rs.50 Lakhs each.
> c) Small Industries – Rs.25 Lakhs each.
>
> (ii.a) The CETP may deposit a sum of RS.10 Crores with the CPCB towards interim compensation within one month."

The NGT has also constituted a Committee to assess the extent of damage and cost of restoration of the environment and individual accountability of CETP and polluting industrial units. The said Committee has to take the aforesaid task. On that basis it is the

Signature Not Verified
Digitally signed by ASHWANI KUMAR
Date: 2019.12.27 15:14:39 IST
Reason:

submission of Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the appellant, that till the time it is established that an industry is a polluting industry, there could not have been any direction to pay the interim compensation. It is also submitted that the appellant was not even a party and, therefore, could not make any submission. This fact is disputed by Mr. Raj Panjwani, learned senior counsel appearing on behalf of the respondents, stating that respondent no. 7 manages the CETP of which all these industrial units are the members. Mr. Ranjit Kumar, submitted that all the industrial units are not members.

Be that as it may, since the Committee constituted by NGT has to undertake the exercise of fixing the responsibility of individual polluting industrial unit, we make it clear that the aforesaid direction of interim compensation is subject to the final outcome of the report that would be submitted by the Committee. To put it otherwise, in case, it is held that a particular industrial unit has not caused any pollution it would be entitled to claim the refund of the interim compensation. At this stage, Mr. Ranjit Kumar submits that many small industrial units are not in a position to pay Rs.25 lakhs by way of interim compensation because of the financial crisis which they are facing. He has also pointed out that in respect of these units, they had submitted bank guarantee which stood forfeited as well. Such industrial units may approach the NGT with the facts and figures by making an appropriate application for the waiver of the direction for payment of interim compensation. Once such an application is made the same shall be

considered by the NGT on its own merits. We make it clear that this Court has not expressed any opinion on such application.

Since permission is given to the industries to approach the NGT, the direction in respect of interim compensation contained in the impugned order is stayed for a period of two weeks.

The appeal is disposed of accordingly.

.....J.
[A.K. SIKRI]

.....J.
[S. ABDUL NAZEER]

NEW DELHI;
FEBRUARY 22, 2019.

ITEM NO.34 COURT NO.2 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 5264/2019

(Arising out of impugned final judgment and order dated 11-01-2019 in OA No. 95/2018 passed by the National Green Tribunal)

VAPI INDUSTRIES ASSOCIATION Petitioner(s)

VERSUS

ARYAVART FOUNDATION & ORS. Respondent(s)
(FOR ADMISSION and IA No.26796/2019-STAY APPLICATION and IA No.26795/2019-PERMISSION TO FILE APPEAL and IA No.28351/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 22-02-2019 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Ranjit Kumar, Sr. Adv.
Mr. Pinaki Mishra, Sr. Adv.
Mr. Mandeep Kalra, Adv.
Mr. Sandeep Mishra, Adv.
Mr. Nitesh Shrivastava, Adv.
Mr. Nishant Shankar, Adv.
Ms. Isha Khurana, Adv.
Mr. Rameshwar Prasad Goyal, AOR

For Respondent(s) Mr. Raj Panjwani, Sr. Adv.
Dr. Surender Singh Hooda, AOR
Mr. Jitendar Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Permission to file appeal is granted.

The appeal stands disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI KUMAR) (RAJINDER KAUR)
COURT MASTER (SH) BRANCH OFFICER
(Signed order is placed on the file)

Annexure - C

Item No.11 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. Nos. 176/2019 to 187/2019, I.A. Nos. 190/2019 to 207/2019,
I.A. Nos. 227/2019 to 238/2019 & I.A. No. 263/2019
IN
Original Application No. 95/2018

Aryavart Foundation Applicant(s)

Versus

M/s Vapi Green Enviro Ltd. & Ors. Respondent(s)

Date of hearing: 09.04.2019

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

For Applicant(s): :Mr. Gopal jain, Sr. Counsel, Mr Mandeep Kalra, Mr. Sandeep Mishra, Advocates
Mr. Jitendar Singh,Advocate, Mr. A.R Mihsra Applicant in person.

For Respondent (s): Mr. Nishant Shankhar, Mr. Nitesh Shrivastava, Ms. Isha Khurana, Advocates
Mr. Dhruv Pal, mr. Himanshu Pal, Advocates for GPCB
Mr. Shlok Chandra, Mr. Ritesh Kumar, Mr. Jatin, Advocates,

ORDER

It is stated that in pursuance of the order dated 11.01.2019, report of the Central Pollution Control Board (CPCB) will be filed within four weeks.

The report may also be placed on the website of CPCB.

List the matter for further consideration 13.05.2019.

Status quo with regard to requirement of deposit may continue.

The date already fixed on 19.08.2019 stands modified.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

April 09, 2019
I.A. Nos. 176/2019 to 187/2019, I.A. Nos. 190/2019 to 207/2019, I.A. Nos. 227/2019 to 238/2019 & I.A. No. 263/2019
IN
Original Application No. 95/2018
AK

Annexure - D

Item No.03 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 95/2018
(M.A. No. 1029/2018, I.A. Nos. 176/2019 to 187/2019,
I.A. Nos. 190/2019 to 207/2019,
I.A. Nos. 227/2019 to 238/2019,
I.A. No. 263/2019 & I.A. No. 326/2019)

Aryavart Foundation Applicant(s)

Versus

M/s Vapi Green Enviro Ltd. &Ors. Respondent(s)

Date of hearing: 13.05.2019

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

For Applicant (s): Mr. Raj Pangwani, Sr. Advocate, Dr. Surender S. Hooda, Mr. Jitender Singh, Advocates

For Respondent(s): Mr. Dhruv Pal for GPCB
Mr. Shlok Chandra
Mr. Pinaki Mishra, Sr. Advocate, Mr. Mandeep Kalra, Mr. Sandeep Mishra, Advocates for Industries
Mr. Gopal Jain, Sr. Advocate, Mr. Nishant Shankar, Mr. Nitesh Srivastva, Mr. Mandeep Kalra, Advocates for CETP

ORDER

INTRODUCTION:

1. The remedial measures against pollution of river Daman Ganga and drain *Bill Khadi* in District Valsad in Gujarat and action against polluting industries and the non-compliant CETP, respondent No.1, is the question for consideration.

BACKGROUND

2. According to the applicant, pollution is being caused by discharge of untreated polluting industrial effluents by more than 500 industrial units in Vapi Industrial Cluster. The CETP operator, Respondent No. 1, M/s. Vapi Green Enviro Limited (Old name – Vapi Waste & Effluent Management Co. Ltd.) and the defaulting individual industrial unit are liable to be rendered accountable by way of prohibitory and remedial measures. The river and the drain in question are required to be restored. The applicant has referred to a study carried out in February, 2017 by NEERI finding huge water pollution in the river as follows:-

> *"The fish bioassay study on the final treated effluent sample discharged from Vapi CETP into the river indicates 100% mortality at 50, 75 and 100% waste water concentrations within 24 h exposure time (Plate 4.56). The experimental results presented in Table 9.6 reveal toxic nature of the treated effluent from Vapi CETP. Thus, it can be concluded from the fish bioassay study that the final treated effluent from Vapi CETP with high colour intensity, organic and inorganic matters is having toxic effect on aquatic life of Daman Ganga River. Therefore, Vapi CETP effluent must be treated adequately to remove the pollution parameters before discharging into Daman Ganga River.*
>
> *The final treated effluent discharge from the existing Vapi CETP (D-11A) has not only caused deterioration of the river water quality with respect to the colour and recalcitrant parameters but also has imparted toxic*

*effect on aquatic life of Daman Ganga River (segment-II). Therefore, Vapi CETP must be scientifically upgraded for colour and recalcitrant pollutants removal including reject management with a final aim of achieving zero liquid effluent discharge as delineated under Section 11.0. This will result in recovery of good quality water, which can be reused as process water by the industries, leading to fresh water conservation.***"**

3. The Gujarat Pollution Control Board (GPCB) carried out inspection on several dates which confirmed pollution. Notices were issued under Sections 33A and 25 of the Water (Prevention and Control of Pollution)Act, 1974 (Water Act) and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) to the erring parties but no satisfactory result was received and pollution beyond statutory norms continues.

EARLIER PROCEEDINGS:

4. This Tribunal reviewed the matter at length vide order dated 11.01.2019 for preventive and remedial measures in the matter. The Tribunal heard the applicant, the CETP Operator, the CPCB, the GPCB and also some of the polluting units who were before the Tribunal. Following questions were framed vide order of this Tribunal dated 11.01.2019:

> **"***i. Whether the CETP operator and its member units have failed to comply with the conditions of consent and norms of environment and caused pollution? If so, the manner in which they are to be held accountable?*
> *ii. Does the functioning of CETP in the present case and of CETPs in general in the country calls for review and modification?*

iii. *Whether the State Pollution Control Board in the present case and regulatory authorities have not performed their duties as per the expectation and if so, what are the steps necessary to achieve the objects for which the Pollution Control Boards/Committees have been constituted under the Water Air and the Air Act?*

iv. *What are the conclusions and what are the directions required to be issued by this Tribunal?***"**

5. With reference to question no. 1, it was held that CETP operators and member units had failed to comply with the conditions of consent in view of inspection reports dated 28.09.2018 and 10.01.2019 and in the circumstances 'Polluter Pays' principle can be invoked by the statutory regulatory authorities to determine the extent of accountability of the industrial units. The report dated 28.09.2018 showed:-

> *"It is observed that Inlet quality - COD, NH3-N and TSS are not meeting with inlet norms whereas COD and TSS at outlet of CETP are not meeting with Outlet norms.*
>
> *CPCB, RD, Vadodara carry out quarterly monitoring of CETP, Vapi. The latest monitoring carried out on 11.08.2018 and results are provided at Annexure-III. It is observed that Inlet quality - TSS, FDS, BOD, COD and NH3-N are not meeting with inlet norms whereas TSS, FD, COD, NH3-N & Phenols at outlet of CETP are not meeting with outlet norms.*
>
> *M/s VGEL (CETP) reportedly takes internal actions among the defaulting member units as per M/s VGEL monitoring but so far not provided the list of defaulting industries to GPCB though it is expected as per the Hon'ble NGT Order dated 29.08.2018, and also as per notices of direction issued by GPCB.*

M/s VGEL (CETP) has not provided any action plan to comply with both inlet as well as outlet norms during the above review."

6. Report dated 10.01.2019 aslo confirmed non-compliance at frequencies noted in the report with reference to the relevant parameters. The fact that untreated effluents were being discharged into the water bodies was not only reported by CPCB and GPCB but also accepted by the CETP operator. The stand of GPCB was that Notice has been issued to CETP operator as well as defaulting industrial units for remedial action.

Accordingly, a Committee was constituted to hear the individual polluting units and to quantify the amount of liability.

7. Under the issue no. 2, after referring to several cases considered by the Tribunal, it was held that there was large scale failure of CETP systems in general in the light of observations of the Tribunal, an Expert Committee was required to review the same.

8. Under issue no. 3, the Tribunal found failure of mechanism of Pollution Control Boards in ensuring pollution free environment which is the mandate of the Constitution and the object of Water Act, Air Act, the Environment (Protection) Act, 1986 and other such laws. The fact that 351 river stretches are identified as polluted by the CPCB, 102 cities in terms of air quality are identified as non-attainment cities and 100 industrial clusters have been identified as polluted is clear evidence of failure of compliance of environment

norms and ineffectiveness of the present statutory bodies constituted with that mandate. Proceedings in the present case established the failure of Gujarat State Pollution Board in performing its duty of preventing pollution and taking adequate remedial action against polluters. In spite of severe pollution, no conviction was reported. Polluters were not shown to have been prosecuted. It was noted that the Hon'ble Supreme Court in *TechiTagi Tara Vs. Rajendra Singh Bhandari&Ors.*[1]and also the Parliamentary Standing Committee on Science and Technology, Environment and Forest had found the failure of pollution boards. Still, adequate remedial measures were not being taken by the concerned authorities by way of legislative or executive intervention. Clean Environment being part of Fundamental Right and 'Sustainable Development', 'Precautionary principle' and 'Polluter Pays principle' being statutorily required to be enforced by this Tribunal under Section 20 of the National Green Tribunal Act, 2010 (NGT Act), to prevent and remedy the acknowledged level of high pollution in the country resulting in death and diseases, the Tribunal held that there was need for Performance Audit being conducted in respect of functioning of all the PCCs and PCBs of the Country and in the light of such findings, further action was required. The directions issued vide order dated 11.01.2019 include that constitution of a Committee to review functioning of CETPs comprising representatives of MoEF&CC, CPCB and NEERI and Performance Audits by CPCB of all the SPCBs and PCCs,

[1] (2018) 11 SCC 734

constitution of a three Member Expert Committee by the MoEF&CC to consider compliance of mandate of the law laid down by the Hon'ble Supreme Court in *TechiTegi Tara* (*supra*), to suggest guidelines for effective working of SPCBs to bring air and water quality within norms.

9. Under issue no. 4, it was concluded that the CETP operator and the concerned units had failed to comply with the environmental norms and were required to be made accountable within the framework of the regulatory regime. The Regulatory regime provides for preventive as well as remedial action of prohibiting polluting activities, including closure, prosecution as well as recovery of compensation on 'Polluter Pays' principle. Pending such action, interim amount of damage for the pollution already caused so as to recover cost of restoration based on *prima-facie* opinion could be recovered. CETP mechanism was required to be reviewed and so was the functioning of the regulatory regime in the form of SPCBs. Accordingly, the Tribunal directed constitution of a Committee to assess the extent of damages, payment of interim compensation by CETP operator as well as erring industries which was to be utilized by the CPCB for restoration. The Tribunal directed performance audit of all the SPCBs/PCCs and also directed to review of regulatory mechanism in the light of observations of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors., (2018) 11 SCC 734.*

ORDERS OF HON'BLE SUPREME COURT:

10. Vide order dated 22.02.2019 in *C.A No.002399 of 2019 (Diary No. 5264/2019)*, the Hon'ble Supreme Court permitted the defaulting industries which were required to pay interim compensation, in the category of small industrial units, and were unable to pay Rs. 25 Lakhs because of financial crisis to approach this Tribunal for seeking waiver of the direction which was to be considered by this Tribunal. The Hon'ble Supreme Court suspended the direction for payment for two weeks to enable the Tribunal to consider the matter. The Hon'ble Supreme Court did not express any opinion on merits. In view of order of the Hon'ble Supreme Court, this Tribunal, vide order dated 09.04.2019, directed *status quo* about the requirement of deposit granted by the Hon'ble Supreme Court to continue till hearing so that the Tribunal could consider the matter.

PRESENT PROCEEDINGS:

A. SUMMARY OF REPORT DATED 09.05.2019:

11. The report of the Committee has been furnished vide email dated 09.05.2019 as is also available on the website of the Central Pollution Control Board (CPCB) and with the parties before the Tribunal.

12. We may make a brief reference to the report of the Committee. The details of the industries of the Vapi industrial area are given in Chapter 2. 78% industries are red category industries while the remaining 22% are orange and green category industries and category and scale wise breakup is as follows:

"

Category	Small	Medium	Large	Total
Red	522	41	64	627
Orange	125	3	1	129
Green	133	1	3	137
Total	780	45	68	893

"

13. Sector wise distribution of industries is as follows:

"

Different Sectors	Number
Chemicals	290
Dyes & Dyes Intermediates	113
Textile	57
Pulp & Paper	40
Pharmaceuticals	30
Pesticides	16
Others	347

"

14. As regards CETP performance, the Committee noted as follows:

"The yearly average inlet COD data over the last five years is far above the permissible inlet limit (1000 mg/l) except for the year of 2016 (Figure 3.1). Similarly, average outlet COD data over the last five years are above the permissible limit (250 mg/l). Figure 3.2 shows that in 2016 when inlet COD level is below the prescribed limit (as per GPCB data), CETP was able to maintain the discharge quality i.e, outlet COD (260 mg/l) very close norm (250 mg/l). Though, there is an improvement over the years, CETP could not maintain the discharge norm continuously. Thus, it is imperative that CETP should strictly maintain its inlet COD norm well below prescribed inlet norm 1000 mg/l."

15. With regard to damage to the river water body, it was observed:

"***4.1.4 DAMAGE TO RIVER WATER QUALITY-PHYSICOCHEMICAL ENVIRONMENT (BASED ON PHYSICOCHEMICAL CHARACTERISTICS OF RIVER WATER)***

❑ *As shown in the Table 4.1, the pH, and D.O., BOD ranged between 7.2-7.8, 4.1 - 6.1 mg/l, 2.0 -3.0 mg/L respectively.*

❑ *TDS of the river water ranged from 678 mg/l near Jari causeway to 12,890 mg/l at Daman Jetty. The TDS concentration below the bridge near CETP outlet is 680 mg/l among the sampling points. The river TDS is anticipated to increase in salinity concentrations from riverine zone to estuarine zone and then sea.*

❑ *The concentration of COD was higher below the bridge near CETP outlet (33 mg/l) which reduces to 23 mg/l near Jari causeway and 27 mg/l near the Daman Jetty. This is attributed to the CETP final treated effluent discharge, as the concentration of COD at Upstream side i.e. GIDC weir is 10 mg/l.*

❑ *The colour of the river samples collected ranged between dark brown (1500 HU) at the CETP outlet to pale yellow (75 HU) near the Daman Jetty based on CSIR-NEERI's report. Other parameters from the same report are as follows.*

- *Ammonia (N), fluoride, nitrate and phenols concentrations are in the• range of BDL-3.9 mg/l, 0.007-0.35 mg/l, 0.06-27.03 mg/l and 0.1- 12.87mg/l respectively.*
- *Total Kjeldhal Nitrogen (TKN) and total Phosphates are in the range of• 9.53-67.32 and 0.07-29.89 mg/l respectively.*
- *Concentrations of sodium ions at sampling point ranges between 96• (Jerry Causeway) - 3200 mg/l (Daman Jetty) with near CETP outlet concentrations of Sodium at 312 mg/L.*

- *Concentrations of chlorides at sampling point ranges between 312• (Near CETP outlet) - 8807 mg/l (Daman Jetty). Concentration at Jerry Causeway of Chlorides is 313 mg/L. This closely follows higher concentrations near the CETP outlet and decreasing downwards. The sodium and chlorides concentrations are expected to increase near the estuarine/Marine zone.*
  This is a clear indication of industrial pollution positively due to CETP Vapi.

As observed from results of CPCB, GPCB (Appendix 6A , 6 B), there is increase in concentration of pollutants after CETP discharge at Namdha and Jari Causeway along the Damanganga river with respect to water quality at GIDC weir (which can be considered as almost river water without effect of pollution). This shows that there is damage to water quality of River Damanganga.

Polluted river stretches have been divided in five priority categories i.e. I, II, III, IV & V depending upon the levels of BOD. As per CPCB Report - "River Stretches for Restoration of Water Quality", CPCB, Sept 2018 and February 2015, river stretch- Kachigaon to Vapi (GIDC weir to Jari Causeway) of river Damanganga is Priority-IV where as it was Priority-II as per CPCB Report in 2010 (Priority - I being most polluted and Priority -V being best rating). This means, the river stretch is improving over time, but still there are pollutants as evident from the above data."

16. The Committee also noted that the local community was not undertaking fishing activity downstream the CETP discharge. There was no fishing catch in the stretch. Fish mortality was observed at 75% and 100% wastewater concentration. After an exposure of 72 h, the recorded fish mortality was 20% for the sample with 75% wastewater, whereas 100% fish mortality was recorded during 96 h

of exposure. In 100% wastewater concentration fish mortality registered was 20%, 80% and 100% within exposure time of 48, 72 and 96 h respectively. Fish mortality rate was very high at 100% compared to 75% wastewater concentration indicating presence of toxic constituents in the CETP discharge. Presence of pollutants discharged from the CETP outlet affected the biological environment.

17. On the subject of evaluation of damages, the Committee considered the direct benefit transfer method and shadow cost of Pollution Load and Benefit Transfer Method. The Committee opted to go by the shadow cost of Pollution Load and Benefit Transfer Method and assessed the cost of damages per year and assessed the damages as follows:

"Table 4.10: total Yearly Damages from Each Pollutant

Year	Damage Cost in Crore (expressed in 2018 Rs)				
	COD	BOD	TSS	N	Total
2013	5.08	0.26	0.07	10.31	15.72
2014	4.85	0.42	0.06	13.44	18.77
2015	2.72	0.00	0.00	0.51	3.23
2016	0.52	0.00	0.00	2.55	3.07
2017	0.52	0.01	0.00	13.23	13.76
2018	0.53	0.01	0.00	11.91	12.45
Total in Last 6 years in Rs. Crore					67.00
Average damage in each year (due to excess discharge) in					11.17

Therefore using Approach II, (Table 4.10) a cumulative damage of Rs. 67.00 Crore has been estimated due to excess discharge of pollutants in the river ecosystem in last six years between 2013- 2018. Yearly damages range from Rs. 3.07 Cr/yr to 18.77 Cr/yr with an average of Rs. 11.17 Crore damage to environment in each year."

18. The cost of restoration of the river was assessed to be between Rs. 731 to 751 Crores. Liability of the defaulting industries was made in respect of 44 defaulting industries of which list was given to the Committee to the GPCB. Contribution of the said 44 industries was found to be miniscule as out of 55 MLD of CETP, the said industries were contributing only 2.2 MLD (about 5%). Thus, for industries contributing 95% of pollution, no assessment of damage has been made. The Committee followed the following formula:

EC = (PI ×N ×R ×S ×LF)

Where, EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector
N = Number of days of violation took place
R = A factor in Rupees (Rs) for EC
S = Factor for scale of operation
LF = Location factor

19. For applying the above formula, variables were taken as follows:

N = Number of days of violation took place for which violation took place is the period between the day of violation observed and the day of compliance verified by PCB/SPCB/PCC

R = A factor in Rupees (Rs) which is a minimum of 100 to maximum of 500. R is considered as Rs 100 for small industries, Rs 300 for medium and Rs 500 for large scale industries including CETP

S = Factor for scale of operation. For small S = 0.5, For medium S = 1 and larger unit S = 1.5

LF = Location factor.

20. The conclusion of the Committee was that there is increase in concentration of pollutants:

"As observed from results of CPCB, GPCB and NEERI, there is increase in the concentration of pollutants post CETP discharge at Namdha and Jari Causeway along the Damanganga river vis-a-vis river water quality at GIDC weir (which can be considered as river water without effect of pollution). Aesthetically, the impact of pollution in the river Damanganga is observed for about 13 km from Vapi weir. This is supported by the CSIR-NEERI Report (2016-2017). The report also stresses on the toxicity of the CETP wastewater on the to fish. Based on the Interactions with local community and Fisheries Department of UT of Daman & Diu, it was conveyed that fishing is not carried out on the stretch downstream of CETP discharge due to river pollution. However data on marine fish catch in the sea near Daman is available.

Also based on the historical data of CPCB, the quantum of pollution load indicated decreasing trend of major pollutants such as COD and BOD over the years. This is in line with the improvement in the quality of treated effluent of CETPthough CETP is not meeting with outlet standards for parameter COD, TDS, and Colour. Hence, upgradation of CETP treatment scheme

is paramount to reduce pollution reaching the river Daman Ganga. There is improvement in the river water quality as per priority categorisation from Priority - II (2010) to Priority - IV (2015 & 2018) as inferred from CPCB report for the river stretch: Kachigaon to Vapi (GIDC weir to Jari Causeway (Priority - I being most polluted and Priority -V being best rating).Though, river stretch falls under Priority IV (based on BOD), presence of other pollutants discharged from the CETP outlet affected the biological and physicochemical environment of the river.

The impact on the coastal marine environment (4 beaches- Tadgam, Jampore, Devka and Tithal) due to industrial discharges through rivers/drains in the area assessed by National Institute of Oceanography (NIO) (2018) and report has stated that there is no evidence of significant deterioration of environmental quality of the beachfront environment. The waters of these 4 beaches contained high load of fecal coliform (FC) in water and sediment suggesting contamination by sewage. The study conducted by CSIR-NEERI also indicated pesticides concentrations at levels below the detectable levels of instrument analysis.

In view of the consideration of the steps for the restoration of the environment of river Damanganga suggested based on treatment of pollutants and discharge as per environmental norms, the cost of restoration comes about Rs. 751 crore for over ground pipeline network from industries to GIDC manhole/sump, quality & quantity monitoring SCADA system, upgradation of CETP, construction of STPs, management of MSW in the area.

*As there are many methods for environment damage estimation and all of them use reasonable assumptions, the committee has used two different approaches to calculate the damage. While Approach - I is based on the economic valuation of eco-services rendered by the river considering a representative critical pollutant (COD) for damage estimation. Approach-II is based on the CETP discharge outlet norms for the pollutants: COD, NH3-N, TSS, and BOD, independent of river water quality. Using two alternative methods the cumulative economic damages are estimated to be in a comparable range (**INR 41.61 Cr for the Approach-I and INR 67.00 Cr for Approach-II during the year 2013 to 2018**).*

*Using the recent six years (2013-2018) data and employing two alternate methods, the yearly average economic damages are estimated to be in the comparable range of **INR 6.93 Cr/year (Approach-I) and INR 11.17 cr/Year (Approach-II)**."*

21. As regards individual polluting units, the compensation was assessed at Rs. 4.44 Crores as per details in Appendix-3 and Appendix-8. A brief reference to Appendix-8 shows that in respect of Amardeep Chemical Industries Pvt. Limited the period of default has been taken to be 23 days, taking the date of inspection when pollution is detected as the starting point and the date of alleged compliance as the end point.

B. <u>CONSIDERATION OF THE REPORT:</u>

22. Learned Counsel for the applicant submits that the approach of assessing damages only for the period after inspection permits

ignoring the pollution for entire period by an erroneous presumption that no pollution was caused till inspection was done. There is fundamental error in Committee presuming that date of inspection is the starting point for liability and not the entire period of pollution. The 'Polluter Pays' principle requires the polluter to pay for the entire period of pollution which needs to be assessed in every individual case in the light of circumstantial evidence and the probabilities. Reliance has been placed on order of this Tribunal dated 29.04.2019 in *O.A. No. 116/2014, Meera Shukla Vs. Municipal Corporation, Gorakhpur & Ors.* wherein it was observed:

> *"9. The UPSPCB may assess the amount of compensation applying the formula laid down by the CPCB not only for the days mentioned in the report of the CPCB but for the actual days of violation from the beginning but not beyond five years from the date of calculation."*

23. As regards the scale laid down by the CPCB, it was submitted that the same is tentative and subject to the rider that the cost of restoration is not. It does not change the basic norm that compensation for damage to environment has to be enough to meet the cost of restoration and has to be deterrent. Polluter cannot profit at the cost of victim. Victim is not to bear the cost of restoration. It is to be borne by the polluter. In this case the cost of restoration is going to be huge and it cannot be said that the polluter is to bear only Rs. 4.44 Crore and rest is to be borne by the victims. This will be perversity and travesty of justice. Non-payment of interim compensation should lead to detention of

owners/directors in civil prison under Section 25 of the NGT Act read with Section 51 of C.P.C.

24. Learned Counsel for the applicant also points out that the Committee has not factored in the level of pollution based on category of industries as red, orange and green which depends on pollution protentional. Even a small industry may be causing more pollution than large industry. Merely categorization large, small and medium without considering the extent of pollution on account of nature of activity of such industry is not correct application of the 'Polluter Pays' principle. The cost of restoration having been found to be more than Rs. 750 Crores which includes multiple of factors. The cost estimate for River Restoration Programme which includes CETP upgradation, STP and MSW facility. The Committee has undertaken economic valuation and damage assessment by two methods. By following 'shadow cost of pollution load and benefit transfer method' the cumulative damage of Rs. 67.00 Crores has been estimated due to excess discharge of pollutants in river ecosystem in last six years between 2013-18 with average damage of Rs. 11.17 Crores each year to the environment. However, by following 'Direct Benefit Method' which is based on The Economics of Ecosystem and Biodiversity (TEEB) project set up in 2007 and led by United Nations Environment Programme (UNEP) the damage that can be attributed to pollution from CETP in excess of stipulated standard of COD comes to Rs. 41.61 Crores for six years. Right application of the 'Polluter Pays' principle requires that the polluter should be required

to pay the cost of restoration. The compensation to be recovered should be deterrent. In the present case, compensation has been based on a formula worked out by the CPCB which cannot be universally applied without reference to cost of restoration and may be deficient in the present case having regard to the high cost of restoration. The amount of compensation should on account of wide spread pollution broadly also correspond to the cost of restoration which has not been done.

25. The Committee has assessed compensation only for 44 units while the number of polluting units is more than 500. GPCB failed to give list of all the polluting units. GPCB has not acted on 'Precautionary' principles by closing the polluting units. Reliance has been placed on the order of this Tribunal dated 09.04.2019 in *O.A. No. 125/2018, Arvind Pundalik Mhatre Vs. Ministry of Environment and Forest & Climate Change & Ors.*, wherein this Tribunal in similar circumstances directed closure of polluting units to uphold the mandate of the Water (Prevention and Control of Pollution) Act, 1974. It was observed as follows:

> *"14. Accordingly, we direct the MPCB to forthwith suspend the Consent to Operate to the industries in the area not meeting the norms and permit them to operate only after remedial steps are taken. Steps in this direction be taken within two weeks from today. Whether a particular industry is complying or not complying with the norms is the matter to be decided by the MPCB in accordance with law. Action taken report be furnished to the Committee and the Committee may take a final call in the matter, in case of any surviving issue."*

26. In the present case in spite of acknowledged pollution, the polluting units are continuing. There is no material to show launching of

prosecution. The approach of the GPCB is, thus, patently soft towards the violators of law which itself shows failure of the regulator to protect and restore the environment.

27. Learned Counsel for the GPCB, CETP operators and the industrial units have not been able to show any justification for the approach of applying the 'Polluter Pays' principle only to the period post inspection as can be seen from Para 21 above nor they are able to show justification for not including all polluters or to justify grossly disproportionate compensation. There is no rebuttal to the contentions raised on behalf of the applicant.

28. Question for consideration is whether report of the Committee to the extent compensation is assessed only for the post inspection default and not for the entire period of pollution and to the extent the same is not deterrent and unrelated to the cost of restoration needs to be reconsidered.

29. Answer has to be in the positive. We find merit in the submissions of the learned Counsel for the applicant. It is well known that there is online monitoring mechanism and water qualities are recorded which can be the basis for liability irrespective of the physical inspection. In the present case, the pollution is taken only from 28.02.2018 which was the date of next inspection and ended on 22.03.2018, it is assumed that the pollution without any study of the actual period of pollution. Similar is the error in respect of calculation of compensation with respect to all the units. We are

also informed that except one year, period of pollution in the last five years has been totally ignored, contrary to the order of this Tribunal. Quantum assessed has no correlation to the cost of restoration.

30. We find merit in the submissions that the compensation to be recovered should be deterrent and should have some correlation with the cost of restoration.

31. Accordingly, we direct the Committee to make fresh calculation based on actual period of pollution during five years preceding 26.02.2018, the date on which this application was filed i.e. from 26.02.2013 till the date of calculation. The Committee has only gone by the category of large, small and medium industry and not by the extent of pollution by the category of the industry concerned as red, orange and green. The Committee may also keep in mind the need to corelate the compensation to be recovered to the cost of restoration in the facts of the present case. The GPCB should furnish list of all the polluting units. We find that the approach of the GPCB has been too soft and adequate action has not been taken against the law violators by way of prosecution and closure of polluting activities which is a failure of the regulator. If cost of restoration is not recovered from polluters, the regulator and not the victim should be responsible for the loss.

32. In view of the material on record appearing from the report extracted above, *prima facie*, direction to deposit interim compensation in terms of order dated 11.01.2019 is fully justified and needs no

change. It is patent that the interim amount fixed by this Tribunal may not only be inadequate to meet the loss caused by pollution and the cost of restoration. The prayer for waiving the requirement of interim deposits has no merit and is dismissed. I.A. Nos.176/2019 to 187/2019, I.A. Nos. 190/2019 to 207/2019, I.A. Nos. 227/2019 to 238/2019, I.A. No. 263/2019 said to be for variation of order dated 11.01.2019 will stand dismissed.

33. Fresh report of the Committee may be furnished within two months by e-mail at ngt.filing@gmail.com. Any further submissions of the parties may be given to the Committee through CPCB. We also add a representative of MoEF&CC to the Committee for making the assessment.

34. GPCB may furnish list of all the polluting units in addition to list of 44 units earlier given and online data as may be necessary to determine damages for period from 13.02.2013 till date to the Committee and perform its duties as regulator in respect of CETP as well as all defaulting units by way of closure to stop polluting activities and prosecution for the violation of law which had already done.

35. In terms of order dated 11.01.2019 and the above order, following steps may be completed:

i. Report be submitted for review of functioning of CETPs in the country as per direction in Para 55 (v) in order dated 11.01.2019. CPCB may coordinate.

ii. Performance audit of SPCBs/PCCs may be completed as per para 55 (vi) in order dated 11.01.2019.

iii. MoEF&CC may give status of report of steps to revamp the regulatory bodies as directed in para 55 (vii) and (vii.a) in order dated 11.01.2019.

iv. Compliance of requirement of deposits be made in terms of para 55 (ii) of order dated 11.01.2019 forthwith to the extent not made.

v. The Committee to assess the compensation and give its revised report within two months. MoEF&CC may nominate its representative as part of Committee constituted in terms of para 55 (i) vide order dated 11.01.2019.

A copy of this order be sent to the MoEF&CC by e-mail for compliance on its part. In case of non-compliance, the concerned Joint Secretary, MoEF&CC may remain present in person on the next date.

List for further consideration on 19.08.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

May 13, 2019
Original Application No. 95/2018
(M.A. No. 1029/2018, I.A. Nos. 176/2019 to 187/2019,
I.A. Nos. 190/2019 to 207/2019,
I.A. Nos. 227/2019 to 238/2019,
I.A. No. 263/2019 & I.A. No. 326/2019)
AK&A

Annexure - E

Item No. 01 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 95/2018
(M.A. No. 1029/2018 & I.A. No. 326/2019)

Aryavart Foundation Applicant(s)

Versus

M/s Vapi Green Enviro Ltd. & Ors. Respondent(s)

Date of hearing: 28.08.2019

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

For Applicant(s): Mr. Raj Panjwani, Sr. Advocate with Mr. Jitendar Singh, Advocate

For Respondent (s): Mr. Gopal Jain, Sr. Advocate, Mr. M.S Kalra, Mr. Sandeep Mishra, Advocates for R-1
Ms. Nidhi Jaswal, Advocate for GPCB
Mr. Ritvij Bhatt, Advocate for R-6
Mr. Shlok Chandra, Advocate for CPCB

ORDER

1. The question for consideration is remedial measures against pollution of river Daman Ganga and drain *Bill Khadi* in District Valsad in Gujarat on account of discharge of effluents by industries and CETP in Vapi Industrial Cluster.

2. The matter was earlier reviewed vide order dated 13.05.2019. It will be appropriate to refer to the relevant part of the said order:

"BACKGROUND

2. According to the applicant, pollution is being caused by discharge of untreated polluting industrial effluents by more than 500 industrial units in Vapi Industrial Cluster. The CETP operator, Respondent No. 1, M/s. Vapi Green Enviro Limited (Old name – Vapi Waste & Effluent Management Co. Ltd.) and the defaulting individual industrial unit are liable to be rendered accountable by way of prohibitory and remedial measures. The river and the drain in question are required to be restored. The applicant has referred to a study carried out in February, 2017 by NEERI finding huge water pollution in the river as follows:-

> ***"****The fish bioassay study on the final treated effluent sample discharged from Vapi CETP into the river indicates 100% mortality at 50, 75 and 100% waste water concentrations within 24 h exposure time (Plate 4.56). The experimental results presented in Table 9.6 reveal toxic nature of the treated effluent from Vapi CETP. Thus, it can be concluded from the fish bioassay study that the final treated effluent from Vapi CETP with high colour intensity, organic and inorganic matters is having toxic effect on aquatic life of Daman Ganga River. Therefore, Vapi CETP effluent must be treated adequately to remove the pollution parameters before discharging into Daman Ganga River.*
>
> *The final treated effluent discharge from the existing Vapi CETP (D-11A) has not only caused deterioration of the river water quality with respect to the colour and recalcitrant parameters but also has imparted toxic effect on aquatic life of Daman Ganga River (segment-II). Therefore, Vapi CETP must be scientifically upgraded for colour and recalcitrant pollutants removal including reject management with a final aim of achieving zero liquid effluent discharge as delineated under Section 11.0. This will result in recovery of good quality water, which can be reused as process water by the industries, leading to fresh water conservation.****"***

3. The Gujarat Pollution Control Board (GPCB) carried out inspection on several dates which confirmed pollution. Notices were issued under Sections 33A and 25 of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) to the erring parties but no satisfactory result was received and pollution beyond statutory norms continues.

EARLIER PROCEEDINGS:

4. This Tribunal reviewed the matter at length vide order dated 11.01.2019 for preventive and remedial measures in the matter.

The Tribunal heard the applicant, the CETP Operator, the CPCB, the GPCB and also some of the polluting units who were before the Tribunal. Following questions were framed vide order of this Tribunal dated 11.01.2019:

"i. Whether the CETP operator and its member units have failed to comply with the conditions of consent and norms of environment and caused pollution? If so, the manner in which they are to be held accountable?

ii. Does the functioning of CETP in the present case and of CETPs in general in the country calls for review and modification?

iii. Whether the State Pollution Control Board in the present case and regulatory authorities have not performed their duties as per the expectation and if so, what are the steps necessary to achieve the objects for which the Pollution Control Boards/Committees have been constituted under the Water Air and the Air Act?

iv. What are the conclusions and what are the directions required to be issued by this Tribunal?"

5. With reference to question no. 1, it was held that CETP operators and member units had failed to comply with the conditions of consent in view of inspection reports dated 28.09.2018 and 10.01.2019 and in the circumstances 'Polluter Pays' principle can be invoked by the statutory regulatory authorities to determine the extent of accountability of the industrial units. The report dated 28.09.2018 showed:-

"It is observed that Inlet quality - COD, NH3-N and TSS are not meeting with inlet norms whereas COD and TSS at outlet of CETP are not meeting with Outlet norms.

CPCB, RD, Vadodara carry out quarterly monitoring of CETP, Vapi. The latest monitoring carried out on 11.08.2018 and results are provided at Annexure-III. It is observed that Inlet quality - TSS, FDS, BOD, COD and NH3-N are not meeting with inlet norms whereas TSS, FD, COD, NH3-N & Phenols at outlet of CETP are not meeting with outlet norms.

M/s VGEL (CETP) reportedly takes internal actions among the defaulting member units as per M/s VGEL monitoring but so far not provided the list of defaulting industries to GPCB though it is expected as per the Hon'ble NGT Order dated 29.08.2018, and also as per notices of direction issued by GPCB.

M/s VGEL (CETP) has not provided any action plan to comply with both inlet as well as outlet norms during the above review."

6. Report dated 10.01.2019 also confirmed non-compliance at frequencies noted in the report with reference to the relevant parameters. The fact that untreated effluents were being discharged into the water bodies was not only reported by CPCB and GPCB but also accepted by the CETP operator. The stand of GPCB was that Notice has been issued to CETP operator as well as defaulting industrial units for remedial action.

Accordingly, a Committee was constituted to hear the individual polluting units and to quantify the amount of liability.

7. ***Under the issue no. 2, after referring to several cases considered by the Tribunal, it was held that there was large scale failure of CETP systems in general in the light of observations of the Tribunal, an Expert Committee was required to review the same.***

8. ***Under issue no. 3, the Tribunal found failure of mechanism of Pollution Control Boards in ensuring pollution free environment which is the mandate of the Constitution and the object of Water Act, Air Act, the Environment (Protection) Act, 1986 and other such laws. The fact that 351 river stretches are identified as polluted by the CPCB, 102 cities in terms of air quality are identified as non-attainment cities and 100 industrial clusters have been identified as polluted is clear evidence of failure of compliance of environment norms and ineffectiveness of the present statutory bodies constituted with that mandate. Proceedings in the present case established the failure of Gujarat State Pollution Board in performing its duty of preventing pollution and taking adequate remedial action against polluters. In spite of severe pollution, no conviction was reported. Polluters were not shown to have been prosecuted. It was noted that the Hon'ble Supreme Court in Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.[1] and also the Parliamentary Standing Committee on Science and Technology, Environment and Forest had found the failure of pollution boards. Still, adequate remedial measures were not being taken by the concerned authorities by way of legislative or executive intervention.*** *Clean Environment being part of Fundamental Right and 'Sustainable Development', 'Precautionary principle' and 'Polluter Pays principle' being statutorily required to be enforced by this Tribunal under Section 20 of the National Green Tribunal Act, 2010 (NGT Act), to prevent and remedy the acknowledged level of high pollution in the country resulting in death and diseases, the Tribunal held that there was need for Performance Audit being conducted in respect of functioning of all the PCCs and PCBs of the Country and in the light of such findings, further action was required. The directions issued vide order dated 11.01.2019 include that constitution of a Committee to review functioning of CETPs comprising*

[1] (2018) 11 SCC 734

representatives of MoEF&CC, CPCB and NEERI and Performance Audits by CPCB of all the SPCBs and PCCs, constitution of a three Member Expert Committee by the MoEF&CC to consider compliance of mandate of the law laid down by the Hon'ble Supreme Court in Techi Tegi Tara (supra), to suggest guidelines for effective working of SPCBs to bring air and water quality within norms.

9. Under issue no. 4, it was concluded that the CETP operator and the concerned units had failed to comply with the environmental norms and were required to be made accountable within the framework of the regulatory regime. The Regulatory regime provides for preventive as well as remedial action of prohibiting polluting activities, including closure, prosecution as well as recovery of compensation on 'Polluter Pays' principle. Pending such action, interim amount of damage for the pollution already caused so as to recover cost of restoration based on prima-facie opinion could be recovered. CETP mechanism was required to be reviewed and so was the functioning of the regulatory regime in the form of SPCBs. Accordingly, the Tribunal directed constitution of a Committee to assess the extent of damages, payment of interim compensation by CETP operator as well as erring industries which was to be utilized by the CPCB for restoration. ***The Tribunal directed performance audit of all the SPCBs/PCCs and also directed to review of regulatory mechanism in the light of observations of the Hon'ble Supreme Court in Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors., (2018) 11 SCC 734."***

3. The above background shows that based on objective data it was clearly established that the CETP in question was operating in environmental norms and the pollution caused was required to be controlled by stopping the polluting activity and making the polluters accountable on the 'Polluter Pays' principle. Conscious of the fact that large number of industries are connected to the CETP which may be required to be made accountable for causing pollution, the Tribunal made it clear that statutory authorities may give hearing to the affected parties and perform their duties consistent with the principles of *natural justice.* For giving a direction to the statutory authorities in the light of clear evidence of pollution, it was not necessary for the Tribunal to hear individual industries in view of the

fact that such hearing is to be given by the regulatory authority. Since the pollution control board had failed to perform its duty, this Tribunal was required to consider the remedial steps necessary including compliance of observations in the judgement of the Hon'ble Supreme Court with regard to the manning of the regulatory bodies.

4. The Tribunal, in its hearing on13.05.2019, considered the report dated 09.05.2019 submitted by the joint Committee with regard to the status of compliance of environmental norms by the CETPs as well as individual industrial units. It was observed:

> *"20. The conclusion of the Committee was that there is increase in concentration of pollutants:*
>
> > *"**As observed from results of CPCB, GPCB and NEERI, there is increase in the concentration of pollutants post CETP discharge at Namdha and Jari Causeway along the Damanganga river vis-a-vis river water quality at GIDC weir (which can be considered as river water without effect of pollution). Aesthetically, the impact of pollution in the river Damanganga is observed for about 13 km from Vapi weir. This is supported by the CSIR-NEERI Report (2016-2017). The report also stresses on the toxicity of the CETP wastewater on the to fish. Based on the Interactions with local community and Fisheries Department of UT of Daman & Diu, it was conveyed that fishing is not carried out on the stretch downstream of CETP discharge due to river pollution. However data on marine fish catch in the sea near Daman is available**.*
> >
> > *Also based on the historical data of CPCB, the quantum of pollution load indicated decreasing trend of major pollutants such as COD and BOD over the years. This is in line with the improvement in the quality of treated effluent of CETP though CETP is not meeting with outlet standards for parameter COD, TDS, and Colour. Hence, upgradation of CETP treatment scheme is paramount to reduce pollution reaching the river Daman Ganga. There is improvement in the river water quality as per priority categorisation from Priority - II (2010) to Priority - IV (2015 & 2018) as inferred from CPCB report for the river stretch: Kachigaon to Vapi (GIDC weir to Jari Causeway (Priority - I being most polluted and Priority -V being best rating).Though, river stretch falls under Priority IV (based*

on BOD), presence of other pollutants discharged from the CETP outlet affected the biological and physicochemical environment of the river.

The impact on the coastal marine environment (4 beaches- Tadgam, Jampore, Devka and Tithal) due to industrial discharges through rivers/drains in the area assessed by National Institute of Oceanography (NIO) (2018) and report has stated that there is no evidence of significant deterioration of environmental quality of the beachfront environment. The waters of these 4 beaches contained high load of fecal coliform (FC) in water and sediment suggesting contamination by sewage. The study conducted by CSIR-NEERI also indicated pesticides concentrations at levels below the detectable levels of instrument analysis.

In view of the consideration of the steps for the restoration of the environment of river Damanganga suggested based on treatment of pollutants and discharge as per environmental norms, the cost of restoration comes about Rs. 751 crore for over ground pipeline network from industries to GIDC manhole/sump, quality & quantity monitoring SCADA system, upgradation of CETP, construction of STPs, management of MSW in the area.

*As there are many methods for environment damage estimation and all of them use reasonable assumptions, the committee has used two different approaches to calculate the damage. While Approach - I is based on the economic valuation of eco-services rendered by the river considering a representative critical pollutant (COD) for damage estimation. Approach-II is based on the CETP discharge outlet norms for the pollutants: COD, NH3-N, TSS, and BOD, independent of river water quality. Using two alternative methods the cumulative economic damages are estimated to be in a comparable range (**INR 41.61 Cr for the Approach-I and INR 67.00 Cr for Approach-II during the year 2013 to 2018**).*

*Using the recent six years (2013-2018) data and employing two alternate methods, the yearly average economic damages are estimated to be in the comparable range of **INR 6.93 Cr/year (Approach-I) and INR 11.17 cr/Year (Approach-II)**."*

24. Learned Counsel for the applicant also points out that the Committee has not factored in the level of pollution based on category of industries as red, orange and green which depends on pollution protentional. Even a small industry may be causing more pollution than large industry. Merely categorization large, small and medium without considering the extent of pollution on account of nature of activity of such industry is not correct application of the 'Polluter Pays' principle. The cost of restoration having been found to be more than Rs. 750 Crores which includes multiple of factors. The cost estimate for River

Restoration Programme which includes CETP upgradation, STP and MSW facility. The Committee has undertaken economic valuation and damage assessment by two methods. By following 'shadow cost of pollution load and benefit transfer method' the cumulative damage of Rs. 67.00 Crores has been estimated due to excess discharge of pollutants in river ecosystem in last six years between 2013-18 with average damage of Rs. 11.17 Crores each year to the environment. However, by following 'Direct Benefit Method' which is based on The Economics of Ecosystem and Biodiversity (TEEB) project set up in 2007 and led by United Nations Environment Programme (UNEP) the damage that can be attributed to pollution from CETP in excess of stipulated standard of COD comes to Rs. 41.61 Crores for six years. Right application of the 'Polluter Pays' principle requires that the polluter should be required to pay the cost of restoration. The compensation to be recovered should be deterrent. In the present case, compensation has been based on a formula worked out by the CPCB which cannot be universally applied without reference to cost of restoration and may be deficient in the present case having regard to the high cost of restoration. The amount of compensation should on account of wide spread pollution broadly also correspond to the cost of restoration which has not been done.

25. ***The Committee has assessed compensation only for 44 units while the number of polluting units is more than 500. GPCB failed to give list of all the polluting units. GPCB has not acted on 'Precautionary' principles by closing the polluting units.*** *Reliance has been placed on the order of this Tribunal dated 09.04.2019 in O.A. No. 125/2018, Arvind Pundalik Mhatre Vs. Ministry of Environment and Forest & Climate Change & Ors., wherein this Tribunal in similar circumstances directed closure of polluting units to uphold the mandate of the Water (Prevention and Control of Pollution) Act, 1974. It was observed as follows:*

> *"14. Accordingly, we direct the MPCB to forthwith suspend the Consent to Operate to the industries in the area not meeting the norms and permit them to operate only after remedial steps are taken. Steps in this direction be taken within two weeks from today. Whether a particular industry is complying or not complying with the norms is the matter to be decided by the MPCB in accordance with law. Action taken report be furnished to the Committee and the Committee may take a final call in the matter, in case of any surviving issue."*

26. In the present case in spite of acknowledged pollution, the polluting units are continuing. There is no material to show launching of prosecution. The approach of the GPCB is, thus, patently soft towards the violators of law which itself shows failure of the regulator to protect and restore the environment.

31. ***Accordingly, we direct the Committee to make fresh calculation based on actual period of pollution during five years preceding 26.02.2018, the date on which this application was filed i.e. from 26.02.2013 till the date of calculation.*** *The Committee has only gone by the category of large, small and medium industry and not by the extent of pollution by the category of the industry concerned as red, orange and green. The Committee may also keep in mind the need to corelate the compensation to be recovered to the cost of restoration in the facts of the present case. The GPCB should furnish list of all the polluting units. We find that the approach of the GPCB has been too soft and adequate action has not been taken against the law violators by way of prosecution and closure of polluting activities which is a failure of the regulator. If cost of restoration is not recovered from polluters, the regulator and not the victim should be responsible for the loss.*

32. ***In view of the material on record appearing from the report extracted above, prima facie, direction to deposit interim compensation in terms of order dated 11.01.2019 is fully justified and needs no change.*** *It is patent that the interim amount fixed by this Tribunal may not only be inadequate to meet the loss caused by pollution and the cost of restoration. The prayer for waiving the requirement of interim deposits has no merit and is dismissed. I.A. Nos.176/2019 to 187/2019, I.A. Nos. 190/2019 to 207/2019, I.A. Nos. 227/2019 to 238/2019, I.A. No. 263/2019 said to be for variation of order dated 11.01.2019 will stand dismissed.*

33. Fresh report of the Committee may be furnished within two months by e-mail at ngt.filing@gmail.com. Any further submissions of the parties may be given to the Committee through CPCB. We also add a representative of MoEF&CC to the Committee for making the assessment.

34. GPCB may furnish list of all the polluting units in addition to list of 44 units earlier given and online data as may be necessary to determine damages for period from 13.02.2013 till date to the Committee and perform its duties as regulator in respect of CETP as well as all defaulting units by way of closure to stop polluting activities and prosecution for the violation of law which had already done.

35. ***In terms of order dated 11.01.2019 and the above order, following steps may be completed:***

i. ***Report be submitted for review of functioning of CETPs in the country as per direction in Para 55 (v) in order dated 11.01.2019. CPCB may coordinate.***

ii. ***Performance audit of SPCBs/PCCs may be completed as per para 55 (vi) in order dated 11.01.2019.***

iii. MoEF&CC may give status of report of steps to revamp the regulatory bodies as directed in para 55 (vii) and (vii.a) in order dated 11.01.2019.

iv. Compliance of requirement of deposits be made in terms of para 55 (ii) of order dated 11.01.2019 forthwith to the extent not made.

v. ***The Committee to assess the compensation and give its revised report within two months. MoEF&CC may nominate its representative as part of Committee constituted in terms of para 55 (i) vide order dated 11.01.2019."***

Proceedings before the Tribunal on 19.08.2019

5. In the light of the above background we took up the matter on 19.08.2019. After considering the above report dated 14.08.2019 received from the Committee on the subject of performance of CETP, the Tribunal sought information about the units responsible for discharging effluents beyond norms in CETP inlet resulting in CETP outlet not being as per standards. The Tribunal completed the hearing on all other aspects.

Today's Proceedings before the Tribunal

6. Written submissions have been filed in the course of hearing today on behalf of Respondent No.1 with regard to identification of individual contributors to pollution of inlets in the CETP. It is stated that the effluents of the individual are collected in a common drain. CETP has no opportunity to assess the inlet norms of the individual industries. At the same time, list of defaulting industries furnished by the CETP to the GPCB on 01.02.2019 has been filed as an annexure to the written submissions containing names of the following industries:

1. Chemodist Industries
2. Dalmia Poly Pro Industries Pvt. Ltd.
3. Haatkesh Chem & Engind
4. Jayshiv Chemicals Pvt. Ltd.
5. Nylo Speciality Colours
6. Pearl Colour Industries

7. Praveen Industries
8. Rainbow Chemicals
9. Ratna Products
10. Skyline Polycats Pvt. Ltd.

7. No other submissions have been advanced even though the written submissions purport to raise certain objections. We may need to mention that as is clear from the background referred to earlier the grievance being considered by this Tribunal is violation of environmental norms resulting in damage *inter alia* to river and drain and the public health. We have already noted earlier that this Tribunal has to enforce the 'Sustainable Development", "Precautionary" and "Polluter Pays" principles under Section 20 of the NGT Act. In the course of such enforcement, the Tribunal can require the statutory bodies to perform their duties after verifying the data and complying with the natural justice. An aggrieved party has statutory remedies against orders of the statutory regulatory bodies. The reports which have been furnished to the Tribunal can certainly be taken into account in absence of meaningful objection thereto.

8. We now proceed to deal with following reports which have been filed in pursuance of earlier consideration and directions by the Tribunal, as noted above:

I. Report dated 14.08.2019 from CPCB in respect of performance of CETP;

II. Report dated 05.08.2019 furnished by the CPCB on behalf of the joint Committee with regard to payment of compensation by the polluting industries;

III. Report dated 10.07.2019 from the CPCB on the subject of performance audit of the State PCBs/PCCs; and

IV. Report dated 17.08.2019 from the MoEF&CC on the subject of compliance of judgment of the Hon'ble Supreme Court *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[2]

I. Report dated 14.08.2019

9. The report dated 14.08.2019 shows that on analyzing the samples the influent to CETP is not meeting parameters. Final outlet is not meeting the standards for TSS, FDS, COD and BOD parameters. Accordingly, remedial action has been recommended as follows:

> ***"3. RECOMMENDATIONS:***
>
> - *CETP should up-grade treatment system/put more efforts in operation for meeting with outlet norms.*
> - *The CETP needs to regulate the discharge of member units to meet the inlet standard, especially concentration of FDS parameters is more than 3.5 times than the prescribed standard.*
> - *Proper calibration and continual maintenance of OCEMS needs to be done to ensure reliable results of monitored parameters.*
> - *List of defaulting industries should be regularly (monthly) share with GPCB for taking suitable action against these industries.*
> - *CETP should regularly send the sludge and salt (generated from Common Spray Dryer) to CHWTSDF for proper disposal."*

10. Thus, there is need to reduce the load of inlet so as to ensure that inlet parameters are complied with by contributing industries. This may require closing identified source of such inlets or reducing the corresponding pollution load of the identified member units. It is not difficult to identify polluting units because there exists monitoring mechanism of outlets of individual units. Moreover, CETP itself claims to have given a list in this regard to the GPCB as already noted. The joint Committee of CPCB and GPCB can determine the

[2] (2018) 11 SCC 734

source of polluting inlets and take further action to correspondingly reduce the pollution load by issuing appropriate directions. Further, the CETP needs to be upgraded and till such upgradation is done, the inlet quantity and load needs to be reduced as to match the current capacity of the CETP. The same Committee can also determine the manner in which the CETP may reduce its intake so that its outlet complies with the parameters pending steps for further upgradation. The joint Committee may accordingly take appropriate further action in the matter and file a compliance report before this Tribunal before the next date.

II. Report dated 05.08.2019

11. Report dated 05.08.2019 furnished by the CPCB on behalf of the joint Committee refers to visit to CETP and river DamanGanga, sampling of CETP Vapi and different locations of river Damanganga, Information/Data collection from CETP operators, GPCB, CPCB, other departments, reports of NEERI, NIO, hearing to defaulting industrial units and CETP operators. It is found that CETP was not able to meet the outlet norms as some of the member units are discharging effluents without proper treatment. CETP is unable to treat refractory COD & colour on account of high salt concentration. Impact of pollution is observed for about 13 km from Vapi weir. There is toxicity of CETP waste water affecting the fish. The water from the river is not consumed downstream of GIDC weir either for drinking or irrigation. The pollution load. Upgradation of CETP is necessary. Compensation to be recovered from individual industry members has been assessed to be Rs. 25.36 crore and from CETP Rs. 92.36 crore as against the cost of restoration being assessed at Rs. 728.72 crore

which includes laying of pipelines, MSW management, sewage collection system. The relevant part of the report is reproduced below:

"The CETP was commissioned in the year 1997 and has made several upgradations in unit treatment and process operations over the years. Recently, the CETP augmented with Common Multiple Effect Evaporator & Common Spray Dryer for High COD & High TDS wastewater. It was observed from the results of analysis of the inlet and outlet wastewaters from multiple data sets of CPCB, GPCB & VGEL that there was an improvement over the years in treated wastewater quality which is significant in 2016. However, the CETP was not able to meet outlet norms broadly for COD, FDS, Chlorides, Sulphates and Color. Major reasons for the non-compliance of GPCB norms are briefly presented hereunder:

1. *Some of the member units are discharging without proper treatment to their process wastewaters prior to discharge into the CETP. Failure to adhere to the CETP Inlet quality norms is one of the reasons for the CETP not meeting the final treated effluent quality.*
2. *The presence of refractory COD & Colour in the presence of high salt concentration becomes difficult to treat and meet statutory norms under the existing treatment scheme.*

Restoration of the environment of river Damanganga requires following broad steps which are suggested based on treatment of pollutants and discharge into river Damanganga as per environmental norms:

- *Improvement/up-gradation in the wastewater collection through surface/over ground pipeline from industries to manhole/sump of GIDC drainage network and to remove all underground discharge line of industrial unit to manhole of underground GIDC drainage. Further, it is recommended to lay surface pipeline conveyance system up to CETP, wherever technically feasible by removing underground existing pipeline.*
- *Restoration of existing & construction of new storm water drain to prevent entry of wastewater into the natural drains in the industrial estate.*
- *Monitoring and analysis of all industries including all streams of wastewater, product wise and shall identify High COD/High TDS (refractory COD) Stream for identification of any discrepancies which will be helpful in taking actions.*
- *Quality & Quantity Monitoring with SCADA-PLC system for controlling quantity & quality of the effluent discharged by each of the member units.*
- *Proper operation, maintenance and up-gradation of CETP to meet the norms prescribed by GPCB*
- *Strict vigilance, identification and action against defaulting industries.*

- *Proper design and construction of stormwater drains and sewerage network, STP within the local bodies*
- *STPs shall be designed to reuse of treated sewage for industrial reuse/ landscaping / firefighting and agriculture purpose.*
- *Prevent dumping of solid waste from towns and villages on the banks of river.*
- *Minimum environmental flow of Damanganga river for release of water from the Madhuban Dam.*
- *Afforestation*
- *River front development*
- *Agricultural and farm yard management surrounding the river path.*

In view of the consideration of the steps for the restoration of the environment of river Damanganga suggested based on treatment of pollutants and discharge as per environmental norms, the cost of restoration including the projects from concerned departments comes about Rs. 731 - 751 crore for over ground pipeline network from industries to GIDC manhole/sump, quality & quantity monitoring SCADA system, upgradation of CETP, construction of STPs, management of MSW in the area by concerned agencies.

***Table 8.1: Compensation and estimated cost of projects from concerns agencies for restoration of Damanganga**:*

No.	***Agency***	***Amount (in crore)***
	Compensation amount from industries and CETP	
1	***Compensation from individual industry members (As per Table 7.4, 161 industries)***	*25.36*
2	***Compensation from Vapi CETP***	*92.36*
	Cost of the other projects of concern Agencies/Departments	
3	*Overground pipe line by GIDC (GIDC Vapi)*	*95.00*
4	*MSW Management (Vapi Municipal Council for Vapi Town)*	*11.00*
5	*STP Plant & Sewage Collection system in Vapi Area - 60 MLD (Vapi Municipal Council)*	*233.00*
6	*STP Plant & Sewage Collection system in Daman area - 70 MLD (Daman Municipal Council)*	*272.00*
	Total	***728.72***

The above table shows correlation with cost of restoration in consideration of the nature of work and the source of the fund for restoration of river Damanganga is Rs. 728.72 Crore against the total cost of restoration estimated Rs. 731 - 751 Crore (mentioned in Chapter 6, Table 6.1). The total Environmental Compensation from individual industries and CETP (Vapi) is calculated to be Rs. 117.72 Cr (25.36 Cr + 92.36 Cr).

As per the interim order dated 11.01.2019 & 13.05.2019, 41 defaulting industries as per earlier list and CETP has already

paid the interim environment compensation, whereas 3 industries have not submitted the interim environment compensation for whom GPCB have already issued the closure directions.
Based on the Hon'ble NGT directives, various actions have been identified to restore the river Damanganga and reduce environmental damage in the future. Few agencies such as GIDC, VGEL CETP, GPCB, CPCB, Municipality/local bodies are identified which are in concern for restoration. ***The committee's major recommendations are summarized below (as detailed given in section 5.1.1 to 5.1.4 Chapter - 5****).*

ACTIONS TO BE UNDERTAKEN BY GIDC/NOTIFIED AREA AUTHORITY

- *It is recommended to provide the surface/over ground pipeline from industries to CETP for proper conveyance of effluent wherever technically feasible by removing existing underground pipeline.*
- *Restoration of any damaged stormwater drains to prevent entry of wastewater into the natural drains in the industrial estate and prevention of entry of industrial wastewater in Bill khadi and its flow downstream to GIDC estate.*
- *Proper design and construction of stormwater drains within the industrial estate where it is not provided particularly in low lying areas to (i) prevent stagnation of storm water contaminated with industrial wastes (ii) to prevent indiscriminate entry of contaminated storm water into natural drains.*

ACTIONS TO BE UNDERTAKEN AT CETP LEVEL

- *CETP shall carry out monitoring and analysis of all industries including all streams of wastewater, product wise and shall identify High COD/High TDS (refractory COD Stream). Based on that, CETP shall monitor the inlet quantity to CMEE/Spray dryer industry wise and shall submit data to GPCB monthly for identification of any discrepancies which will be helpful in taking actions.*
- *All the member units have to provide a system for the quantity and quality of the effluent discharge through SCADA-PLC system and shall observe discharge schedule and permitted volume.*
- *All the sump rooms shall be equipped with auto samplers for controlling the quality of effluent discharged by members, which can be accessible by VGEL. If require, it should also be accessible for GPCB.*
- *Proper operation, maintenance and up-gradation of CETP to meet the norms as prescribed in* ***Chapter 6 (Table 6.1****) or equivalent advanced technology related to effluent profile.*

ACTIONS TO BE TAKEN AT REGULATORY LEVEL

- *Continuous strict vigilance, identification and action against defaulting industries.*
- *Vapi GIDC to ensure that the process wastewaters from industries do not enter the storm water drains. It may be*

achieved through the construction of dykes or tanks by Industry to collect and introduce into the wastewater treatment scheme.

ACTIONS TO BE TAKEN BY LOCAL BODIES (MUNICIPAL COUNCIL)

- *Proper design and construction of stormwater drains and sewerage network within the local bodies where it is not provided particularly (i) in low lying areas to prevent stagnation of storm water contaminated with wastes (ii) to prevent indiscriminate entry of contaminated storm water into natural drains and finally river Damanganga.*
- *Control domestic/commercial wastewater (sewage) discharges into the River through proper collection and treatment from residential and commercial areas and treatment through STPs. The STPs shall be designed to reuse of treated sewage for industrial reuse/ landscaping / firefighting and agriculture purpose.*
- *Prevent dumping of solid waste from towns and villages on the banks of river.*
- *Identification of plots for solid waste landfill development.*
- *The appropriate authority should take care of their concern projects for restoring the environment."*

12. Learned Counsel or the applicant has referred to the report of the Committee to point out that the Committee has given hearing to the CETP and all individual units and discussed the individual cases for determining the amount of compensation. However, the period for which the compensation has been assessed is not the entire period for which the pollution continued but reckoned only with respect to the date of inspection. It cannot be presumed that there was no pollution earlier. The polluter is to prove the period during which no pollution was being caused. Whatever be the "best judgement assessment" for the past, presumption of no pollution is not justified. The compensation assessed may thus need to be enhanced. We are of the view that this aspect can be revisited by the joint Committee in light of the submission made by the Learned Counsel for the applicant. Till such consideration, the amount assessed can be collected as an interim compensation. Further action may accordingly

be taken jointly by GPCB and CPCB. . Compliance report in this regard may be filed before the next date.

III. Report dated 10.07.2019

13. Report dated 10.07.2019 filed by the CPCB is on the subject of performance audit of the State PCBs/PCCs. The report merely ranks the PCBs/PCCs, without proper assessment of the functioning.

14. What is expected is performance audit on issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, scientific equipments, logistics support, competence etc. rather than ranking the States. Let the same be done and state-wise reports submitted based on thorough analysis in terms of statutory functions. CPCB may devise an appropriate mechanism for the purpose. We also direct that all vacant positions in the SPCBs/PCCs may be filled up at the within four months and the Chief Secretaries of the States/UTs may ensure that there is no embargo in doing so, so that effective steps for protection of environment can be taken. It is also necessary to direct that the laboratories established by the SPCBs/PCCs, at headquarters as well as regional centers, are duly recognized for purposed of enforcement of environmental laws. The concerned authorities may take further steps accordingly. The CPCB may compile a report and file before the next date. SPCBs/PCCs may utilize the funds available with them, under EC/Consents or other heads instead of approaching other authorities and on that pretext not performing their essential function. The MoEF&CC may consider constituting an appropriate authority for the purpose with

representatives from Central and State authorities on the pattern of Compensatory Afforestation Fund Management and Planning Authority (CAMPA) or otherwise. A compliance report be filed by the MoEF&CC before the next date.

IV. Report dated 17.08.2019

15. Report furnished on 17.08.2019 by the MoEF&CC is on the subject of compliance of judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[3]. The report shows that further action is required for compliance of judgement of Hon'ble Supreme Court.

16. Let further follow up action be taken by the MoEF&CC to monitor compliance of judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.* and report furnished to this Tribunal before the next date after ascertaining that uniformity in terms of qualifications, experience and special skill sets is adhered to especially with regard to key position of Chairman and Member Secretary of SPCBs/PCCs.

17. In view of the above discussion our directions are summed up as follows:

(i) Let the joint Committee take action in terms of para 10 above on the subject of corresponding reduction in load to ensure compliance of norms of inlet in CETP so as to ensure that inlet and outlet of CETP are as per norms and file compliance report before the next date.

[3] (2018) 11 SCC 734

(ii) With regard to the past violations, compensation as assessed by the Committee in respect of individual units as well as CETP is liable to be recovered as interim compensation on 'Polluter Pays' principle. Further action may be taken jointly by GPCB and CPCB. Compliance report in this regard may be filed before the next date.

(iii) Performance audit be done with reference to issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, adequacy of laboratories and scientific equipments, logistics support, competence etc. rather than ranking the States and state-wise reports submitted along with recommendations based on thorough analysis in terms of statutory functions before the next date. CPCB may devise an appropriate mechanism for the purpose. CPCB and MoEF&CC may file a compliance report with reference to observations in para 14 above.

(iv) Let further follow up action be taken by the MoEF&CC to monitor compliance of judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.* and report furnished to this Tribunal before the next date.

List for further consideration on 11.02.2020.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

August 28, 2019
Original Application No. 95/2018
DV

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Annexure - F

Diary number

Diary Number | Case Number | CNR Number | AOR Code | Party Name | Court

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DIARY NO. - 43253/2019

M/S VAPI GREEN ENVIRO LIMITED VS. ARYAVART FOUNDATION

Case Details

Diary Number	**43253/2019** Filed on 02-12-2019 12:00 AM [**SECTION: XVII**] **PENDING**
Case Number	C.A. No. 009398 - / 2019 Registered on 12-12-2019 (Verified On 02-12-2019)
CNR Number	SCIN010432532019
Present/Last Listed On	**19-05-2022 [HON'BLE MR. JUSTICE L. NAGESWARA RAO, HON'BLE THE CHIEF JUSTICEand HON'BLE MR. JUSTICE A.S. BOPANNA]**
Status/Stage	Pending (Motion Hearing [AFTER NOTICE (FOR ADMISSION) - CIVIL CASES]) Not taken up/ Not Today-Ord dt:19-05-2022
Tentatively case may be listed on (likely to be listed on)	23-09-2025 (Computer generated)
Admitted	[ADMITTED ON : 18-01-2022]

Category	2002-Environmental Laws : Appeal under Section 22 of the National Green Tribunal Act, 2010
Petitioner(s)	1 M/S VAPI GREEN ENVIRO LIMITED
Respondent(s)	1 ARYAVART FOUNDATION 2 GUJARAT POLLUTION CONTROL BOARD AUTHORISED REPRESENTATIVE 3 COLLECTOR 4 CENTRAL POLLUTION CONTROL BOARD CHAIRMAN 5 MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE SECRETARY 6 GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION CHAIRMAN
Petitioner Advocate(s)	MANDEEP KALRA [P-1]
Respondent Advocate(s)	SURENDER SINGH HOODA[R-1] AMIT KUMAR (Dead / Retired / Elevated) [R-6] VIJAY PANJWANI (Dead / Retired / Elevated) [R-4] RUCHI KOHLI (Dead / Retired / Elevated) [R-2] DEEPANWITA PRIYANKA[R-6] DEEPANWITA PRIYANKA[R-2]

Argument Transcripts +

Indexing +

Earlier Court Details +

Tagged Matters +

Listing Dates +

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Notices +

Defects +

Judgement/Orders +

Mention Memo +

Drop Note +

Office Report +

Similarities +

Caveat +

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Delivery Mode: Registered

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(RULE 8 OF ORDER XIX, SCR 2013)

CIVIL APPEAL No. 9398 OF 2019

with

INTERLOCUTORY APPLICATION NO. 184999 OF 2019

(STAY APPLICATION)

M/S VAPI GREEN ENVIRO LIMITED ... Petitioner(s)/Appellant(s)

VERSUS

ARYAVART FOUNDATION AND OTHERS ... Respondent(s)

To,

1 ARYAVART FOUNDATION,
THROUGH ITS ADVOCATE SURENDER SINGH HOODA,
B-40 BASEMENT, N.D.S.E II,
DISTRICT- NEW DELHI, DELHI - 395303
PID: 338627/2019 FOR R[1] IN C.A. NO.9398/2019 (SEC XVII)

2 GUJARAT POLLUTION CONTROL BOARD
AUTHORISED REPRESENTATIVE,
THROUGH ITS AUTHORISED REPRESENTATIVE PARYAVARAN BHAVAN SECTOR-10A, GANDHINAGAR,
DISTRICT- GANDHINAGAR, GUJARAT - 382010
PID: 338628/2019 FOR R[2] IN C.A. NO.9398/2019 (SEC XVII)

3 COLLECTOR VALSAD,
DIST. COLLECTOR OFFICE, VALSAD,
DISTRICT- VALSAD, GUJARAT - 396001
PID: 338629/2019 FOR R[3] IN C.A. NO.9398/2019 (SEC XVII)

4 CENTRAL POLLUTION CONTROL BOARD CHAIRMAN,
THROUGH ITS CHAIRMAN
PARIVESH BHAWAN, EAST ARJUN NAGAR,
DISTRICT- , DELHI - 110032
PID: 338630/2019 FOR R[4] IN C.A. NO.9398/2019 (SEC XVII)

5 MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE,
THROUGH ITS SECRETARY
INDIRA PARYAVARAN BHAVAN, ALI GANJ, JORBAGH ROAD,
DISTRICT- NEW DELHI, DELHI - 110003
PID: 338631/2019 FOR R[5] IN C.A. NO.9398/2019 (SEC XVII)

6 GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION CHAIRMAN,
THROUGH ITS CHAIRMAN
BLOCK 3,4,5, UDHYOG BHAVAN,
SECTOR-11,,
DISTRICT- GANDHINAGAR, GUJARAT - 382011
PID: 338632/2019 FOR R[6] IN C.A. NO.9398/2019 (SEC XVII)

WHEREAS the appeal above-mentioned (copy enclosed) along with application for condonation of delay in filing , exemption from filing certified copy of impugned Judgment and stay filed in the Registry by

Ms. JASMINE DAMKEWALA, Advocate, on behalf of the Appellant above-named were listed for hearing before this Court on the **04th December, 2019**, when the Court was pleased to pass the following inter alia Order :

" ... ...

" **Delay condoned.**

Issue notice.

In the meanwhile, there shall be stay of the impugned order.

List the appeal along with Civil Appeal No. 3396 of 2019 and Civil Appeal No. 8313 of 2019.

... "

NOW, THEREFORE, TAKE NOTICE that the appeal above-mentioned will be posted for hearing before this Court in due course when you may appear before the Court either in person or through an Advocate-on-record of this Court duly appointed by you and show cause to the Court on the day that may subsequently be specified as to why the appeal may not be allowed.

You may file your affidavit in opposition to the petition within 30 days from the date of receipt of notice or not later than 2 weeks before the date appointed for hearing, whichever be earlier, but shall do so only by setting out the grounds in opposition to the questions of law or grounds set out in the Appeal and may produce such pleadings and documents filed before the Tribunal against whose order the appeal is filed.

TAKE FURTHER NOTICE that if you fail to enter appearance as aforesaid, no further notice shall be given to you and the matter above-mentioned shall be disposed of in your absence.

Dated :**18th December, 2019**

Madhu 20-12-19

ASSISTANT REGISTRAR

Copy to :-

1 Ms. Jasmine Damkewala (adv.)
f-12, Upper Gf(left Side), Jungpura Extension,new Delhi - 110 014.

ASSISTANT REGISTRAR

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2019

(ARISING OUT OF THE INTERIM ORDER DATED 28.08.2019 PASSED BY THE HON'BLE NATIONAL GREEN TRIBUNAL [NGT], PRINCIPAL BENCH IN ORIGINAL APPLICATION NO. 95 OF 2018)

IN THE MATTER OF

VAPI GREEN ENVIRO LIMITED — APPELLANT

VERSUS

ARYAVART FOUNDATION & ORS. — RESPONDENTS

I.A. NO._____ OF 2019: APPLICATION FOR STAY

WITH

I.A. NO._____ OF 2019: APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY

WITH

I.A. NO._____ OF 2019: APPLICATION SEEKING CONDONATION OF DELAY IN FILING CIVIL APPEAL

PAPER BOOK

VOLUME I

(Pg. 1 -185)

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ADVOCATES FOR THE APPELLANTS : ***JASMINE DAMKEWALA***

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S.NO.	*DATE OF RECORD OF PROCEEDINGS*	*PAGES*

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2019

(ARISING OUT OF THE INTERIM ORDER DATED 28.08.2019 PASSED BY THE HON'BLE NATIONAL GREEN TRIBUNAL [NGT], PRINCIPAL BENCH IN ORIGINAL APPLICATION NO. 95 OF 2018)

IN THE MATTER OF

VAPI GREEN ENVIRO LIMITED — APPELLANT

VERSUS

ARYAVART FOUNDATION & ORS. — RESPONDENTS

OFFICE REPORT ON LIMITATION

1 The Petition is within Limitation.

2 The Petition is barred by time and there is delay of _____ days in filing the same against order dated 28.08.2019 and petition for Condonation of _____ delay has been filed.

3 There is delay of _____ days in Refiling the petition and petition for Condonation of _____days in Re-filing has been filed.

BRANCH OFFICER

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PROFORMA FOR FIRST LISTING

The case pertains to (please tick/check the correct box):

☐ Central Act: The National Green Tribunal Act, 2010

☐ Section: Section 14, 15,16, 17 and 18

☐ Central Rule: N/A

☐ Rule No(s): N/A

☐ State Act: N/A

☐ Section: N/A

☐ State Rule: N/A

☐ Rule No(s): N/A

☐ Impugned Final Order/decree: 28.08.2019

☐ High Court: N/A

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

☐ Tribunal/Authority: Hon'ble National Green Tribunal, New Delhi

---

1. Nature of matter: ☐√ Civil ☐ Criminal

2 (a) Petitioner/appellant No.1: Vapi Green Enviro Ltd.

(b) e-mail ID: _____N.A._____

(c) Mobile phone number: _____N.A._____

3. (a) Respondent No.1: Aryavart Foundation & Ors.

(b) e-mail ID: _____N.A._____

(c) Mobile phone number: _____N.A._____

A-2

4. (a) Main category classification: 18
(b) Sub classification: 1818

5. Not to be listed before: N.A.

6. (a) Similar disposed of matter with citation, if any & case Details: No Similar matter.
(b) Similar pending matter with case details:
1. Civil Appeal No. 3396 of 2019 {Main Matter with same questions of law & grounds }
2. Civil Appeal (D) No. 8313 of 2019 (Tagged Matter against the same Impugned Order}.

7. Criminal Matter: N/A

(a) Whether accused/convict has surrendered: ☐ Yes ☐ No. **N/A**

(b) FIR No. _____N/A_____ Date: _____N/A_____

(c) Police Station: _____N/A_____

(d) Sentence Awarded : _____N/A_____

(e) Sentence Undergone : _____N/A_____

8. Land Acquisition Matters: N/A

(a) Date of Section 4 notification: _____N/A_____

(b) Date of Section 6 Notification: _____N/A_____

(c) Date of Section 17 notification: _____N/A_____

9. Tax Matters: State the tax effect: _____N/A_____

10. Special Category (first petitioner/appellant only): N/A

☐ Senior citizen > 65 years ☐ SC/ST ☐ Woman/child ☐ Disabled ☐ Legal Aid case ☐In Custody **N/A**

11. Vehicle Number (in case of Motor Accident Claim matters): N/A

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12. Decided cases with citation:_____
N/A_____

Date: 28.11.2019

AOR for petitioner (s)/ appellant(s)

JASMINE DAMKEWALA
Registration Code No. 2100
Email Id: Jasmine.Damkewala@Hotmail.c

B

SYNOPSIS

This Hon'ble Court in a similar Civil Appeal, arising out of the same impugned order dated 28.08.2019 passed in O.A. 95 of 2018, and registered as Civil Appeal No. 8313 of 2019 titled as *Vapi Industries Association Vs. Aryavart Foundation and Ors.*, was pleased to issue notice and grant stay on prosecution vide order dated 25.10.2019. Furthermore, this Hon'ble Court, considering the identicalness of the questions of law and grounds with another Civil Appeal registered as No. 3396 of 2019 titled as *M/s Chadha Sugar Mills Private Limited through Director vs. Sushil Kumar*, was pleased to tag the above matter along with the Civil Appeal No. 3396 of 2019. This Hon'ble Court in an appeal arising out of an order from the same proceedings before the NGT i.e. O.A. 95 of 2018, were pleased to issue notice on 23.08.2019 registered as Civil Appeal {Diary} No. 28435 of 2019.

The precise and identical issues pending consideration before this Hon'ble Court, which once again arise for consideration in the present petition relate to whether a tribunal established by a statute exercises powers of judicial review akin to a Constitutional Court. This question has been examined by this Hon'ble Court in the case of *Tamil Nadu Pollution Control Board Vs. Sterlite Industries (I) Ltd. and Others* reported at 2019 SCC Online SC 221, wherein it has been held and declared that a tribunal is a creature of a statute and the limitations and jurisdictions of the tribunal is set out in the governing statute. A tribunal does not exercise powers of judicial review similar or analogous to that of a Constitutional Court exercising jurisdiction under Article 226 of the Constitution of India.

Insofar as the present appeal is concerned the Appellant assails the order of the Hon'ble NGT whereby the Powers vested in the statutory regulator i.e. Gujarat Pollution Control Board/respondent No. 2 herein have been

completely usurped and taken over by the adjudicatory authority i.e. the Hon'ble NGT. The Hon'ble NGT is continuing to pass orders without jurisdiction and any statutory backing.

The substantial questions of law which arise in the present appeal for consideration before this Hon'ble Court are as follows:

I. Whether an appeal, which is the creation of a statute, is maintainable before the NGT against an order which is otherwise appealable before an Appellate Authority?

II. Whether the NGT while passing an order, against an order which is otherwise appealable before an appellate authority would not amount to assumption of jurisdiction not vested in it and order passed by it is *coram non judice?*

III. Whether all orders passed by the NGT are not liable to be corrected and interfered as not even once was an opportunity of being heard or filing objections to reports was given to the Appellant, being against the fundamental rule that no decision must be taken which affects the right of any person without first giving him an opportunity of putting forward his case?

IV. Whether the Impugned Order is non-est in law for non-compliance of the principles of Natural Justice to the extent the directions which have been passed qua the Appellant?

V. Whether the impugned order is contrary to the law laid down by this Hon'ble Court in *R. VISWANATHAN v. RUKN-UL-MULK SYED*

D

ABDUL WAJID, as reported in 1963 3 SCR 22, wherein a three-judge bench of this Hon'ble Court has stressed the importance of compliance with the principles of natural justice?

VI. Whether the NGT has jurisdiction to entertain a petition that is in the nature of a public interest litigation and that too by a person who is not shown to have espoused any public cause or done any public work for welfare of the society?

VII. Whether the Hon'ble NGT by virtue of the impugned order can direct multiple recoveries of the compensation from the Appellant, for the same violation/non-compliance for which member the Appellant has already paid the compensation, suffered closure and/or got the bank guarantee forfeited?

VIII. Whether the Hon'ble NGT could have delegated the judicial function of hearing the Appellant to the quasi-judicial authority without there being any legislative backing for the same, also there being no judicial member for hearing and fixing of compensation?

IX. Whether the Appellant can be made to pay interim compensation of Rs 92 crores without even considering the objections to the report filed by the Appellant, and not providing an opportunity to the Appellant to counter the allegations made against them?

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X. Whether there was any basis to determine the compensation of about Rs. 92 Crores in the impugned order? If yes, what was the basis and how was it arrived in the impugned order?

XI. Whether the Hon'ble NGT has given contradictory finding in as much as at one place it holds that principles of natural justice have to be complied with for the Appellant but in the same order, holds them a defaulter and also directs them to pay interim compensation?

XII. Whether Hon'ble NGT had the jurisdiction and/or powers to interfere with the report of an expert committee constituted vide its own orders?

XIII. Whether Hon'ble NGT could have objected to the uniform formula applied by CPCB for calculating the cost of restoration despite the NGT itself approving the same formula in the case of *Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors.* registered as O.A. 593 of 2017 vide order dated 19.02.2019 at para 6?

XIV. Whether NGT has erred in considering the Appellant as a related party to the member industries of VIA, and holding the Appellant responsible for the environmental conditions?

The instant appeal under Section 22 of the National Green Tribunal Act, 2010 (hereinafter referred to as "the Act") has been filed against the order dated 28.08.2019 passed by the National Green Tribunal (hereinafter referred to as

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"the NGT") in Original Application No. 95 of 2018 whereby the Hon'ble NGT has virtually *ex-parte* erroneously directed Respondent No. 2 and 4 to collect a penalty of about 92 Crores from the Appellant, for an alleged non-compliance for which Appellant has already faced consequences as per the statutory scheme. The NGT for the second time has opined of collecting interim compensation from the CETP Operator without there being any evidence or finding towards actual damage to the environment. The Hon'ble NGT completely ignored the fact that the issue for consideration before it was discharge of untreated/partially treated effluents into River Damanganga, while it is noteworthy to state that the Appellant has been actively trying to improve the system of effluent discharge and has even been successful in improving the conditions therein. In regards to the same, their efforts have also been recognized by various dignitaries.

This Hon'ble Court in a matter where exactly same grounds as that of instant appeal have been raised, registered as Civil Appeal No. 34038 of 2019 was pleased to issue notice vide order dated 25.10.2019 and hold that –

> *"Permission to file appeal is granted. Issue notice returnable on 13.12.2019. List along with Civil Appeal No.3396 of 2019. In the meanwhile, there shall be stay of prosecution".*

It is most respectfully submitted that Hon'ble NGT has erred by not considering the objections to the reports dated 09.05.2019 and 05.08.2019, submitted by the Appellant herein on 08.07.2019 & 19.07.2019, in O.A. 95 of

G

2018, and passed the impugned order on the same date as that of filing the written submissions, without affording an opportunity of being heard to the Appellant, which was in complete breach of the principles of natural justice and thus makes the impugned order non-est in law.

That apart from the non-compliance with the principles of natural justice, the Judgment and Order, dated 28.08.2019 suffers from the following illegalities:

(i) That this Hon'ble Court in the aforesaid judgment has delegated the judicial function of hearing to the one committee which has been constituted by it in the impugned order;

(ii) It is significant to note that the Appellant, by way of the impugned order are being made to pay compensation for the same violation again and again;

(iii) A huge amount would be liable to be recovered in the name of interim compensation without there being any hearing either before the Hon'ble National Green Tribunal or the Committee so constituted by way of the impugned order.

(iv) Because the Hon'ble Tribunal proceeded with a pre-determined mindset and failed to taken into consideration the actual facts and figures involved in the case, and also various expert reports which suggest that no environmental degradation has occurred.

(v) Because the Hon'ble Tribunal had no jurisdiction to disregard the report of an expert committee and thereby order fresh calculations.

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(vi) Because the Hon'ble Tribunal erroneously did not suspend direction of interim compensation even though report of the expert committee was before it.

Hence, the present Appeal.

I

LIST OF DATES

DATE	EVENTS
1997	That the Appellant- Vapi Green Enviro Limited ('VGEL'), a non-equity, non-profit entity based Company registered under the Companies Act, 1956, operating the Common Effluent Treatment Plant (**"CETP"**), catering to the needs of industries in the area of Vapi, formed with an objective of providing a Comparative Environment Management Program (CEMP) for Vapi in Gujarat. The Respondent No. 1 is the Aryavart Foundation (hereinafter referred to as "the Foundation") which claims to be non-governmental organization under the Central Societies Act, 1860 and the Bombay Port Trust Act 1950. That the Respondent No. 2 – Gujarat Pollution Control Board is a State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. Respondents No. 3 is the Collector, Valsad. Respondent No. 4 is the Central Pollution Control Board and Respondent No. 5 is Ministry of Environment and Forest. Respondent No. 6 is Gujarat Industrial Development Cooperation. The CETP that caters to the needs of Vapi Industrial area, was taken over from Government authorities, under unchallenged directions given by the Gujarat High Court to the Appellant, way back in 1997.

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	Thereafter, by 2001, all waste water generated in the industrial part of Vapi were linked to the CETP to ensure that the environment is protected
30.03.2016 To 27.10.2017	The Hon'ble National Green Tribunal (WZ) Pune satisfied with efforts made by the Appellant to achieve & maintain the discharge norms have acknowledged the work of the Appellant and cited the Appellants as exmaples in other matters too. Such as vide order dated 30/03/2016 in EA-15/16 in OA-37/13 (WZ) titled as *Vanashakti Public Trust & Anr Vs Maharashtra Pollution Control Board & Ors.* Secondly, vide order dated 17/02/2017 passed in Application No: 89/14 (WZ) registered as *Tarun Patel Vs. The Gujarat Pollution Control Boards & Ors.* Thirdly vide order dated 08/08/2017 in Original Application No: 109/14 (WZ) titled as ***Tarun Patel Vs. The Collector Valsad & Ors*** also vide order dated 27/10/2017 in Original Application No: 109/14 (WZ) titled as *Tarun patel Vs. The Collector Valsad & Ors.*
2017	The Petitioner in the Paryavaran Judgment had prayed for a direction to the respondents (which includes the Union Government, all the State Governments and the Union Territories), to ensure that no industry which requires "consent to operate" from the Pollution Control Board concerned, is permitted to function, unless it has a functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent, before it is discharged.

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	The Petitioner in the Paryavaran Judgment had prayed for a direction to the respondents (which includes the Union Government, all the State Governments and the Union Territories), to ensure that no industry which requires "consent to operate" from the Pollution Control Board concerned, is permitted to function, unless it has a functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent, before it is discharged. (i) While deciding the matter, the Hon'ble Supreme Court was pleased to pass the following directions: ***13.*** *We are of the view that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We, therefore, hereby provide that the directions pertaining to continuation of industrial activity only when there is in place a functional "primary effluent treatment plants", and the setting up of functional "common effluent treatment plants" within the timelines, expressed above, shall be of the Member Secretaries of the Pollution Control Boards concerned. The Secretary of the Department of Environment, of the State Government concerned (and the Union Territory concerned), shall be answerable in case of default. The Secretaries to the Government concerned shall be responsible for monitoring the progress and issuing necessary directions to*

	the Pollution Control Board concerned, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data and shall furnish the same to the Bench of the jurisdictional National Green Tribunal. ***14.*** *To supervise complaints of non-implementation of the instant directions, the Benches concerned of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The abovementioned case files will be listed periodically. The Pollution Control Board concerned is also hereby directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.* — ***15.*** *Liberty is granted to private individuals and organisations, to approach the Bench concerned of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions.* ***16.*** *It however needs to be clarified that*

	the instant directions and timelines shall not in any way dilute any timelines and directions issued by courts or Benches of the National Green Tribunal, hitherto before, wherein the postulated timelines would expire before the ones expressed through the directions recorded above. It is clarified that the timelines expressed hereinabove will be relevant, only in situations where there are no prevalent timeline(s), and also, where a longer period has been provided for. ***17.*** *It would be in the interest of implementation of the objective sought to be achieved, to also require each State concerned (and each Union Territory concerned) to make provision for "online, real time, continuous monitoring system" to display emission levels, in the public domain, on the portal of the State Pollution Control Board concerned. We are informed that at least three State Governments have already adopted the aforesaid measures. Such measures shall be put in place by all the State Governments concerned (including the Union Territories concerned), within six months from today.* **Note :** It is important to bear in mind that though the above mentioned directions of the Hon'ble Supreme Court of India came to be passed only in the year

	2017, however, the Appellant herein has been adhering to the aforesaid direction for a very long time since 1997.
January 2018	Aryavart Foundation claiming to be an NGO, preferred Original Application No. 95 of 2018, alleging that there is a discharge of untreated/partially treated trade effluents by the Applicant in Vapi Industrial Cluster into Damanganga's High Tide Zone in District Valsad in Gujara which meets the Arabian Sea. Apart from Daman, it was also alleged that the Damanganga river & Bill Khadi (a natural drain) which also falls into the Arabian Sea, are being equally polluted by the Appellant
09.03.2018	The Hon'ble Bench issued notice on the Original Application No. 95 of 2018, thereby allowing the Original Application filed by Aryavart Foundation (Respondent No.1 herein)
29.08.2018	Once pleadings stood completed, the matter was finally taken up for arguments on 29.08.2018, wherein the Tribunal was pleased to limit the scope of the O.A 95 of 2018 to the following clarifications- *'while passing the order dated 03.08.2018, this Tribunal has not in any manner diluted the directions of the Hon'ble Supreme Court in [2017] 5 SCC 326 with regard to the mandatory requirement of ETP. Prayer is allowed'.*
10.01.2019	At about 01.00 p.m (i.e. about 21 hours prior to

	hearing), the counsel for Respondent No. 2 / Gujarat Pollution Control Board served the Appellants' counsel with reports prepared by Respondent No. 4 / Central Pollution Control Board and Respondent No. 2 / Gujarat Pollution Control Board.
11.01.2019	The Hon'ble Bench vide its order dated 11.01.2019 was pleased to pass the following direction in that matter: *i. the pollution norms and are required to be made accountable for their failure within the framework of the regulatory regime with the assistance of experts making the CPCB as nodal agency to determine the extent of damage caused to the environment and cost of restoration.* *ii. The CETP and polluting industrial units must be required to deposit an interim amount for damage to the environment and for the cost of restoration pending further orders to be passed in the light of Expert Committee Report proposed to be constituted.* ... *55. Accordingly, we direct as follows:* *(i) We direct constitution of following Committee to assess the extent of damage and cost of restoration of the environment and individual accountability of CETP and polluting industrial units:* *a) Representative of CPCB.*

	b) Representative of IIM, Ahmadabad. c) Nominee of IIT, Ahmadabad. d) Scientist nominated by NEERI. e) Representative of GPCB. (i.a) The Committee may give its report within three months. The Committee will be entitled to take any factual or technical inputs in the manner found necessary. CPCB will be the nodal agency for the purpose. The Committee may also suggest steps for restoration of the environment. (i.b) The Committee may give hearing to the CETP operator and the units identified as polluting by the GPCB for which list will be furnished by the GPCB to the Committee indicating the period and nature of default within one month. (i.c) The GPCB may inform the defaulting units for compliance of this order. (i.d) The Committee may also consider data already available with it since the affidavit filed by the CPCB does indicate availability of such data with the CPCB. (i.e) The GPCB may also consider exercise of its statutory powers of prosecution which power is coupled with duty. (ii.a) The CETP may deposit a sum of Rs. 10

	Crores with the CPCB towards interim compensation within one month. **Note 1**: The aforesaid order came to be passed without affording any opportunity to the Appellant to argue its case and as such the same was passed without compliance of principles of Natural Justice. **Note 2**: It will not be out of place to mention that the order of Hon'ble NGT will amount to multiple recoveries of the compensation on the same violation which will make it penal in nature and not compensatory.
12.02.2019	The Hon'ble NGT had considered an Original Application filed against member industries of VIA, registered as O.A. 57 of 2018 at length, and had disposed of the same vide order dated 12.02.2019 directions to the statutory regulator Gujarat Pollution Control Board, to take actions in accordance with law.
22.02.2019	The member industries of Vapi Industries Association preferred an appeal before this Hon'ble Court impugning the order dated 11.01.2019 registered as Civil Appeal Diary No. 5264 of 2019, wherein it was held that – *'Be that as it may since the Committee constituted by NGT has to undertake the exercise of fixing the responsibility of individual polluting industrial unit, we make it clear that the aforesaid direction of interim compensation is subject to the final outcome of the report that would be submitted by the*

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	Committee. To put it otherwise, in case, it is held that a particular industrial unit has not caused any pollution it would be entitled to claim the refund of the interim compensation. *At this stage, Mr. Ranjit Kumar submits that many small industrial units are not in a position to pay Rs.25 lakhs by way of interim compensation because of the financial crisis which they are facing. He has also pointed out that in respect of these units, they had submitted bank guarantee which stood forfeited as well. Such industrial units may approach the NGT with the facts and figures by making an appropriate application for the waiver of the direction for payment of interim compensation. Once such an application is made the same shall be considered by the NGT on its own merits. We make it clear that this Court has not expressed any opinion on such application.* *Since permission is given to the industries to approach the NGT, the direction in respect of interim compensation contained in the impugned order is stayed for a period of two weeks.* *The appeal is disposed of accordingly.*
25.02.2019	Thereafter, the Appellant preferred a Review Application No. 08 of 2019 in O.A. 95 of 2018, before the Hon'ble NGT, wherein the Hon'ble NGT passed

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	order dated 25.02.2019, thereby dismissing the Review Application No. 08 of 2019, without any sufficient reasons.
12.04.2019	This Hon'ble Court in a similar matter wherein the Hon'ble NGT had directed assessment of damages by an expert committee without jurisdiction and any statutory backing to pass such, in Civil Appeal No. 3396 of 2019 this Hon'ble Court was pleased to issue notice vide order dated 12.04.2019 and hold that – *"In the meantime, there shall be a stay of proceedings in Original Application No. 1040 of 2018 pending before National Green Tribunal, Principal Bench, New Delhi."*
09.05.2019	The expert committee constituted vide order dated 11.01.2019, submitted its report before the NGT on 09.05.2019 and imposed compensation for the cost of restoration of the environment aggregating to Rs. 15,75,49,827/-. It is noteworthy to state that triple the amount, as being calculated by the committee has been deposited by the member industries of the Appellant in the garb of interim compensation. The industries were prepared to seek a refund from CPCB in terms of order dated 22.02.2019 passed by this Hon'ble Court.
13.05.2019	The NGT, in gross contravention of the orders passed by this Hon'ble Court on 22.02.2019, instead of considering each application of member industries of VIA on merit, observed that –

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	32. In view of the material on record appearing from the report extracted above, prima facie, direction to deposit interim compensation in terms of order dated 11.01.2019 is fully justified and needs no change. It is patent that the interim amount fixed by this Tribunal may not only be inadequate to meet the loss caused by pollution and the cost of restoration. The prayer for waiving the requirement of interim deposits has no merit and is dismissed. I.A. Nos.176/2019 to 187/2019, I.A. Nos. 190/2019 to 207/2019, I.A. Nos. 227/2019 to 238/2019, I.A. No. 263/2019 said to be for variation of the order dated 11.01.2019 will stand dismissed. It is much pertinent to submit that, the NGT had no jurisdiction to interfere with the findings and assessment of the expert committee and each member of the committee was a highly qualified professional and even otherwise NGT has no powers to interfere/ re-work on the report of an expert committee to reach its pre-determined calculations, as appreciated by this Hon'ble Court in Civil Appeal 3396 of 2019 vide order dated 12.04.2019.
19.08.2019	The Hon'ble NGT vide order dated 19.08.2019, considered the reports dated 09.05.2019 and 06.08.2019, and proceeded with the pre-determined mindset, to hold that-

	'30. We find merit in the submissions that the compensation to be recovered should be deterrent and should have some correlation with the cost of restoration. *31. Accordingly, we direct the Committee to make a fresh calculation based on the actual period of pollution during five years preceding 26.02.2018, the date on which this application was filed i.e. from 26.02.2013 till the date of calculation. The Committee has only gone by the category of large, small and medium industry and not by the extent of pollution by the category of the industry concerned as red, orange and green. The Committee may also keep in mind the need to correlate the compensation to be recovered to the cost of restoration in the facts of the present case. The GPCB should furnish a list of all the polluting units. We find that the approach of the GPCB has been too soft and adequate action has not been taken against the law violators by way of prosecution and closure of polluting activities which is a failure of the regulator. If the cost of restoration is not recovered from polluters, the regulator and not the victim should be responsible for the loss.*
23.08.2019	The member industries of VIA preferred an appeal

	against order dated 13.05.2019 passed by NGT, before this Hon'ble Court, registered as Civil Appeal (D) No. 28435 of 2019, wherein this Hon'ble Court being convinced with the grounds and questions of law raised therein was pleased to issue notice.
28.08.2019	Impugned Order passed by NGT, directing GPCB and CPCB to collect about 92 Crores as interim compensation from Appellant. The NGT had no jurisdiction and statutory backing to pass such orders.
28.11.2019	Hence the Present Appeal.

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Item No. 01 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 95/2018
(M.A. No. 1029/2018 & I.A. No. 326/2019)

Aryavart Foundation Applicant(s)

Versus

M/s Vapi Green Enviro Ltd. & Ors. Respondent(s)

Date of hearing: 28.08.2019

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

For Applicant(s): Mr. Raj Panjwani, Sr. Advocate with Mr. Jitendar Singh, Advocate

For Respondent (s): Mr. Gopal Jain, Sr. Advocate, Mr. M.S Kalra, Mr. Sandeep Mishra, Advocates for R-1
Ms. Nidhi Jaswal, Advocate for GPCB
Mr. Ritvij Bhatt, Advocate for R-6
Mr. Shlok Chandra, Advocate for CPCB

ORDER

1. The question for consideration is remedial measures against pollution of river Daman Ganga and drain *Bill Khadi* in District Valsad in Gujarat on account of discharge of effluents by industries and CETP in Vapi Industrial Cluster.

2. The matter was earlier reviewed vide order dated 13.05.2019. It will be appropriate to refer to the relevant part of the said order:

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"**BACKGROUND**

2. According to the applicant, pollution is being caused by discharge of untreated polluting industrial effluents by more than 500 industrial units in Vapi Industrial Cluster. The CETP operator, Respondent No. 1, M/s. Vapi Green Enviro Limited (Old name – Vapi Waste & Effluent Management Co. Ltd.) and the defaulting individual industrial unit are liable to be rendered accountable by way of prohibitory and remedial measures. The river and the drain in question are required to be restored. The applicant has referred to a study carried out in February, 2017 by NEERI finding huge water pollution in the river as follows:-

> "The fish bioassay study on the final treated effluent sample discharged from Vapi CETP into the river indicates 100% mortality at 50, 75 and 100% waste water concentrations within 24 h exposure time (Plate 4.56). The experimental results presented in Table 9.6 reveal toxic nature of the treated effluent from Vapi CETP. Thus, it can be concluded from the fish bioassay study that the final treated effluent from Vapi CETP with high colour intensity, organic and inorganic matters is having toxic effect on aquatic life of Daman Ganga River. Therefore, Vapi CETP effluent must be treated adequately to remove the pollution parameters before discharging into Daman Ganga River.
>
> The final treated effluent discharge from the existing Vapi CETP (D-11A) has not only caused deterioration of the river water quality with respect to the colour and recalcitrant parameters but also has imparted toxic effect on aquatic life of Daman Ganga River (segment-II). Therefore, Vapi CETP must be scientifically upgraded for colour and recalcitrant pollutants removal including reject management with a final aim of achieving zero liquid effluent discharge as delineated under Section 11.0. This will result in recovery of good quality water, which can be reused as process water by the industries, leading to fresh water conservation."

3. The Gujarat Pollution Control Board (GPCB) carried out inspection on several dates which confirmed pollution. Notices were issued under Sections 33A and 25 of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) to the erring parties but no satisfactory result was received and pollution beyond statutory norms continues.

EARLIER PROCEEDINGS:

4. This Tribunal reviewed the matter at length vide order dated 11.01.2019 for preventive and remedial measures in the matter.

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The Tribunal heard the applicant, the CETP Operator, the CPCB, the GPCB and also some of the polluting units who were before the Tribunal. Following questions were framed vide order of this Tribunal dated 11.01.2019:

"i. Whether the CETP operator and its member units have failed to comply with the conditions of consent and norms of environment and caused pollution? If so, the manner in which they are to be held accountable?

ii. Does the functioning of CETP in the present case and of CETPs in general in the country calls for review and modification?

iii. Whether the State Pollution Control Board in the present case and regulatory authorities have not performed their duties as per the expectation and if so, what are the steps necessary to achieve the objects for which the Pollution Control Boards/Committees have been constituted under the Water Air and the Air Act?

iv. What are the conclusions and what are the directions required to be issued by this Tribunal?"

5. With reference to question no. 1, it was held that CETP operators and member units had failed to comply with the conditions of consent in view of inspection reports dated 28.09.2018 and 10.01.2019 and in the circumstances 'Polluter Pays' principle can be invoked by the statutory regulatory authorities to determine the extent of accountability of the industrial units. The report dated 28.09.2018 showed:-

"It is observed that Inlet quality - COD, NH3-N and TSS are not meeting with inlet norms whereas COD and TSS at outlet of CETP are not meeting with Outlet norms.

CPCB, RD, Vadodara carry out quarterly monitoring of CETP, Vapi. The latest monitoring carried out on 11.08.2018 and results are provided at Annexure-III. It is observed that Inlet quality - TSS, FDS, BOD, COD and NH3-N are not meeting with inlet norms whereas TSS, FD, COD, NH3-N & Phenols at outlet of CETP are not meeting with outlet norms.

M/s VGEL (CETP) reportedly takes internal actions among the defaulting member units as per M/s VGEL monitoring but so far not provided the list of defaulting industries to GPCB though it is expected as per the Hon'ble NGT Order dated 29.08.2018, and also as per notices of direction issued by GPCB.

M/s VGEL (CETP) has not provided any action plan to comply with both inlet as well as outlet norms during the above review."

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6. Report dated 10.01.2019 also confirmed non-compliance at frequencies noted in the report with reference to the relevant parameters. The fact that untreated effluents were being discharged into the water bodies was not only reported by CPCB and GPCB but also accepted by the CETP operator. The stand of GPCB was that Notice has been issued to CETP operator as well as defaulting industrial units for remedial action.

Accordingly, a Committee was constituted to hear the individual polluting units and to quantify the amount of liability.

7. **Under the issue no. 2, after referring to several cases considered by the Tribunal, it was held that there was large scale failure of CETP systems in general in the light of observations of the Tribunal, an Expert Committee was required to review the same.**

8. **Under issue no. 3, the Tribunal found failure of mechanism of Pollution Control Boards in ensuring pollution free environment which is the mandate of the Constitution and the object of Water Act, Air Act, the Environment (Protection) Act, 1986 and other such laws. The fact that 351 river stretches are identified as polluted by the CPCB, 102 cities in terms of air quality are identified as non-attainment cities and 100 industrial clusters have been identified as polluted is clear evidence of failure of compliance of environment norms and ineffectiveness of the present statutory bodies constituted with that mandate. Proceedings in the present case established the failure of Gujarat State Pollution Board in performing its duty of preventing pollution and taking adequate remedial action against polluters. In spite of severe pollution, no conviction was reported. Polluters were not shown to have been prosecuted. It was noted that the Hon'ble Supreme Court in Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.[1] and also the Parliamentary Standing Committee on Science and Technology, Environment and Forest had found the failure of pollution boards. Still, adequate remedial measures were not being taken by the concerned authorities by way of legislative or executive intervention.** Clean Environment being part of Fundamental Right and 'Sustainable Development', 'Precautionary principle' and 'Polluter Pays principle' being statutorily required to be enforced by this Tribunal under Section 20 of the National Green Tribunal Act, 2010 (NGT Act), to prevent and remedy the acknowledged level of high pollution in the country resulting in death and diseases, the Tribunal held that there was need for Performance Audit being conducted in respect of functioning of all the PCCs and PCBs of the Country and in the light of such findings, further action was required. The directions issued vide order dated 11.01.2019 include that constitution of a Committee to review functioning of CETPs comprising

[1] (2018) 11 SCC 734

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representatives of MoEF&CC, CPCB and NEERI and Performance Audits by CPCB of all the SPCBs and PCCs, constitution of a three Member Expert Committee by the MoEF&CC to consider compliance of mandate of the law laid down by the Hon'ble Supreme Court in Techi Tegi Tara (supra), to suggest guidelines for effective working of SPCBs to bring air and water quality within norms.

9. Under issue no. 4, it was concluded that the CETP operator and the concerned units had failed to comply with the environmental norms and were required to be made accountable within the framework of the regulatory regime. The Regulatory regime provides for preventive as well as remedial action of prohibiting polluting activities, including closure, prosecution as well as recovery of compensation on 'Polluter Pays' principle. Pending such action, interim amount of damage for the pollution already caused so as to recover cost of restoration based on prima-facie opinion could be recovered. CETP mechanism was required to be reviewed and so was the functioning of the regulatory regime in the form of SPCBs. Accordingly, the Tribunal directed constitution of a Committee to assess the extent of damages, payment of interim compensation by CETP operator as well as erring industries which was to be utilized by the CPCB for restoration. ***The Tribunal directed performance audit of all the SPCBs/PCCs and also directed to review of regulatory mechanism in the light of observations of the Hon'ble Supreme Court in Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors., (2018) 11 SCC 734."***

3. The above background shows that based on objective data it was clearly established that the CETP in question was operating in environmental norms and the pollution caused was required to be controlled by stopping the polluting activity and making the polluters accountable on the 'Polluter Pays' principle. Conscious of the fact that large number of industries are connected to the CETP which may be required to be made accountable for causing pollution, the Tribunal made it clear that statutory authorities may give hearing to the affected parties and perform their duties consistent with the principles of *natural justice*. For giving a direction to the statutory authorities in the light of clear evidence of pollution, it was not necessary for the Tribunal to hear individual industries in view of the

fact that such hearing is to be given by the regulatory authority. Since the pollution control board had failed to perform its duty, this Tribunal was required to consider the remedial steps necessary including compliance of observations in the judgement of the Hon'ble Supreme Court with regard to the manning of the regulatory bodies.

4. The Tribunal, in its hearing on13.05.2019, considered the report dated 09.05.2019 submitted by the joint Committee with regard to the status of compliance of environmental norms by the CETPs as well as individual industrial units. It was observed:

"20. The conclusion of the Committee was that there is increase in concentration of pollutants:

> ***"As observed from results of CPCB, GPCB and NEERI, there is increase in the concentration of pollutants post CETP discharge at Namdha and Jari Causeway along the Damanganga river vis-a-vis river water quality at GIDC weir (which can be considered as river water without effect of pollution). Aesthetically, the impact of pollution in the river Damanganga is observed for about 13 km from Vapi weir. This is supported by the CSIR-NEERI Report (2016-2017). The report also stresses on the toxicity of the CETP wastewater on the to fish. Based on the Interactions with local community and Fisheries Department of UT of Daman & Diu, it was conveyed that fishing is not carried out on the stretch downstream of CETP discharge due to river pollution. However data on marine fish catch in the sea near Daman is available.***
>
> *Also based on the historical data of CPCB, the quantum of pollution load indicated decreasing trend of major pollutants such as COD and BOD over the years. This is in line with the improvement in the quality of treated effluent of CETP though CETP is not meeting with outlet standards for parameter COD, TDS, and Colour. Hence, upgradation of CETP treatment scheme is paramount to reduce pollution reaching the river Daman Ganga. There is improvement in the river water quality as per priority categorisation from Priority - II (2010) to Priority - IV (2015 & 2018) as inferred from CPCB report for the river stretch: Kachigaon to Vapi (GIDC weir to Jari Causeway (Priority - I being most polluted and Priority -V being best rating).Though, river stretch falls under Priority IV (based*

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on BOD), presence of other pollutants discharged from the CETP outlet affected the biological and physicochemical environment of the river.

The impact on the coastal marine environment (4 beaches- Tadgam, Jampore, Devka and Tithal) due to industrial discharges through rivers/drains in the area assessed by National Institute of Oceanography (NIO) (2018) and report has stated that there is no evidence of significant deterioration of environmental quality of the beachfront environment. The waters of these 4 beaches contained high load of fecal coliform (FC) in water and sediment suggesting contamination by sewage. The study conducted by CSIR-NEERI also indicated pesticides concentrations at levels below the detectable levels of instrument analysis.

In view of the consideration of the steps for the restoration of the environment of river Damanganga suggested based on treatment of pollutants and discharge as per environmental norms, the cost of restoration comes about Rs. 751 crore for over ground pipeline network from industries to GIDC manhole/sump, quality & quantity monitoring SCADA system, upgradation of CETP, construction of STPs, management of MSW in the area.

*As there are many methods for environment damage estimation and all of them use reasonable assumptions, the committee has used two different approaches to calculate the damage. While Approach - I is based on the economic valuation of eco-services rendered by the river considering a representative critical pollutant (COD) for damage estimation. Approach-II is based on the CETP discharge outlet norms for the pollutants: COD, NH3-N, TSS, and BOD, independent of river water quality. Using two alternative methods the cumulative economic damages are estimated to be in a comparable range (**INR 41.61 Cr for the Approach-I and INR 67.00 Cr for Approach-II during the year 2013 to 2018**).*

*Using the recent six years (2013-2018) data and employing two alternate methods, the yearly average economic damages are estimated to be in the comparable range of **INR 6.93 Cr/year (Approach-I) and INR 11.17 cr/Year (Approach-II).**"*

24. Learned Counsel for the applicant also points out that the Committee has not factored in the level of pollution based on category of industries as red, orange and green which depends on pollution protentional. Even a small industry may be causing more pollution than large industry. Merely categorization large, small and medium without considering the extent of pollution on account of nature of activity of such industry is not correct application of the 'Polluter Pays' principle. The cost of restoration having been found to be more than Rs. 750 Crores which includes multiple of factors. The cost estimate for River

Restoration Programme which includes CETP upgradation, STP and MSW facility. The Committee has undertaken economic valuation and damage assessment by two methods. By following 'shadow cost of pollution load and benefit transfer method' the cumulative damage of Rs. 67.00 Crores has been estimated due to excess discharge of pollutants in river ecosystem in last six years between 2013-18 with average damage of Rs. 11.17 Crores each year to the environment. However, by following 'Direct Benefit Method' which is based on The Economics of Ecosystem and Biodiversity (TEEB) project set up in 2007 and led by United Nations Environment Programme (UNEP) the damage that can be attributed to pollution from CETP in excess of stipulated standard of COD comes to Rs. 41.61 Crores for six years. Right application of the 'Polluter Pays' principle requires that the polluter should be required to pay the cost of restoration. The compensation to be recovered should be deterrent. In the present case, compensation has been based on a formula worked out by the CPCB which cannot be universally applied without reference to cost of restoration and may be deficient in the present case having regard to the high cost of restoration. The amount of compensation should on account of wide spread pollution broadly also correspond to the cost of restoration which has not been done.

25. ***The Committee has assessed compensation only for 44 units while the number of polluting units is more than 500. GPCB failed to give list of all the polluting units. GPCB has not acted on 'Precautionary' principles by closing the polluting units.*** *Reliance has been placed on the order of this Tribunal dated 09.04.2019 in O.A. No. 125/2018, Arvind Pundalik Mhatre Vs. Ministry of Environment and Forest & Climate Change & Ors., wherein this Tribunal in similar circumstances directed closure of polluting units to uphold the mandate of the Water (Prevention and Control of Pollution) Act, 1974. It was observed as follows:*

> *"14. Accordingly, we direct the MPCB to forthwith suspend the Consent to Operate to the industries in the area not meeting the norms and permit them to operate only after remedial steps are taken. Steps in this direction be taken within two weeks from today. Whether a particular industry is complying or not complying with the norms is the matter to be decided by the MPCB in accordance with law. Action taken report be furnished to the Committee and the Committee may take a final call in the matter, in case of any surviving issue."*

26. In the present case in spite of acknowledged pollution, the polluting units are continuing. There is no material to show launching of prosecution. The approach of the GPCB is, thus, patently soft towards the violators of law which itself shows failure of the regulator to protect and restore the environment.

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31. ***Accordingly, we direct the Committee to make fresh calculation based on actual period of pollution during five years preceding 26.02.2018, the date on which this application was filed i.e. from 26.02.2013 till the date of calculation.*** *The Committee has only gone by the category of large, small and medium industry and not by the extent of pollution by the category of the industry concerned as red, orange and green. The Committee may also keep in mind the need to corelate the compensation to be recovered to the cost of restoration in the facts of the present case. The GPCB should furnish list of all the polluting units. We find that the approach of the GPCB has been too soft and adequate action has not been taken against the law violators by way of prosecution and closure of polluting activities which is a failure of the regulator. If cost of restoration is not recovered from polluters, the regulator and not the victim should be responsible for the loss.*

32. ***In view of the material on record appearing from the report extracted above, prima facie, direction to deposit interim compensation in terms of order dated 11.01.2019 is fully justified and needs no change.*** *It is patent that the interim amount fixed by this Tribunal may not only be inadequate to meet the loss caused by pollution and the cost of restoration. The prayer for waiving the requirement of interim deposits has no merit and is dismissed. I.A. Nos.176/2019 to 187/2019, I.A. Nos. 190/2019 to 207/2019, I.A. Nos. 227/2019 to 238/2019, I.A. No. 263/2019 said to be for variation of order dated 11.01.2019 will stand dismissed.*

33. *Fresh report of the Committee may be furnished within two months by e-mail at ngt.filing@gmail.com. Any further submissions of the parties may be given to the Committee through CPCB. We also add a representative of MoEF&CC to the Committee for making the assessment.*

34. *GPCB may furnish list of all the polluting units in addition to list of 44 units earlier given and online data as may be necessary to determine damages for period from 13.02.2013 till date to the Committee and perform its duties as regulator in respect of CETP as well as all defaulting units by way of closure to stop polluting activities and prosecution for the violation of law which had already done.*

35. ***In terms of order dated 11.01.2019 and the above order, following steps may be completed:***

i. ***Report be submitted for review of functioning of CETPs in the country as per direction in Para 55 (v) in order dated 11.01.2019. CPCB may coordinate.***

ii. ***Performance audit of SPCBs/PCCs may be completed as per para 55 (vi) in order dated 11.01.2019.***

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iii. ***MoEF&CC may give status of report of steps to revamp the regulatory bodies as directed in para 55 (vii) and (vii.a) in order dated 11.01.2019.***

iv. ***Compliance of requirement of deposits be made in terms of para 55 (ii) of order dated 11.01.2019 forthwith to the extent not made.***

v. ***The Committee to assess the compensation and give its revised report within two months. MoEF&CC may nominate its representative as part of Committee constituted in terms of para 55 (i) vide order dated 11.01.2019."***

Proceedings before the Tribunal on 19.08.2019

5. In the light of the above background we took up the matter on 19.08.2019. After considering the above report dated 14.08.2019 received from the Committee on the subject of performance of CETP, the Tribunal sought information about the units responsible for discharging effluents beyond norms in CETP inlet resulting in CETP outlet not being as per standards. The Tribunal completed the hearing on all other aspects.

Today's Proceedings before the Tribunal

6. Written submissions have been filed in the course of hearing today on behalf of Respondent No.1 with regard to identification of individual contributors to pollution of inlets in the CETP. It is stated that the effluents of the individual are collected in a common drain. CETP has no opportunity to assess the inlet norms of the individual industries. At the same time, list of defaulting industries furnished by the CETP to the GPCB on 01.02.2019 has been filed as an annexure to the written submissions containing names of the following industries:

1. Chemodist Industries
2. Dalmia Poly Pro Industries Pvt. Ltd.
3. Haatkesh Chem & Engind
4. Jayshiv Chemicals Pvt. Ltd.
5. Nylo Speciality Colours
6. Pearl Colour Industries

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7. Praveen Industries
8. Rainbow Chemicals
9. Ratna Products
10. Skyline Polycats Pvt. Ltd.

7. No other submissions have been advanced even though the written submissions purport to raise certain objections. We may need to mention that as is clear from the background referred to earlier the grievance being considered by this Tribunal is violation of environmental norms resulting in damage *inter alia* to river and drain and the public health. We have already noted earlier that this Tribunal has to enforce the 'Sustainable Development", "Precautionary" and "Polluter Pays" principles under Section 20 of the NGT Act. In the course of such enforcement, the Tribunal can require the statutory bodies to perform their duties after verifying the data and complying with the natural justice. An aggrieved party has statutory remedies against orders of the statutory regulatory bodies. The reports which have been furnished to the Tribunal can certainly be taken into account in absence of meaningful objection thereto.

8. We now proceed to deal with following reports which have been filed in pursuance of earlier consideration and directions by the Tribunal, as noted above:

I. Report dated 14.08.2019 from CPCB in respect of performance of CETP;

II. Report dated 05.08.2019 furnished by the CPCB on behalf of the joint Committee with regard to payment of compensation by the polluting industries;

III. Report dated 10.07.2019 from the CPCB on the subject of performance audit of the State PCBs/PCCs; and

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IV. Report dated 17.08.2019 from the MoEF&CC on the subject of compliance of judgment of the Hon'ble Supreme Court *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[2]

I. Report dated 14.08.2019

9. The report dated 14.08.2019 shows that on analyzing the samples the influent to CETP is not meeting parameters. Final outlet is not meeting the standards for TSS, FDS, COD and BOD parameters. Accordingly, remedial action has been recommended as follows:

> *"3. **RECOMMENDATIONS:***
> - *CETP should up-grade treatment system/put more efforts in operation for meeting with outlet norms.*
> - *The CETP needs to regulate the discharge of member units to meet the inlet standard, especially concentration of FDS parameters is more than 3.5 times than the prescribed standard.*
> - *Proper calibration and continual maintenance of OCEMS needs to be done to ensure reliable results of monitored parameters.*
> - *List of defaulting industries should be regularly (monthly) share with GPCB for taking suitable action against these industries.*
> - *CETP should regularly send the sludge and salt (generated from Common Spray Dryer) to CHWTSDF for proper disposal."*

10. Thus, there is need to reduce the load of inlet so as to ensure that inlet parameters are complied with by contributing industries. This may require closing identified source of such inlets or reducing the corresponding pollution load of the identified member units. It is not difficult to identify polluting units because there exists monitoring mechanism of outlets of individual units. Moreover, CETP itself claims to have given a list in this regard to the GPCB as already noted. The joint Committee of CPCB and GPCB can determine the

[2] (2018) 11 SCC 734

source of polluting inlets and take further action to correspondingly reduce the pollution load by issuing appropriate directions. Further, the CETP needs to be upgraded and till such upgradation is done, the inlet quantity and load needs to be reduced as to match the current capacity of the CETP. The same Committee can also determine the manner in which the CETP may reduce its intake so that its outlet complies with the parameters pending steps for further upgradation. The joint Committee may accordingly take appropriate further action in the matter and file a compliance report before this Tribunal before the next date.

II. Report dated 05.08.2019

11. Report dated 05.08.2019 furnished by the CPCB on behalf of the joint Committee refers to visit to CETP and river DamanGanga, sampling of CETP Vapi and different locations of river Damanganga, Information/Data collection from CETP operators, GPCB, CPCB, other departments, reports of NEERI, NIO, hearing to defaulting industrial units and CETP operators. It is found that CETP was not able to meet the outlet norms as some of the member units are discharging effluents without proper treatment. CETP is unable to treat refractory COD & colour on account of high salt concentration. Impact of pollution is observed for about 13 km from Vapi weir. There is toxicity of CETP waste water affecting the fish. The water from the river is not consumed downstream of GIDC weir either for drinking or irrigation. The pollution load. Upgradation of CETP is necessary. Compensation to be recovered from individual industry members has been assessed to be Rs. 25.36 crore and from CETP Rs. 92.36 crore as against the cost of restoration being assessed at Rs. 728.72 crore

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which includes laying of pipelines, MSW management, sewage collection system. The relevant part of the report is reproduced below:

"The CETP was commissioned in the year 1997 and has made several upgradations in unit treatment and process operations over the years. Recently, the CETP augmented with Common Multiple Effect Evaporator & Common Spray Dryer for High COD & High TDS wastewater. It was observed from the results of analysis of the inlet and outlet wastewaters from multiple data sets of CPCB, GPCB & VGEL that there was an improvement over the years in treated wastewater quality which is significant in 2016. However, the CETP was not able to meet outlet norms broadly for COD, FDS, Chlorides, Sulphates and Color. Major reasons for the non-compliance of GPCB norms are briefly presented hereunder:

1. *Some of the member units are discharging without proper treatment to their process wastewaters prior to discharge into the CETP. Failure to adhere to the CETP Inlet quality norms is one of the reasons for the CETP not meeting the final treated effluent quality.*
2. *The presence of refractory COD & Colour in the presence of high salt concentration becomes difficult to treat and meet statutory norms under the existing treatment scheme.*

Restoration of the environment of river Damanganga requires following broad steps which are suggested based on treatment of pollutants and discharge into river Damanganga as per environmental norms:

- *Improvement/up-gradation in the wastewater collection through surface/over ground pipeline from industries to manhole/sump of GIDC drainage network and to remove all underground discharge line of industrial unit to manhole of underground GIDC drainage. Further, it is recommended to lay surface pipeline conveyance system up to CETP, wherever technically feasible by removing underground existing pipeline.*
- *Restoration of existing & construction of new storm water drain to prevent entry of wastewater into the natural drains in the industrial estate.*
- *Monitoring and analysis of all industries including all streams of wastewater, product wise and shall identify High COD/High TDS (refractory COD) Stream for identification of any discrepancies which will be helpful in taking actions.*
- *Quality & Quantity Monitoring with SCADA-PLC system for controlling quantity & quality of the effluent discharged by each of the member units.*
- *Proper operation, maintenance and up-gradation of CETP to meet the norms prescribed by GPCB*
- *Strict vigilance, identification and action against defaulting industries.*

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- *Proper design and construction of stormwater drains and sewerage network, STP within the local bodies*
- *STPs shall be designed to reuse of treated sewage for industrial reuse/ landscaping / firefighting and agriculture purpose.*
- *Prevent dumping of solid waste from towns and villages on the banks of river.*
- *Minimum environmental flow of Damanganga river for release of water from the Madhuban Dam.*
- *Afforestation*
- *River front development*
- *Agricultural and farm yard management surrounding the river path.*

In view of the consideration of the steps for the restoration of the environment of river Damanganga suggested based on treatment of pollutants and discharge as per environmental norms, the cost of restoration including the projects from concerned departments comes about Rs. 731 - 751 crore for over ground pipeline network from industries to GIDC manhole/sump, quality & quantity monitoring SCADA system, upgradation of CETP, construction of STPs, management of MSW in the area by concerned agencies.

Table 8.1: Compensation and estimated cost of projects from concerns agencies for restoration of Damanganga:

No.	Agency	Amount (in crore)
	Compensation amount from industries and CETP	
1	**Compensation from individual industry members (As per Table 7.4, 161 industries)**	25.36
2	**Compensation from Vapi CETP**	92.36
	Cost of the other projects of concern Agencies/Departments	
3	Overground pipe line by GIDC (GIDC Vapi)	95.00
4	MSW Management (Vapi Municipal Council for Vapi Town)	11.00
5	STP Plant & Sewage Collection system in Vapi Area - 60 MLD (Vapi Municipal Council)	233.00
6	STP Plant & Sewage Collection system in Daman area - 70 MLD (Daman Municipal Council)	272.00
	Total	**728.72**

The above table shows correlation with cost of restoration in consideration of the nature of work and the source of the fund for restoration of river Damanganga is Rs. 728.72 Crore against the total cost of restoration estimated Rs. 731 - 751 Crore (mentioned in Chapter 6, Table 6.1). The total Environmental Compensation from individual industries and CETP (Vapi) is calculated to be Rs. 117.72 Cr (25.36 Cr + 92.36 Cr).

As per the interim order dated 11.01.2019 & 13.05.2019, 41 defaulting industries as per earlier list and CETP has already

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paid the interim environment compensation, whereas 3 industries have not submitted the interim environment compensation for whom GPCB have already issued the closure directions.

Based on the Hon'ble NGT directives, various actions have been identified to restore the river Damanganga and reduce environmental damage in the future. Few agencies such as GIDC, VGEL CETP, GPCB, CPCB, Municipality/local bodies are identified which are in concern for restoration. **The committee's major recommendations are summarized below (as detailed given in section 5.1.1 to 5.1.4 Chapter - 5).**

ACTIONS TO BE UNDERTAKEN BY GIDC/NOTIFIED AREA AUTHORITY

- It is recommended to provide the surface/over ground pipeline from industries to CETP for proper conveyance of effluent wherever technically feasible by removing existing underground pipeline.
- Restoration of any damaged stormwater drains to prevent entry of wastewater into the natural drains in the industrial estate and prevention of entry of industrial wastewater in Bill khadi and its flow downstream to GIDC estate.
- Proper design and construction of stormwater drains within the industrial estate where it is not provided particularly in low lying areas to (i) prevent stagnation of storm water contaminated with industrial wastes (ii) to prevent indiscriminate entry of contaminated storm water into natural drains.

ACTIONS TO BE UNDERTAKEN AT CETP LEVEL

- CETP shall carry out monitoring and analysis of all industries including all streams of wastewater, product wise and shall identify High COD/High TDS (refractory COD Stream). Based on that, CETP shall monitor the inlet quantity to CMEE/Spray dryer industry wise and shall submit data to GPCB monthly for identification of any discrepancies which will be helpful in taking actions.
- All the member units have to provide a system for the quantity and quality of the effluent discharge through SCADA-PLC system and shall observe discharge schedule and permitted volume.
- All the sump rooms shall be equipped with auto samplers for controlling the quality of effluent discharged by members, which can be accessible by VGEL. If require, it should also be accessible for GPCB.
- Proper operation, maintenance and up-gradation of CETP to meet the norms as prescribed in **Chapter 6 (Table 6.1)** or equivalent advanced technology related to effluent profile.

ACTIONS TO BE TAKEN AT REGULATORY LEVEL

- Continuous strict vigilance, identification and action against defaulting industries.
- Vapi GIDC to ensure that the process wastewaters from industries do not enter the storm water drains. It may be

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achieved through the construction of dykes or tanks by Industry to collect and introduce into the wastewater treatment scheme.

ACTIONS TO BE TAKEN BY LOCAL BODIES (MUNICIPAL COUNCIL)

- *Proper design and construction of stormwater drains and sewerage network within the local bodies where it is not provided particularly (i) in low lying areas to prevent stagnation of storm water contaminated with wastes (ii) to prevent indiscriminate entry of contaminated storm water into natural drains and finally river Damanganga.*
- *Control domestic/commercial wastewater (sewage) discharges into the River through proper collection and treatment from residential and commercial areas and treatment through STPs. The STPs shall be designed to reuse of treated sewage for industrial reuse/ landscaping / firefighting and agriculture purpose.*
- *Prevent dumping of solid waste from towns and villages on the banks of river.*
- *Identification of plots for solid waste landfill development.*
- *The appropriate authority should take care of their concern projects for restoring the environment."*

12. Learned Counsel or the applicant has referred to the report of the Committee to point out that the Committee has given hearing to the CETP and all individual units and discussed the individual cases for determining the amount of compensation. However, the period for which the compensation has been assessed is not the entire period for which the pollution continued but reckoned only with respect to the date of inspection. It cannot be presumed that there was no pollution earlier. The polluter is to prove the period during which no pollution was being caused. Whatever be the "best judgement assessment" for the past, presumption of no pollution is not justified. The compensation assessed may thus need to be enhanced. We are of the view that this aspect can be revisited by the joint Committee in light of the submission made by the Learned Counsel for the applicant. Till such consideration, the amount assessed can be collected as an interim compensation. Further action may accordingly

be taken jointly by GPCB and CPCB. . Compliance report in this regard may be filed before the next date.

III. Report dated 10.07.2019

13. Report dated 10.07.2019 filed by the CPCB is on the subject of performance audit of the State PCBs/PCCs. The report merely ranks the PCBs/PCCs, without proper assessment of the functioning.

14. What is expected is performance audit on issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, scientific equipments, logistics support, competence etc. rather than ranking the States. Let the same be done and state-wise reports submitted based on thorough analysis in terms of statutory functions. CPCB may devise an appropriate mechanism for the purpose. We also direct that all vacant positions in the SPCBs/PCCs may be filled up at the within four months and the Chief Secretaries of the States/UTs may ensure that there is no embargo in doing so, so that effective steps for protection of environment can be taken. It is also necessary to direct that the laboratories established by the SPCBs/PCCs, at headquarters as well as regional centers, are duly recognized for purposed of enforcement of environmental laws. The concerned authorities may take further steps accordingly. The CPCB may compile a report and file before the next date. SPCBs/PCCs may utilize the funds available with them, under EC/Consents or other heads instead of approaching other authorities and on that pretext not performing their essential function. The MoEF&CC may consider constituting an appropriate authority for the purpose with

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representatives from Central and State authorities on the pattern of Compensatory Afforestation Fund Management and Planning Authority (CAMPA) or otherwise. A compliance report be filed by the MoEF&CC before the next date.

IV. Report dated 17.08.2019

15. Report furnished on 17.08.2019 by the MoEF&CC is on the subject of compliance of judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[3]. The report shows that further action is required for compliance of judgement of Hon'ble Supreme Court.

16. Let further follow up action be taken by the MoEF&CC to monitor compliance of judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.* and report furnished to this Tribunal before the next date after ascertaining that uniformity in terms of qualifications, experience and special skill sets is adhered to especially with regard to key position of Chairman and Member Secretary of SPCBs/PCCs.

17. In view of the above discussion our directions are summed up as follows:

(i) Let the joint Committee take action in terms of para 10 above on the subject of corresponding reduction in load to ensure compliance of norms of inlet in CETP so as to ensure that inlet and outlet of CETP are as per norms and file compliance report before the next date.

[3] (2018) 11 SCC 734

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(ii) With regard to the past violations, compensation as assessed by the Committee in respect of individual units as well as CETP is liable to be recovered as interim compensation on 'Polluter Pays' principle. Further action may be taken jointly by GPCB and CPCB. Compliance report in this regard may be filed before the next date.

(iii) Performance audit be done with reference to issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, adequacy of laboratories and scientific equipments, logistics support, competence etc. rather than ranking the States and state-wise reports submitted along with recommendations based on thorough analysis in terms of statutory functions before the next date. CPCB may devise an appropriate mechanism for the purpose. CPCB and MoEF&CC may file a compliance report with reference to observations in para 14 above.

(iv) Let further follow up action be taken by the MoEF&CC to monitor compliance of judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.* and report furnished to this Tribunal before the next date.

List for further consideration on 11.02.2020.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

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K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

August 28, 2019
Original Application No. 95/2018
DV

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL [D] NO. _____ OF 2019

(ARISING OUT OF THE ORDER DATED 28.08.2019 PASSED BY THE HON'BLE NATIONAL GREEN TRIBUNAL [NGT], PRINCIPAL BENCH IN ORIGINAL APPLICATION NO. 95 OF 2018)

BETWEEN:

POSITION OF PARTIES

	NGT	**Supreme Court**
1. VAPI GREEN ENVIRO LIMITED Through its C.E.O Non- Equity Non Profit entity Responsible for managing the CETP plant at Vapi VIA House, Plot No. 135 GIDC. Industrial Estate, VAPI – 396195, Gujarat, India Through its Authorized Signatory	Respondent No. 1	Appellant

AND

1. Aryavart Foundation Through its President Shri Ashutosh Ramesh Bhai Mishra Having its Head Branch and Administrative Office Shop No. J-50, Upper Ground Floor, Japan Market, Near Delhi Gate, Ring Road, Surat, Gujarat-395303	Applicant	Contesting Respondent No.1
2. Gujarat Pollution Control Board Through its Authorised Representative Paryavaran Bhavan Sector-10A, Gandhinagar,	Respondent No. 2	Contesting Respondent No.2

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Gujarat-382010

3. The Collector, Valsad District Collector Office , Valsad, Gujarat-396001	Respondent No. 3	Contesting Respondent No.3
4. Central Pollution Control Board Through its Chairman Parivesh Bhawan, East Arjun Nagar, Delhi-110032	Respondent No. 4	Contesting Respondent No.4
5. Ministry of Environment, Forest and Climate Change Through its Secretary Indira Paryavaran Bhavan, Ali Ganj, Jorbagh Road, New Delhi, Delhi – 110003	Respondent No. 5	Contesting Respondent No.5
6. Gujarat Industrial Development Corporation Through its Chairman Block 3,4,5, Udhyog Bhavan, Sector-11, Gandhinagar - 382011, Gujarat, India.	Respondent No. 6	Contesting Respondent No.6

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CIVIL APPEAL UNDER SECTION 22 OF

THE NATIONAL GREEN TRIBUNAL ACT,2010

To,

Hon'ble The Chief Justice of India

And His Hon'ble Companion Justices of

The Hon'ble Supreme Court of India

The humble appeal of the Appellant above named:

MOST RESPECTFULLY SHEWETH:

1. The instant statutory appeal under Section 22 of the National Green Tribunal Act, 2010 (hereinafter referred to as "the Act") has been filed against an interim order dated 28.08.2019 passed by the National Green Tribunal (hereinafter referred to as "the NGT") in Original Application No. 95 of 2018 whereby the Hon'ble NGT has *ex-parte* erroneously directed Respondent No. 2 and 4 to collect a penalty of about 92 Crores from the Appellant for an alleged non-compliance for which the Appellant has already faced consequences, penalty as per the statutory provisions. The impugned order has been passed without NGT having requisite jurisdiction or a statutory backing to pass such orders. The NGT has erred by directing for the second time, collection of compensation from Appellant for which the Appellant has already faced consequences as per

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the statutory provisions. It is pertinent to mention that, the Impugned Order has been passed without there being any conclusive evidence or finding towards actual damage to the environment. The Hon'ble NGT completely ignored the fact that the issue for consideration before it was discharge of untreated/partially treated effluents into River Damanganga, while it is noteworthy to state that not even a single member industry of VIA discharges any kind of effluent into River Damanganga but to CETP.

1A. This Hon'ble Court, in a matter where exactly the same questions of law and grounds as that of instant appeal have been raised, registered as Civil Appeal No. 3396 of 2019, was pleased to issue notice vide order dated 12.04.2019 and hold that –

"In the meantime, there shall be a stay of proceedings in Original Application No. 1040 of 2018 pending before National Green Tribunal, Principal Bench, New Delhi."

1B. This Hon'ble Court, in an appeal arising out of same impugned order, registered as Civil Appeal No. 8313 of 2019, was pleased to issue notice vide order dated 25.10.2019 and hold that –

"Issue notice returnable on 13.12.2019. List along with Civil Appeal No.3396 of 2019. In the meanwhile, there shall be stay of prosecution. Pleadings to be completed in the meanwhile."

2. BRIEF FACTS

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That the facts leading to the filing of the instant appeal are as follows:

(ii) The Appellant- Vapi Green Enviro Limited ('VGEL'), is a non-equity, non-profit entity based Company registered under the Companies Act, 1956, operating the Common Effluent Treatment Plant (**"CETP"**), catering to the needs of industries in the area of Vapi, formed with an objective of providing a Comparative Environment Management Program (CEMP) for Vapi in Gujarat.

(iii) The CETP that caters to the needs of Vapi Industrial area, was taken over from Government authorities, under unchallenged directions given by the Gujarat High Court to the Appellant, way back in 1997. Thereafter, by 2001, all waste water generated in the industrial part of Vapi were linked to the CETP to ensure that the environment is protected.

(iv) The Appellant has installed treatment facilities for effluents i.e. through common effluent treatment plant (CETP) and transport, storage, disposal facility for hazardous solid waste (TSDF) to control pollution levels in and around the industrial areas of Vapi. The Appellant has played a lead and active role towards pollution abatement by adopting and promoting cleaner production, cleaner technology for cleaner development mechanism.

(v) Furthermore, in order to take care of High COD effluents, Non-Biodegradable effluent and High TDS effluents, the member industries are transporting such effluents by tankers to the CETP site, and not discharging in the drainage system. It is pertinent to mention that the Appellant has set up a CMEE plant in 2015 and a spray dryer in the year 2018 to treat the aforesaid effluents effectively.

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(vi) The Appellant has also taken numerous Effective Pollution Control Measures at the points of origin of effluents, in transit and also at the end of the pipeline by providing collective treatment prior to its final disposal in Damanganga High Tide Zone.

(vii) The Appellant had set up a common solid waste management site in the year 1999, located at Vapi and in the year 2000, commissioned the first cell of the Secured Landfill constructed as per German Design based on asphalt-concrete baseliners. Also, the Applicant provided the facility for collection, transport, storage and disposal of hazardous solid wastes at this site.

(viii) The Hon'ble National Green Tribunal (WZ) Pune satisfied with efforts made by the Appellant to achieve & maintain the discharge norms have acknowledged the work of the Appellant and cited the Appellants as exmaples in other matters too. Such as vide order dated 30/03/2016 in EA-15/16 in OA-37/13 (WZ) titled as *Vanashakti Public Trust & Anr Vs Maharashtra Pollution Control Board & Ors.* Secondly, vide order dated 17/02/2017 passed in Application No: 89/14 (WZ) registered as *Tarun Patel Vs. The Gujarat Pollution Control Boards & Ors.* Thirdly vide order dated 08/08/2017 in Original Application No: 109/14 (WZ) titled as ***Tarun Patel Vs. The Collector Valsad & Ors*** also vide order dated 27/10/2017 in Original Application No: 109/14 (WZ) titled as *Tarun patel Vs. The Collector Valsad & Ors.*

A copy order dated 30/03/2016 in EA-15/16 in OA-37/13 (WZ) titled as *Vanashakti Public Trust & Anr Vs Maharashtra Pollution Control Board & Ors* is annexed herewith and marked as **ANNEXURE- A1 (Pages 70 to 76).**

A copy of the order dated 17/02/2017 passed in Application No: 89/14 (WZ) registered as *Tarun Patel Vs. The Gujarat Pollution*

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Control Boards & Ors is annexed herewith and marked as **ANNEXURE- A2 (Pages 77 to 78).**

A copy of the order dated 08/08/2017 in Original Application No: 109/14 (WZ) titled as *Tarun Patel Vs. The Collector Valsad & Ors* is annexed herewith and marked as **ANNEXURE- A3 (Pages 79 to 80).**

A copy of the order dated 27/10/2017 in Original Application No: 109/14 (WZ) titled as *Tarun patel Vs. The Collector Valsad & Ors* is annexed herewith and marked as **ANNEXURE- A4 (Pages 81 to 82).**

(ix) In January 2018, Aryavart Foundation claiming to be an NGO, preferred Original Application No. 95 of 2018, alleging that there is a discharge of untreated/partially treated trade effluents by the Applicant in Vapi Industrial Cluster into Damanganga's High Tide Zone in District Valsad in Gujara which meets the Arabian Sea. Apart from Daman, it was also alleged that the Damanganga river & Bill Khadi (a natural drain) which also falls into the Arabian Sea, are being equally polluted by the Appellant.

(x) Thereafter on 09.03.2018, the Hon'ble Bench issued notice on the Original Application No. 95 of 2018. Once pleadings stood completed, the matter was finally taken up for arguments on 29.08.2018, wherein the Tribunal was pleased to limit the scope of the O.A 95 of 2018 to the following clarifications-

> *'while passing the order dated 03.08.2018, this Tribunal has not in any manner diluted the directions of the Hon'ble Supreme Court in [2017] 5 SCC 326 with regard to the mandatory requirement of ETP. Prayer is allowed'.*

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The copy of order dated 29.08.2018 passed by the Hon'ble NGT in O.A. 95 of 2018 is annexed herewith and marked as **ANNEXURE- A5 (Pages 83 to 103).**

(xi) Having perused the Order dated 29.08.2018, the Hon'ble Tribunal observed that the order is a mere clarification to the original order dated 03.08.2018 passed in *Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.* O.A. 593 of 2017. The order dated 03.08.2018 has to be read jointly with Order dated 29.08.2018 since the issues involved in O.A. 95 of 2018 were limited to clarification of order dated 03.08.2018. The moment such clarification is provided by the Hon'ble Tribunal, nothing survives in the matter for consideration thereafter.

(xii) On 10.01.2019, at about 01.00 p.m (i.e. about 21 hours prior to hearing), the counsel for Respondent No. 2 / Gujarat Pollution Control Board served the Appellants' counsel with reports prepared by Respondent No. 4 / Central Pollution Control Board and Respondent No. 2 / Gujarat Pollution Control Board. Thereafter, a detailed hearing on 11.01.2019 took place.

A copy of the proof of service of report by counsel of GPCB / Respondent No.2 on 10.01.2019 i.e. 21 Hours prior to the hearing has been annexed herewith as marked as **ANNEXURE A6 (Pg. 104 to 105).**

(xiii) The Hon'ble NGT failed to consider the material facts and prayers made by the learned counsel for the Appellant and passed the order dated 11.01.2019, thereby directing the following-

'55. Accordingly, we direct as follows:

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(i) We direct constitution of following Committee to assess the extent of damage and cost of restoration of the environment and individual accountability of CETP and polluting industrial units:

a) Representative of CPCB.

b) Representative of IIM, Ahmadabad.

c) Nominee of IIT, Ahmadabad.

d) Scientist nominated by NEERI.

e) Representative of GPCB.

(i.a) The Committee may give its report within three months. The Committee will be entitled to take any factual or technical inputs in the manner found necessary. CPCB will be the nodal agency for the purpose. The Committee may also suggest steps for restoration of the environment.

(i.b) The Committee may give hearing to the CETP operator and the units identified as polluting by the GPCB for which list will be furnished by the GPCB to the Committee indicating the period and nature of default within one month.

(i.c) The GPCB may inform the defaulting units for compliance of this order.

(i.d) The Committee may also consider data already available with it since the affidavit filed by the CPCB does indicate availability of such data with the CPCB.

(i.e) The GPCB may also consider exercise of its statutory powers of prosecution which power is coupled with duty.

(ii.a) The CETP may deposit a sum of Rs. 10 Crores with the CPCB

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towards interim compensation within one month.'

A copy of the order dated 11.01.2019 passed by the Hon'ble NGT in O.A. 95 of 2018 is annexed hereto and marked as Annexure **ANNEXURE- A7** (Pg. No.106 to 129).

(xiv) It is noteworthy to mention that, the Hon'ble NGT had considered an Original Application filed against member industries of VIA, registered as O.A. 57 of 2018 at length, and had disposed of the same vide order dated 12.02.2019 directions to the statutory regulator Gujarat Pollution Control Board, to take actions in accordance with law.

A copy of the order dated 12.02.2019 passed by the Hon'ble NGT in O.A. 57 of 2018 is annexed hereto and marked as Annexure **ANNEXURE- A8**(Pg. No.130 to 131).

(xv) Pursuant to the order dated 11.01.2019, Appellant preferred an appeal before this Hon'ble Court against the order dated 11.01.2019, registered as Civil Appeal Diary No. 5264 of 2019, wherein it was held that –

'Be that as it may since the Committee constituted by NGT has to undertake the exercise of fixing the responsibility of individual polluting industrial unit, we make it clear that the aforesaid direction of interim compensation is subject to the final outcome of the report that would be submitted by the Committee. To put it otherwise, in case, it is held that a particular industrial unit has not caused any pollution it would be entitled to claim the refund of the interim compensation.

At this stage, Mr. Ranjit Kumar submits that many small industrial units are not in a position to pay Rs.25 lakhs by way of interim compensation because the financial crisis which they are facing. He

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has also pointed out that in respect of these units, they had submitted bank guarantee which stood forfeited as well. Such industrial units may approach the NGT with the facts and figures by making an appropriate application for the waiver of the direction for payment of interim compensation. Once such an application is made the same shall be considered by the NGT on its own merits. We make it clear that this Court has not expressed any opinion on such application.

Since permission is given to the industries to approach the NGT, the direction in respect of interim compensation contained in the impugned order is stayed for a period of two weeks.

The appeal is disposed of accordingly.'

A copy of the order dated 22.02.2019 passed by the Hon'ble Supreme Court of India in Civil Appeal Diary No. 5264 of 2019 is annexed hereto and marked as **ANNEXURE- A9 (Pg. No. 132 to 135).**

(xvi) Thereafter, the Appellant filed a Review Application No. 08 of 2019 in O.A. 95 of 2018, before the Hon'ble NGT, wherein the Hon'ble NGT passed order dated 25.02.2019, thereby dismissing the Review Application No. 08 of 2019, without any sufficient reason.

A copy of the Review Application filed by the Appellant herein impugning order dated 11.01.2019 has been annexed herewith and marked as **ANNEXURE- A10 (Pg. No. 136 to 181).**

A copy of the order dated 25.02.2019 passed by the Hon'ble NGT in Review Application No. 08 of 2019 in O.A. 95 of 2018, is annexed herewith and marked as **ANNEXURE- A11 (Pg. No. 182 to 184).**

The appeal against orders dated 11.01.2019 and 25.02.2019 is at the stage of fresh admission before this Hon'ble Court.

(xvii) The NGT vide Order dated 11.01.2019 had imposed cost on the Appellant, which will amount to multiple recoveries of the compensation on the same violation, and hence making it penal in nature and not compensatory. Furthermore, the Hon'ble NGT has erroneously dismissed the Review Application vide the order dated 25.02.2019, without affording sufficient reasons thereof.

(xviii) This Hon'ble Court in a similar matter wherein the Hon'ble NGT had constituted a committee and directed assessment of damages in complete contravention to the statutory mechanism under the Water Act, registered as Civil Appeal No. 3396 of 2019, this Hon'ble Court was pleased to issue notice vide order dated 12.04.2019 and hold that –

> *"In the meantime, there shall be a stay of proceedings in Original Application No. 1040 of 2018 pending before National Green Tribunal, Principal Bench, New Delhi."*

Copy of the order dated 12.04.2019 passed by this Hon'ble Court in Civil Appeal No. 3396 of 2019 is annexed hereto and marked as **ANNEXURE- A12 (Pg. No. 185 to 185).**

(xix) Thereafter, NGT while considering report dated 09.05.2019 and 06.08.2019 proceeded with the pre-determined mindset, to hold that–

> *'30. We find merit in the submissions that the compensation to be recovered should be deterrent and should have some correlation with the cost of restoration.*

34 135

31. Accordingly, we direct the Committee to make a fresh calculation based on the actual period of pollution during five years preceding 26.02.2018, the date on which this application was filed i.e. from 26.02.2013 till the date of calculation. The Committee has only gone by the category of large, small and medium industry and not by the extent of pollution by the category of the industry concerned as red, orange and green. The Committee may also keep in mind the need to correlate the compensation to be recovered to the cost of restoration in the facts of the present case. The GPCB should furnish a list of all the polluting units. We find that the approach of the GPCB has been too soft and adequate action has not been taken against the law violators by way of prosecution and closure of polluting activities which is a failure of the regulator. If the cost of restoration is not recovered from polluters, the regulator and not the victim should be responsible for the loss.

A copy of the report dated 09.05.2019 filed by GPCB and CPCB, is annexed hereto and marked as **ANNEXURE- A13 (Pg. No.186 to 429).**

A Copy of the proof of service on the Appellant of the report dated 09.05.2019 filed by GPCB and CPCB, is annexed hereto and marked as **ANNEXURE- A14 (Pg. No.430 to 431).**

A copy of the order dated 13.05.2019 passed by Hon'ble NGT has been annexed herewith and marked as **ANNEXURE- A15 (Pg. No.432 to 455).**

(xx) The Appellant filed its objections to the reports, before the committee pursuant to order dated 13.05.2019, however the committee did not even utter a word about the same vide its next report dated 06.08.2019.

A copy of the objections dated 08.07.2019 submitted by the Appellant before the committee, has been annexed herewith and marked as **ANNEXURE- A16 (Pg. No.456 to 495).**

(xxi) It is to be noted that Hon'ble Tribunal failed to grant a fair opportunity/time to the Appellant to respond to the reports filed by GPCB & CPCB. The report dated 09.05.2019 was served upon the Appellant on 10.05.2019 that is 2 days prior to the hearing fixed for 13.05.2019. Even though repeated requests were made by the Appellant for grant of time to respond/file objections to the First Report dated 09.05.2019, no time was given by this Hon'ble Tribunal. Yet again, the latest report by CPCB dated 06.08.2019 was served upon the Appellant during the course of hearing on 19.08.2019 as evident from the mail received from the CPCB's counsel, however order dated 19.08.2019 records that '*hearing is practically concluded*'.

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Therefore, it is noteworthy to state that there has been gross violation of the principle of Natural Justice.

A copy of the report dated 06.08.2019 filed by GPCB and CPCB, is annexed hereto and marked as **ANNEXURE- A17 (Pg. No.496 to 1000).**

Proof of service of the report dated 06.08.2019 filed by GPCB and CPCB, is annexed hereto and marked as **ANNEXURE- A18 (Pg. No.1001 to 1002).**

(xxii) The NGT without even affording an opportunity to the Appellant to submit its objections to the report dated 06.08.2019, concluded the hearing vide order dated 19.08.2019, in gross violation of the principles of natural justice and the orders passed by this Hon'ble Court.

A copy of the order dated 19.08.2019 passed by the Hon'ble NGT in O.A. No. 95 of 2018 is annexed hereto and marked as **ANNEXURE-A19 (Pg. No.1003 to 1004).**

(xxiii) Vapi Industries Association on behalf of its members preferred an appeal against order dated 13.05.2019 passed by NGT, registered as Civil Appeal (D) No. 28435 of 2019, wherein this Hon'ble Court being convinced with the grounds and questions of law raised therein was pleased to issue notice.

37 1411

A copy of the order dated 23.08.2019 passed by this Hon'ble Court in Civil Appeal (D) No. 28435 of 2019 is annexed hereto and marked as **ANNEXURE- A20 (Pg. No.1005 to 1005).**

(xxiv) The Principal Bench, Hon'ble NGT in Original Application No. 95/2018, has passed the impugned order dated 28.08.2019, whereby the directions sought by Respondent No. 1, against the Appellant were allowed and the Hon'ble Bench vide the impugned order had directed Respondent No. 2 & 4 to collect interim compensation to the tune of Rs. 117 Crores from the Appellant and the members of VIA. The Appellant on 28.08.2019, having being given no opportunity till date for filing objections on lack of Jurisdiction and no statutory backing for NGT to pass such orders, tendered a comprehensive Written Submission during the course of hearing dated 28.08.2019. A copy of the Written Submissions tendered by the Appellant before the NGT on 28.08.2019 is annexed hereto and marked as **ANNEXURE- A21 (Pg. No.1006 to 1018).**

(xxv) It will not be out of place to mention that the order of Hon'ble NGT has amounted to multiple recoveries of compensation on account of exactly the same non-compliance, which has resulted the direction of NGT to be penal in nature which is unheard of in the NGT Act. It is relevant to point out that the Appellant has been making payment to the Respondent No.2 and/or their Bank Guarantee have been forfeited by the Respondent No.2 as and when the closure notices were issued

on the basis for any non-compliance and as such demands again raised for interim compensation on the same violation will not only be illegal, but also unconstitutional, since it is in complete contravention to the statutory scheme of the Water (Prevention and Control of Pollution) Act, 1974 ('the **Water Act'**) and arbitrary as the course adopted by the NGT lacks a statutory backing, in other words the powers of NGT under the NGT Act in no way permit overriding or substituting the mechanism provided under the Water Act.

Regardless, it is noteworthy to state that the interim compensation amount has already been paid without prejudice, by the Appellant. In fact, triple the amount as being calculated by the committee has been deposited by the member industries of VIA in the garb of interim compensation.

(xxvi) It is submitted that, the NGT had no jurisdiction to constitute a committee when all industries have already faced consequences in terms of the statutory mechanism in place. Even otherwise NGT has no powers to interfere/ re-work on the report of an expert committee to reach its pre-determined calculations, as appreciated by this Hon'ble Court in Civil Appeal 3396 of 2019 vide order dated 12.04.2019.

(xxvii) It is pertinent to submit that the Appellant herein, had filed their written submissions in the O.A. No. 95 of 2018, before the Hon'ble NGT on 28.08.2019. The Appellant herein has clearly pointed out in

39 145

their written submissions that an individual contributor to pollution of inlets in the CETP cannot be determined due to the collection in a common drain. Along with the same, the Appellant has also made their objections to the reports dated 09.05.2019, 20.05.2019 and 05.08.2019, which the Hon'ble NGT has failed to consider and moreover, passed the impugned order dated 28.08.2019.

(xxviii) The NGT vide Impugned Order dated 28.08.2019 had directed the Respondent No. 2 and 3 to collect about 92 Crores as interim compensation from the Appellant, in complete contravention to the statutory scheme.

(xxix) Hence the present Appeal.

3. QUESTIONS OF LAW

The substantial questions of law that arise for the consideration of this Hon'ble Court in the present appeal are as follows:

XV. Whether an appeal, which is the creation of a statute, is maintainable before the NGT against an order which is otherwise appealable before an Appellate Authority?

XVI. Whether the NGT while passing an order, against an order which is otherwise appealable before an appellate authority would not amount to assumption of jurisdiction not vested in it and order passed by it is *coram non judice?*

40 1491

XVII. Whether all the virtually *ex parte* orders passed by the NGT were not liable to be corrected and interfered with, as being against the fundamental rule that no decision must be taken which affects the right of any person without first giving him an opportunity of putting forward his case?

XVIII. Whether the Impugned Order is non-est in law for non-compliance of the principles of Natural Justice to the extent the directions which have been passed qua the member industries of VIA?

XIX. Whether the impugned order is contrary to the law laid down by this Hon'ble Court in *R. VISWANATHAN v. RUKN-UL-MULK SYED ABDUL WAJID*, as reported in 1963 3 SCR 22, wherein a three-judge bench of this Hon'ble Court has stressed the importance of compliance with the principles of natural justice?

XX. Whether the NGT has jurisdiction to entertain a petition that is in the nature of a public interest litigation and that too by a person who is not shown to have espoused any public cause or done any public work for welfare of the society?

XXI. Whether the Hon'ble NGT by virtue of the impugned order can direct multiple recoveries of the compensation from the Appellant, for the same violation/non-compliance for which member industries of VIA have already paid the compensation, suffered closure and/or got the bank guarantee forfeited?

41 1491

XXII. Whether the Hon'ble NGT could have delegated the judicial function of hearing the member industries of VIA to the quasi-judicial authority without there being any legislative backing for the same, also there being no judicial member for hearing and fixing of compensation?

XXIII. Whether the Appellant can be made to pay interim compensation of 92 Crores without even an opportunity provided to the Appellant of being heard and due opportunity to counter the allegations made against them?

XXIV. Whether there was any basis to determine the compensation of up to Rs. 117 Crores in the impugned order? If yes, what was the basis and how was it arrived in the impugned order?

XXV. Whether the Hon'ble NGT has given contradictory finding in as much as at one place it holds that principles of natural justice have to be complied with for the Appellant but in the same order, holds them defaulting industry and also directs them to pay interim compensation?

XXVI. Whether Hon'ble NGT had the jurisdiction and/or powers to interfere with the report of an expert committee constituted vide its own orders?

XXVII. Whether Hon'ble NGT could have objected to the uniform formula applied by CPCB for calculating the cost of restoration despite the

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NGT itself approving the same formula in the case of *Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors.* numbered as O.A. 593 of 2017 vide order dated 19.02.2019 at para 6?

4. DECLARATION IN TERMS OF RULE 2(2):

The Appellant states that no other Civil Appeal has been filed by it against the Impugned Judgement and Order dated 28.08.2019 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi in Original Application No. 95 of 2018.

5. DECLARATION IN TERMS OF RULE 4:

The Annexures produced along with the Civil Appeal are true copies of the pleadings / documents which formed part of the case in Courts below against whose order the leave to appeal is sought for in this petition.

6. That being aggrieved by the impugned order passed by the NGT, against which the Petitioner is approaching this Hon'ble Court on the following amongst other grounds which are taken in the alternative and without prejudice to one another:-

7. <u>GROUNDS</u>

A. BECAUSE in terms of the order impugned herein the NGT observed that with regard to the past violations, compensation as assessed by

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the Committee in respect of individual units as well as CETP is liable to be recovered as interim compensation on 'Polluter Pays' principle. Accordingly, the Respondent No. 2 and 4 were directed to take further action in this regard and a Compliance report has been directed to be filed before the next date of hearing.

B. BECAUSE the NGT in terms of the order impugned herein has completely prejudged the issue at hand.

C. BECAUSE the consent to operate granted to the Appellant, under Sections 25 and 26 of the Water Act and also under Air Act have not been challenged or appealed before the appellate authority or the state government. Therefore, it was beyond the scope and purview of the Hon'ble Tribunal to issue directions for fresh assessment and evaluation, by ignoring and overlooking the statutory mechanism provide for under the Water Act. In this regard it is submitted that order impugned herein is legally untenable and beyond the scope of powers vested in the NGT by virtue of NGT Act and also the Water Act. It is stated that the order impugned has been passed in a complaint filed under Section 14 of the NGT Act. It is imperative to reproduce the relevant provisions of the Water Act and NGT Act, which are as follows :-

WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

18. Power to give directions

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(1)In the performance of its functions under this Act-

(a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and

(b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it:

PROVIDED that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

(2) Where the Central Government is of the opinion that any State Board has defaulted in complying with any directions given by the Central Board under subsection (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area for such period and for such purposes, as may be specified in the order.

(3) Where the Central Board performs any of the functions of the State Board in pursuance of a direction under sub-section (2), the expenses, if any, incurred by the Central Board with respect to the performance of such functions may, if the State Board is empowered to recover such expenses, be recovered by the Central Board with interest (at such reasonable rate as the Central Government may, by

45 158

order, fix) from the date when a demand for such expenses is made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.

(4) For the removal of doubts, it is hereby declared that any directions to perform the functions of any State Board given under sub-section (2) in respect of any area would not preclude the State Board from performing such functions in any other area in the State or any of its other functions in that area.

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:

PROVIDED that a person in the process of taking any steps to establish any industry, operation or process immediately before the

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commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may-

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being-

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent

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from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

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(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30-

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

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26. Provision regarding existing discharge of sewage or trade effluent

Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a 21[stream or well or sewer or on land, the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section 5 shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette.

27. Refusal or withdrawal of consent by State Board

(1) A State Board shall not grant its consent under sub-section (4) of section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.

(2) A State Board may from time to time review

(a) any condition imposed under section 25 or section 26 and may serve on the person to whom a consent under section 25 or section 26 is granted a notice making any reasonable variation of or revoking any such condition.

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(b) the refusal of any consent referred to in sub-section (1) of section 25 or section 26 or the grant of such consent without any condition, and may make such orders as it deemed fit.

(3) Any condition imposed under section 25 or section 26 shall be subject to any variation made under sub-section (2) and shall continue in force until revoked under that sub-section.

28. Appeals

(1) Any person aggrieved by an order made by the State Board under section 25, section 26 or section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

PROVIDED that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) An Appellate Authority shall consist of a single person or three persons as the State Government may think fit, to be appointed by that government.

(3) The form and manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State

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Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

(5) If the Appellate Authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then-

(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

(b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.

D. BECAUSE in terms of the impugned order herein the Hon'ble NGT has virtually declared the consent to operate granted by the Respondent No. 2, which is the competent statutory authority to grant the aforesaid consent, as invalid, void and directed the Committee constituted by the Hon'ble Tribunal to examine the entire issue afresh. The observations and directions of the Hon'ble Tribunal tantamount to unsurping the powers of the statutory authority/regulator. The mandate of the 1974 and 1981 Act has been rendered meaningless as the Hon'ble Tribunal has taken it upon itself to exercise statutory powers vested in Respondent No. 2- State Pollution Control Board.

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E. BECAUSE Tribunals are bought into existence on the strength of a statute; and they do not exercise powers of judicial review similar to or akin to powers vested upon a Constitutional Court under Article 226 of the Constitution of India as held by this Hon'ble Court in *Cellular Operators Association of India Vs. UOI & Ors.* (2003) 3 SCC 186.

F. BECAUSE it is also well settled now that the power and extent of jurisdiction of a tribunal is set out by the relevant statute, under which the aforesaid tribunal is constituted. Therefore, it is abundantly clear that the powers of Hon'ble NGT are clearly adjudicatory in nature; the aforesaid tribunal does not possess the power or jurisdiction to usurp the functions of the regulator.

G. BECAUSE it is further submitted that since no appeal has been filed under Section 28 of the 1974 Act has been filed against the decision granting consent to operate, the exercise of jurisdiction by Hon'ble NGT under Section 14 and 15 of the 2010 Act is uncalled for and unwarranted. The remedy of a person aggrieved by an order passed under Section 25 and 26 of the 1974 Act is to prefer an appeal to the Appellate Authority under section 28 of the 1974 Act and similarly under the 1981 Act.

I. MULTIPLE PUNISHMENTS FOR THE SAME ALLEGED VIOLATION

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H. Because the Appellant was issued and is being continued to issue closure directions by GPCB, as and when a default is made out by the GPCB.

I. Because the bank guarantee of the Appellant has already been forfeited for the alleged defaults as pointed by the GPCB in the demand notices as mentioned hereinabove.

J. Because the Appellant has paid the compensation to Respondent No.2 if in case there was any violation and as such the direction to again recover compensation from the member industries amounts to a penalty which cannot be levied without there being any legislative backing for the same.

K. Because the impugned order, if allowed to be operated in the way as it has been passed, will be penal in nature and *the same qualify as 'compensatory' in so far as:*

(a) no multiple recoveries for the same period are contemplated under the National Green Tribunal Act, 2010 or any other act which provides only for compensation and not penal recoveries for any breach by the member industries even assuming without conceding that the polluter pay principle is applicable;

(b) does not contemplate the same breach as a justification of multiple recoveries which is permitted again results in changing the entire character of the recovery from 'compensatory' to 'penal'

II. ERRONEOUS & IRRATIONAL CALCULATIONS DONE BY THE EXPERT COMMITTEE

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L. Because the Hon'ble Tribunal erroneously appreciated that the "Direct Benefit Transfer Method" as per the Expert Committee Report, the economic value of Ecosystem services and functions selected for Damanganga Estuary downstream of CETP Vapi considers various water use functions such as food (fish), miscellaneous water uses, aesthetic (attractive landscapes) bio-diversity protection, recreation / eco-tourism. The entire stretch of Damanganga Estuary right from the discharge point of CETP-Vapi to the Arabian Sea is under High/Low Tidal zone and brackish water, hence the water potential is not fit for Agriculture, Domestic Use, Drinking/Bathing use, and Fishing Etc. Therefore, the Environmental cost calculated considering the above-stated water use functions is misconstrued and hypothetical and hence should be lowered/minimized.

M. Because the Hon'ble Tribunal failed to appreciate that even if we consider the cost of the water use functions as considered in the committee report, the basic value of these water use functions has been considered in US $ (Dollars) per hectare/year in different countries other than India in different base years and Indian water reuse values have been converted using US $ conversion factors into Indian Rupees with the inflation factor considered for the base year of 2018. It is submitted that this simple conversion of foreign currency into Indian Rupees will inflate the actual valuation in Indian Rupees of these water uses, which is not actually correct/logical conclusion. The cost of resources varies from country to country. The cost of Water in the USA is almost 10-15 times as that of India.

N. Because the Hon'ble Tribunal further failed to appreciate that, along with this environmental cost considered under "Aesthetic" and "Attractive Landscapes" Category is considered with reference from

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Western Australia which is mentioned as an amount of Rs. 9.63 Cr./Year for the base year 2013, which is very high in Indian equivalence. Hence VGEL requests the Committee to consider aesthetic direct uses of landscape with Indian cost valuation.

O. Because the Hon'ble Tribunal erroneously ignored the Mathematical calculation errors by the Expert Committee and the number of economic values has been done as Rs 15.6 Cr/ha/year as against Rs 22.29 Cr/ha/year mentioned in the report. Accordingly, the calculations of Table 4.4 (Page 43) in the NGT report shall need to be modified as Rs. 24.75 Cr as against Rs. 41.61 Cr considered in NGT Committee Report.

P. The Tribunal further failed to appreciate that Approach 2 i.e. "Shadow cost of pollution load and benefit transfer method" has been erroneously applied by the committee as the shadow price of undesirable parameter Nitrogen in this regard basically derived from operation cost of European countries effluent treatment plants, which is not appropriate with respect to Indian cost of effluent treatment plant operating & maintenance cost. However, in NGT Committee report, this has been done by converting only the European country currency (Euros) into Indian Equivalent Rupees which will be erring on the higher side, which is completely erroneous and baseless.

Q. Because the Hon'ble Tribunal failed to appreciate that VGEL's average operating cost is Rs.13.67 /m3 (Average between 2013-2018) as compared to the Indian Equivalent currency converted from European wastewater treatment plant operating cost of 0.22 Euro/m3 in the year 2007 converted into Equivalent Indian Rupees which amounts to Rs.27.62/ m3. Considering this fact of the low cost of treatment in Indian conditions need to be considered while estimating the Shadow

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Costs and Prices of parameter Nitrogen to be more appropriate for Indian operating conditions.

R. Because the Hon'ble Tribunal failed to consider that the Shadow Damage Cost for Nitrogen Pollutant has been considered as 16.353 Euros/Kg of Nitrogen for the base year 2010. This Shadow Cost amount has been considered with reference to European countries as referred from Hernandez – Sancho, et al paper titled Economic Feasibility Study for waste-water treatment: A cost-benefit analysis. As per the above-referred study, the Shadow Cost in Euros/kg in the year 2010 is 8.0604 Euro/kg for the parameter Nitrogen. When this is considered the Environmental cost with an appropriate inflation adjustment to the year 2018 will be more appropriate compared to what is considered in the report i.e. 16.353 Euro/kg for the parameter Nitrogen. In view of this, the Shadow cost price of the parameter Nitrogen for years (2013-2018) is only Rs.25.42 Cr as against Rs.51.52 cores given in NGT Committee report. Accordingly, the total shadow cost as per the Committee Report for Approach-II workout to be Rs.67 Cr as against actual shadow cost as per VGEL calculation worked out to be Rs. 40.84 Cr only. The Shadow cost would further reduce if we consider the actual cost of operation of CETP Vapi and which will be more appropriate and scientifically and logical conclusion of the shadow Environmental Cost Assessment in this case.

S. The Hon'ble Tribunal, further failed to appreciate that Appellant's Outlet Nitrogen parameter considered in Committee Report for years (2013-2018) is not matching with GPCB & CPCB data and instead, the Committee should have considered either GPCB or CPCB data for calculation of Environmental shadow cost related to Nitrogen Parameter.

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T. The NGT further failed to appreciate that that approach 3 i.e. "Based on CPCB Methodology for Environmental Compensation" is misconstrued and not applicable to the facts of the instant case. As per CPCB document on Methodology of Assessment of Environmental Cost, it has been taken by Hon'ble NGT Report mentioning location factor as 1.5 but this factor is belonging to the population level of 5 – 10 million people. However, the population of Vapi is less than 1 million, hence the location factor to be considered as 1.25 again 1.5 mentioned in the Report.

U. The NGT further failed to appreciate that with reference to CPCB documents on Methodology of Assessment of Environmental Compensation, it is suggested that the Cost factor for Rupees should be considered as 250 for calculation of Environmental compensation in case of any violation.

V. The NGT erroneously overlooked the fact that the additional Environmental Compensation cost of Rs. 8.03 Cr. calculated as per the Committee Report is not to be considered as already the same is covered under the CPCB's methodology of Environmental Compensation Formula.

W. The Hon'ble Tribunal failed to appreciate that Environmental Cost of Restoration as calculated by the Committee is erroneous and baseless. It is submitted that cost of restoration as per the Committee report for River Restoration Program, under short term measures are The capital cost for over ground pipeline from industry along with intermittent over ground sumps is estimated by VGEL to be Rs.25 Cr., instead of Rs.95 Cr. as stated in the Report submitted by the NGT Committee.

Further, the NGT failed to consider that under "Ozonation" or "Electro-Chlorination", which is amounting to Capital Cost of Rs.120 Cr. which

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is not techno-economically feasible at VIA's level to treat wastewater volume of 55 MLD capacity. Instead of this, decentralized industry-wise Advanced Oxidation or Hydro-Dynamic Cavitation Scheme could be implemented at member industry level which will be more techno-economically feasible. Accordingly, the NGT Committee could have considered the implementation of this advanced Oxidation process at the individual industry level.

X. The NGT failed to appreciate that as per the general norms followed by CPCB across the country, a 10% deviation from norms is accepted, however, in the present case the benefit of 10% deviation has not been afforded to the Appellant and the member industries of VIA. If the same is done, almost 80% discharge reports being considered as violation presently, can be counted as non-violations/within parameters.

Y. Because the Hon'ble Tribunal erred in holding that the Appellant represents the member industries of VIA in its impugned order. It is submitted that Appellant was not at all representing VIA and it also did not have any authorization to represent the industries in the areas of Vapi.

Z. Because the study conducted by NEERI has been selectively placed by the Respondent No.1, as just one part of the entire study has been relied upon by this Hon'ble Bench, instead of the entire study, which should have been taken into consideration which conveys a different picture altogether.

AA. Because only the adverse inspection reports have been taken into account by this Hon'ble Bench, while not even a single Joint Monitoring Inspection report which has been largely favorable to the

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applicant's case has been considered by this Hon'ble Bench. [Copies of the Joint Monitoring Inspection Reports may be tendered].

BB. Because a recent study conducted by NIO (a Govt. of India undertaking specifically tasked with studying the impact on oceans) under the directions of Hon'ble National Green Tribunal, Pune Bench in the case of *Tarun Patel Vs. Collector, Daman, and Ors,* as per which the dissolved oxygen level in Damanganga's High Tide Zone has increased substantially with time. The Joint Monitoring Report read with other studies confirms that the aquatic life in Damanganga River has become better over time. Firstly, ***NIO Report of August 2018,*** secondly ***Annual Report of 2017-18 from Statistical Analysis of Fish Production in India by Department of Animal Husbandry,*** thirdly ***Dairying and Fisheries,*** fourthly ***Joint Monitoring of Discharge Point of VGEL to Daman Shore, Report by GPCB, DPCC & VGEL prepared by GPCB's Lab, CPCB's River Classification Report on Priorities has rated Damanganga River from Priority II (in the year 2010) to Priority IV (in the year 2018),*** confirm that environment in and around Vapi has been consistently improving and certainly in no sense as projected malafidely by Respondent No.1. On a scale of Priority 1 to Priority 5 (wherein Priority 1 is most polluted and Priority 5 is clean water, the best in quality).

CC. The Appellant craves leave of this Hon'ble Court to raise any other and further ground, at the time of the hearing, if required.

III. IMPUGNED ORDER HAS BEEN PASSED WITHOUT JURISDICTION AND WITH A PRE-DETERMINED MINDSET AND HENCE IS IRRATIONAL, ERRONEOUS AND BASELESS

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DD. Because the Hon'ble Tribunal proceeded with a pre-determined mindset and failed to taken into consideration the actual facts and figures involved in the case and also various expert reports which suggest that no environmental degradation has occurred.

EE. Because the Hon'ble Tribunal has failed to consider the past records of the Respondent No.1 – Aryavart Foundation, claiming to be an NGO. The very fact that the Respondent No.1 is an NGO based in Surat, and the fact that between Surat to Vapi, there are multiple CETPs falling in between, the NGO having malafide intentions against the Appellant has approached the Hon'ble Tribunal in regard to a CETP which is situated at a distance more than 100 km from the Respondent No.1's registered office / place of routine practice of employment.

FF. Because the Hon'ble Tribunal had no jurisdiction to disregard the report of an expert committee and thereby order fresh calculations. It is pertinent to mention that though the Expert Committee followed NGT's approved formula suggested by CPCB, however the calculations made are completely erroneous. Even otherwise, the expert committee has devised its own additional formula without any basis and rational.

GG. Because the Hon'ble Tribunal failed to follow the directions of this Hon'ble Court that each application for waiver of interim compensation had to be considered on its own merit.

HH. Because the Hon'ble Tribunal erroneously did not suspend direction of interim compensation even though report of the expert committee

was before it suggesting the final compensation amount which was much lesser.

II. Because the Hon'ble Bench vide order dated 11.01.2019 records a finding that *'We have heard the CETP operators but we have not heard the individual industrial units though CETP represents such units'.* It has been assumed that the Appellant represents the member industries, however, there is no such representation by the Appellant on behalf of any of the member industries, neither have any of the member industries authorized the Appellant to represent on its behalf. Appellant is a separate legal entity and has no other relation with any of the member industry save and except providing them waste treatment and other similar services as not-for-profit transactions. Therefore, the Appellant did not represent the Individual members in any manner.

IV. IN THE ABSENCE OF ANY CONCLUSIVE FINDING BY THE EXPERT COMMITTEE WITH REGARD TO DAMAGE TO THE ENVIRONMENT DONE BY APPELLANT OR THE MEMBER INDUSTRIES OF VIA, COULD COMPENSATION AT ALL HAVE BEEN IMPOSED

JJ. Because the Hon'ble Tribunal failed to consider that the committee has examined several documents and have made a mention of those in their report, contrary to the view taken by Hon'ble NGT. It is noteworthy to state that these reports provide positive evidence that there has been no damage to the environment.

KK. Because the Hon'ble Tribunal failed to consider that 10% deviation as analytical error is approved by CPCB across the country in various industrial clusters, then why shouldn't the Appellant or the member industries be given the advantage of 10% variation from the

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prescribed standards. If given, mostly all reports would be compliant for the Appellant and the member Industries.

LL. Because the Hon'ble NGT failed to consider that there is no mention any serious environmental damage to river Damanganga due to the presence of CETP outlet in the reports dated 09.05.2019, 20.05.2019, and 05.08.2019. From the various reports considered by the committee appointed by Hon'ble NGT, no specific damage to the environment has been proved.

MM. Because the Hon'ble Tribunal failed to consider that the majority of the industries (who are members of VIA) affected by the impugned order were never issued notice and never given a fair opportunity of being heard by a judicial forum.

NN. Because the Hon'ble tribunal failed to appreciate that the sampling procedure under "legal sample" to be followed by the State Pollution Control Boards has been completely disregarded in the instant case. For instance they have to follow the procedure of stabilizing the samples, providing a counter sealed sample to the party being inspected etc.

OO. Because the Hon'ble Tribunal failed to appreciate that if at all any damage was done to the environment in and around Vapi, only then would the question of restoration of the environment arise. On the contrary, the NIO Report – August 2018, the Report from Statistical Analysis of Fish Production in India, and the Joint Monitoring of Discharge Point of VGEL to Daman Shore, Report by GPCB, DPCC & VGEL prepared by GPCB Lab confirm that environment in and around Vapi has been consistently improving and now is in a good condition, certainly in no sense as projected malafidely by the Respondent No.1. In fact, the aforesaid reports largely conclude that the discharge being

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done by the Appellant is at the High Tide Zone, wherein aquatic life has been improving with time in Damanganga River. It is pertinent to mention at this stage that there is no aquatic life and/or potable water that exists at the discharge point of Appellant, as the same area has been declared as High Tide Zone since time immemorial.

PP. Because the Hon'ble Tribunal has taken a stand contrary to the actual facts as confirmed by various eminent dignitaries such as the Green Minister himself, Mr. Jairam Ramesh, Former Chief Justice of India B.N. Kirpal and Padma Vibhushan Professor M.M. Sharma, who have visited the Appellant's plant and have commended the way it has been run in compliance of environmental norms

V. VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

QQ. Because the approach of his Hon'ble Tribunal has since the beginning been of prejudging the issues in hand. Even before the report of a committee is submitted, there are observations recorded in the order which convey an extremely negative picture of the concerned industry/CETP. This is even before the actual inspection has taken place.

RR. Because the members of VIA were not even made a party to the Original Application being O.A No. 95 of 2018, which culminated in the impugned order which adversely affect it.

SS. Because no notice was issued to the member industries of VIA at any stage.

TT. Because the Hon'ble Tribunal could not have shifted the task of hearing industries by a statutory tribunal to a quasi-judicial authority in absence of any express statutory provisions, permitting to do so.

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UU. Because as held by Hon'ble Supreme Court of India in the cantina of judgments, the powers vested in Tribunals is limited and derived only from the statute, or in other words they cannot travel beyond the scope of the statute. Similarly, the direction of constituting a committee by this Hon'ble Tribunal is without authority and any kind of statutory backing

VV. Because the Hon'ble Tribunal has recorded that "the Tribunal has to follow principles of Natural Justice if it is to finally assess the damages" and "*... we have heard the CETP operators but we have not heard the individual units..*" and yet directs the all the large, small and medium industries to pay interim compensation.

WW. Because the impugned order is contrary to the law laid down by this Hon'ble Court in *R. VISWANATHAN v. RUKN-UL-MULK SYED ABDUL WAJID*, as reported in 1963 3 SCR 22, wherein a three-judge bench of this Hon'ble has stressed the importance of compliance with the principles of natural justice and held as under:

> "*But it is the essence of a judgment of a Court that it must be obtained after due observance of the judicial process, i.e., the Court rendering the judgment must observe the minimum requirements of natural justice-it must be composed of impartial persons, acting fairly, without bias, and in good faith, it must give reasonable notice to the parties to the dispute and afford each party adequate opportunity of presenting his case.*"

XX. Because the Hon'ble Tribunal has recorded that "*the Tribunal has to follow principles of Natural Justice if it is to finally assess the damages*" and "*... we have heard the CETP operators but we have not heard the individual units..*" and yet directs all the large, small and

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medium industries to pay interim compensation except the white and green industries.

YY. Because none of the reports as referred to in the impugned judgment were neither supplied nor made available to the member industries of VIA.

ZZ. Because the Hon'ble Tribunal failed to grant a fair opportunity/time to Appellant to respond to the three reports filed by GPCB & CPCB and completely ignored the fact that the reports were served upon VGEL's counsel only 21 hours prior to the hearing i.e. on 10.01.2019 at 12.38 Hours. Even the report dated 09.05.2019 was served upon the Appellant on 10.05.2019 that is 2 days prior to the hearing fixed for 13.05.2019. Despite repeated requests made by the Appellant for grant of time to respond/file objections to the First Report dated 09.05.2019, no time was given by this Hon'ble Tribunal. Yet again, the report by CPCB dated 06.08.2019 was served upon the Appellant during the course of hearing on 19.08.2019 as evident from the mail received from the CPCB's counsel, however order dated 19.08.2019 records that *'hearing is practically concluded'.* Therefore, it is noteworthy to state that there has been gross violation of the principle of Natural Justice.

AAA. Because the Hon'ble Tribunal failed to appreciate that the inlet norms are beyond the scope of VGEL's monitoring as the effluents by individual members is first collected in a common drain maintained by GIDC and thereafter through that common drain, the waste reaches the CETP operated by the Appellant, thereby leaving no opportunity for the Appellant to assess the inlet norms. It is pertinent to mention that there are more than 1100 industries connected to the common drainage system under the control and supervision of GIDC, which

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then comes to the Appellant's CETP, however there are only 516 industries who are members of CETP. Therefore, by no means can the Appellant ensure that its inlet is restricted to effluents from 516 industries, as the common drain is under the control and supervision of GIDC.

VI. DELEGATION OF HEARING TO THE COMMITTEE WITH NO JUDICIAL MEMBER

BBB. Because the Hon'ble Tribunal erred in directing that the Committee as constituted by it in the impugned order would give a hearing to the industries. It is submitted that such an approach amounts to a violation of natural justice since the committee will be prejudiced by the view already taken by the Hon'ble Tribunal in the impugned order. It is also submitted that the judicial function of giving a hearing to the affected industries could not have been delegated to the Committee.

CCC. Without prejudice to the aforementioned submissions, it is submitted that the Impugned Order at one place says that "*the Committee may give hearing to the CETP operator and the units identified as polluting by the GPCB for which list will be furnished by the GPCB to the Committee indicating the period and nature of default within one month* and at the same time provides that "*other category of defaulting industries connected to the CETP must make deposit within one month...*" It is submitted that the consequence of this order is that without even determining the extent of damage, industry will have to pay compensation that too without getting a hearing from the Hon'ble Tribunal or the Committee.

6. The Appellant has not filed any other petition/appeal against the order dated 28.08.2019 passed by the Hon'ble National Green Tribunal,

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Principal Bench, New Delhi in Original Application No. 95 of 2018 before this Hon'ble Court.

PRAYER

7. It is, therefore, most respectfully prayed that in the aforesaid facts and circumstances this Hon'ble Court may be pleased to:

(a) Admit and allow the instant appeal filed against the order dated 28.08.2019 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi and thereby set aside the Impugned Order in Original Application No. 95 of 2018; and

(b) Pass such further and other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interests of justice.

Drawn & Filed by:-

JASMINE DAMKEWALA

Filed on: 28.11.2019

New Delhi.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ of 2019

IN THE MATTER OF:

VAPI GREEN ENVIRO LTD. ...APPELLANT

VERSUS

ARYAVART FOUNDATION & ORS. ...RESPONDENTS

AFFIDAVIT

I, Chetan Patel. S/o Shri Chandrakant Patel, aged about 45 years, R/o Vapi, presently at New Delhi in the capacity of the Authorized Signatory of Appellant Association do hereby solemnly affirm and state as under:-

1. That I am the authorized signatory of the Appellant Association in the above mentioned Civil Appeal and as such I am fully conversant with the facts and proceedings of the case.

2. That I have read and understood the contents of the accompanying Civil Appeal, & IAs and I say that the facts stated therein are true and correct to my knowledge.

3. That I state that the contents contained in the Civil Appeal/IAs that is pages to and paras to are true to my knowledge, those contained in pages to of the List of Dates are also true and correct to my knowledge and record of the case.

4. That the annexures annexed to the accompanying Civil Appeal are true copies of their respective originals.

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For VAPI GREEN ENVIRO LTD.

DIRECTOR

DEPONENT

VERIFICATION

Verified that the contents of the above mentioned affidavit are true and correct to the best of my knowledge and belief. Nothing false has been stated therein and no material fact has been concealed therefrom.

Verified at , on this day of , 2019.

For VAPI GREEN ENVIRO LTD

DIRECTOR

DEPONENT

ANNEXURE A1
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BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

EXECUTION APPLICATION No.15/2016 IN APPLICATION No.37/2013 (WZ) (Disposed on 2.7.2015) (C.P.C.B) In Vanashakti Public Trust & Anr Vs Maharashtra Pollution Control Board & Ors.

CORAM: HON'BLE DR JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE DR. AJAY A. DESHPANDE, EXPERT MEMBER

Present:	Applicant/Appellant	:	Gayatri Singh Sr. Adv a/w Mr. Zaman Ali, ANusha Sundarsan Advs
	Respondent No.1	:	Supriya Dangare Adv a/w Dr Y.B. Sontakke (J.D. Water)
	Respondent CPCB	:	Mr. Anand Kulkarni holding for Manda Gaikwad Adv

Date and Remarks	Orders of the Tribunal
Item No. 2 March 30, 2016 Order No.2	This is an Execution Application. The Application is filed by the Central Pollution Control Board (CPCB) before this Tribunal is numbered Execution Application No.15/2016, wherein the first prayer is that the Tribunal may allow the Applicant to carry on further monitoring of non-compliance of CETPs and conduct random inspection of major industries on quarterly basis, instead of monthly basis, till the action plan for CETP's performance improvement and standards are complied with. The second prayer is that the MPCB may be directed to submit to CPCB short term and long term plans to be implemented to achieve compliance of standards by the non-complying CETPs and names of major industries in the area. The Tribunal after due consideration allowed the Original Application 37 of 2013 by Judgment dated 2nd July,2015 issuing, amongst many others, following directions: 1. *The directions issued by CPCB vide letter dated 02-09-2008 shall be strictly enforced by MPCB in case of the CETPs at Dombivili and Ambarnath till the time these CETPs are effectively operational complying the standards and such report is submitted to the Tribunal by MPCB along with substantial time series data and observations. The directions issued by CPCB are reproduced for clarity :* *a) Initiate monitoring program for all CETPs at least every quarter and take follow up action against industries/CETPs not complying with the prescribed standards.* *b) Not to permit expansion/establishment of the industrial units in the areas where the associated CETPs are not complying with the required standards and where*

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March 30, 2016
Order No.2

such CETPs do not have adequate hydraulic load capacities.

c) Submit action report every quarter on (1) and (2) above within one month of every quarter to CPCB.

2) The CPCB shall ensure the effective implementation of its directions referred to above, and also ensure that the action plan submitted by MPCB is enforced in next six (6) months without fail. CPCB shall verify the compliance of CETPs and also, conduct random inspection of major industries for ensuring compliance on monthly basis till its above directions are complied with. CPCB shall independently submit the compliance report on monthly basis to Registry of Tribunal till the CETP performance is as per consent conditions for a period of 3 months and the action plan is implemented, which will result into reduction of CEPI index.

Thereafter, the Judgment passed by this Tribunal was questioned before the Hon'ble High Court of Bombay by the Respondents in several Writ Petitions including WP 7208 of 2015, which the Hon'ble High Court has passed following order on 13.8.2015:

16. The directions contained in paragraph 58(3) to 58(7) of the impugned order of NGT are stayed. As far as directions 58(8) to 58(10) are concerned, we make it clear that the Committee under the Chairmanship of Divisional Commissioner, Konkan Revenue Division, shall be considered as a Local Committee and the said Committee shall function in tandem with the Committee to be headed by the Chief Secretary of the State of Maharashtra, appointed by this Court under the present order.

17. The Committee headed by the Chief Secretary shall submit report within two months and the report shall be placed on the record of these proceeding by 12 October, 2015.

From the order passed by the Hon'ble High Court, it is clear that though some of the directions of this Tribunal are stayed, the directions Nos. 1 and 2 above have not been stayed by the Hon'ble High Court. Thus, this gains importance as by virtue of these directions the MPCB had to submit action plan for ensuring the compliance of CETP effluent discharge standards and also, take action against the defaulting industries/CETPs, which was to be enforced by CPCB and MPCB along with necessary monitoring. The second direction was that the CPCB shall ensure effective implementation of directions referred to above and also ensure that the action plan submitted by MPCB is enforced in next six (6)

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Item No. 2 March 30, 2016 Order No.2	months from the date of order without fail. CPCB was directed to verify the compliance of CETPs and also, conduct random inspection of major industries for ensuring compliance on monthly basis till its above directions are complied with. CPCB was required to independently submit the compliance report on monthly basis to Registry of the Tribunal. Here proceedings commenced in this Tribunal when CPCB filed this Application on 10.3.2015 with a request to modify the earlier order enabling them to file report based on quarterly inspection rather than inspections to be carried out every month. But taking into consideration the statement from CPCB that all CEPTs are not performing its functions as required and there has been no consequential action either by CPCB or MPCB in this regard to ensure compliance of CETP effluent discharge standards, we thought it fit on 16.3.16 to direct a joint inspection to be done by the CPCB and MPCB of all the CEPTs and then hold a Meeting on fact finding collected during inspection with the operators and identify effective implementation and to ensure that CEPTs comply the standards. The very nature of submissions and prayers of CPCB in present Application would demonstrate that are not well with MPCB, and CPCB having noticed ineffective control and discharge of its functions by the MPCB approached this Tribunal seeking prayers as referred above. We have gone through the Application filed by CPCB and have taken judicial note that CPCB at para-3(iii) of the Application has made critical observations on performance of 5 CETPs, which are subject matter of the Application. It is noted that 4 out of 5 CETPs namely; Additional Ambarnath CETP, Dombivali Better Environment System Association CETP, Dombivali, M/s Dombivli CETP (Chemical) and M/s ACMA CETP co-op. society Ltd.CETP are exceeding effluent discharge standards continuously which is finally meeting the creek/river. More importantly the CPCB has referred exceeding concentration of toxic elements like Chromium (Cr+6), Cyanide (CN), Lead (Pb) and also, obnoxious pollutants like Phenols besides high concentration of Ammoniac Nitrogen in the CETP discharges. This indicates continuous unabated discharge of polluted and toxic discharge of untreated industrial waste water in the surrounding environment. (emphasis supplied by us) Today, an affidavit is filed on behalf of MPCB duly sworn by Dr. Yeshwant B. Sontakke, who is said to be the Joint Director (Water Pollution Control) of the MPCB, in which having referred to directions of

Item No. 2 March 30, 2016 Order No.2	this Tribunal, he has extracted proceedings of the joint Meeting held. According to joint inspection and meeting at page 2 of the affidavit, the Board has issued following directions to CETPs:

(i) *CEPT Operator shall install SCADA automation control system at CETP for the parameters Flow and pH of member industries generating effluent 100M^3 and above.*

(ii) *CETP operator shall ensure regular maintenance and operation of the online system with tamper proof mechanism having facilities for online calibration.*

(iii) *CETP operator to submit proposal for ensuring installation of SCADA system at CETP and member industries generating effluent 100M^3 & above within 3 months in time bound manner.*

However, all these directions, in our opinion, are related to effective monitoring of performance but are not related to improvement in performance by taking certain scientific and technical interventions. We have been informed that a joint meeting was held on 28.3.2015 as per the directions of the Tribunal and as per the para 4 (c) of the minutes produced on record, *Member Secretary had directed CETPs operators to submit undertaking to make CEPTs compliant to consent conditions by fixing deadline of 31st March, 2016 for DBESA and D CETP whereas 30th April, 2016 for additional Ambernath CETP.*

However, during arguments, it was brought to our notice that the MPCB is not taking effective and urgent steps in the right direction and there is no effective control or management or monitoring of CETPs within its jurisdiction. Incidentally, we had on our Board today, a similar case with regard to Vapi Industrial area, wherein functioning of CETP which is of even larger capacity, was remarkably improved and pollution level has been brought down significantly within a short period. We had noted that the GPCB had taken various scientific interventions like identification of High COD industries, high recalcitrant COD industries, industries discharging toxics and obnoxious pollutants, besides taking stringent action of actual disconnection of water/electricity of erring industries. Taking into consideration this aspect, we asked MPCB to be guided by the steps taken by the GPCB in the management of CETPs at the industrial area of Vapi.

Besides, we had asked MPCB to give undertaking as to why same result cannot be achieved and second question was regarding the

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Item No. 2 **March 30, 2016** **Order No.2**	enforcement of its own directions referred at para 4 (c) of the minutes dated 28.3.15 and what action the MPCB has taken when it has come to know that CETPs and several industries are discharging industrial effluent into the creek without any proper preventive action. Learned Counsel appearing for MPCB could not get the instructions to make any statement on this aspect and hence, we had directed at least to file undertaking by the MPCB to ensure that decision of the Committee of joint inspection as described in para 4-C as extracted above, to be done. Learned Counsel was given time to obtain proper instructions and the case was passed over from morning session to afternoon session. Learned Counsel submits that she had informed the responsible officer of the MPCB about Tribunal's directions and tried to ascertain whether such undertaking could be given. She has submitted that she has been instructed that the MPCB is not willing to give any undertaking but that it will make all efforts to ensure compliance of decisions taken in the joint meeting of MPCB and CPCB officers. We were rather dismayed by the stand of MPCB. It is already on record as observed in Judgment of the Tribunal dated 2nd July 2015 and order of Hon'ble High Court of Bombay referred above that the issue of pollution from CETPs in this area is of very serious nature. The submissions made by CPCB in the present Application referred above clearly shows the serious nature of problem of CETP performance resulting in discharge of untreated effluent containing toxic and obnoxious pollutants which are continuously causing environmental damage. The Dombivali industrial area has already been identified as Critically Polluted area by the CPCB way back in 2010 and is among the most critical areas in the country. In spite of this fact situation, we have noted that MPCB has not taken any suitable action or/and scientific interventions to improve the performance of CETP. We have also taken a note that though CPCB was directed to conduct inspection of erring industries, no such efforts have been made, nor the CPCB has utilized its powers to take action against erring industries/CETPs and has sought directions from Tribunal to obtain action plan from MPCB, which it could have sought directly using powers under the Water Act, 1974. In the circumstances, we take note of this fact position and in our considered opinion, certain urgent steps are necessary to mitigate and control the continuing pollution arising from erring CETPs and industries in.

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the said area and therefore, we call upon the MoEF who is original respondent no. 3 to exercise its powers under Section 18 of the Water (Prevention & Control of Pollution) Act, 1974, which reads thus:

18. POWERS TO GIVE DIRECTIONS

2[1)] In the performance of its functions under this Act --

(a) the Central Board shall be bound by such directions in writing the Central Government may give to it; and

(b) every State Board shall be bound by such directions in writing as the Central Government or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

3[(2) Where the Central Government is of the opinion that and State Board has defaulted in complying with any directions given by the Central Government under sub-section (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area for such period and for such purposes, as may be specified in the order.

(3) Where the Central Board performs any of the functions of the State Board in pursuance of a direction under sub-section (2), the expenses, if any, incurred by the Central Board with respect to performance of such functions may, if the State Board is empowered to recover such expenses, be recovered by the Central Board with interest (at such reasonable rate as the Central Government may, by order, fix) from the date when a demand for such expenses is made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.

(4) For the removal of doubts, it is hereby declared that any directions to perform the functions of any State Board given under sub-section (2) in respect of any area would not preclude the State Board from performing such functions in any other area in the State or any of its other functions in that area.

The MoEF is directed to first issue Show cause Notice to the MPCB to give them opportunity to scrupulously discharge its statutory functions in the matter relating to enforcement of provisions of the Water (Prevention & Control of Pollution) Act, 1974 and implement decisions taken in the Meeting referred in para supra and further directing them to explain as to

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Item No. 2 **March 30, 2016** **Order No.2**	why because of its failure to perform statutory functions, the MPCB shall not be taken over and its functions be assigned to CPCB, invoking the powers conferred by virtue of Section 18 (2) of the Act, which clearly envisages: *"where the Central Government is of the opinion that State Board has defaulted in complying with any directions given by the Central Government under sub-section (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area for such period and for such purposes, as may be specified in the order".* Secretary, MoEF is directed to send Action Taken Report to this Tribunal within three (3) weeks from now without fail. A copy of this order shall be communicated by the Registrar of this Tribunal by sending DO letters to Secretary, MoEF&CC; Chief Secretary, Maharashtra and Additional Chief Secretary Environment Department, Maharashtra for necessary action. **List it on 29th April, 2016.** HKK **....., JM** **(Dr. Justice Jawad Rahim)** **....., EM** **(Dr. Ajay A. Deshpande)**

NATIONAL GREEN TRIBUNAL NEW DELHI

ANNEXURE-A2
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BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

Application No. 89/2014 (WZ)
Tarun Patel V/s The Gujarat Pollution Control Board & Ors.

CORAM: HON'BLE MR JUSTICE U.D.SALVI, JUDICIAL MEMBER
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER

Present:	Applicant/Appellant	:	In person a/w Mr. Saurabh Kulkarni Adv a/w Priti Joshi Adv
	Respondent No.1	:	Mr. Viral K. Shah Adv Mr. Anil G. Patel RO, GPCB Vapi
	Respondent Nos.3-5	:	Mr. Prashant P. Bhat Adv
	Respondent Nos.6,7	:	Mr. D.M.Gupte Adv

Date and Remarks	Orders of the Tribunal
Item No. 5 February 17, 2017 Order No.26	This Application has been moved for directions to Gujarat State Pollution control Board (GSPCB) to take action and/or to prosecute erring companies situate within Vapi industrial area, Gujarat for the violation of provisions under the Air and Water Act. The grievance in the present case mainly arose as a result of the Applicant's noticing defaulting industries listed in the Application aspolluting industries: 1. N.R. Aggarwal Paper Mills 2. Centre Point 3. Prashant Dyes 4. Ideal Dyes 5. Nath Chemicals 6. Rama Pulp and Paper Mills and 7. Vapi Waste & Effluent Management Co. Ltd.. All these companies have been joined to the present Application as Respondent Nos.3 to 8, against whom a specific allegation was made about unauthorised discharge of effluents. The applicant submits that discharge of effluent is now made by Respondent Nos.3 to 7 in conveyance belt or underground pipeline, which takes effluents to Central Effluent Treatment Plant (CETP) run by Respondent No.8 Vapi Waste and Effluent Management Company Limited (VWEMCL) and he is satisfied with the performance results of Respondent No.8 vide affidavit filed by Respondent No.1 GPCB dated 5th July, 2016 and 11th August, 2016. He further submits that the issue of drinking water has been now raised by the villagers surrounding Vapi industrial area in the Application No.52/2016 (Kirti Ratilal Desai Vs Collctor, Valsad). He further submits that the present Application can be disposed off with directions to

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GPCB to lodge prosecution against the defaulting/erring industries within Vapi Industrial Area.

Learned Counsel Mr. Viral Shah appearing for Respondent No.1 joins the Applicant and makes a statement that GPCB may be directed to take action against erring industries in Wapi Industrial Area as well as Respondent No.8 VWEMCL, if they violate the prescribed norms and terms as well as conditions stipulated for 'consent to operate'.

Perusal of the affidavits reveal that expected parameters of temperature and TDS are not up to the prescribed norms. The Applicant and GPCB submit that norms applied are the norms for discharge in river, whereas discharge of effluents from CETP is envisaged offshore and the issue in that regard is pending in Application No.109/2014. In case effluent is discharged offshore norms prescribed will be relaxed and the performance of CETP as reflected now would be within parameters. Considering these facts and circumstances, we direct GPCB to take action against the industries within Vapi Industrial Area and CETP run by Respondent No.8, for prosecution or otherwise for violation of norms in their performance in accordance with law.

With these directions, we dispose off this Application.

Application No.89/2014 stands disposed off.

hkk

....., JM
(Justice U.D.Salvi)

....., EM
(Ranjan Chatterjee)

NATIONAL GREEN TRIBUNAL, NEW DELHI

ANNEXURE A3
79

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

Application No.109/2014(WZ)

In the matter of:-

Tarun Patel V/s The Collector, Valsad & Ors.

CORAM: HON'BLE MR. JUSTICE U. D. SALVI, JUDICIAL MEMBER
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER

Present:

Applicant/Appellant	: In person
Respondent MoEF	: Mrs. Supriya Dangare, Adv.
Respondent No.2	: Mr. Rahul Andhale, Adv.
Respondent No.1,GPCB	: Mr. Viral Shah, Adv. Mr. Tushar B. Shah, GPCB
Respondent No.5	: Col. R.K. Jain, CEO VGEL, Vapi Mr. Kamlesh V. Patel, MGR F&A

Date and Remarks	Orders of the Tribunal
Item No.8 8th August, 2017 Order No.29	The Applicant moved the present application for seeking implementation of the basic concept of discharging pollution load in deep sea by laying the conveyance pipeline to carry the treated effluent to deep sea as suggested by NIO vide Consent to establish dated 19th May, 2011. Respondent No.1 and Respondent Nos.3 and 4 – GPCB submit that there are difficulties in implementing the said concept due to the resistance from the Respondent No.2 – Collector Daman to the work of laying of the pipeline through its territory. However, he submits that the CETP which has achieved the standard of treating its effluents to the riverine standards be allowed to discharge its effluent at a downstream location in River Daman Ganga nearer to sea on a condition that the standard shall be maintained and existing CETP of Respondent No.5 be improvised and upgraded to meet the future load of effluents. The Applicant on the other hand submits that if the point of discharge of the effluents is taken 3 km downstream towards the sea and within the territory of State of Gujarat, the conditions which can provide cushion for absorbing the pollution load will be available due to the ingress and egress of tidal water at that point. He submits that such point can be located at the site if a joint visit

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Item No.8 **8th August, 2017** **Order No.29**	by him and the officials of GPCB is arranged. He submits that he has technical background and holds M.Sc. (Organic Chemistry) degree. The Applicant and the GPCB have come to consensus that joint visit to the site as suggested be paid on 31st August, 2017. The Senior Scientist from NIO shall remain present at the time of site visit. GPCB shall intimate the time of such visit to the applicant and as well as Senior Scientist from NIO. GPCB to communicate this order to NIO to depute its Senior Scientist for the aforesaid work. **List this case on 18th September, 2017.** **....., JM** **(Justice U. D. Salvi)** **....., EM** **(Ranjan Chatterjee)**

NATIONAL GREEN TRIBUNAL, NEW DELHI

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ANNEXURE-A4
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BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

Original Application No. 109/2014(WZ)

In the matter of:-

Tarun Patel V/s The Collector, Valsad & Ors.

CORAM: HON'BLE MR. JUSTICE U. D. SALVI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present:	Applicant	: Mr. Saurabh Kulkarni, Adv. a/w Ms. Priti Joshi, Adv. Mr. Tarun Patel (In person)
	Respondent Nos.1 & 4	: Mr. Viral Shah, Adv.
	Respondent No.5	: Col. R. Jain (In person) Mr. M.M. Pandya (In person)
	Respondent MoEF	: Ms. Supriya Dangare, Adv.

Date and Remarks	Orders of the Tribunal
Item No.17 27th October, 2017 Order No.32	Parties before us submit that the Meeting was held on 4th September, 2017 in pursuance to the Order dated 8th August, 2017 for identifying the new discharge point for treated effluent of Respondent No.5- CETP Vapi presently known as Vapi Green Environment Ltd. Parties further reveal that the Meeting was attended by Principal Scientist, NIO, the Applicant, Regional Officer of GPCB, CEO and Directors of Vapi Green Environment Ltd. and the representatives of Village Chandor, Namdha. Final conclusion for amicable resolution of the controversy herein was reached in the said Meeting that the discharge point of treated effluent of CETP Vapi shall be at a location around 20^0 21'45.29" N, 72^0 52' 51.98"E at 4.5 Km downstream from existing discharge location of CETP in the Damanganga estuary, where 12 feet depth is available irrespective of tidal effect. It was also decided that the detailed pipeline survey and diffuser design shall be fixed by NIO and the water quality of the location around 5 Km radius shall be monitored before the discharge is started at the said location. Parties assure to place on record the Minutes of the Meeting along with supporting affidavit. Considering these submissions and with a view to settle the dispute amicably, we pass the following directions: (i) We direct Respondent No.5 – Vapi Green Environment Ltd to extend the discharge point through the pipeline and a diffuser system as
Item No.17 27th October,	

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2017
Order No.21

suggested by NIO to the location at 20^0 21'45.29" N, 72^0 52' 51.98"E approximately 4.5 Km downstream from existing discharge location of CETP, Vapi in the Damanganga estuary within a period of 18 months at their own cost.

(ii) We direct the Respondent No.1 – Collector Valsad, the Respondent No.3 – GPCB and Respondent No.7 - MoEF to extend co-operation in the matter of extending this pipeline to the Respondent No.5 – Vapi Green Environment Ltd in accordance with law.

(iii) NIO is directed to furnish complete pipeline and diffuser design/plan to the Respondent No.5 for executing the directions herein within a period of 60 days.

(iv) Respondent No.3 – GPCB shall monitor the water quality of the location around 5 kms radius before the discharge is started at the proposed location. Meanwhile the CETP shall maintain the prescribed parameters of the discharged effluent.

(v) Respondent No.5 – Vapi Green Environment Ltd is directed to make appropriate application to Respondent No.3 – GPCB for consent to operate the extended pipeline.

(vi) Minutes of Meeting dated 4th September, 2017 shall be placed on record within a week.

Application No.109/2014 thus stands disposed of.

....., JM
(Justice U. D. Salvi)

....., EM
(Dr. Nagin Nanda)

NATIONAL GREEN TRIBUNAL NEW DELHI

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ANNEXURE-A5
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BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 95/2018
(M.A. No. 1029/2018)

IN THE MATTER OF:

Aryavart Foundation Vs. M/s. Vapi Green Enviro Ltd. & Ors.

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

Present: Applicant : **Mr. Raj Panjwani, Sr. Adv., Mr. Jitender Singh, Adv. with Mr. Surender S. Hooda, Advs.**

Respondent No. 1: **Mr. Pinaki Misra, Sr. Adv., Mr. M.S. Kalra, Ms. Isha Khurana, Mr. Arvind Chari, Mr. Vaibhav and Mr. Nishant Shankar, Mr. Nitesh Shrivastava, Advs.**
Ms. Sakshi Popli, Adv.
Mr. Shlok Chandra, Adv.

CPCB : **Mr. Shlok Chandra, Adv.**
: **Mr. Dhruv Pal, Adv.**

	Date and Remarks	Orders of the Tribunal
	Item No. 09 **August 29, 2018** **R**	1. Learned counsel for the applicant seeks clarification to the effect that while passing the order dated 03.08.2018, this Tribunal has not in any manner diluted the directions of the Hon'ble Supreme Court in [2017] 5 SCC 326 with regard to mandatory requirement of ETP. Prayer is allowed. 2. Learned counsel for the applicant has also drawn our attention to paragraph nos. 4 and 5 of the affidavit dated 28.08.2018 filed on behalf of the Central Pollution Control Board in pursuance of our above order as follows: 4. *That it is observed from annual average values of inlet that the concentration of COD (except in 2016), TSS, (except in 2017), NH_3-N (except in 2011, 2013 & 2017), TDS, Phenolic compounds are by and large more than the inlet norms, whereas, BOD (except in 2008, 2009, 2010 & 2011)) are less than inlet norms for some years. It is submitted that as per analysis results of CPCB monitoring, inlet quality is not meeting with inlet design norms of CETP which shows that some member industries are discharging without meeting specified inlet norms as mentioned in consents (CCA) of*

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	Item No. 09 **August 29, 2018** **R**	*member industries issued by GPCB. However, it is observed that there is improvement in inlet effluent quality over the years.* *5. That it is also submitted that member industries are discharging their effluent in GIDC underground drainage system which leads to CETP. M/s. VGEL-CETP should ensure that the member industries discharge the trade effluent meeting the inlet norms of CETP. In case of non-compliance, the list of such industrial units should be provided to GPCB for necessary action against such units.* *6. That it is also observed from annual average values of outlet that the concentration of TSS, TDS, BOD and COD are more than the outlet norms for the years 2008 to 2015 & 2017. Annual average values for BOD, COD, NH_3-N,Phenolic compounds are within the outlet norms for year 2016. There is improvement in outlet effluent quality over the years though not meeting the outlet norms (TSS, TDS, BOD, COD and Cyanide) prescribed by GPCB.* *7. That as per monitoring carried out on 8/3/2018, the concentration of TDS, BOD, COD, NH_3-N and Phenols were not meeting prescribed outlet norms. As per latest monitoring carried out on 10/5/2018, the concentration of all the monitored parameters, except TDS, were found to be within prescribed outlet norms.* *8. That it is observed from the results of inlet and outlet of CETP that there is reduction in pollutants due to treatment at CETP and as such no untreated trade effluent is discharged. However, Vapi CETP is required to be operated properly & up-graded adequately so as to ensure to discharge the treated effluent, all the time, meeting with the prescribed discharge norms."* 3. In view of above averments, appropriate action in accordance with law may be taken by the State Pollution Control Board. The Central Pollution Control Board will oversee compliance of this order. Report of the action taken may be brought on record before this Tribunal within one month from today by E-mail at filing.ngt@gmail.com. Put up for consideration of the report on 11th January, 2019, as prayed. .....,CP (Adarsh Kumar Goel)

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The Tribunal heard the applicant, the CETP Operator, the CPCB, the GPCB and also some of the polluting units who were before the Tribunal. Following questions were framed vide order of this Tribunal dated 11.01.2019:

"i. Whether the CETP operator and its member units have failed to comply with the conditions of consent and norms of environment and caused pollution? If so, the manner in which they are to be held accountable?

ii. Does the functioning of CETP in the present case and of CETPs in general in the country calls for review and modification?

iii. Whether the State Pollution Control Board in the present case and regulatory authorities have not performed their duties as per the expectation and if so, what are the steps necessary to achieve the objects for which the Pollution Control Boards/Committees have been constituted under the Water Air and the Air Act?

iv. What are the conclusions and what are the directions required to be issued by this Tribunal?"

5. With reference to question no. 1, it was held that CETP operators and member units had failed to comply with the conditions of consent in view of inspection reports dated 28.09.2018 and 10.01.2019 and in the circumstances 'Polluter Pays' principle can be invoked by the statutory regulatory authorities to determine the extent of accountability of the industrial units. The report dated 28.09.2018 showed:-

"It is observed that Inlet quality - COD, NH3-N and TSS are not meeting with inlet norms whereas COD and TSS at outlet of CETP are not meeting with Outlet norms.

CPCB, RD, Vadodara carry out quarterly monitoring of CETP, Vapi. The latest monitoring carried out on 11.08.2018 and results are provided at Annexure-III. It is observed that Inlet quality - TSS, FDS, BOD, COD and NH3-N are not meeting with inlet norms whereas TSS, FD, COD, NH3-N & Phenols at outlet of CETP are not meeting with outlet norms.

M/s VGEL (CETP) reportedly takes internal actions among the defaulting member units as per M/s VGEL monitoring but so far not provided the list of defaulting industries to GPCB though it is expected as per the Hon'ble NGT Order dated 29.08.2018, and also as per notices of direction issued by GPCB.

M/s VGEL (CETP) has not provided any action plan to comply with both inlet as well as outlet norms during the above review."

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6. Report dated 10.01.2019 also confirmed non-compliance at frequencies noted in the report with reference to the relevant parameters. The fact that untreated effluents were being discharged into the water bodies was not only reported by CPCB and GPCB but also accepted by the CETP operator. The stand of GPCB was that Notice has been issued to CETP operator as well as defaulting industrial units for remedial action.

Accordingly, a Committee was constituted to hear the individual polluting units and to quantify the amount of liability.

7. ***Under the issue no. 2, after referring to several cases considered by the Tribunal, it was held that there was large scale failure of CETP systems in general in the light of observations of the Tribunal, an Expert Committee was required to review the same.***

8. ***Under issue no. 3, the Tribunal found failure of mechanism of Pollution Control Boards in ensuring pollution free environment which is the mandate of the Constitution and the object of Water Act, Air Act, the Environment (Protection) Act, 1986 and other such laws. The fact that 351 river stretches are identified as polluted by the CPCB, 102 cities in terms of air quality are identified as non-attainment cities and 100 industrial clusters have been identified as polluted is clear evidence of failure of compliance of environment norms and ineffectiveness of the present statutory bodies constituted with that mandate. Proceedings in the present case established the failure of Gujarat State Pollution Board in performing its duty of preventing pollution and taking adequate remedial action against polluters. In spite of severe pollution, no conviction was reported. Polluters were not shown to have been prosecuted. It was noted that the Hon'ble Supreme Court in Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.[1] and also the Parliamentary Standing Committee on Science and Technology, Environment and Forest had found the failure of pollution boards. Still, adequate remedial measures were not being taken by the concerned authorities by way of legislative or executive intervention.*** *Clean Environment being part of Fundamental Right and 'Sustainable Development', 'Precautionary principle' and 'Polluter Pays principle' being statutorily required to be enforced by this Tribunal under Section 20 of the National Green Tribunal Act, 2010 (NGT Act), to prevent and remedy the acknowledged level of high pollution in the country resulting in death and diseases, the Tribunal held that there was need for Performance Audit being conducted in respect of functioning of all the PCCs and PCBs of the Country and in the light of such findings, further action was required. The directions issued vide order dated 11.01.2019 include that constitution of a Committee to review functioning of CETPs comprising*

[1] (2018) 11 SCC 734

representatives of MoEF&CC, CPCB and NEERI and Performance Audits by CPCB of all the SPCBs and PCCs, constitution of a three Member Expert Committee by the MoEF&CC to consider compliance of mandate of the law laid down by the Hon'ble Supreme Court in Techi Tegi Tara (supra), to suggest guidelines for effective working of SPCBs to bring air and water quality within norms.

9. Under issue no. 4, it was concluded that the CETP operator and the concerned units had failed to comply with the environmental norms and were required to be made accountable within the framework of the regulatory regime. The Regulatory regime provides for preventive as well as remedial action of prohibiting polluting activities, including closure, prosecution as well as recovery of compensation on 'Polluter Pays' principle. Pending such action, interim amount of damage for the pollution already caused so as to recover cost of restoration based on prima-facie opinion could be recovered. CETP mechanism was required to be reviewed and so was the functioning of the regulatory regime in the form of SPCBs. Accordingly, the Tribunal directed constitution of a Committee to assess the extent of damages, payment of interim compensation by CETP operator as well as erring industries which was to be utilized by the CPCB for restoration. ***The Tribunal directed performance audit of all the SPCBs/PCCs and also directed to review of regulatory mechanism in the light of observations of the Hon'ble Supreme Court in Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors., (2018) 11 SCC 734."***

3. The above background shows that based on objective data it was clearly established that the CETP in question was operating in environmental norms and the pollution caused was required to be controlled by stopping the polluting activity and making the polluters accountable on the 'Polluter Pays' principle. Conscious of the fact that large number of industries are connected to the CETP which may be required to be made accountable for causing pollution, the Tribunal made it clear that statutory authorities may give hearing to the affected parties and perform their duties consistent with the principles of *natural justice.* For giving a direction to the statutory authorities in the light of clear evidence of pollution, it was not necessary for the Tribunal to hear individual industries in view of the

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fact that such hearing is to be given by the regulatory authority. Since the pollution control board had failed to perform its duty, this Tribunal was required to consider the remedial steps necessary including compliance of observations in the judgement of the Hon'ble Supreme Court with regard to the manning of the regulatory bodies.

4. The Tribunal, in its hearing on13.05.2019, considered the report dated 09.05.2019 submitted by the joint Committee with regard to the status of compliance of environmental norms by the CETPs as well as individual industrial units. It was observed:

"20. The conclusion of the Committee was that there is increase in concentration of pollutants:

"As observed from results of CPCB, GPCB and NEERI, there is increase in the concentration of pollutants post CETP discharge at Namdha and Jari Causeway along the Damanganga river vis-a-vis river water quality at GIDC weir (which can be considered as river water without effect of pollution). Aesthetically, the impact of pollution in the river Damanganga is observed for about 13 km from Vapi weir. This is supported by the CSIR-NEERI Report (2016-2017). The report also stresses on the toxicity of the CETP wastewater on the to fish. Based on the Interactions with local community and Fisheries Department of UT of Daman & Diu, it was conveyed that fishing is not carried out on the stretch downstream of CETP discharge due to river pollution. However data on marine fish catch in the sea near Daman is available.

Also based on the historical data of CPCB, the quantum of pollution load indicated decreasing trend of major pollutants such as COD and BOD over the years. This is in line with the improvement in the quality of treated effluent of CETP though CETP is not meeting with outlet standards for parameter COD, TDS, and Colour. Hence, upgradation of CETP treatment scheme is paramount to reduce pollution reaching the river Daman Ganga. There is improvement in the river water quality as per priority categorisation from Priority - II (2010) to Priority - IV (2015 & 2018) as inferred from CPCB report for the river stretch: Kachigaon to Vapi (GIDC weir to Jari Causeway (Priority - I being most polluted and Priority -V being best rating).Though, river stretch falls under Priority IV (based

on BOD), presence of other pollutants discharged from the CETP outlet affected the biological and physicochemical environment of the river.

The impact on the coastal marine environment (4 beaches- Tadgam, Jampore, Devka and Tithal) due to industrial discharges through rivers/drains in the area assessed by National Institute of Oceanography (NIO) (2018) and report has stated that there is no evidence of significant deterioration of environmental quality of the beachfront environment. The waters of these 4 beaches contained high load of fecal coliform (FC) in water and sediment suggesting contamination by sewage. The study conducted by CSIR-NEERI also indicated pesticides concentrations at levels below the detectable levels of instrument analysis.

In view of the consideration of the steps for the restoration of the environment of river Damanganga suggested based on treatment of pollutants and discharge as per environmental norms, the cost of restoration comes about Rs. 751 crore for over ground pipeline network from industries to GIDC manhole/sump, quality & quantity monitoring SCADA system, upgradation of CETP, construction of STPs, management of MSW in the area.

*As there are many methods for environment damage estimation and all of them use reasonable assumptions, the committee has used two different approaches to calculate the damage. While Approach - I is based on the economic valuation of eco-services rendered by the river considering a representative critical pollutant (COD) for damage estimation. Approach-II is based on the CETP discharge outlet norms for the pollutants: COD, NH3-N, TSS, and BOD, independent of river water quality. Using two alternative methods the cumulative economic damages are estimated to be in a comparable range (**INR 41.61 Cr for the Approach-I and INR 67.00 Cr for Approach-II during the year 2013 to 2018**).*

*Using the recent six years (2013-2018) data and employing two alternate methods, the yearly average economic damages are estimated to be in the comparable range of **INR 6.93 Cr/year (Approach-I) and INR 11.17 cr/Year (Approach-II).**"*

24. Learned Counsel for the applicant also points out that the Committee has not factored in the level of pollution based on category of industries as red, orange and green which depends on pollution protentional. Even a small industry may be causing more pollution than large industry. Merely categorization large, small and medium without considering the extent of pollution on account of nature of activity of such industry is not correct application of the 'Polluter Pays' principle. The cost of restoration having been found to be more than Rs. 750 Crores which includes multiple of factors. The cost estimate for River

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Restoration Programme which includes CETP upgradation, STP and MSW facility. The Committee has undertaken economic valuation and damage assessment by two methods. By following 'shadow cost of pollution load and benefit transfer method' the cumulative damage of Rs. 67.00 Crores has been estimated due to excess discharge of pollutants in river ecosystem in last six years between 2013-18 with average damage of Rs. 11.17 Crores each year to the environment. However, by following 'Direct Benefit Method' which is based on The Economics of Ecosystem and Biodiversity (TEEB) project set up in 2007 and led by United Nations Environment Programme (UNEP) the damage that can be attributed to pollution from CETP in excess of stipulated standard of COD comes to Rs. 41.61 Crores for six years. Right application of the 'Polluter Pays' principle requires that the polluter should be required to pay the cost of restoration. The compensation to be recovered should be deterrent. In the present case, compensation has been based on a formula worked out by the CPCB which cannot be universally applied without reference to cost of restoration and may be deficient in the present case having regard to the high cost of restoration. The amount of compensation should on account of wide spread pollution broadly also correspond to the cost of restoration which has not been done.

25. ***The Committee has assessed compensation only for 44 units while the number of polluting units is more than 500. GPCB failed to give list of all the polluting units. GPCB has not acted on 'Precautionary' principles by closing the polluting units.*** *Reliance has been placed on the order of this Tribunal dated 09.04.2019 in O.A. No. 125/2018, Arvind Pundalik Mhatre Vs. Ministry of Environment and Forest & Climate Change & Ors., wherein this Tribunal in similar circumstances directed closure of polluting units to uphold the mandate of the Water (Prevention and Control of Pollution) Act, 1974. It was observed as follows:*

> *"14. Accordingly, we direct the MPCB to forthwith suspend the Consent to Operate to the industries in the area not meeting the norms and permit them to operate only after remedial steps are taken. Steps in this direction be taken within two weeks from today. Whether a particular industry is complying or not complying with the norms is the matter to be decided by the MPCB in accordance with law. Action taken report be furnished to the Committee and the Committee may take a final call in the matter, in case of any surviving issue."*

26. *In the present case in spite of acknowledged pollution, the polluting units are continuing. There is no material to show launching of prosecution. The approach of the GPCB is, thus, patently soft towards the violators of law which itself shows failure of the regulator to protect and restore the environment.*

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31. ***Accordingly, we direct the Committee to make fresh calculation based on actual period of pollution during five years preceding 26.02.2018, the date on which this application was filed i.e. from 26.02.2013 till the date of calculation.*** *The Committee has only gone by the category of large, small and medium industry and not by the extent of pollution by the category of the industry concerned as red, orange and green. The Committee may also keep in mind the need to corelate the compensation to be recovered to the cost of restoration in the facts of the present case. The GPCB should furnish list of all the polluting units. We find that the approach of the GPCB has been too soft and adequate action has not been taken against the law violators by way of prosecution and closure of polluting activities which is a failure of the regulator. If cost of restoration is not recovered from polluters, the regulator and not the victim should be responsible for the loss.*

32. ***In view of the material on record appearing from the report extracted above, prima facie, direction to deposit interim compensation in terms of order dated 11.01.2019 is fully justified and needs no change.*** *It is patent that the interim amount fixed by this Tribunal may not only be inadequate to meet the loss caused by pollution and the cost of restoration. The prayer for waiving the requirement of interim deposits has no merit and is dismissed. I.A. Nos.176/2019 to 187/2019, I.A. Nos. 190/2019 to 207/2019, I.A. Nos. 227/2019 to 238/2019, I.A. No. 263/2019 said to be for variation of order dated 11.01.2019 will stand dismissed.*

33. *Fresh report of the Committee may be furnished within two months by e-mail at ngt.filing@gmail.com. Any further submissions of the parties may be given to the Committee through CPCB. We also add a representative of MoEF&CC to the Committee for making the assessment.*

34. *GPCB may furnish list of all the polluting units in addition to list of 44 units earlier given and online data as may be necessary to determine damages for period from 13.02.2013 till date to the Committee and perform its duties as regulator in respect of CETP as well as all defaulting units by way of closure to stop polluting activities and prosecution for the violation of law which had already done.*

35. ***In terms of order dated 11.01.2019 and the above order, following steps may be completed:***

i. ***Report be submitted for review of functioning of CETPs in the country as per direction in Para 55 (v) in order dated 11.01.2019. CPCB may coordinate.***

ii. ***Performance audit of SPCBs/PCCs may be completed as per para 55 (vi) in order dated 11.01.2019.***

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iii. ***MoEF&CC may give status of report of steps to revamp the regulatory bodies as directed in para 55 (vii) and (vii.a) in order dated 11.01.2019.***

iv. ***Compliance of requirement of deposits be made in terms of para 55 (ii) of order dated 11.01.2019 forthwith to the extent not made.***

v. ***The Committee to assess the compensation and give its revised report within two months. MoEF&CC may nominate its representative as part of Committee constituted in terms of para 55 (i) vide order dated 11.01.2019.***"

Proceedings before the Tribunal on 19.08.2019

5. In the light of the above background we took up the matter on 19.08.2019. After considering the above report dated 14.08.2019 received from the Committee on the subject of performance of CETP, the Tribunal sought information about the units responsible for discharging effluents beyond norms in CETP inlet resulting in CETP outlet not being as per standards. The Tribunal completed the hearing on all other aspects.

Today's Proceedings before the Tribunal

6. Written submissions have been filed in the course of hearing today on behalf of Respondent No.1 with regard to identification of individual contributors to pollution of inlets in the CETP. It is stated that the effluents of the individual are collected in a common drain. CETP has no opportunity to assess the inlet norms of the individual industries. At the same time, list of defaulting industries furnished by the CETP to the GPCB on 01.02.2019 has been filed as an annexure to the written submissions containing names of the following industries:

1. Chemodist Industries
2. Dalmia Poly Pro Industries Pvt. Ltd.
3. Haatkesh Chem & Engind
4. Jayshiv Chemicals Pvt. Ltd.
5. Nylo Speciality Colours
6. Pearl Colour Industries

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7. Praveen Industries
8. Rainbow Chemicals
9. Ratna Products
10. Skyline Polycats Pvt. Ltd.

7. No other submissions have been advanced even though the written submissions purport to raise certain objections. We may need to mention that as is clear from the background referred to earlier the grievance being considered by this Tribunal is violation of environmental norms resulting in damage *inter alia* to river and drain and the public health. We have already noted earlier that this Tribunal has to enforce the 'Sustainable Development", "Precautionary" and "Polluter Pays" principles under Section 20 of the NGT Act. In the course of such enforcement, the Tribunal can require the statutory bodies to perform their duties after verifying the data and complying with the natural justice. An aggrieved party has statutory remedies against orders of the statutory regulatory bodies. The reports which have been furnished to the Tribunal can certainly be taken into account in absence of meaningful objection thereto.

8. We now proceed to deal with following reports which have been filed in pursuance of earlier consideration and directions by the Tribunal, as noted above:

I. Report dated 14.08.2019 from CPCB in respect of performance of CETP;

II. Report dated 05.08.2019 furnished by the CPCB on behalf of the joint Committee with regard to payment of compensation by the polluting industries;

III. Report dated 10.07.2019 from the CPCB on the subject of performance audit of the State PCBs/PCCs; and

IV. Report dated 17.08.2019 from the MoEF&CC on the subject of compliance of judgment of the Hon'ble Supreme Court *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[2]

I. Report dated 14.08.2019

9. The report dated 14.08.2019 shows that on analyzing the samples the influent to CETP is not meeting parameters. Final outlet is not meeting the standards for TSS, FDS, COD and BOD parameters. Accordingly, remedial action has been recommended as follows:

> ***"3. RECOMMENDATIONS:***
>
> - *CETP should up-grade treatment system/put more efforts in operation for meeting with outlet norms.*
> - *The CETP needs to regulate the discharge of member units to meet the inlet standard, especially concentration of FDS parameters is more than 3.5 times than the prescribed standard.*
> - *Proper calibration and continual maintenance of OCEMS needs to be done to ensure reliable results of monitored parameters.*
> - *List of defaulting industries should be regularly (monthly) share with GPCB for taking suitable action against these industries.*
> - *CETP should regularly send the sludge and salt (generated from Common Spray Dryer) to CHWTSDF for proper disposal."*

10. Thus, there is need to reduce the load of inlet so as to ensure that inlet parameters are complied with by contributing industries. This may require closing identified source of such inlets or reducing the corresponding pollution load of the identified member units. It is not difficult to identify polluting units because there exists monitoring mechanism of outlets of individual units. Moreover, CETP itself claims to have given a list in this regard to the GPCB as already noted. The joint Committee of CPCB and GPCB can determine the

[2] (2018) 11 SCC 734

source of polluting inlets and take further action to correspondingly reduce the pollution load by issuing appropriate directions. Further, the CETP needs to be upgraded and till such upgradation is done, the inlet quantity and load needs to be reduced as to match the current capacity of the CETP. The same Committee can also determine the manner in which the CETP may reduce its intake so that its outlet complies with the parameters pending steps for further upgradation. The joint Committee may accordingly take appropriate further action in the matter and file a compliance report before this Tribunal before the next date.

II. Report dated 05.08.2019

11. Report dated 05.08.2019 furnished by the CPCB on behalf of the joint Committee refers to visit to CETP and river DamanGanga, sampling of CETP Vapi and different locations of river Damanganga, Information/Data collection from CETP operators, GPCB, CPCB, other departments, reports of NEERI, NIO, hearing to defaulting industrial units and CETP operators. It is found that CETP was not able to meet the outlet norms as some of the member units are discharging effluents without proper treatment. CETP is unable to treat refractory COD & colour on account of high salt concentration. Impact of pollution is observed for about 13 km from Vapi weir. There is toxicity of CETP waste water affecting the fish. The water from the river is not consumed downstream of GIDC weir either for drinking or irrigation. The pollution load. Upgradation of CETP is necessary. Compensation to be recovered from individual industry members has been assessed to be Rs. 25.36 crore and from CETP Rs. 92.36 crore as against the cost of restoration being assessed at Rs. 728.72 crore

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which includes laying of pipelines, MSW management, sewage collection system. The relevant part of the report is reproduced below:

"The CETP was commissioned in the year 1997 and has made several upgradations in unit treatment and process operations over the years. Recently, the CETP augmented with Common Multiple Effect Evaporator & Common Spray Dryer for High COD & High TDS wastewater. It was observed from the results of analysis of the inlet and outlet wastewaters from multiple data sets of CPCB, GPCB & VGEL that there was an improvement over the years in treated wastewater quality which is significant in 2016. However, the CETP was not able to meet outlet norms broadly for COD, FDS, Chlorides, Sulphates and Color. Major reasons for the non-compliance of GPCB norms are briefly presented hereunder:

1. *Some of the member units are discharging without proper treatment to their process wastewaters prior to discharge into the CETP. Failure to adhere to the CETP Inlet quality norms is one of the reasons for the CETP not meeting the final treated effluent quality.*
2. *The presence of refractory COD & Colour in the presence of high salt concentration becomes difficult to treat and meet statutory norms under the existing treatment scheme.*

Restoration of the environment of river Damanganga requires following broad steps which are suggested based on treatment of pollutants and discharge into river Damanganga as per environmental norms:

- *Improvement/up-gradation in the wastewater collection through surface/over ground pipeline from industries to manhole/sump of GIDC drainage network and to remove all underground discharge line of industrial unit to manhole of underground GIDC drainage. Further, it is recommended to lay surface pipeline conveyance system up to CETP, wherever technically feasible by removing underground existing pipeline.*
- *Restoration of existing & construction of new storm water drain to prevent entry of wastewater into the natural drains in the industrial estate.*
- *Monitoring and analysis of all industries including all streams of wastewater, product wise and shall identify High COD/High TDS (refractory COD) Stream for identification of any discrepancies which will be helpful in taking actions.*
- *Quality & Quantity Monitoring with SCADA-PLC system for controlling quantity & quality of the effluent discharged by each of the member units.*
- *Proper operation, maintenance and up-gradation of CETP to meet the norms prescribed by GPCB*
- *Strict vigilance, identification and action against defaulting industries.*

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- *Proper design and construction of stormwater drains and sewerage network, STP within the local bodies*
- *STPs shall be designed to reuse of treated sewage for industrial reuse/ landscaping / firefighting and agriculture purpose.*
- *Prevent dumping of solid waste from towns and villages on the banks of river.*
- *Minimum environmental flow of Damanganga river for release of water from the Madhuban Dam.*
- *Afforestation*
- *River front development*
- *Agricultural and farm yard management surrounding the river path.*

In view of the consideration of the steps for the restoration of the environment of river Damanganga suggested based on treatment of pollutants and discharge as per environmental norms, the cost of restoration including the projects from concerned departments comes about Rs. 731 - 751 crore for over ground pipeline network from industries to GIDC manhole/sump, quality & quantity monitoring SCADA system, upgradation of CETP, construction of STPs, management of MSW in the area by concerned agencies.

Table 8.1: Compensation and estimated cost of projects from concerns agencies for restoration of Damanganga:

No.	Agency	Amount (in crore)
	Compensation amount from industries and CETP	
1	**Compensation from individual industry members (As per Table 7.4, 161 industries)**	25.36
2	**Compensation from Vapi CETP**	92.36
	Cost of the other projects of concern Agencies/Departments	
3	Overground pipe line by GIDC (GIDC Vapi)	95.00
4	MSW Management (Vapi Municipal Council for Vapi Town)	11.00
5	STP Plant & Sewage Collection system in Vapi Area - 60 MLD (Vapi Municipal Council)	233.00
6	STP Plant & Sewage Collection system in Daman area - 70 MLD (Daman Municipal Council)	272.00
	Total	**728.72**

The above table shows correlation with cost of restoration in consideration of the nature of work and the source of the fund for restoration of river Damanganga is Rs. 728.72 Crore against the total cost of restoration estimated Rs. 731 - 751 Crore (mentioned in Chapter 6, Table 6.1). The total Environmental Compensation from individual industries and CETP (Vapi) is calculated to be Rs. 117.72 Cr (25.36 Cr + 92.36 Cr).

As per the interim order dated 11.01.2019 & 13.05.2019, 41 defaulting industries as per earlier list and CETP has already

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paid the interim environment compensation, whereas 3 industries have not submitted the interim environment compensation for whom GPCB have already issued the closure directions.
Based on the Hon'ble NGT directives, various actions have been identified to restore the river Damanganga and reduce environmental damage in the future. Few agencies such as GIDC, VGEL CETP, GPCB, CPCB, Municipality/local bodies are identified which are in concern for restoration. ***The committee's major recommendations are summarized below (as detailed given in section 5.1.1 to 5.1.4 Chapter - 5).***

ACTIONS TO BE UNDERTAKEN BY GIDC/NOTIFIED AREA AUTHORITY

- *It is recommended to provide the surface/over ground pipeline from industries to CETP for proper conveyance of effluent wherever technically feasible by removing existing underground pipeline.*
- *Restoration of any damaged stormwater drains to prevent entry of wastewater into the natural drains in the industrial estate and prevention of entry of industrial wastewater in Bill khadi and its flow downstream to GIDC estate.*
- *Proper design and construction of stormwater drains within the industrial estate where it is not provided particularly in low lying areas to (i) prevent stagnation of storm water contaminated with industrial wastes (ii) to prevent indiscriminate entry of contaminated storm water into natural drains.*

ACTIONS TO BE UNDERTAKEN AT CETP LEVEL

- *CETP shall carry out monitoring and analysis of all industries including all streams of wastewater, product wise and shall identify High COD/High TDS (refractory COD Stream). Based on that, CETP shall monitor the inlet quantity to CMEE/Spray dryer industry wise and shall submit data to GPCB monthly for identification of any discrepancies which will be helpful in taking actions.*
- *All the member units have to provide a system for the quantity and quality of the effluent discharge through SCADA-PLC system and shall observe discharge schedule and permitted volume.*
- *All the sump rooms shall be equipped with auto samplers for controlling the quality of effluent discharged by members, which can be accessible by VGEL. If require, it should also be accessible for GPCB.*
- *Proper operation, maintenance and up-gradation of CETP to meet the norms as prescribed in* ***Chapter 6 (Table 6.1)*** *or equivalent advanced technology related to effluent profile.*

ACTIONS TO BE TAKEN AT REGULATORY LEVEL

- *Continuous strict vigilance, identification and action against defaulting industries.*
- *Vapi GIDC to ensure that the process wastewaters from industries do not enter the storm water drains. It may be*

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achieved through the construction of dykes or tanks by Industry to collect and introduce into the wastewater treatment scheme.

ACTIONS TO BE TAKEN BY LOCAL BODIES (MUNICIPAL COUNCIL)

- *Proper design and construction of stormwater drains and sewerage network within the local bodies where it is not provided particularly (i) in low lying areas to prevent stagnation of storm water contaminated with wastes (ii) to prevent indiscriminate entry of contaminated storm water into natural drains and finally river Damanganga.*
- *Control domestic/commercial wastewater (sewage) discharges into the River through proper collection and treatment from residential and commercial areas and treatment through STPs. The STPs shall be designed to reuse of treated sewage for industrial reuse/ landscaping / firefighting and agriculture purpose.*
- *Prevent dumping of solid waste from towns and villages on the banks of river.*
- *Identification of plots for solid waste landfill development.*
- *The appropriate authority should take care of their concern projects for restoring the environment."*

12. Learned Counsel or the applicant has referred to the report of the Committee to point out that the Committee has given hearing to the CETP and all individual units and discussed the individual cases for determining the amount of compensation. However, the period for which the compensation has been assessed is not the entire period for which the pollution continued but reckoned only with respect to the date of inspection. It cannot be presumed that there was no pollution earlier. The polluter is to prove the period during which no pollution was being caused. Whatever be the "best judgement assessment" for the past, presumption of no pollution is not justified. The compensation assessed may thus need to be enhanced. We are of the view that this aspect can be revisited by the joint Committee in light of the submission made by the Learned Counsel for the applicant. Till such consideration, the amount assessed can be collected as an interim compensation. Further action may accordingly

be taken jointly by GPCB and CPCB. . Compliance report in this regard may be filed before the next date.

III. Report dated 10.07.2019

13. Report dated 10.07.2019 filed by the CPCB is on the subject of performance audit of the State PCBs/PCCs. The report merely ranks the PCBs/PCCs, without proper assessment of the functioning.

14. What is expected is performance audit on issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, scientific equipments, logistics support, competence etc. rather than ranking the States. Let the same be done and state-wise reports submitted based on thorough analysis in terms of statutory functions. CPCB may devise an appropriate mechanism for the purpose. We also direct that all vacant positions in the SPCBs/PCCs may be filled up at the within four months and the Chief Secretaries of the States/UTs may ensure that there is no embargo in doing so, so that effective steps for protection of environment can be taken. It is also necessary to direct that the laboratories established by the SPCBs/PCCs, at headquarters as well as regional centers, are duly recognized for purposed of enforcement of environmental laws. The concerned authorities may take further steps accordingly. The CPCB may compile a report and file before the next date. SPCBs/PCCs may utilize the funds available with them, under EC/Consents or other heads instead of approaching other authorities and on that pretext not performing their essential function. The MoEF&CC may consider constituting an appropriate authority for the purpose with

representatives from Central and State authorities on the pattern of Compensatory Afforestation Fund Management and Planning Authority (CAMPA) or otherwise. A compliance report be filed by the MoEF&CC before the next date.

IV. Report dated 17.08.2019

15. Report furnished on 17.08.2019 by the MoEF&CC is on the subject of compliance of judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[3]. The report shows that further action is required for compliance of judgement of Hon'ble Supreme Court.

16. Let further follow up action be taken by the MoEF&CC to monitor compliance of judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.* and report furnished to this Tribunal before the next date after ascertaining that uniformity in terms of qualifications, experience and special skill sets is adhered to especially with regard to key position of Chairman and Member Secretary of SPCBs/PCCs.

17. In view of the above discussion our directions are summed up as follows:

(i) Let the joint Committee take action in terms of para 10 above on the subject of corresponding reduction in load to ensure compliance of norms of inlet in CETP so as to ensure that inlet and outlet of CETP are as per norms and file compliance report before the next date.

[3] (2018) 11 SCC 734

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(ii) With regard to the past violations, compensation as assessed by the Committee in respect of individual units as well as CETP is liable to be recovered as interim compensation on 'Polluter Pays' principle. Further action may be taken jointly by GPCB and CPCB. Compliance report in this regard may be filed before the next date.

(iii) Performance audit be done with reference to issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, adequacy of laboratories and scientific equipments, logistics support, competence etc. rather than ranking the States and state-wise reports submitted along with recommendations based on thorough analysis in terms of statutory functions before the next date. CPCB may devise an appropriate mechanism for the purpose. CPCB and MoEF&CC may file a compliance report with reference to observations in para 14 above.

(iv) Let further follow up action be taken by the MoEF&CC to monitor compliance of judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.* and report furnished to this Tribunal before the next date.

List for further consideration on 11.02.2020.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

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K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

August 28, 2019
Original Application No. 95/2018
DV

NATIONAL GREEN TRIBUNAL, NEW DELHI

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ANNEXURE-A6 235

Fwd: FW: To report regarding appropriate action taken in accordance with law by Gujarat Pollution Control Board in above referred matter and in consideration Honorable NGT Principal bench order Dt:-29 th August 2018. O.A.-95/2018 (M.A. 1029/2018)

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1 message

Dhruv Pal <dhruvpal.legal@gmail.com> Thu, Jan 10, 2019 at 12:38 PM
To: chambersofmskalra@gmail.com, Surender Singh Hooda <Sshooda65@gmail.com>, JITENDAR SINGH <Jituoimt@gmail.com>

---------- Forwarded message ---------
From: **Dhruv Pal** <dhruv.pal@hotmail.com>
Date: Thu, Jan 10, 2019 at 12:35 PM
Subject: FW: To report regarding appropriate action taken in accordance with law by Gujarat Pollution Control Board in above referred matter and in consideration Honorable NGT Principal bench order Dt:-29 th August 2018. O.A.-95/2018 (M.A. 1029/2018)
To: dhruvpal.legal@gmail.com <dhruvpal.legal@gmail.com>

Please find attached Compliance Affidavit in above captioned matter.

--
Dhruv Pal

Advocate
Supreme Court of India

Office-cum-Residence Address:
C-203, 2F, GK - 1,
Near M Block Market,
New Delhi - 110048
Mobile: +919999739573

dhruv.pal@hotmail.com

From: Bhavdip R Gajjar(GoG-GPCB Dept.) <ro-gpcb-vapi@gujarat.gov.in>
Sent: 10 January 2019 12:17
To: ngt.filing@gmail.com
Cc: Sushil2 H Vegda(GoG-GPCB Dept.); dhruv.pal@hotmail.com
Subject: Fw: To report regarding appropriate action taken in accordance with law by Gujarat Pollution Control Board in above referred matter and in consideration Honorable NGT Principal bench order Dt:-29 th August 2018. O.A.-95/2018 (M.A. 1029/2018)

With Regards

B. R. Gajjar
Regional Officer
Gujarat Pollution Control Board
Vapi

From: Bhavdip R Gajjar(GoG-GPCB Dept.)
Sent: Friday, September 28, 2018 3:34 PM
To: filing.ngt@gmail.com
Cc: ms-gpcb; westzonecpcb@yahoo.com; brnaidu.cpcb@nic.in
Subject: To report regarding appropriate action taken in accordance with law by Gujarat Pollution Control Board in above referred matter and in consideration Honorable NGT Principal bench order Dt:-29 th August 2018. O.A.-95/2018 (M.A. 1029/2018)

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 95 OF 2018
(M.A. No. 1029/2018)

2281
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Subject:- To report regarding appropriate action taken in accordance with law by Gujarat Pollution Control Board in above referred matter and in consideration Honorable NGT Principal bench order Dt:-29 th August 2018.

Ref:- Honorable NGT Principal bench order Dt:-29th August 2018 in matter of Original Application No 95/2018 (M.A. No-1029/2018).

Respected Sir.

In reference to Original Application No 95/2018 (M.A. No-1029/2018). Order passed by Honorable NGT Principal bench order Dt:-29th August 2018. Gujarat Pollution Control Board has to report of Action taken and The Central Pollution Control Board has to oversee compliance of this order. It has to bring on record before the Honorable Tribunal within one month by e mail at "filing.ngt@gmail.com" Status of implementation report so far is attached herewith. This is for kind information please

Thanking You,

B.R.Gajjar
(Regional Officer}
Gujarat Pollution Control Board

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6 attachments

Brief Report-compl-NGT order 29.08.2018 in OA 95 of 2018.docx
19K

Annex-I-list of ind -cetp member- visited by GPCB-19.08.2018-22.09.2018-.docx
29K

Annexure - II.docx
14K

Annexure - III.docx
15K

ANNEXURE - A7

Item No. 05

Court No. 1

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BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 95/2018
(M.A. No. 1029/2018)

Aryavart Foundation — Applicant(s)

Versus

M/s Vapi Green Enviro Ltd. & Ors. — Respondent(s)

Date of hearing: 11.01.2019

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

For Applicant(s): Mr. Raj Panjwani, Senior Advocate with Dr. Surender Singh Hooda, Advocate

For Respondent (s): Mr. M.S. Kalra, Advocate for R-1
Mr. Shlok Chandra with Mr. Ritesh Kumar Sharma, Advocates for CPCB
Mr. Dhruv Pal, Advocate for GPCB

ORDER

1. The issue for consideration in this matter is discharge of untreated/partially treated trade effluents by more than 500 industrial units in Vapi Industrial Cluster into Daman Ganga River in District Valsad in Gujrat which meets the Arabian Sea. The effluents comprise of untreated coloured chemical liquids. Apart from Daman Ganga River, the other water body in which effluents are discharged is the *Bill Khadi* (a drain) which also falls into the Arabian Sea.

2. Case of the Applicant is that Common Effluent Treatment Plant (CETP) is being operated in the area by Respondent No. 1, M/s. Vapi Green Enviro Limited (Old name – Vapi Waste & Effluent Management Co. Ltd.) reportedly since 01.01.1997. The impact of discharge is serious threat to the aquatic life in the river as well as in the sea.

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3. A study was carried out in February 2017 by the National Environmental Engineering Research Institute (NEERI). It was found that:

> *"The fish bioassay study on the final treated effluent sample discharged from Vapi CETP into the river indicates 100% mortality at 50, 75 and 100% waste water concentrations within 24 h exposure time (Plate 4.56). The experimental results presented in Table 9.6 reveal toxic nature of the treated effluent from Vapi CETP. Thus, it can be concluded from the fish bioassay study that the final treated effluent from Vapi CETP with high colour intensity, organic and inorganic matters is having toxic effect on aquatic life of Daman Ganga River. Therefore, Vapi CETP effluent must be treated adequately to remove the pollution parameters before discharging into Daman Ganga River."*

> *"The final treated effluent discharge from the existing Vapi CETP (D-11A) has not only caused deterioration of the river water quality with respect to the colour and recalcitrant parameters but also has imparted toxic effect on aquatic life of Daman Ganga River (segment-II). Therefore, Vapi CETP must be scientifically upgraded for colour and recalcitrant pollutants removal including reject management with a final aim of achieving zero liquid effluent discharge as delineated under Section 11.0. This will result in recovery of good quality water, which can be reused as process water by the industries, leading to fresh water conservation."*

4. Further case set out in the application is that Respondent No. 2, Gujarat Pollution Control Board (GPCB), carried out inspection and tested the water quality from P-Equalization Tank (Inlet) on 25.10.2017 and found that the same was not meeting the standards. Samples were also taken from overflow of primary clarifier (Inlet) and the storage tank and similar results were noticed. Tests were also carried out on 06.11.2017, 28.11.2017, 07.12.2017, 27.12.2017, 30.12.2017, 23.01.2018, 29.01.2018, 31.01.2018 and 05.02.2018 and same results were found. From the final outlet also similar results were seen on 27.12.2017, 30.12.2017, 23.01.2018 and 29.01.2018.

5. GPCB issued show cause notice dated 25.10.2017 and 01.11.2017 and direction under Section 33A of the Water (Prevention and Control

NATIONAL GREEN TRIBUNAL (Principal Bench), New Delhi

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discharge was on the higher side as tanks had not been cleaned for many years.

10. The GPCB has referred to the order of the NGT dated 01.04.2014 in O.A. No. 34/2013 directing the Respondent no. 1 to maintain the laid down standards of effluent discharge. The industrial units were directed to set up/up-grade treatment plants. The GPCB was directed to use Bank Guarantee regime for improvement in pollution control systems.

11. The GPCB further submitted that the Vapi industrial estate is spread over 1117 hectares and is largest industrial area in Asia. It has industrial units of small, medium and large size in diverse sectors, such as Chemicals, Pharmaceuticals, Pesticides, Dyes & Dyes Intermediate and Pulp & Paper. There is substantial consumption of water in the production processes and resultantly there is discharge of effluents. The CETP was set up in the year 1997 and is operated by Respondent No. 1. The industrial units are required to do basic treatment of their effluents in their own premises which refers to Primary Effluent Treatment Plant (PETP). The Respondent No. 1 collects effluents through underground pipeline network and after primary, secondary and tertiary treatment at CETP, discharges effluents into Daman Ganga River at designated place. Each member industry is to provide basic treatment facilities to meet CETP inlet norms. Five hundred and nineteen (519) industrial units are members of CETP. Due to unsatisfactory treatment of effluents by CETP, and also based on Comprehensive Environmental Pollution Index (CEPI), Vapi industrial cluster was declared critically polluted Area on 13.01.2010. Major up-gradation was undertaken by the CETP by investing Rs. 464 Crores which led to improvement in the quality of effluent discharge. Accordingly, vide order dated 25.11.2016, the MoEF&CC lifted the moratorium on setting up of new

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industries and expansion of existing industries. Certain industries have been identified as generating high COD. Common spray dryers have been developed in March 2018.

12. On earlier hearing, the Tribunal had before it the Order dated 01.04.2014 in O.A. No. 34/2013 of this Tribunal which showed that the CETP was not satisfactorily working.[1] There was need to take innovative enforcement measures by the GPCB.[2] It was held therein that though the Pollution Control Board could not apply the of "Polluter Pays" Principle as a punitive measure, it could take Bank Guarantee for non-compliance for ensuring improvement since the CETP was continuously not meeting the norms and such norms could not be relaxed.[3] The CPCB in its reply dated 25.04.2018 stated that average value of inlet and outlet were not as per norms.[4]

13. In view of above, on 29.08.2018, the Tribunal directed the GPCB to take appropriate action in accordance with law in the matter for failure of mandatory requirements laid down by the Hon'ble Supreme Court in *Paryavaran Suraksha Samiti and Ors. vs. Union of India (UOI) and Ors.*[5], for operational and effective ETPs. CPCB was to oversee the compliance of the order and action taken report was required to be filed.

14. In compliance of above order, the GPCB and the CPCB have filed their reports. The GPCB in its report dated 28.09.2018 states as follows:

> *"It is observed that Inlet quality - COD, NH_3-N and TSS are not meeting with inlet norms whereas COD and TSS at outlet of CETP are not meeting with Outlet norms.*
>
> *CPCB, RD, Vadodara carry out quarterly monitoring of CETP, Vapi. The latest monitoring carried out on 11.08.2018 and results are provided at Annexure-III. It is observed that Inlet quality - TSS, FDS, BOD, COD and NH_3-N are not meeting*

[1] Para 5
[2] Para 23
[3] Para 32 & 33
[4] Para 10
[5] (2017) 5 SCC 326

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with inlet norms whereas TSS, FD, COD, NH_3-N & Phenols at outlet of CETP are not meeting with outlet norms.

M/s VGEL (CETP) reportedly takes internal actions among the defaulting member units, as per M/s VGEL monitoring but so far not provided the list of defaulting industries to GPCB though it is expected as per the Hon'ble NGT Order dated 29.08.2018, and also as per notices of direction issued by GPCB.

M/s VGEL (CETP) has not provided any action plan to comply with both inlet as well as outlet norms during the above review."

15. GPCB has also stated that it has issued notice under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 for up-gradation of the CETP to achieve the standard of discharge and till then to take preventive action.

16. There is also a report dated 10.01.2019 of inspection carried out on 03.01.2019. The inspection team at the time of inspection comprised Regional Director, CPCB,-; Scientist-D, CPCB,-; Unit Head-Vapi, GPCB,-; Regional Officer, GPCB,-; AEE, GPCB, -; AGM, (Process) and CEO, VGEL(CETP) Vapi, -; three Directors of VGEL, Vapi and President Director, VIA, VGEL, Vapi

17. The frequency of compliance and non-compliance in the context of BOD, COD, NH_3N and TSS are as follows:

"

BOD			
Inlet		Outlet	
Compliance	Non-compliance	Compliance	Non-compliance
12	1	6	7

COD			
Inlet		Outlet	
Compliance	Non-compliance	Compliance	Non-compliance
0	13	3	10

NH3-N			
Inlet		Outlet	
Compliance	Non-compliance	Compliance	Non-compliance
0	13	9	4

TSS			
Inlet		Outlet	
Compliance	Non-compliance	Compliance	Non-compliance
4	9	6	7

"

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18. As noted earlier, notice under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 was issued to the CETP while internal action is to be taken by the CETP itself.

19. We have heard the learned Counsel for the parties.

20. Learned Counsel for the applicant submitted that discharge of untreated effluents is beyond any doubt from the reports to which not only CPCB and GPCB but also the representatives of the CETP are party. The CETP operator, the polluting units and the GPCB may be made accountable for preventive and remedial steps, including punitive action and recovery of damages for restoration of the environment and by way of deterrent action.

21. Learned Counsel for Respondent No. 1 submitted that the operator of CETP is taking all such steps as are possible and no direction is called for. Learned Counsel for GPCB has not disputed the inspection reports which clearly demonstrates that the standards are not being met. On that basis, the GPCB has already issued notice to the CETP as well as to some of the industrial units for remedial actions. Thus, the GPCB has done its job. Learned Counsel for CPCB submitted that in view of the report of inspection carried out on 03.01.2019, CETP as well as the industrial units are clearly proved to be non-compliant with the laid down parameters for which appropriate directions may be issued by this Tribunal. There is continued failure of enforcement of law.

22. The questions that arise for consideration are as follows:

i. Whether the CETP operator and its member units have failed to comply with the conditions of consent and norms of environment and caused pollution? If so, the manner in which they are to be held accountable?

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ii. Does the functioning of CETP in the present case and of CETPs in general in the country calls for review and modification?

iii. Whether the State Pollution Control Board in the present case and regulatory authorities have not performed their duties as per the expectation and if so, what are the steps necessary to achieve the objects for which the Pollution Control Boards/Committees have been constituted under the Water Air and the Air Act?

iv. What are the conclusions and what are the directions required to be issued by this Tribunal?

23. We now proceed to deal with the questions for consideration seriatim.

Re (i): Whether the CETP operator and its member units have failed to comply with the conditions of consent and caused pollution? If so, the manner in which they are to be held accountable?

24. We have reproduced the reports of inspections dated 28.09.2018 and 10.01.2019 clearly showing the CETP as well as the industrial units to be non-compliant. In support of the said reports, test reports have also been annexed. There is no reason to doubt the veracity of reports of inspections conducted by the joint team of representatives of CPCB, GPCB and the CETP operators. Thus, it is concluded that the CETP operator and the member units generally have failed to comply with the environmental norms for which they are held to be accountable.

25. Though, there are observations in order dated 01.04.2014 by the two-member Pune Bench of this Tribunal referred to earlier, that "Polluter Pays" principle cannot be invoked as a punitive measure and only 'Precautionary Principle' of requiring Bank Guarantee can be applied, the said view is in ignorance of the binding legal precedents in the judgment of the Hon'ble Supreme Court[6] which lay down that

[6] Indian Council for Enviro Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212 Para 16, Vellore Citizens Welfare Forum v. Union of India & Ors. (1996)5SCC647 Para 12 to 18 - holding that 'Polluter Pay' principle is

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'Polluter Pays' principle is ingrained in the environmental jurisprudence of the country as well as statutory mandate under Section 20 of the NGT Act, 2010. This was considered in the recent order of the Tribunal (by four Member Bench) in *Paryavaran Suraksha Samiti and Anr. Vs. Union of India & Ors.*[7], *Parveen Kakar & Ors. Vs. Ministry of Environment & Forests & Ors.*[8] and in *News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels"*[9] wherein this Tribunal held that:

> *"11. Needless to say that it will be open to the SPCBs/Committees and CPCB to take coercive measures including recovery of compensation for the damage to the environment on 'Polluter Pays' principle as well as also to direct taking of such precautionary measures as may be necessary on the basis of 'Precautionary principle'."*

26. This Tribunal has to follow principles of natural justice if it is to finally assess the damages. The Tribunal can also require the statutory authorities to perform their duty in the matter. We have heard the CETP operators but we have not heard the individual industrial units though CETP represents such units. The reports indicate deficiency in inlet as well as outlet which is evidence of failure of CETP operators as well as individual industrial cluster. Thus, there is objective material available to act against both- CETP operator and individual units. While on proved facts, interim arrangement is proposed, statutory authorities may finally determine the extent of accountability of the industrial units and such units may be given opportunity of hearing by the SPCB and the CPCB. To enable this to be done, we propose to constitute a Committee to hear

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accepted principle and part of environmental law of the country, even without specific statute. M.C. Mehta v. Union of India & Ors., W.P.(C) No. 13029/2015 order dated 24.10.2017 of Supreme Court of India

[7] O.A. No. 593/2017 Order dated 03.08.2018: The Tribunal directed CPCB to take penal action against those accountable for failure in setting up CETPs/ETPs/STPs and to recover compensation for damage to the environment.

[8] O.A. No. 661/2018, Order dated 08.01.2019: The Tribunal stated that the Pollution Control Board had failed to perform its duties in taking statutorily mandated coercive measures under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 and 33B of the Water (Prevention and Control of Pollution) Act, 1974 or initiating prosecution. This Tribunal directed CPCB to exercise its statutory powers to determine and recover damages for violation of environmental norms by the respondent therein.

[9] O.A. No. 1038/2018, Order dated 13.12.2018.

individual polluting units not meeting the norms and to quantify the amount of liability on "Polluter Pays" principle which can clearly be invoked by the regulatory body to enforce pollution norms not only as a 'Precautionary Principle' but also as remedial action if the unit is found to be polluting and not meeting the prescribed norms. Any other interpretation would grant immunity to the polluters and will not be conducive to the protection of the environment. We answer the question accordingly.

Re(ii): <u>Does the functioning of CETP in the present case and of CETPs in general in the country calls for review and modification?</u>

27. CETP Scheme was developed primarily to meet specific objectives under the Environment (Protection) Rules, 1986. It has, however, been found that inspite of setting up of CETPs, the environmental norms have not been maintained at several places in the country. The MoEF&CC itself imposed a moratorium for grant of permissions for setting up of industries in critically polluted areas/industrial clusters identified by the CPCB as shown by letter dated 25.11.2016. Time bound action plans were required to be prepared for improvement of environment quality in such clusters/areas. Moratorium was, thereafter, lifted in respect of certain clusters from time to time based on CEPI score subject to certain conditions.

28. The recent experience shows that situation at several places in the country is far from being satisfactory. This Tribunal has taken cognizance of the serious pollution caused on account of failure of CETPs vide order dated 13.12.2018 in *News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels"*. It was noted that 43 industrial clusters in 16 States were identified as Critically Polluted Areas and 32 industrial clusters were categorized as Seriously Polluted Areas. In 2017-18, the number of identified polluted industrial clusters went

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upto 100. Accordingly, the Tribunal directed the State Pollution Control Board to finalize time bound action plan to restore the environmental quality as per norms laid down by the CPCB and directed CPCB and SPCBs /PCCs to take coercive measures against the violators on the basis of 'Precautionary Principle' and 'Polluter Pays' principle.

29. This apart, in *Arvind Pundalik Mhatre v. Ministry of Environment, Forest and Climate Change & Ors.*[10] the CETP was found not fully functional and effluents were being discharged at Taloja in the river *Kasaradi*. This Tribunal directed imposition of an amount of Rs. 5 Crores for severe impact on environment on account of non-functioning of the CETP resulting in imminent danger to the life of local population.

30. In *Rashid Ali Warsi Vs. UPSIDC & Ors.*[11], the Tribunal dealt with discharge of untreated effluents by textile units in Tronica City, Ghaziabad. CETP was not functional to the extent of requisite capacity and operating without valid consent. Member industries of CETP were directed to comply with PETP standards as prescribed by UPPCB.

31. In *Sidhgarbyang Kalyan Sewa Samiti, Sitargang, District – Udham Singh Nagar Vs. State of Uttarakhand & Ors.*[12], the Tribunal dealt with was pollution in Sitarganj by industries. The STPs/CETP were not functional and untreated effluents and hazardous chemical were being discharged in open drain. It was noted that CETP was working without valid Consent to Operate (CTO). CPCB was directed to carry out fresh inspection of the CETP and the industries. The State PCB

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[10] *O.A. No. 125/ 2018* Order dated 11.07.2018
[11] O.A. No. 317/2015 Order dated 13.11.2018
[12] O.A. No. 123/2018 Order dated 13.11.2018

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was directed to take appropriate legal action against CETP and erring industries.

32. In *Indian Council for Enviro-Legal Action & Ors. Vs. Jammu and Kashmir State Pollution Control Board & Ors.*[13], the Tribunal considered discharge of effluents by industries in river Basantar, Jammu. The industries were operating without valid consent. There was delay in establishment of CETP and STP. As a result, untreated sewage waste and effluents were discharged in the river. The SIDCO and Municipal Council were held liable to pay compensation for restoration of environment and failure in installing STPs respectively.

33. In *Paryavaran Suraksha Samiti and Anr. Vs. Union of India & Ors.*[14], the Tribunal dealt with the issue of establishment and functioning of CETPs/ETPs/STPs in all the States and the question whether the effluents were treated as per prescribed limits or not. This Tribunal noted the requirements of continuous monitoring of CETPs/ETPs/STPs by the statutory authorities and directed that CPCB to take penal action against those accountable for failure in setting up CETPs/ETPs/STPs and to recover compensation for damage to the environment.

34. In *Stench Grips Mansa's Sacred Ghaggar River (Suo-Motu Case) and Yogender Kumar*[15], the matter dealt with River Ghaggar which had turned into a polluted water body on account of discharge of effluents. The Tribunal noted failure of authorities in taking action against persons responsible for violation of law and directed to constitute Special Task Force to submit action taken report. The Tribunal directed that an action plan be prepared for preventing

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[13] O.A. No. 483/2016 Order dated 22.11.2018
[14] O.A. No. 593/2017 Order dated 03.08.2018
[15] O.A. No. 138/2016 (Case No. 559/19/11/14) and O.A. No. 139/2016 (Case No. 600/19/11/14) (TNHRC) Order dated 07.08.2018

discharge of untreated effluents in the river by setting up CETPs/ETPs/STPs.

35. In *Hero Motocorp Limited Vs. Union of India & Ors.*[16], the Tribunal directed the Uttarakhand Pollution Control Board to regularly monitor the appellant unit for discharge of effluents.

36. From the above, it is clear that there is a large-scale failure of the CETP which calls for an extensive review regarding the functioning of CETPs in the country, reasons for its failure in meeting the prescribed norms and possible solutions to rectify the problems by the MoEF&CC and the CPCB. In the light of this, Expert Committee may be constituted for the purpose and be asked to submit its report in six months. Question No. (ii) is answered accordingly.

Re(iii): Whether the State Pollution Control Board in the present case and regulatory authorities have not performed their duties as per the expected norms and if so, what are the steps necessary to achieve the objects for which the Pollution Control Boards/Committees have been constituted under the Water Air and the Air Act?

37. The test reports compiled by a joint inspection team clearly shows the non-compliance by the CETP and industrial units as already noticed. We have also noted frequent failure of CETP mechanism while considering Question No. (ii). The SPCB has not shown that it took any stringent action as required which can act as deterrent against violation of pollution norms. Simply issuing notice has not brought about the desired results. No closures have been ordered, nor prosecution launched nor other adequate preventive and remedial measures, including assessment and recovery of damages taken. In this respect, there is failure of GPCB. We may only observe that even a regulatory authority may be held accountable if it colludes with polluters by being required to pay damages or errant officers being held liable for action, including prosecution. Frequent failures of

[16] Appeal No. 55/2018 Order dated 27.09.2018

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regulatory bodies need to be remedied for meaningful enforcement of environmental norms. This Tribunal in *Threat to life arising out of coal mining in South Garo Hills district Vs. State of Meghalaya & Ors.*[17], held that State machinery is also required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. The polluters as well as colluding officers are to be made accountable not only by prosecution or closure of industry but also by assessing and recovering such damages for loss to the environment as it may not only compensate the environment or victims but also act as deterrent to prevent further damage.

38. It is well acknowledged that there is serious threat to the environment in this country. Studies show huge number of pollution related deaths and diseases[18]. Any violation of laid down environmental norms has to be seriously viewed and sternly dealt with.

39. It was in the year 1974 that the Water (Prevention and Control of Pollution) Act, 1974 was enacted after noticing that problem of pollution of rivers and streams had assumed considerable importance and urgency on account of growth of industries, threatening the sources of drinking water, the aquatic life and sources of irrigation. After considering the Expert Committee reports on the subject, the statutory framework was adopted giving enormous powers to the Pollution Control Boards (PCBs) for closure, prohibition or regulation of any industries operation or process as well as filing of complaints for prosecution. Minimum sentences have been laid down for violation

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[17] O.A. No. 110(T_{HC})/2012 Order dated 04.01.2019 para 28-29

[18] https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf- India ranks 120th in 122 countries in Water Quality Index as per Niti Ayog Report, https://www.thehindu.com/sci-tech/energy-and-environment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece- Most pollution-linked deaths occur in India, https://www.hindustantimes.com/india-news/delhi-world-s-most-polluted-city-mumbai-worse-than-beijing-who/story-m4JFTO63r7x4Ti8ZbHE9PM.html- Delhi's most polluted city, Mumbai worse than Beijing as per WHO; http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf- WHO Water Quality Index.

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of the norms. Polluter Pays Principle is an accepted norm within the purview of regulatory regime. The statutory functions of the PCBs, include programs for prevention, abatement and control of pollution and exercise all incidental powers. The CPCB has powers to issue directions to the State Boards. Needless to say, that similar provisions have been made for protection of air quality under the Air (Prevention and Control of Pollution) Act, 1981 as well as for other environmental issues under the Environment (Protection) Act, 1986.

40. As already noted, the SPCB is equally accountable for its failure and in appropriate cases can be prosecuted for conspiracy or collusion with other offenders causing pollution. The pollution cannot be allowed to be profitable activity and deterrent action must be taken wherever pollution is found so as to render causing of pollution unprofitable and unacceptable to prevent damage to the health and lives of the citizens. Any polluter must be subjected to heavy and deterrent economic sanctions. Unfortunately, this is not happening as expected for which failure the regulatory authority cannot disown their responsibility.

41. We note that the State of Environment in the country, even as per official figures, is alarming. As many as 351 river stretches have been declared to be polluted by the CPCB. Vide order dated 20.09.2018 in *Original Application No. 673/2018, News item published in 'The Hindu' authored by Shri. Jacob Koshy Titled "More river stretches are now critically polluted: CPCB"*, this Tribunal considered the issue of such polluted stretches and noticed the directions of the Hon'ble Supreme Court from time to time for stopping discharge of untreated sewage and effluents in water bodies. Such discharge causes serious diseases, including Cholera and Typhoid. Sewage treatment capacity was disproportionate to the sewage generated. As per some studies noted in the order, 75 to 80% water is polluted in India. Pollution of

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River Yamuna[19], Ganga[20], Hindon[21], Ghaggar[22], Sutlej and Beas[23], Son[24], Subarnarekha[25], Ami[26] were also noted. The States were directed to prepare action plans to make the water of the polluted river stretches atleast fit for bathing within six months from the dates of preparation of approved action plans. When the matter was reviewed on 19.12.2018, it was found that only 16 States had prepared action plans, most of which were not complete. The direction was issued for payment of environmental compensation per month by every State/UT for failure to prepare action plan and also to furnish Performance Guarantees for execution of the action plans within the stipulated time.

42. This Tribunal in *News Item Published in "The Times of India' Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15"*[27] has dealt with the issue of 102 air polluted cities identified by the CPCB. Taking into account eminent threat to human health as a result of air pollution, this Tribunal directed all the States/UTs with non-attainment cities to prepare action plans for bringing down the standards of air quality within the prescribed norms within six months. The Tribunal further constituted the Air Quality Monitoring Committee to ensure implementation of such action plans. The CPCB and the SPCBs were entrusted with the responsibility to design a robust nation-wide ambient air quality monitoring program to strengthen the existing monitoring network.

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[19] Manoj Mishra Vs. Union Of India O.A. No. 6/2012 order dated 26.07.2018
[20] M.C. Mehta vs. Union of India O.A. No. 200/2014 order dated 06.08.2018
[21] Doaba Paryavaran Samiti vs. State of U.P. and Ors. O. A. No. 231/2014 Order dated 08.08.2018
[22] Stench Grips Mansa's Sacred Ghaggar River (Suo-Motu Case) and Yogender Kumar O.A. No. 138/2016 Order dated 07.08.2018
[23] Sobha Singh and Ors. Vs. State of Punjab and Ors. O.A. No. 916/2018 Order dated 14.11.2018
[24] Amarshakti vs. State of Bihar and Ors. O.A. No. 596/2016 Order dated 24.08.2018
[25] Sudarsan das vs. State of West Bengal and Ors. O.A. No. 173/2018 Order dated 04.09.2018
[26] Meera Shukla vs. Municipal Corporation, Gorakhpur and Ors. O.A. No. 116/2014 Order dated 25.10.2018
[27] Original Application No. 681/2018 Order dated 08.10.2018

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43. In re: *Compliance of Municipal Solid Waste Management Rules, 2016*[28], the Tribunal directed preparation of action plans for solid waste management consistent with the Solid Waste Management Rules, 2016 in view of the fact that as per annual report of the CPCB prepared in April 2018, most of the States were not complying with the statutory rules.

44. As already noted earlier, this Tribunal considered the matter of polluted industrial clusters in *News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels"* vide order dated 13.12.2018. It was noted that 43 industrial clusters in 16 States were identified as Critically Polluted Areas and 32 industrial clusters were categorized as Seriously Polluted Areas. In 2017-18, the number of identified polluted industrial clusters went upto 100. Accordingly, the Tribunal directed the State Pollution Control Board to finalize time bound action plan to restore the environmental quality as per the norms laid down by the CPCB and directed CPCB and SPCBs to take coercive measures against the violators on the basis of 'Precautionary Principle' and 'Polluter Pays Principle'.

45. In *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[29], the Hon'ble Supreme Court noted that the State Pollution Control Boards (SPCBs) continued to be manned by persons not having expertise or

[28] Original Application No. 606/2018 Order dated 31.08.2018

[29] (2018) 11 SCC 734 para 3-4, 28-34: The judgment takes into consideration various Committees appointed laying down guidelines for the functioning of SPCBs viz.,

(a) Bhattacharya Committee (1984) proposed that the structural organization of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts, training cell and research and development.

(b) The Belliappa Committee (1990) - Recommended (i) introducing elaborate monitoring, reporting and organizational systems at the national level along with four regional centres and one training cell in each Board, (ii) effecting suitable changes in the Boards recruitment policy to enable them induct persons with suitable academic qualifications, and (iii) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years.

(c) The Administrative Staff College of India (1994) - Recommended, inter alia, that (i) the SPCBs be reoriented for implementing the instrument mix of legislation and regulation, fiscal incentives, voluntary agreements, information campaigns and educational programmes.

(d) The Menon Committee – Recommending that the State Governments should not interfere with recruitment policies of the SPCBs, especially where the Boards are making efforts to equip their institutions with more and better trained engineering and scientific staff.

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professional experience. The State Governments were not able to appoint qualified, impartial, and politically neutral persons of high standing to the crucial regulatory posts. Political appointments were being made in blatant violation of Apex Court guidelines to debar favorable persons being appointed.[30] The appointments being made did not inspire the confidence of the people. The Hon'ble Supreme Court directed all the States to frame guidelines and recruitment rules within six months. It may be pertinent to lay emphasis on the following observations of the Hon'ble Supreme Court in the aforesaid judgment:

> *"Unless corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such."*

46. In addition to this, the Parliamentary Standing Committee on Science and Technology, Environment and Forest, August 2012 in its recommendations on the working of the SPCBs was perturbed to note that the SPCBs were not performing their duties vigilantly and recommended that MoEF&CC must ensure proper and effective coordination between the CPCB and SPCBs and take necessary steps to make the Pollution Control Boards functional and ensure that the discharge their duties effectively and efficiently.[31]

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[30] *Ibid.* The judgment notes the report of the Tata Institute of Social Sciences published in 2013 titled "Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards" which stated about the appointments to the SPCBs that time and again across state governments have not been able to choose a qualified, impartial, and politically neutral person of high standing to this crucial regulatory post. The recent appointments of chairpersons of various State Pollution Control Boards are in blatant violation of the Apex Court guidelines. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non-transparent unilateral decision. Many senior environmental scientists and other officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the Board.

[31] Accessible at: http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20S%20and%20T,%20Env.%20and%20Forests/230.pdf

47. During the hearing it was stated by the learned Counsel for the GPCB that guidelines in terms of Techi Tagi Tara (supra) have been issued and thus, the judgment has been complied with. However, he has not been able to dispute that the persons appointed are not having technical or professional qualifications or background as expected.

48. This Tribunal, on 20.07.2018, in *Satish Kumar vs. U.O.I & Ors.*[32] also observed that persons of judicial background may be required in key position in PCBs as several functions of the SPCBs are quasi-judicial.

49. The order of this Tribunal dated 07.08.2018 in *Stench Grips Mansa's Sacred Ghaggar River (Suo-Moto Case)*[33] noted that a task force must be constituted in every district and State to give reports on the environmental issues which should be published on the websites.

50. The Tribunal in the order on 08.08.2018 in *Doaba Paryavaran Samiti Vs. State of U.P. & Ors.*[34] noted that statutory authorities had miserably failed and were required to be held accountable for their failure.

51. In view of the fact clean environment, apart from other statutory provisions, is a mandate of Article 21 of the Constitution, causing of pollution having serious implications on health of the citizens cannot be accepted and no responsible authority could simply throw its hands in despair.[35]

52. Thus, there being far from satisfactory governance on the part of the SPCBs, as depicted by the compiled data, resulting in large number of deaths and diseases in the country, remedial measures are required. Lack of effective governance in the present case is patent from absence of steps for prosecution of the guilty persons or recovery of

[32] O.A No. 56 (THC) of 2013
[33] O.A. No. 138/2016 (T_{NHRC})
[34] O.A. No. 231/2014
[35] *Supra* note 18

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damages for restoration of the environment which is primary responsibility of the SPCB. Appointment process does contribute to such ineffectiveness.

53. There is, thus, urgent need to review the qualification and appointment procedure so as to realistically comply with the mandate of the judgment of the Hon'ble Supreme Court. There is also need to carry out performance audit of functioning of all the Pollution Control Boards and Pollution Control Committees in the country and to identify remedial steps required in manning and functioning of SPCBs and PCCs or otherwise. Unless strong effective regulatory regime is in place, and shortcomings identified and remedied to expect clean environment would be unrealistic and merely a dream.

Re(iv): <u>What are the conclusions and what are the directions required to be issued by this Tribunal?</u>

54. The above observations lead us to conclude as follows:

i. CETP operator and the concerned industrial units have failed to comply with the pollution norms and are required to be made accountable for their failure within the framework of the regulatory regime with the assistance of experts making the CPCB as nodal agency to determine the extent of damage caused to the environment and cost of restoration.

ii. The CETP and polluting industrial units must be required to deposit an interim amount for damage to the environment and for the cost of restoration pending further orders to be passed in the light of Expert Committee Report proposed to be constituted.

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iii. Functioning of CETP in the country generally calls for review in view of the fact that there are large number of failures in the existing CETP mechanism, as earlier noted. The abovementioned cases cannot be taken to be only isolated

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cases. As many as 100 industrial clusters have been identified by the CPCB itself as critically polluted which supports the need for review.

iv. The regulatory regime in the form of SPCBs has not been as effective as expected as noted by the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.* (supra). This is partly on account of appointments not being upto the mark as well as absence of audit of performance and monitoring mechanism. This needs to be remedied in light of performance audit and study by an Expert Committee.

55. Accordingly, we direct as follows:

(i) We direct constitution of following Committee to assess the extent of damage and cost of restoration of the environment and individual accountability of CETP and polluting industrial units:

a) Representative of CPCB.

b) Representative of IIM, Ahmadabad.

c) Nominee of IIT, Ahmadabad.

d) Scientist nominated by NEERI.

e) Representative of GPCB.

(i.a) The Committee may give its report within three months. The Committee will be entitled to take any factual or technical inputs in the manner found necessary. CPCB will be the nodal agency for the purpose. The Committee may also suggest steps for restoration of the environment.

(i.b) The Committee may give hearing to the CETP operator and the units identified as polluting by the GPCB for which list will be furnished by the GPCB to the Committee indicating the period and nature of default within one month.

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(i.c) The GPCB may inform the defaulting units for compliance of this order.

(i.d) The Committee may also consider data already available with it since the affidavit filed by the CPCB does indicate availability of such data with the CPCB.

(i.e) The GPCB may also consider exercise of its statutory powers of prosecution which power is coupled with duty.

(ii) Having regard to entirety of factual situation in the present case, we direct that except the green and white categories of industries, other category of defaulting industries connected to the CETP must make deposit with the CPCB, towards interim compensation within one month as follows:

a) Large Industries – Rs. 1 Crore each.

b) Medium Industries – Rs. 50 Lakhs each.

c) Small Industries – Rs. 25 Lakhs each.

(ii.a) The CETP may deposit a sum of Rs. 10 Crores with the CPCB towards interim compensation within one month.

(iii) The amount may be utilized by the CPCB for restoration of the environment.

(iv) The CPCB shall undertake jointly with GPCB extensive surveillance and monitoring of CETPs and at regular interval of three months and submit its report to this Tribunal.

(v) We direct constitution of following Committee to review the functioning of the CETP in the country and to suggest modifications, if necessary:

a) Representative of the MoEF&CC.

b) Representative of the CPCB.

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c) Representative of NEERI.

(v.a) The representative of the CPCB will be the nodal agency. The report may be furnished within three months.

(vi) The CPCB may conduct Performance Audit of all the SPCBs and Pollution Control Committees (PCCs) within six months by constituting appropriate expert inspection teams and furnish a report to this Tribunal. The CPCB may consider making Performance Audit at suitable intervals a regular feature of its working.

(vii) We direct the MoEF&CC to constitute a three-member Expert Committee to consider steps to be taken to comply with the mandate of directions of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors. (supra)* and suggestions for improvement, if any to remedy the existing deficiencies in the effective functioning of the regulatory bodies for meaningful protection of the environment.

(vii.a) The Committee may suggest guidelines for functioning of the SPCBs and broad steps required for bringing air and water quality in polluted stretches and cities and industrial clusters and coastal/eco-sensitive zones within the prescribed norms and measures to be adopted, including recovery of damages, prosecution of offenders, restitution of contaminated and degraded environmental sites.

(vii.b) The report of the Committee may be furnished before the next date.

(viii) The CPCB may consider issuing appropriate directions in exercise of its statutory powers in the light of expert studies which may be carried out.

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56. Copy of the order may be sent to CPCB by email and all reports in pursuance of the above directions be sent to this Tribunal at filing.ngt@gmail.com

List for further consideration on 19.08.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 11, 2019
Original Application No. 95/2018
DV

NATIONAL GREEN TRIBUNAL, NEW DELHI

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ANNEXURE A8 327

Item No. 04 Court No. 1

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BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 57/2018

Aryavart Foundation Applicant(s)

Versus

Gujarat Pollution Control Board & Ors. Respondent(s)

Date of hearing: 12.02.2019

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

For Applicant(s): Mr. Jitender Singh, Mr. Aditya Hooda, Advocates and Mr. A.R. Mishra in person

For Respondent (s): Mr. Dhruv Pal and Mr. Himanshu Pal, Advocates for GPCB

ORDER

The question involved is action against the industries discharging effluents and/or operating without Consent to Operate.

Vide order dated 29.08.2018, the Gujarat State Pollution Control Board (GPCB) was directed to make assessment of damages and take action for violation of law.

Accordingly, an action taken report has been filed vide e-mail dated 10.01.2019 indicating the amount of damages recovered. The report shows that some of the industries have closed and others have taken/renewed Consent to Operate, subject to suitable conditions.

In view of above, no further order is necessary at this stage.

The application is disposed of.

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The amount collected may be transferred to the Central Pollution Control Board (CPCB) and utilised for restoration of the environment in accordance with law.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

February 12, 2019
Original Application No. 57/2018
DV

ANNEXURE A-9

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). /2019
(@ CIVIL APPEAL Diary No(s). 5264/2019)

VAPI INDUSTRIES ASSOCIATION APPELLANT(s)

VERSUS

ARYAVART FOUNDATION & ORS. RESPONDENT(s)

O R D E R

Permission to file appeal is granted.

The National Green Tribunal (NGT) has vide impugned order inter alia passed the following directions:

> (ii) Having regard to entirety of factual situation I n the present case, we direct that except the green and white categories of industries, other category of defaulting industries connected to the CETP must make deposit with the CPCB, towards interim compensation within one month as follows:
>
> a) Large Industries - Rs.1 Crore each.
> b) Medium Industries - Rs.50 Lakhs each.
> c) Small Industries - Rs.25 Lakhs each.
>
> (ii.a) The CETP may deposit a sum of RS.10 Crores with the CPCB towards interim compensation within one month."

The NGT has also constituted a Committee to assess the extent damage and cost of restoration of the environment and individual accountability of CETP and polluting industrial units. The said Committee has to take the aforesaid task. On that basis it is the

Signature Not Verified
Digitally signed by ASHWANI KUMAR
Date: 2019.02.27 15:14:39 IST
Reason:

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submission of Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the appellant, that till the time it is established that an industry is a polluting industry, there could not have been any direction to pay the interim compensation. It is also submitted that the appellant was not even a party and, therefore, could not make any submission. This fact is disputed by Mr. Raj Panjwani, learned senior counsel appearing on behalf of the respondents, stating that respondent no. 7 manages the CETP of which all these industrial units are the members. Mr. Ranjit Kumar, submitted that all the industrial units are not members.

Be that as it may, since the Committee constituted by NGT has to undertake the exercise of fixing the responsibility of individual polluting industrial unit, we make it clear that the aforesaid direction of interim compensation is subject to the final outcome of the report that would be submitted by the Committee. To put it otherwise, in case, it is held that a particular industrial unit has not caused any pollution it would be entitled to claim the refund of the interim compensation. At this stage, Mr. Ranjit Kumar submits that many small industrial units are not in a position to pay Rs.25 lakhs by way of interim compensation because of the financial crisis which they are facing. He has also pointed out that in respect of these units, they had submitted bank guarantee which stood forfeited as well. Such industrial units may approach the NGT with the facts and figures by making an appropriate application for the waiver of the direction for payment of interim compensation. Once such an application is made the same shall be

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considered by the NGT on its own merits. We make it clear that this Court has not expressed any opinion on such application.

Since permission is given to the industries to approach the NGT, the direction in respect of interim compensation contained in the impugned order is stayed for a period of two weeks.

The appeal is disposed of accordingly.

.....J.
[A.K. SIKRI]

.....J.
[S. ABDUL NAZEER]

NEW DELHI;
FEBRUARY 22, 2019.

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ITEM NO.34 COURT NO.2 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 5264/2019

(Arising out of impugned final judgment and order dated 11-01-2019 in OA No. 95/2018 passed by the National Green Tribunal)

VAPI INDUSTRIES ASSOCIATION Petitioner(s)

VERSUS

ARYAVART FOUNDATION & ORS. Respondent(s)
(FOR ADMISSION and IA No.26796/2019-STAY APPLICATION and IA No.26795/2019-PERMISSION TO FILE APPEAL and IA No.28351/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 22-02-2019 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Ranjit Kumar, Sr. Adv.
Mr. Pinaki Mishra, Sr. Adv.
Mr. Mandeep Kalra, Adv.
Mr. Sandeep Mishra, Adv.
Mr. Nitesh Shrivastava, Adv.
Mr. Nishant Shankar, Adv.
Ms. Isha Khurana, Adv.
Mr. Rameshwar Prasad Goyal, AOR

For Respondent(s) Mr. Raj Panjwani, Sr. Adv.
Dr. Surender Singh Hooda, AOR
Mr. Jitendar Singh, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Permission to file appeal is granted.

The appeal stands disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI KUMAR)
COURT MASTER (SH)

(RAJINDER KAUR)
BRANCH OFFICER

(Signed order is placed on the file)

ANNEXURE-A10

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BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH

AT

NEW DELHI

REVIEW APPLICATION NO. _____ OF 2019

IN

ORIGINAL APPLICATION NO. 95 OF 2018

(ARISING OUT OF THE ORDER UNDER REVIEWDATED 11.01.2019 PASSED BY THIS HON'BLE COURT IN ORIGINAL APPLICATION NO. 95 OF 2018).

IN THE MATTER OF:

ARYAVART FOUNDATION APPLICANT

VERSUS

M/S VAPI GREEN ENVIRO. LTD. AND ORS. RESPONDENT

IN THE MATTER OF:

VAPI GREEN ENVIRO LIMITED REVIEW APPLICANT

VERSUS

ARYAVART FOUNDATION & ORS. ....RESPONDENTS

REVIEW APPLICATION
U/S 19(4) (F) OF THE NATIONAL GREEN TRIBUNAL ACT,2010
READ WITH
RULE 22 OF THE NATIONAL GREEN TRIBUNAL
(PRACTICES AND PROCEDURE) RULES, 2011

(Paper Book)
(For Index: Kindly see inside)

ADVOCATES FOR REVIEW APPLICANT

Chambers of M.S. Kalra

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BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPALBENCH

AT

NEW DELHI

REVIEW APPLICATION NO. _____OF 2019

IN

ORIGINAL APPLICATION NO. 95 OF 2018

(ARISING OUT OF THE ORDER UNDER REVIEWDATED 11.01.2019 PASSED BY THIS HON'BLE COURT IN ORIGINAL APPLICATION NO. 95 OF 2018).

IN THE MATTER OF:

IN THE MATTER OF:

ARYAVART FOUNDATION APPLICANT

VERSUS

M/S VAPI GREEN ENVIRO. LTD. AND ORS. RESPONDENT

IN THE MATTER OF:

VAPI GREEN ENVIRO LIMITED REVIEW APPLICANT

VERSUS

ARYAVART FOUNDATION & ORS. ....RESPONDENTS

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	11.01.2019	
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M.	Vakalatnama	

Through
Chambers of M.S. Kalra
ADVOCATES FOR REVIEW APPLICANT
Advocates & Solicitors
#1278, Sector 17-C,
Gurgaon, HR-122001
Email-chambersofmskalra@gmail.com
Mob:- 91-9278780313

Dt. 7/2/2019

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SYNOPSIS

1. That the present Review Application under Section 19(4)(F) of the National Green Tribunal Act, 2010 is being filed seeking review of the order dated 11.01.2019 passed by this Hon'ble Tribunal in Original Application No. 95 of 2018, as there is an error apparent on the face of record.

2. The errors apparent on record are that :

   a. This Hon'ble Bench records a finding that *'We have heard the CETP operators but we have not heard the individual industrial units though CETP represents such units'*. It is respectfully submitted that, the Review Applicant has been assumed to represent the member industries, however, there is no such representation by the Review Applicant on behalf of any of the member industries, neither have any of the member industries authorized the Review Applicant to represent on its behalf. The Review Applicant is a separate legal entity and has no other relation with any of the member industry save and except providing them waste treatment and other similar services as not for profit transactions. Therefore, the Review Applicant did not represent the Individual members in any manner.

   b. The study conducted by NEERI has been selectively placed by the Applicant as just one part of the entire study has been relied upon by this Hon'ble Bench, at the instance of the Applicant

instead, the entire study should have been taken into consideration.

c. Only the adverse inspection reports have been taken into account by this Hon'ble Bench, while not even a single Joint Monitoring Inspection report which have been largely favorable to the applicant's case have been considered by this Hon'ble Bench.

d. The Hon'ble Tribunal did not consider the recent study conducted by NIO (a Govt. of India undertaking specifically tasked with studying the impact on oceans) under the directions of Hon'ble National Green Tribunal, Pune Bench in the case of Tarun Patel Vs. Collector, Daman and Ors,. as per which the dissolved oxygen level in Damanganga's High Tide Zone has increased substantially with time. The Joint Monitoring Report read with other studies confirms that the aquatic life in Damanganga River has become better over time. It is further submitted that,

e. The Hon'ble Bench did not appreciate to grant a fair opportunity/time to VGEL to respond to the three reports filed by GPCB & CPCB and completely ignored the fact that the reports were served upon VGEL's counsel only 21 hours prior to the hearing i.e. on 10.01.2019 at 12.38 Hours.

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f. The Hon'ble bench has noted during the proceedings that VGEL has not submitted the Action Taken Report, however this report had been submitted and also has mention of the same in the status report submitted by GPCB to the Hon'ble Bench.

g. The Order under Review erroneously forms the basis of the inspection dated 03.01.2019 (the Report for which came out on 10.01.2019) to reach a conclusion, **while no such inspection was ever conducted on such date**. It was merely an informal meeting that had taken place at Baroda.

h. The Order under Review suffers from serious perversity as CPCB has misrepresented the actual set of reports in a table which classifies very minor deviations as 'non-compliance'. GPCB/CPCB is following the American Public Health Association (APHA) Test Method (rule 5220B) for measurement of COD. As per this method there is a permitted variation of +- 10% in the results. In fact the GPCB & CPCB follow the above rule generally, however have failed to apply it to the instant case.

i. This Hon'ble Bench has also not appreciated that the inlet norms are beyond the scope of VGEL's monitoring as the effluents by individual members is first collected in a common drain maintained by GIDC and thereafter through that common drain, the waste reaches the CETP operated by Review

Applicant, thereby leaving no opportunity for the Review Applicant to assess the inlet norms. It is pertinent to mention that that there are more than 1100 industries connected to the common drainage system under the control and supervision of GIDC, which then comes to the Review Applicant's CETP, however there are only 516 industries who are members of CETP. Therefore, by no means the Review Applicant can ensure that it's inlet is restricted to effluents from 516 industries, as the common drain is under the control and supervision of GIDC.

j. The Order under Review records that the Tribunal has to follow principles of natural justice, however Review Applicant's principles of natural justice have been given a go by to as no opportunity to respond to the three reports served upon the counsel of Review Applicant (21 hours prior to the hearing) have been given to the Review Applicant **despite several prayers for grant of time/opportunity was made by the Review Applicant during the course of hearing** dated 11.01.2019.

k. This Hon'ble Bench has taken a stand contrary to the actual facts as confirmed by various eminent dignitaries such as the Green Minister himself, Mr. Jairam Ramesh, Former Chief Justice of India B.N. Kirpal and Padma Vibhushan Professor M.M. Sharma, have visited the Review Applicant's plant and

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have commended the way it has been run in compliance of environmental norms.

l. This Hon'ble Tribunal failed to conclude that if at all any damage was done to the environment in and around Vapi, only then would the question of restoration of the environment arise.On the contrary, the NIO Report – August 2018, the Report from Statistical Analysis of Fish Production in India, and the Joint Monitoring of Discharge Point of VGEL to Daman Shore, Report by GPCB, DPCC & VGEL prepared by GPCB Lab confirm that environment in and around Vapi has been consistently improving and now is in good condition, certainly in no sense as projected malafidely by the Applicant, infact the aforesaid reports largely conclude that the discharge being done by the Review Applicant is at the High Tide Zone and the aquatic life has been improving with time in Damanganga River. It is pertinent to mention at this stage that there is no aquatic life and/or potable water that exists at the discharge point of Review Applicant, as the same area has been declared as High Tide Zone since time immemorial.

m. The GPCB was given one month's time to inform the defaulting units for payment of interim compensation as per the Impugned Order; at the same time, the Individual Industries have also been given a month's time from the pronouncement

of Impugned Order to deposit the amounts. This reflects clear inconsistency in the Order under Review.

n. The overall language of the Order under Review is confusing, vague and ambiguous and capable of confusing interpretation. For example the basis for identification of the Defaulting Industries by GPCB and even the basis for classification as large, medium and small have not been specified in the Order under Review and is left totally vague and subjective.

o. The committee appointed is yet to hear the parties and reach a conclusion, however, penalization has been ordered as a pre-emptive measure while the Environment Laws primarily provide a scheme for compensation and not immediate and preemptory penalization.

p. This Hon'ble Tribunal has failed to consider the past records of the original applicant – Aryavart Foundation, claiming to be an NGO. The very fact that the original applicant – NGO is based in Surat, and despite the fact that between Surat to Vapi there are multiple CETPs falling in between, the Applicant NGO having malafide intentions against the Review Applicant has approached this Hon'ble Tribunal in regard to a CETP which is situated at a distance more than 100 kms from the Applicant NGO's registered office / place of his routine practice of employment.

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q. If these documents (evidence) were duly considered, they would have a material bearing going to the root of the matter inasmuch as the question in issue is as to whether the Review Applicanthas at all caused any of the environmental damage. On the contrary, the NIO Report – August 2018, the Report from Statistical Analysis of Fish Production in India, and the Joint Monitoring of Discharge Point of VGEL to Daman Shore, Report by GPCB, DPCC & VGEL prepared by GPCB Lab confirm that environment in and around Vapi has been consistently improving and certainly in no sense as projected malafidely by the Applicant.

r. It is noteworthy to state that, The Damanganga River's water quality has improved from Priority II (2010) to Priority IV (2018) as per CPCB' River Classification of India.

s. The CETP that caters to the needs of Vapi Industrial area, was taken over from government authorities under unchallenged directions given by the Gujarat High Court, tothe Review Applicant way back in the year 1997. Thereafter by 2001, all wastewater generated in the industrial part of Vapi were linked to the CETP to ensure that the environment is protected.

t. The Review Applicant- Vapi Green Enviro Limited ('VGEL') a Non- Equity: Non Profit entity, based on cooperative principles, with the corporate culture of management, was formed with an

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objective of providing a Comprehensive Environment Management Program (CEMP) for Vapi in Gujrat.

u. The Review Applicant has installed treatment facilities for effluents i.e. through common effluent treatment plant (CETP) and transport, storage, disposal facility for hazardous solid waste (TSDF) to control pollution levels in and around the industrial area of Vapi. The Review Applicant it appears has played a lead and active role towards pollution abatement by adopting and promoting Cleaner Production, Cleaner Technology for Cleaner Development Mechanism.

v. In order to take care of High COD effluent, Non-Biodegradable effluent and High TDS effluents, the member industries are transporting such effluent by tankers to the CETP site, and not discharging in drainage system. It is pertinent to mention that the Review Applicant has set up a CMEE Plant in the 2015 and a spray dryer in the year 2018 to treat aforesaid effluents effectively.

w. The Review Applicant it appears has also taken numerous Effective Pollution Control Measures at the points of origin of effluents, in transit and also at the end of the pipeline by providing collective treatment prior to its final disposal in Damanganga High Tide Zone.

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x. Further, the Review Applicant had set up a common solid waste management site in the year 1999, located at Vapi and in the year2000, the Review Applicant commissioned the first cell of Secured Landfill Constructed as per German Design based on asphalt-concrete baseliners. It is also the Review Applicant that provided the facility for collection, transport, storage and disposal of hazardous solid wastes at this site.

y. That in and around January 2018, one Aryavart Foundation claiming to be an NGO preferred Original Application No. 95 of 2018 alleging that there is a discharge of untreated/partially treated trade effluents by the Review Applicant in Vapi Industrial Cluster into Damanganga'sHigh Tide Zone in District Valsad in Gujrat which meets the Arabian Sea. Apart from Daman, it was also alleged that Damanganga River & Bill Khadi (a naturaldrain) which also falls into the Arabian Sea are being equally polluted by the Review Applicant.

Hence this review petition.

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LIST OF DATES

DATE	PARTICULARS
1997	The CETP that caters to the needs of Vapi Industrial area, was taken over from government authorities under unchallenged directions given by the Gujarat High Court, tothe Review Applicant way back in the year 1997. Thereafter by 2001, all wastewater generated in the industrial part of Vapi were linked to the CETP to ensure that the environment is protected.
09.03.2018	Thereafter on 09th March 2018, this Hon'bleBench issued notice on the Original Application No. 95 of 2018. Once pleadings stood completed, the matter was finally taken up for arguments on 29.08.2018, wherein the this Tribunal was pleased to limit the scope of O.A. 95 of 2018 to the following clarification:- *'while passing the order dated 03.08.2018, this Tribunal has not in any manner diluted the directions of the Hon'ble Supreme Court in [2017] 5 SCC 326 with regard to the mandatory requirement of ETP.Prayer is allowed'.*
29.08.2018	This Hon'ble Tribunal vide order dated 29.08.2018, also relied upon the affidavit filed by CPCB which read as

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	under:-
	'4. That it is observed from annual average values of inlet that the concentration of COD (except in 2016), TSS, (except in 2017), NH3-N (except in 2011, 2013 & 2017), TDS, Phenolic compounds are by and large more than the inlet norms, whereas, BOD (except in 2008, 2009, 2010 & 2011)) is less than inlet norms for some years. It is submitted that as per analysis results of CPCB monitoring, inlet quality is not meeting with inlet design norms of CETP which shows that some member industries are discharging without meeting specified inlet norms as mentioned in consents (CCA) of member industries issued by GPCB. However, it is observed that there is an improvement in inlet effluent quality over the years. *5. That it is also submitted that member industries are discharging their effluent in GIDC underground drainage system which leads to CETP. M/s. VGEL-CETP should ensure that the member industries discharge*

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	the trade effluent meeting the inlet norms of CETP. In case of noncompliance, the list of such industrial units should be provided to GPCB for necessary action against such units. *6. That it is also observed from annual average values of outlet that the concentration of TSS, TDS, BOD and COD are more than the outlet norms for the years 2008 to 2015 & 2017. Annual average values for BOD, COD, NH3-N,Phenolic compounds are within the outlet norms for the year 2016. There is an improvement in outlet effluent quality over the years though not meeting the outlet norms (TSS, TDS, BOD, COD,and Cyanide) prescribed by GPCB.* *7. That as per monitoring carried out on 8/3/2018, the concentration of TDS, BOD, COD, NH3-N,and Phenols were not meeting prescribed outlet norms. As per latest monitoring carried out on 10/5/2018, the concentration of all the monitored parameters, except TDS, was found to be within prescribed outlet norms.*

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	8. That it is observed from the results of inlet and outlet of CETP that there is a reduction in pollutants due to treatment at CETP and as such no untreated trade effluent is discharged. *However, Vapi CETP is required to be operated properly & up-graded adequately so as to ensure to discharge the treated effluent, all the time, meeting with the prescribed discharge norms."*
06.09.2018	Subsequently, on 06.09.2018, the Original Application No. 95 of 2018 matter was mentioned to submit that hearing was concluded on 29.08.2018. As the Hon'ble Bench was convinced by the arguments and contentions made on behalf of the Respondent No.1, it was pleased to dispose off O.A. 95 of 2018 without imposing any penalties or costs. However, on perusal of the order on 04.09.2018, it was observed that inadvertently the line 'proceedings/O.A. stands disposed of' was missing however reflected in the connected matter. It was submitted that the Applicant sought to challenge the order dated 29.08.2018, as an interim order, before the Hon'ble Supreme Court of India while in true sense the order passed by this Hon'ble Tribunal on 29.08.2018 was a final order/judgment. Accordingly, it was

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	prayed that a specific line may be added which has been inadvertently left out i.e. 'proceedings stand disposed off''. Having perused the Order dated 29.08.2018, the Hon'ble Bench observed that the said order is a mere clarification to the original order dated 03.08.2018 passed in *Paryavaran Suraksha Samiti & Anr. Vs. Union of India &Ors.* O.A. No. 593 of 2017. The order dated 03.08.2018 has to be read jointly with Order dated 29.08.2018 since the issues involved in O.A. 95 of 2018 were limited to clarification of order dated 03.08.2018. The moment such clarification is provided by the Hon'ble Tribunal, nothing survives in the matter for consideration thereafter.
10.01.2019	On 10.01.2019, at about 01.00 p.m. (i.e. about 21 hours prior to hearing), the Counsel for GPCB served Review Applicant's Counsel with the reports prepared by CPCB and GPCB. Thereafter a detailed hearing on 11.01.2019 took place.
11.01.2019	During the course of arguments on 11.01.2019, the Counsel appearing on behalf of the Review Applicant had *inter alia*argued that:- a) *As the reports for the alleged inspection have been served upon the Review Applicant immediately the day before 11.01.2019,*

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	hence as a matter of right, time may be given to the Review Applicant to reply to the report. b) The GPCB has purposely concealed/made an error apparent on the face of the record by not deposing the true set of facts before this Hon'ble Tribunal. c) The Individual Industries may not be imposed fine without being heard. d) The recent study conducted by NIO (being an independent authority) may be taken into consideration,infact no substantial evidence has been led to show that any damage has been done to the environment. On the contrary, the NIO Report – August 2018, the Report from Statistical Analysis of Fish Production in India, and the Joint Monitoring of Discharge Point of VGEL to Daman Shore, Report by GPCB, DPCC & VGEL prepared by GPCB Lab confirm that overall all condition has improved. e) The ratio/proportion of inlet and outlet of CETP is well within norms. f) The Review Applicant has been spending

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	enormously towards uplifting the environment at Vapi. However, this Hon'ble Tribunal failed to even consider the material facts and prayers as made by the Ld. Counsel for the Review Applicant.
07.02.2019	Hence the present Review Application.

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BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH

AT

NEW DELHI

REVIEW APPLICATION NO. _____OF 2019

IN

ORIGINAL APPLICATION NO. 95 OF 2018

(ARISING OUT OF THE ORDER UNDER REVIEWDATED 11.01.2019 PASSED BY THIS HON'BLE COURT IN ORIGINAL APPLICATION NO. 95 OF 2018).

IN THE MATTER OF:

ARYAVART FOUNDATION APPLICANT

VERSUS

M/S VAPI GREEN ENVIRO. LTD. AND ORS. RESPONDENT

IN THE MATTER OF:

VAPI GREEN ENVIRO LIMITED
Non- Equity: Non Profit entity
Responsible for managing the CETP plat at Vapi
VIA House, Plot No. 135,
GIDC, Vapi - 396 195
Gujarat. India
Through its Authorized Signatory ....REVIEW APPLICANT

VERSUS

1. ARYAVART FOUNDATION
Through its President
ShriAshutosh Ramesh Bhai Mishra
Having its Head Branch and Administrative Office
Shop No. J-50, Upper Ground
Floor, Japan Market, Near Delhi Gate,
Ring Road, Surat, Gujarat-395303

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2. Gujarat Pollution Control Board
Through its Authorised Representative
ParyavaranBhavan
Sector-10A, Gandhinagar,
Gujarat-382010

3. The Collector,
Valsad
District Collector Office,
Valsad, Gujarat-396001

4. Central Pollution Control Board
Parivesh Bhawan,
East Arjun Nagar,
Delhi-110032

5. Ministry of Environment, Forest and Climate Change
Indira Paryavaran Bhavan,
Ali Ganj,
Jorbagh Road,
New Delhi, Delhi - 110003

6. Gujarat Industrial Development Corporation
Block 3,4,5, Udhyog Bhavan,
Sector-11, Gandhinagar - 382011,
Gujarat, India.
....RESPONDENTS

APPLICATION FOR REVIEW OF ORDER DATED 11.01.2019 PASSED IN ORIGINAL APPLICATION NO. 95 OF 2018 UNDER SECTION 19(4) (F) OF THE NATIONAL GREEN TRIBUNAL ACT,2010 READ WITH RULE 22 OF THE NATIONAL GREEN TRIBUNAL(PRACTICES AND PROCEDURE) RULES, 2011

TO

HON'BLE THE CHAIRPERSON,
HIS COMPANION JUDGES AND
MEMBERS OF THE

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NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH

THE REVIEW APPLICATION OF THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

3. That the present Review Application under Section 19(4)(F) of the National Green Tribunal Act, 2010 read with Rule 22 of the National Green Tribunal (Practices and Procedures) Rule, 2011 is being filed seeking review of the order dated 11.01.2019(**'Order under Review'**) passed by this Hon'bleTribunal in Original Application No. 95 of 2018, as there is an error apparent on the face of record.

4. The errors apparent on record are that :

a. This Hon'ble Bench records a finding that *'We have heard the CETP operators but we have not heard the individual industrial units though CETP represents such units'*. It is respectfully submitted that, the Review Applicant has been assumed to represent the member industries, however, there is no such representation by the Review Applicant on behalf of any of the member industries, neither have any of the member industries authorized the Review Applicant to represent on its behalf. The Review Applicant is a separate legal entity and has no other relation with any of the member industry save and except providing them waste treatment

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and other similar services as not for profit transactions. Therefore, the Review Applicant did not represent the Individual members in any manner. [@ **Para 26 of the Order under Review**]

i. The study conducted by NEERI has been selectively placed by the Applicant as just one part of the entire study has been relied upon by this Hon'ble Bench, at the instance of the Applicant instead, the entire study should have been taken into consideration. [@ **Para 3 of the Order under Review**]

ii. Only the adverse inspection reports have been taken into account by this Hon'ble Bench, while not even a single Joint Monitoring Inspection report which have been largely favorable to the applicant's case have been considered by this Hon'ble Bench. [@ **Para 4of the Order under Review**]

Copies of the Joint Monitoring Inspection Reports have been annexed herewith and marked as **ANNEXURE – A2.**

iii. The Hon'bleTribunal failed to consider the recent study conducted by NIO (a Govt. of India undertaking specifically tasked with studying the impact on oceans) under the directions of Hon'ble National Green Tribunal, Pune Bench in the case of Tarun Patel Vs. Collector, Daman and Ors, as per which the dissolved oxygen level in Damanganga'sHigh Tide Zone has increased substantially with time. The Joint Monitoring Report

read with other studies confirms that the aquatic life in Damanganga River has become better over time. It is further submitted that,

The NIO Report of August 2018,

A copy of the NIO Report of August 2018 has been annexed herewith and marked as ANNEXURE – A3.

1. Annual Report of 2017-18 from Statistical Analysis of Fish Production in India by Department of Animal Husbandry, Dairying and Fisheries

   A copy of the Annual Report of 2017-18 from Statistical Analysis of Fish Production in India by Department of Animal Husbandry, Dairying and Fisheries has been marked as ANNEXURE – A4.

2. Joint Monitoring of Discharge Point of VGEL to Daman Shore, Report by GPCB, DPCC & VGEL prepared by GPCB's Lab

3. CPCB's River Classification Report on Priorities has rated Damanganga River from Priority II (in the year 2010) to Priority IV (in the year 2018).

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A copy of the CPCB's River Classification Report on Priorities has rated Damanganga River from Priority II (in the year 2010) to Priority IV (in the year 2018), has been annexed herewith and marked as **ANNEXURE – A5.**

Confirm that environment in and around Vapi has been consistently improving and certainly in no sense as projected malafidely by the Applicant. On a scale of Priority 1 to Priority 5 (wherein Priority 1 is most polluted and Priority 5 is clean water, the best in quality)

iv. The Hon'ble Bench failed to grant a fair opportunity/time to VGEL to respond to the three reports filed by GPCB & CPCB and completely ignored the fact that the reports were served upon VGEL's counsel only 21 hours prior to the hearing i.e. on 10.01.2019 at 12.38 Hours.

A copy of the proof of service emails have been annexed herewith as marked as **ANNEXURE – A6.**

v. The Hon'bleBench has in fact erroneously noted that *'Due opportunity has been given to file pleadings'*. **[@ Para 8of the Order under Review]**

vi. The Hon'ble bench has noted during the proceedings that VGEL has not submitted the Action Taken Report, however

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this report had been submitted and also has mention of the same in the status report submitted by GPCB to the Hon'ble Bench.

A copy of the Action Taken Report as submitted by VGEL has been annexed herewith and marked as ANNEXURE – A7.

vii. The Order under Review erroneously forms the basis of the inspection dated 03.01.2019 (the Report for which came out on 10.01.2019) to reach a conclusion, **while no such inspection was ever conducted on such date**. It was merely an informal meeting that had taken place at Baroda. [@ **Para 16 of the Order under Review**]

viii. The Order under Review suffers from serious perversity as CPCB has misrepresented the actual set of reports in a table which classifies very minor deviations as 'non-compliance'. GPCB/CPCB is following the American Public Health Association (APHA) Test Method (rule 5220B) for measurement of COD. As per this method there is a permitted variation of +- 10% in the results. In fact the GPCB & CPCBfollow the above rule generally, however have failed to apply it to the instant case. [@ **Para 17 of the Order under Review**]

A copy of the concerned APHA's rule has been annexed herewith and marked as ANNEXURE –A8.

ix. This Hon'ble Bench has also not appreciated that the inlet norms are beyond the scope of VGEL's monitoring as the effluents by individual members is first collected in a common drain maintained by GIDC and thereafter through that common drain, the waste reaches the CETP operated by Review Applicant, thereby leaving no opportunity for the Review Applicant to assess the inlet norms. It is pertinent to mention that that there are more than 1100 industries connected to the common drainage system under the control and supervision of GIDC, which then comes to the Review Applicant's CETP, however there are only 516 industries who are members of CETP. Therefore, by no means the Review Applicant can ensure that it's inlet is restricted to effluents from 516 industries, as the common drain is under the control and supervision of GIDC.

x. The Order under Review records that the Tribunal has to follow principles of natural justice, however Review Applicant's principles of natural justice have been given a go by to as no opportunity to respond to the three reports served upon the counsel of Review Applicant (21 hours prior to the hearing) have been given to the Review Applicant <u>despite several prayers for grant of time/opportunity was made by the Review Applicant during the course of hearing</u> dated 11.01.2019.**[@ Para 26 of the Order under Review]**

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xi. This Hon'ble Bench has taken a stand contrary to the actual facts as confirmed by various eminent dignitaries such as the Green Minister himself, Mr. Jairam Ramesh, Former Chief Justice of India B.N. Kirpal and Padma Vibhushan Professor M.M. Sharma, have visited the Review Applicant's plant and have commended the way it has been run in compliance of environmental norms.

A copy of the reviews given by the eminent dignitaries as mentioned above, in the visitors book of the Review Applicant have been annexed herewith and marked as ANNEXURE – A9.

xii. This Hon'ble Tribunal failed to conclude that if at all any damage was done to the environment in and around Vapi, only then would the question of restoration of the environment arise.On the contrary, the NIO Report – August 2018, the Report from Statistical Analysis of Fish Production in India, and the Joint Monitoring of Discharge Point of VGEL to Daman Shore, Report by GPCB,,DPCC & VGEL prepared by GPCB Lab confirm that environment in and around Vapi has been consistently improving and now is in good condition, certainly in no sense as projected malafidely by the Applicant, infact the aforesaid reports largely conclude that the discharge being done by the Review Applicant is at the High Tide Zone and the aquatic life has been improving with time in

Damanganga River. It is pertinent tc mention at this stage that there is no aquatic life and/or potable water that exists at the discharge point of Review Applicant, as the same area has been declared as High Tide Zone since time immemorial. **[@ Para 54(ii) of the Order under Review]**

xiii. The GPCB was given one month's time to inform the defaulting units for payment of interim compensation as per the Impugned Order; at the same time, the Individual Industries have also been given a month's time from the pronouncement of Impugned Order to deposit the amounts. This reflects clear inconsistency in the Order under Review. **[@ Para 55 (i.b) of the Order under Review]**

xiv. The overall language of the Order under Review is confusing, vague and ambiguous and capable of confusing interpretation. For example the basis for identification of the Defaulting Industries by GPCB and even the basis for classification as large, medium and small have not been specified in the Order under Review and is left totally vague and subjective. **[@ Para 55(ii.b)of the Order under Review]**.

xv. The committee appointed is yet to hear the parties and reach a conclusion, however; penalization has been ordered as a pre-emptive measure while the Environment Laws primarily provide a scheme for compensation and not immediate and

preemptory penalization. [@ **Para 55(vii.a)of the Order under Review]**

xvi. This Hon'ble Tribunal has failed to consider the past records of the original applicant – Aryavart Foundation, claiming to be an NGO. The very fact that the original applicant – NGO is based in Surat, and despite the fact that between Surat to Vapi there are multiple CETPs falling in between, the Applicant NGO having malafide intentions against the Review Applicant has approached this Hon'ble Tribunal in regard to a CETP which is situated at a distance more than 100 kms from the Applicant NGO's registered office / place of his routine practice of employment.

5. If these documents (evidence) were duly considered, they would have a material bearing going to the root of the matter inasmuch as the question in issue is as to whether the Review Applicanthas at all caused any of the environmental damage. On the contrary, the NIO Report – August 2018, the Report from Statistical Analysis of Fish Production in India, and the Joint Monitoring of Discharge Point of VGEL to Daman Shore, Report by GPCB, DPCC & VGEL prepared by GPCB Lab confirm that environment in and around Vapi has been consistently improving and certainly in no sense as projected malafidely by the Applicant.

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6. It is noteworthy to state that, The Damanganga River's water quality has improved from Priority II (2010) to Priority IV (2018) as per CPCB' River Classification of India.

FACTS:

I. The CETP that caters to the needs of Vapi Industrial area, was taken over from government authorities under unchallenged directions given by the Gujarat High Court, tothe Review Applicant way back in the year 1997. Thereafter by 2001, all wastewater generated in the industrial part of Vapi were linked to the CETP to ensure that the environment is protected.

II. The Review Applicant- Vapi Green Enviro Limited ('VGEL') a Non-Equity: Non Profit entity, based on cooperative principles, with the corporate culture of management, was formed with an objective of providing a Comprehensive Environment Management Program (CEMP) for Vapi in Gujrat.

III. The Review Applicant has installed treatment facilities for effluents i.e. through common effluent treatment plant (CETP) and transport, storage, disposal facility for hazardous solid waste (TSDF) to control pollution levels in and around the industrial area of Vapi. The Review Applicant it appears has played a lead and active role towards pollution abatement by adopting and promoting Cleaner

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Production, Cleaner Technology for Cleaner Development Mechanism.

IV. In order to take care of High COD effluent, Non-Biodegradable effluent and High TDS effluents, the member industries are transporting such effluent by tankers to the CETP site, and not discharging in drainage system. It is pertinent to mention that the Review Applicant has set up a CMEE Plant in the 2015 and a spray dryer in the year 2018 to treat aforesaid effluents effectively.

V. The Review Applicant it appears has also taken numerous Effective Pollution Control Measures at the points of origin of effluents, in transit and also at the end of the pipeline by providing collective treatment prior to its final disposal in Damanganga High Tide Zone.

VI. Further, the Review Applicant had set up a common solid waste management site in the year 1999, located at Vapi and in the year2000, the Review Applicant commissioned the first cell of Secured Landfill Constructed as per German Design based on asphalt-concrete baseliners. It is also the Review Applicant that provided the facility for collection, transport, storage and disposal of hazardous solid wastes at this site.

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VII. That in and around January 2018, one Aryavart Foundation claiming to be an NGO preferred Original Application No. 95 of 2018 alleging that there is a discharge of untreated/partially treated trade effluents by the Review Applicant in Vapi Industrial Cluster into Damanganga'sHigh Tide Zone in District Valsad in Gujrat which meets the Arabian Sea. Apart from Daman, it was also alleged that Damanganga River & Bill Khadi (a naturaldrain) which also falls into the Arabian Sea are being equally polluted by the Review Applicant.

VIII. Thereafter on 09th March 2018, this Hon'bleBench issued notice on the Original Application No. 95 of 2018. Once pleadings stood completed, the matter was finally taken up for arguments on 29.08.2018, wherein the this Tribunal was pleased to limit the scope of O.A. 95 of 2018 to the following clarification:-

'while passing the order dated 03.08.2018, this Tribunal has not in any manner diluted the directions of the Hon'ble Supreme Court in [2017] 5 SCC 326 with regard to the mandatory requirement of ETP.Prayer is allowed'.

IX. This Hon'ble Tribunal vide order dated 29.08.2018, also relied upon the affidavit filed by CPCB which read as under:-

'4. That it is observed from annual average values of inlet that the concentration of COD (except in 2016), TSS, (except in

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2017), NH3-N (except in 2011, 2013 & 2017), TDS, Phenolic compounds are by and large more than the inlet norms, whereas, BOD (except in 2008, 2009, 2010 & 2011)) is less than inlet norms for some years. It is submitted that as per analysis results of CPCB monitoring, inlet quality is not meeting with inlet design norms of CETP which shows that some member industries are discharging without meeting specified inlet norms as mentioned in consents (CCA) of member industries issued by GPCB. However, it is observed that there is an improvement in inlet effluent quality over the years.

5. That it is also submitted that member industries are discharging their effluent in GIDC underground drainage system which leads to CETP. M/s. VGEL-CETP should ensure that the member industries discharge the trade effluent meeting the inlet norms of CETP. In case of noncompliance, the list of such industrial units should be provided to GPCB for necessary action against such units.

6. That it is also observed from annual average values of outlet that the concentration of TSS, TDS, BOD and COD are more than the outlet norms for the years 2008 to 2015 & 2017. Annual average values for BOD, COD, NH3-N,Phenolic compounds are within the outlet norms for the year 2016. There is an improvement in outlet effluent quality over the years

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though not meeting the outlet norms (TSS, TDS, BOD, COD,and Cyanide) prescribed by GPCB.

7. That as per monitoring carried out on 8/3/2018, the concentration of TDS, BOD, COD, NH3-N,and Phenols were not meeting prescribed outlet norms. As per latest monitoring carried out on 10/5/2018, the concentration of all the monitored parameters, except TDS, was found to be within prescribed outlet norms.

8. That it is observed from the results of inlet and outlet of CETP that there is a reduction in pollutants due to treatment at CETP and as such no untreated trade effluent is discharged.

However, Vapi CETP is required to be operated properly & up-graded adequately so as to ensure to discharge the treated effluent, all the time, meeting with the prescribed discharge norms."

X. Finally, thisHon'ble Bench observed that

'In view of above averments, appropriate action in accordance with law may be taken by the State Pollution Control Board. The Central Pollution Control Board will oversee compliance of this order. Report of the action taken may be brought on record before this Tribunal within one month from today by E-mail at filing.ngt@gmail.com.'

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XI. In light of the above observation the Hon'ble Bench, disposed off O.A. 95 of 2018 and directed that the report shall be listed for consideration thereafter.

XII. Subsequently, on 06.09.2018, the Original Application No. 95 of 2018 matter was mentioned to submit that hearing was concluded on 29.08.2018. As the Hon'ble Bench was convinced by the arguments and contentions made on behalf of the Respondent No.1, it was pleased to dispose off O.A. 95 of 2018 without imposing any penalties or costs. However, on perusal of the order on 04.09.2018, it was observed that inadvertently the line 'proceedings/O.A. stands disposed of' was missing however reflected in the connected matter. It was submitted that the Applicant sought to challenge the order dated 29.08.2018, as an interim order, before the Hon'ble Supreme Court of India while in true sense the order passed by this Hon'ble Tribunal on 29.08.2018 was a final order/judgment. Accordingly, it was prayed that a specific line may be added which has been inadvertently left out i.e. 'proceedings stand disposed off''.

XIII. Having perused the Order dated 29.08.2018, the Hon'ble Bench observed that the said order is a mere clarification to the original order dated 03.08.2018 passed in *Paryavaran Suraksha Samiti &*

Anr. Vs. Union of India &Ors. O.A. No. 593 of 2017. The order dated 03.08.2018 has to be read jointly with Order dated 29.08.2018 since the issues involved in O.A. 95 of 2018 were limited to clarification of order dated 03.08.2018. The moment such clarification is provided by the Hon'ble Tribunal, nothing survives in the matter for consideration thereafter.

XIV. On 10.01.2019, at about 01.00 p.m. (i.e. about 21 hours prior to hearing), the Counsel for GPCB served Review Applicant's Counsel with the reports prepared by CPCB and GPCB. Thereafter a detailed hearing on 11.01.2019 took place.

XV. During the course of arguments on 11.01.2019, the Counsel appearing on behalf of the Review Applicant had *inter alia* argued that:-

g) *As the reports for the alleged inspection have been served upon the Review Applicant immediately the day before 11.01.2019, hence as a matter of right, time may be given to the Review Applicant to reply to the report.*

h) *The GPCB has purposely concealed/made an error apparent on the face of the record by not deposing the true set of facts before this Hon'ble Tribunal.*

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i) *The Individual Industries may not be imposed fine without being heard.*

j) *The recent study conducted by NIO (being an independent authority) may be taken into consideration,infact no substantial evidence has been led to show that any damage has been done to the environment. On the contrary, the NIO Report – August 2018, the Report from Statistical Analysis of Fish Production in India, and the Joint Monitoring of Discharge Point of VGEL to Daman Shore, Report by GPCB, DPCC & VGEL prepared by GPCB Lab confirm that overall all condition has improved.*

k) *The ratio/proportion of inlet and outlet of CETP is well within norms.*

l) *The Review Applicant has been spending enormously towards uplifting the environment at Vapi;*

However, this Hon'ble Tribunal failed to even consider the material facts and prayers as made by the Ld. Counsel for the Review Applicant.

GROUNDS FOR REVIEW:

A. That there wasin fact no such inspection done on 03.01.2019 as claimed, hence the report dated 10.01.2019 should not be considered at all,

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B. That the report by NEERI has been selectively placed by the Applicant, as the entire report has deliberately not been placed on record. The report by NEERI if perused would show that the major sources of trade discharge are not relatable to Vapi,

C. That the principles of Natural Justice for Review Applicant have been violated,

D. That pleadings in the matters are yet to be completed,

E. That there has been no assessment of damages (if any) done to the environment, prior to quantification compensation amounts, instead the reports and material on record portray that the water quality for marine life has become better due to the increase in dissolved oxygen levels, and even as per CPCB's own assessment the river's condition has become better.

F. That there is no discharge in Bill Khadi drain by any of the industries at Vapi.Bilkhadi is not under the purview of VGEL but Irrigation Department of Government of Gujarat,

G. That there is no quantification done or reasoning given for the imposition of high compensationon the Review Applicant,

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H. That the Applicant NGO has acted with malafide intentions and ulterior motives against the Review Applicant for reasons unknown to the Review Applicant, as the applicant has cherry picked the respondent CETP ignoring many other polluting ones, much nearer to the Applicant NGO's registered office;

The Review Applicant is desirous of placing detailed documents, reports, studies, electricity bills, comments by eminent dignitaries, joint inspection reports etc on record by way of an Application seeking permission to place on record additional documents to establish the true and actual factual position. The Review Applicant further reserves the liberty to raise additional grounds/modify existing grounds at the time of arguments.

LIMITATION

The instant Review Application has been filed well within the limitation period as prescribed by National Green Tribunal Act of 2010 read with the National Green Tribunal (Practices and Procedure) Rules of 2011. The, above stated order was uploaded on the website of this Tribunal only on 14/01/2019.

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PRAYER:

The Review Applicant humbly prays that this Hon'ble Court may graciously be pleased to:

a) Review the order dated 11.01.2019 passed by this Hon'ble Tribunal in Original Application No. 95 of 2018; and

b) Pass such further or other orders as this Hon'bleTribunal may deem fit and proper.

FILED BY:-

[CHAMBERS OF M.S. KALRA]
ADVOCATES FOR THE REVIEW APPLICANT

PLACE: NEW DELHI
FILED ON:

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BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI

REVIEW APPLICATION NO. ____ OF 2019
IN
O.A NO. 95 OF 2018

VAPI GREEN ENVIRO LTD. — Review Applicant

Versus

ARYAVART FOUNDATION & ORS. — Respondents

AFFIDAVIT

I, Chetan Patel, S/o. Chandrakant Patel aged about 45 years, r/o Vapi Gujarat , do hereby solemnly affirm and declare as under:-

1. That I am the Director/Authorized Signatory of the Review Applicant in the accompanying application and as such I am fully conversant with the facts and proceedings of the case and I am competent to swear this affidavit.

2. That I have read and understood the contents of the accompanying Review Application & IAs and I say that the facts stated therein are true and correct to my knowledge.

3. That the annexures annexed to the accompanying review application and IAs are true copies of their respective originals.

NOTARY SUSHMA GUPTA DIST. CT. DELHI R. NO.-1157 GOVT. OF INDIA

For VAPI GREEN ENVIRO LIMITED

DIRECTOR

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DEPONENT

VERIFICATION:

Verified at New Delhi, on this 05th day of February, 2019 that the contents of the above Affidavit are true and correct to the best of my knowledge and belief, that no part of it is false and nothing material has been concealed therefrom.

For VAPI GREEN ENVIRO LIMITED

DIRECTOR

DEPONENT

NOTARY
SUSHMA GUPTA
NCT OF DELHI
R. No. 1167
GOVT. OF INDIA

- 7 FEB 2019

ATTESTED

NOTARY PUBLIC
NCT DELHI

ANNEXURE-A11

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Item No. 01

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Review Application No. 08/2019
IN
O.A. No. 95/2018
(M.A. No. 99/2019 & M.A. No. 118/2019)

Aryavart Foundation — Applicant

Versus

M/s Vapi Gree Enviro. Ltd. & Ors. — Respondents

Date of hearing: 25.02.2019

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

IN CHAMBER BY CIRCULATION

ORDER

1. M/s Vapi Gree Enviro. Ltd., Respondent No. 1 in Original Application No. 95/2018, has filed this application for review of order dated 11.01.2019 in which certain directions have been issued pertaining to the functioning of CETP in the Vapi Industrial Cluster which is being operated by them. The ground for review is that there is an error apparent on the face of the record.

2. We have perused the review application and examined the impugned order dated 11.01.2019 as well as records of O.A. No. 95/2018 and, we find that the application for review questions the findings of the Tribunal in its merits which can be subject matters of an appeal. We also find that some of the facts stated to be an error do not appear to be so and clearly misconceived or incorrect. For instance, the very first finding of the Tribunal recorded in para 4(a) of the review application is a selective portion of para 26 of the

impugned order which cannot be read in the manner projected by the applicant but has to be considered holistically with the rest of the paragraphs.

3. Orders dated 09.03.2018 and 27.04.2018 would justify the observation of the Tribunal that "due opportunity has been given to file pleadings". No embargo had been cast upon the applicant in responding to the reports submitted by the regulatory authorities which the Tribunal did not find any reason not to accept. Want of submission of action taken report by the applicant had been expressed in the report of the Gujarat Pollution Control Board (GPCB) dated 28.09.2018 and is not a finding of the Tribunal as will appear from the last paragraph of the report extracted in para 14 of the impugned order. In para 26 of the impugned order, the Tribunal had expressed the necessity to follow the principles of natural justice if it was to finally assess the damages in which context it had been noted that though the CETP operators had been heard, the individual industrial units had not been given that opportunity. It was, thus, directed at para 55 (i.b) that the Committee may give an opportunity of hearing to the CETP operators and the units identified as polluting by the GPCB.

4. It is of relevance to note that before the directions in para 55 of the impugned order were issued, the Tribunal had traced the entire history of the questions involved in the case and had drawn a resume of litigations that had reflected unsatisfactory performance of the applicant notwithstanding those activities which it had carried out as per its obligations.

5. Considering the above facts and circumstances, we do not find any merit in the application.

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6. In the result, the Review Application stands dismissed with no order as to costs.

Adarsh Kumar Goel, CP

S.P. Wangdi, JP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

February 25, 2019
Review Application No. 08/2019
IN O.A. No. 95/2018
DV

NATIONAL GREEN TRIBUNAL, NEW DELHI

ANNEXURE-P10

ITEM NO.33 COURT NO.5 SECTION XVII

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S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 3396/2019

M/S CHADHA SUGAR MILLS PRIVATE LIMITED
THROUGH DIRECTOR Appellant(s)

VERSUS

SUSHIL KUMAR & ORS. Respondent(s)

(With IA No.56397/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 12-04-2019 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE VINEET SARAN

For Appellant(s)
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Gopal Jain, Sr. Adv.
Mr. Sangram S. Saron, Adv.
Mr. Harshit Sethi, Adv.
Mr. Nikhil Jain, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Issue notice.

In the meantime, there shall be stay of proceedings in Original Application No. 1040 of 2018 pending before National Green Tribunal, Principal Bench, New Delhi.

(NIDHI AHUJA)
COURT MASTER (SH)

(RENU DIWAN)
ASSISTANT REGISTRAR

Signature Not Verified
Digitally signed by NIDHI AHUJA
Date: 2019.04.15 17:26:42 IST
Reason:

ITEM NO.19 COURT NO.10 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s).34038/2019

(Arising out of impugned final judgment and order dated 28-08-2019 in OA No.95/2018 passed by the National Green Tribunal)

VAPI INDUSTRIES ASSOCIATION Petitioner(s)

VERSUS

ARYAVART FOUNDATION & ORS. Respondent(s)
(IA No.157089/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.157086/2019-STAY APPLICATION and IA No.157087/2019-PERMISSION TO FILE APPEAL[ALONG WITH RECORD OF C.A.NO.3396/2019)

Date : 25-10-2019 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s) Mr. Pinaki Mishra,Sr.Adv.
Ms. Mandeep Kalra,Adv.
Mr. Sandeep Mishra,Adv.
Mr. Nishant Shankar,Adv.
Ms. Jasmine Damkewala, AOR

For Respondent(s) Mr. Raj Panjwani, Sr.Adv.
Dr. Surender Singh Hooda, AOR
Mr. Jitender Singh, Adv.

UPON perusing papers the Court made the following
O R D E R

Permission to file appeal is granted.

Issue notice returnable on 13.12.2019.

List along with Civil Appeal No.3396 of 2019.

In the meanwhile, there shall be stay of prosecution.

Pleadings to be completed in the meanwhile.

(B.Parvathi)
Court Master

(Sunil Kumar Rajvanshi)
Court Master

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Annexure - H

ITEM NO.5+25 COURT NO.4 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No. 43253/2019

(Arising out of impugned final judgment and order dated 28-08-2019 in OA No. 95/2018 passed by the National Green Tribunal)

M/S VAPI GREEN ENVIRO LIMITED Petitioner(s)

VERSUS

ARYAVART FOUNDATION & ORS. Respondent(s)

(FOR ADMISSION and I.R. and IA No.184998/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.184999/2019-STAY APPLICATION and IA No.184997/2019-CONDONATION OF DELAY IN FILING APPEAL)
[TO BE TAKEN UP ALONGWITH ITEM NO. 25 I.E. C.A.NO. 3396/2019]

C.A. No. 3396/2019
(With IA No.98028/2019 – APPROPRIATE ORDERS/DIRECTIONS, I.A. No. 56397/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.60229/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.60447/2019-STAY APPLICATION)

C.A. No. 8313/2019
(With IA No.157089/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.157087/2019-PERMISSION TO FILE APPEAL and IA No.157086/2019-STAY APPLICATION)

Date : 04-12-2019 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s)
Ms. Pinaki Misra, Sr. Adv.
Mr. Gopal Jain, Sr. Adv.
Mr. Mandeep Kalra, Adv.
Mr. Arvind, Adv.
Mr. Abhinay Sharma, Adv.
Ms. Isha Khurana, Adv.
Mr. Nitesh Shrivastava, Adv.
Mr. Nishant Shankar, Adv.
Ms. Shefali Tripathi, Adv.
Ms. Jasmine Damkewala, AOR

Signature Not Verified
Digitally signed by R NATARAJAN
Date: 2019.12.09 13:31:06 IST
Reason:

Mr. Sangram S. Saron, Adv.
Mr. Nikhil Jain, Adv.

For Respondent(s)
Mr. Mithilesh Kumar Singh, Adv.
Ms. Manju Singh, Adv.
Mr. Tarun Verma, Adv.

Ms. Uttara Babbar, Adv.

Mr. Surender Singh Hooda, Adv.

Mr. Vijay Panjwani, Adv.

UPON hearing the counsel the Court made the following

O R D E R

CIVIL APPEAL Diary No. 43253 of 2019

Delay condoned.

Issue notice.

In the meanwhile, there shall be stay of the impugned order.

List the appeal along with Civil Appeal No. 3396 of 2019 and Civil Appeal No. 8313 of 2019.

Civil Appeal No. 3396 of 2019

Civil Appeal No. 8313 of 2019

The appeals stand adjourned by four weeks as prayed for in the letter circulated by the learned counsel for the petitioner seeking adjournment on the ground of personal difficulty of the arguing counsel.

(NIDHI AHUJA)
COURT MASTER (SH)

(NISHA TRIPATHI)
BRANCH OFFICER

Annexure - I

Item No. 01 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 95/2018
(M.A. No. 1029/2018 &
I.A. No. 326/2019, I.A. No. 81/2020,
I.A. No. 183/2020 & I.A. No. 184/2020)

(With reports dated 11.05.2020 and 30.09.2020)

Aryavart Foundation Applicant

Versus

M/s Vapi Green Enviro Ltd. & Ors. Respondent(s)

Date of hearing: 05.02.2021

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Applicant: Mr. S.S. Hooda, Advocate

Respondent: Mr. Shlok Chandra, Advocate for CPCB
Mr. Pinaki Misra, Senior Advocate with Mr. Mandeep Kalra, Advocate for M/s Vapi Green Enviro Ltd.
Mr. B.R. Gajjar, RO, GPCB

ORDER

1. The question for consideration is the remedial measures against pollution of river Daman Ganga and drain Bill Khadi in District Valsad in Gujarat on account of discharge of effluents by industries and the CETP in Vapi Industrial Cluster, operated by M/s Vapi Green Enviro Ltd. In the course of consideration of the said question, further issue of compliance of judgement of the Hon'ble Supreme in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*, (2018) 11 SCC 734 with regard to manning and functioning of the statutory environmental regulators was also taken up as will appear from the later part of this order throughout India.

2. The matter has been considered on several occasions for preventive and remedial measures against discharge of untreated pollutants by more than 500 industries in the Vapi Industrial cluster. Non-compliances were found by the Expert Committees constituted by this Tribunal. It was observed that there was large scale failure of the CETP system and also failure of the monitoring by the State PCBs. Vide order dated 13.05.2019, after considering report of the joint Committee dated 09.05.2019, finding continuing discharge of the pollutants and assessing compensation on "Polluter Pays" principle, the Tribunal issued directions for payment of compensation as well as for conducting performance audit.

3. On 28.08.2019, this Tribunal considered the following reports, filed in response to the earlier directions of the Tribunal:

I. Report dated 14.08.2019 from CPCB in respect of performance of CETP;

II. Report dated 05.08.2019 furnished by the CPCB on behalf of the joint Committee with regard to payment of compensation by the polluting industries;

III. Report dated 10.07.2019 from the CPCB on the subject of performance audit of the State PCBs/PCCs; and

IV. Report dated 17.08.2019 from the MoEF&CC on the subject of compliance of judgment of the Hon'ble Supreme Court *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[1]

4. On appeal being filed before the Hon'ble Supreme Court against the order dated 28.08.2019, being Civil Appeal No. 9398/2019, M/s Vapi

[1] (2018) 11 SCC 734

Green Enviro Limited v. Aryavart Foundation and Ors., the order of this Tribunal has been stayed. **In view thereof, we defer the issue which is subject matter of appeal before the Hon'ble Supreme Court i.e. about the pollution by the industries in the Vapi Industrial area and performance of CETP. In that regard, the proceedings are deferred *sine die*.**

5. However, we proceed to deal with the other aspects i.e. performance audit of PCBs and compliance of judgment in Techi Tagi Tara (supra) which, in our view as well understanding of learned Counsel for the parties, is not before the Supreme Court i.e. the consideration of the 3rd and 4th reports of the CPCB mentioned above and the related reports. In that respect, the earlier directions of this Tribunal are in paras 14 to 16 and part of para 17, as follows:

> *"14. What is expected is performance audit on issues such as **adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, scientific equipment, logistics support,** competence etc. rather than ranking the States. Let the same be done and state-wise reports submitted based on thorough analysis in terms of statutory functions. CPCB may devise an appropriate mechanism for the purpose. **We also direct that all vacant positions in the SPCBs/PCCs may be filled up at the within four months and the Chief Secretaries of the States/UTs may ensure that there is no embargo in doing so, so that effective steps for protection of environment can be taken. It is also necessary to direct that the laboratories established by the SPCBs/PCCs, at headquarters as well as regional centers, are duly recognized for purposed of enforcement of environmental laws.** The concerned authorities may take further steps accordingly. The CPCB may compile a report and file before the next date. **SPCBs/PCCs may utilize the funds available with them, under EC/Consents or other heads instead of approaching other authorities and on that pretext not performing their essential function.** The MoEF&CC may consider constituting an appropriate authority for the purpose with representatives from Central and State authorities on the pattern of Compensatory Afforestation Fund Management and Planning Authority (CAMPA) or otherwise. A compliance report be filed by the MoEF&CC before the next date.*

IV. Report dated 17.08.2019

15. Report furnished on 17.08.2019 by the MoEF&CC is on the subject of compliance of judgment of the Hon'ble Supreme Court in Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.[2]. The report shows that further action is required for compliance of judgement of Hon'ble Supreme Court.

16. ***Let further follow up action be taken by the MoEF&CC to monitor compliance of judgment of the Hon'ble Supreme Court in Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors. and report furnished to this Tribunal before the next date after ascertaining that uniformity in terms of qualifications, experience and special skill sets is adhered to especially with regard to key position of Chairman and Member Secretary of SPCBs/PCCs.***

17. In view of the above discussion our directions are summed up as follows:

(i). xxx ……..xxx ……xxx……
(ii). xxx ……..xxx ……xxx……

(iii). ***Performance audit be done with reference to issues such as adequacy with regard to environmental monitoring, efficacy of regulatory setup/mechanisms, staffing both technical and scientific manpower, adequacy of laboratories and scientific equipment, logistics support, competence etc. rather than ranking the States and state-wise reports submitted along with recommendations based on thorough analysis in terms of statutory functions before the next date. CPCB may devise an appropriate mechanism for the purpose. CPCB and MoEF&CC may file a compliance report with reference to observations in para 14 above.***

(iv). Let further follow up action be taken by the MoEF&CC to monitor compliance of judgment of the Hon'ble Supreme Court in Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors. and report furnished to this Tribunal before the next date*."*

6. We have perused the reports filed by the MoEF&CC on 11.05.2020 and by the CPCB dated 30.09.2020. The report of the MoEF&CC dated 11.05.2020 merely gives the status of recruitment rules and some suggestions for improvement of PCBs/PCCs as follows:

"1.0 xxx ……xxx ……xxx
a) Ten States namely; Chhattisgarh, Goa, Gujarat, Kerala, Sikkim, Nagaland, Jharkhand, West Bengal, Tamil Nadu

[2] (2018) 11 SCC 734

and Haryana have been notified RRs of Chairman & Member Secretary and whereas five States namely; Chhattisgarh, Jharkhand, Kerala, West Bengal & Nagaland have already made appointments in line with the notified rules. Tamil Nadu PCB has appointed Chairman & appointment of Member Secretary, TNPCB is in progress.

b) *Madhya Pradesh, HP & Punjab have notified RRs of Chairman. Punjab has appointed Chairman. In HPSPCB, appointment process of Chairman is under process, besides RRs of Member Secretary is under process.*
c) *Thirteen SPCBs namely; Andhra Pradesh, Bihar, Karnataka, Maharashtra, Meghalaya, Odisha, Telangana, Tripura, Uttar Pradesh, Rajasthan, Assam, Jammu & Kashmir and Uttarakhand informed that draft RRs have been forwarded to their respective State Govts for notification.*
d) *Mizoram SPCB informed that Govt. of Mizoram has been constituted a drafting Committee to frame the RRs for appointment of Chairman and Member Secretary.*
e) *Delhi PCC informed to CPCB that there is no sanctioned post of Chairman in DPCC and in the absence of sanctioned post, it is not feasible to frame RRs for the post of Chairman. Further, RRs for the post of Member Secretary is under process on the lines of uniform RRs, provided by CPCB.*
f) *Puducherry PCC requested CPCB for need of amendments in existing notification (Constitution of Puducherry). However, CPCB has not accepted the proposal submitted due to the said proposal was not in line of Water Act, 1974 and Air Act, 1981.*
g) *Chandigarh PCC informed CPCB that MoEF&CC has reconstituted Chandigarh PCC by notification issued by CPCB in year 2015. However, the Chandigarh PCC has not responded on RRs of Chairman & Member Secretary of CPCC till date.*
h) *Remaining 5 SPCBs/PCCs namely; Arunachal Pradesh, Andaman & Nicobar, Daman & Diu and Dadra & Nagar Haveli, Lakshadweep and Manipur have not responded to CPCB's reminders in this issue till date."*

With regard to functioning of the PCBs/PCCs, suggestion has been made for improvements on following aspects:

"2.0 xxx .....xxx xxx

I. *Monitoring of Environmental quality and polluting sources:*
II. *Regulatory Actions and environmental Governance:*
III. *Data Management & Public Outreach:*
IV. *Advisory for Decision Making:*

V. *Research & Development and Training:*
VI. *Imposition of environmental damages compensation liability*
VII. *HR-Requirement:*
VIII. *Adequate Infrastructure facilities*
IX. *Capacity Building*
X. *Remediation of contaminated sites"*

7. **The report of the CPCB dated 30.09.2020 gives the status of performance audit of SPCBs/PCCs in three parts: i) environmental issues in the area, ii) gaps in infrastructure in terms of key manpower and procurement of necessary equipment and iii) gaps in compliance status on key environmental issues**.

8. It has been found that there are serious deficiencies and undue delay in recruiting the sanctioned manpower, adequacy and upgradation of laboratories and performance in terms of monitoring of various compliances resulting in continued damage to the environment, which requires remedial measures. Serious deficiencies include failure of sewage and waste management - solid waste, hazardous waste, bio-medical waste etc., inadequacy, operation and functioning of STPs, ETPs and CETPs.

9. The executive summary in the report is as follows:

> *"xxx ……xxx ……xxx…….*
> *The Performance Audit of each State Pollution Control Board contained three sections. The first part shows about general information, State's potential in terms of resources, environmental factors and performance with reference to other indices.* ***The second part is the summary of the audit findings mainly dealing with infrastructure, monitoring, regulatory and other actions*** *with recommendations. Third part contains information at a glance on all environmental aspects.*
>
> ***Serious concerns were mentioned regarding the infrastructure in the form of manpower, laboratories and other facilities available at State Pollution Control Boards and Pollution Control Committees.*** *The information is collected from the States on the aspects related to infrastructure were detailed in the report.*
>
> ***MANPOWER:*** *It has been reported from time to time that* ***shortage of manpower is the chief cause for under performance of State***

Pollution Control Boards. CPCB requested all SPCBs / PCCs to provide the Scientific, Technical and Administrative manpower details w.r.t. Group A, B, and C in prescribed format.

Category	*Group A*	*Group B*	*Group C*	*Total*
Sanctioned	*1,749*	*2,629*	*5,060*	*9,438*
In Place	*1,092*	*1,591*	*2,413*	*5,096*
Vacancy	*657*	*1,038*	*2,647*	*4,342*

- ***It is evident that about 46 % posts are vacant and need to be filled up urgently.***
- *North Eastern States and UTs have skeleton staff attending urgent matters only.*
- *Six Boards namely Andaman & Nicobar (05), Arunachal Pradesh (56, including 49 Group C), Daman, Diu & Dadra and Nagar Haveli (10), Mizoram (11), Nagaland (14) and Sikkim (19) have filled all sanctioned posts.*
- *Arunachal Pradesh, Delhi, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Meghalaya, Punjab, Sikkim Board had* ***administrative staff more than Scientific & Technical manpower****.*

LABORATORIES: *The strengthening of laboratories at SPCBs is one of the major concerns and expected regular upgradation and establishment of analytical facilities to meet the regulatory and research requirements. Shortage of funds was not a reason for most of the Boards. Similarly,* ***there are no reasons for the State Boards for not obtaining the recognition of their laboratories under E (P) Act. NABL Accreditation is recommended for all laboratories and followed up by CPCB with moderate success. The shortage of scientific manpower, procurement delays in instruments, equipment, & consumables and need for quality control are important aspects identified during the audit process****.*

- *Six Central Laboratories at SPCBs had valid recognition as Environmental Laboratories.*
- *Two applications are under process for renewal of recognition at MoEF&CC.*
- *Three regional laboratories had valid recognition as Environmental Laboratories.*
- *Five Laboratories have obtained accreditation for four major group of parameters.*
- *Eight SPCBs have accreditation for more than two groups of parameters.*
  Five SPCBs notified adequate number of Board Analysts.
- *Twelve Boards have notified more than one Analyst at Laboratories.*
- *Thirteen SPCBs / PCCs have not notified any Analysts.*

The two short comings related to recruitment and procurement need urgent attention all the SPCBs and if needed, professional services in private sector may be hired for effective and timely actions.

PERFORMANCE: *After examining the performance of SPCBs during the audit process, short-comings noted are mentioned here. Some of these shortcomings are prevailing in well-structured Boards also.*

i. *Many States / UTs have not yet felt the need for* ***state specific Environment Policy. The existing Environment Policies at other States need a review in view of new thrust areas are related to the civic issues and waste management practices***

ii. *There are many* ***SPCBs / PCCs who have not yet prepared the Environment Status Reports.*** *There is a strong need of preparing such reports regularly incorporating the inventory of wastes and management regulations revised in the year 2016.*

iii. Most of the SPCBs / PCCs (exceptions NE States and UTs such as Lakshadweep) do not have any kind of financial constraints and the budget utilization is mostly for the non-plan activities. There are many SPCBs which have built reserves funds.

iv. *A number of* ***States still do not have the industrial siting policy/criteria.*** *It is very important step in regulating industrial growth, especially for the hilly states in view of the very sensitive ecology*

v. *The Boards and Committees have not met regularly to review the functioning and provide much needed direction & vision.*

vi. ***The SPCBs / PCCs are not submitting annual reports as per the timelines specified in the various rules. This in-turn affects the timely compilation and preparation of the National Status Report by CPCB.*** *Considerable improvement in compliance with reference to the submissions was seen after 2018.*

vii. *Many SPCBs / PCCs are yet to adopt to the practice of issuing the integrated / consolidated consents and conducting regular inspections of the industries for timely identification and action against the defaulters.*

viii. Many SPCBs having CETPs have not yet prescribed the inlet standards. This implies that the uncertainty, of the member industries discharging their effluents into the CETP not complying these standards, continues to prevail.

ix. The quantity of the hazardous waste shown as 'sent to the TSDF' pose risk in the absence of effective verification and tracking.

x. *The present implementation status of Bio-Medical Waste Management Rules 2016, is reasonably satisfactory, while the* ***compliance with reference to Batteries Management Rules, 2001 is very poor.***

xi. *The present network of the* ***Air / Water Quality Monitoring Stations provides representative Air / Water Quality of the State only for selected areas and water bodies. The Class II towns and stagnant water bodies in States need to be included in monitoring networks.***

xii. *Majority of the* ***SPCBs / PCCs are not well-equipped for the quality assurance in the analysis & data generation at their laboratories.*** *Representative analysis data is essential for the preparation of action plans for abatement and control of pollution.*

xiii. ***The monitoring network of coastal waters is very small and practically insignificant. The recent data from coastal districts show serious issues of sewage and solid waste management.***

xiv. *Many SPCBs expressed the need for technical guidance and* ***regular professional trainings in effective discharge of their functions***

xv. SPCBs have challenges in their working because of geographical & climatic conditions and different procedures and processes followed for implementation of Rules

Compliance Status: The State Boards are deploying most of the resources in consent management and finally at compliance of industrial operations. The performance of SPCBs is expected to be better in the segment of Regulatory in view of time and resources spent. During audit exercise, the compliance outcome is categorised in ***17-categories of industries, Grossly Polluting Industries (GPI), Water Polluting industries needed ETPs, Sewage Treatment Plants and CETPs****.*

Compliance	17-Cat. of industries	Grossly Polluting Industries	Industries discharging Trade Effluent	Common ETPs	Sewage Treatment Plants
Gross Total	4,359	2,747	64,001	189	1,122
Functional	3,813	2,500	62,174	189	1,114
Complying with standards	3,497	2,225	60,980	132	878
Percentage of non-	**8.3**	**11**	**1.9**	**30**	**21**
Actions taken against non-complying Industries (%)					
Show-cause notice	55	27	55	30	40
Closure	33	52	13	9	0
Legal case	2	1	1	14	5
Pending action	10	20	31	47	55

i. There are 4,359 Industries of 17-Categories identified by the States and 546 of these were closed down on their own. The overall compliance of the industries is 91.7 %, 3,497 industries are complying with the prescribe standards. The states Tamil Nadu, Odisha, Kerala, Uttar Pradesh, Bihar, Madhya Pradesh and Haryana have shown better compliance.

ii. Gujarat, West Bengal, Jharkhand and Puducherry have recorded less than 80 % compliance, while Rajasthan, HP, Assam and Uttarakhand have reported less than national average compliance percentage of 91 %

iii. ***The non-complying industries, 316 are mostly located in Gujarat (97), Maharashtra (40), UP (25), West Bengal (24) and Rajasthan (20).***

iv. The SPCBs generally issue Show-Cause Notices (SCNs), then closure and finally file legal cases. There were only 6 legal cases filed by States, 4 by Telangana, while 105 units were issued Closure directions and 174 were issued SCNs

v. ***The water polluting industries with discharges to a water course having BOD of 100 kg/day and / or handling hazardous substances are categorised as Grossly***

Polluting Industries. The inventory of these units was not updated by many States.

vi. *There were 2,747 GPI units identified in the country and 247 of these were found closed on their own. Most of the operating GPIs are located in Uttar Pradesh (1,079) followed by Haryana (638) Andhra Pradesh (193) and Gujarat (178)*

vii. *The overall compliance percentage was 89 and* ***Gujarat, West Bengal, Jharkhand, Uttarakhand, Uttar Pradesh and Arunachal Pradesh have reported lesser compliance than the national average.***

viii. *The non-complying units are located in UP, Gujarat, Jharkhand and Arunachal Pradesh.* ***UP has issued closure directions to 84 units out of 143 in the country and also the state was in the process of taking required action against 39 noncomplying industries.*** *Only three legal cases are filed against the non-complying units, two in Jharkhand and one in UP.*

ix. *In the country; 64,001 industrial units were identified Generating Trade Effluents & Requiring ETPs from 32 States and UTs. Uttar Pradesh has not provided the details and there were no units reported in Manipur and Lakshadweep.*

x. *It was identified that* ***1,827 units were operating without functional ETPs. Assam has maximum of 795 units followed by J & K (212), Karnataka (156) and Gujarat (117).*** *SPCBs have issued closure directions to 804 and Show-Cause Notices (SCN) to 842 units. Legal cases were filed against 6 units, while action was pending for remaining 164 industries.*

xi. *The 60,980 industrial units having functional ETPs complied with prescribed standards and* ***the remaining 1,194 units failed to comply****. Closure directions were issued to 163 units, SCNs to 652, 13 legal cases filed and action was pending against 366 non-complying units. The non-complying units were located in* ***Assam (237), Maharashtra (208), Punjab (143) and Rajasthan (120).***

xii. *Nineteen States have reported 189 Common Effluent Treatment Plants (CETPs) operating in the country and most of these are located in Tamil Nadu (36), Gujarat (34), Maharashtra (26) and Haryana (19).*

xiii. ***The compliance status of CETPs is very poor at 70 %,*** *mainly because of undisciplined member units. Some of the agencies involved in management of CETPs were unprofessional and found lacking required skilled manpower.*

xiv. *SPCBs have issued closure directions to five CETPs and filed legal cases against eight CETPs.* ***The non-complying CETPs were reported in Gujarat (15), Tamil Nadu (9), Rajasthan (9) and Delhi (8).***

xv. ***The sewage generation from urban population in the country was estimated as 70,089 MLD and the treatment capacity was reported as 27,240 MLD in 2018****. After 2018, the States have calculated the gap in generation and installed capacity to create additional capacity needed for treatment.*

xvi. *The total operating STPs reported in the country were 1,122 and* ***236 of these STPs were not complying with discharge standards. These STPs are located in Punjab (47), West***

Bengal (42), Karnataka (31), Rajasthan (30) and Uttar Pradesh (22).

xvii. *Most of the SPCBs preferred issuing SCNs (98) to non-complying STPs and only 13 legal cases were filed. The action needed against the defaulters was delayed in 137 cases, mostly in Punjab, Rajasthan and UP.*

xviii. *As per the information furnished by SPCBs / PCCs, about* ***10.71 Million MT of hazardous waste was generated*** *during 2018-19 by 69,054 units. About 45 % of waste is utilized / recycled and about 31 % of waste is disposed through TSDFs / SLFs*

xix. *There are 42 Common HW Treatment, Storage and Disposal Facilities (TSDFs) available in 18 States / UT, which includes 18 integrated TSDFs, having both Secured Landfills and Incinerators. In remaining 17 States / UTs the generated waste is mostly stored at occupier's premises.*

xx. *About 1,050 applications for utilization of different categories of HW under Rule 9 of HOWM Rules, 2016 have been received at CPCB. Upon technical examination and evaluation followed by successful trial runs, 54 SOPs for utilization of 40 different categories of HW have been developed and circulated to all SPCBs / PCCs. Gujarat is in forefront in utilising the hazardous wastes in industrial processes*

xxi. *As per compiled information from the Annual Reports of 2018, there were 2,70,416 Health Care Facilities (HCFs) reported in the country, 97,382 of HCFs bedded and 1,73,831 non-bedded. About 41 % of HCFs, 1,10,356 HFCs have obtained authorization under BMWM Rules, 2016.*

xxii. *About 615 TPD of biomedical waste was generated by the HCFs and 534 TPD of waste is treated and disposed. There were 200 Common Biomedical Waste Treatment Facilities (CBWTFs) and 12,326 captive treatment facilities installed by HCFs for the treatment & disposal of biomedical waste. In addition, 28 CBWTFs were under construction.*

xxiii. *All States / UTs; except Arunachal Pradesh, Goa, Jharkhand, Kerala and Uttarakhand had granted more than 75 % authorizations to the Health Care Faculties (HCFs), applied for authorization under the Bio-Medical Waste Management Rules.*

xxiv. *Municipal Solid Waste generation in the country was reported as 1,62,836 TPD.* ***About 92 % (1,49,346 TPD) of waste is collected and 37 % (60,683 TPD) of the collected waste is treated. About 27 % (44,835 TPD) of total waste is landfilled in 3,115 dumpsites. The remaining 43,828 TPD of solid waste was unaccounted, littered and dumped in drains, canals and low-lying areas***

Overall Recommendations: *Based on the information gathered through questionnaires, visits of the Expert Teams for auditing and interactions, the following general recommendations are made:*

i. The State Governments should allow the recruitment of the staff required by the respective SPCB and if needed, comprehensive assessments may be carried out for building suitable infrastructure for effective and improved performance.

ii. ***Based on the information collected on manpower at SPCBs, it was observed that large number of sanctioned posts are still vacant. It is recommended that recruitment process may be outsourced availing professional services, wherever internal shortcomings were observed.***

iii. ***The State should prepare / revisit their Environmental Policies incorporating all the current aspects concerning the sustainability of the development, conservation of the resources and the objectives of the Environment Legislation of the country.***

iv. ***The State Environmental Status Reports should be prepared / updated by the SPCBs incorporating the aspects of environmental quality parameters.***

v. ***The States should prepare / update their industrial siting policies / criteria and regulated strictly as per the criteria***

vi. ***The SPCBs should ensure preparation and submission of their annual reports with complete inventory details as per the timelines specified under the rules.***

vii. ***All the SPCBs should ensure issuing the consolidated consents & authorization from the year 2021 by processing all applications online in transparent manner.***

viii. ***The SPCBs should prepare / update the protocols for regular inspection of the polluting industries for timely identification of & action against the defaulters.***

ix. ***The Online CEMS data generated from the system should be used for surveillance and monitoring for identifying habitual and frequent violators.***

x. ***The SPCBs / PCCs should prescribe the inlet standards for CETPs for compliance of member industries.***

xi. ***The States and UTs should adopt 'Online Tracking' for all wastes from generation point to final disposal point. A national tracking system initiated by CPCB may be shared with SPCBs.***

xii. ***The SPCBs should ensure 100 % compliance of the Batteries Management Rules, 2001 and submission of the report to CPCB by December, 2020.***

xiii. ***The SPCBs should develop & upgrade their laboratories and obtain the NABL Accreditation and MoEF&CC recognition on top priority by 2021.***

xiv. ***The SPCBs should identify air & water quality monitoring locations covering the district headquarters, minor rivers, ponds, lakes and other important water bodies of the State / UT.***

xv. ***The SPCBs / PCCs, situated along the main coastline, should establish a representative number of stations / locations for the monitoring of coastal waters in the range of 80 to 150 stations.***

It is expected that the State Pollution Control Boards and Pollution Control Committees prepare comprehensive plans for strengthening the organisations and also incorporate short-term & long-term actions for abatement and control of pollution with budgetary estimates and obtain required

approvals from the respective departments under State Government and UT Administration."

10. **We have given due consideration to the report, which shows startling state of affairs tested on the touchstone of 'Sustainable Development' principle, accepted in Stockhome conference and which has been held to be part of right to life under article 21 of the Constitution in *Vellore Citizens' Welfare Forum* v. *Union of India,* (1996) 5 SCC 647**.

11. **Some of the significant observations include failure to fill up key positions, to acquire necessary equipment, to arrange continuous training, to prepare State Environment policy, to specify industries-siting criteria, making inventory of grossly polluting industries, not specifying standards of inlet to the CETPs and hazardous waste, inaction against identified polluters, taking steps for bridging gaps in law and enforcement with regard to liquid and solid waste (of different kinds), including non-functional and noncompliant ETPS, STPs and CETPs, inadequate monitoring of environmental compliance in Class II towns and coastal areas, failure to compile and analyse data and filing annual reports, inefficiency shown by inaction against serious violations of environmental norms. Needless to say that such sorry state of affairs is reflection of poor governance, making environmental rule of law far from reality.**

12. The environmental law principles, which this Tribunal is mandated to apply under sections 20 and 15 of the NGT Act, 2010, are – 'sustainable development', 'precautionery' and 'polluter pays'. In Hanuman Luxman, (2019) 15 SCC 401, (paras 142-156), significance of environmental rule of law has been highlighted to achieve sustainable development goals for

prosperity, health and well being. **This requires filling of gap between law and enforcement**. In *T.N. Godavarman Thirumulpad v. Union of India, (2002) 10 SCC 606*, at page 621**,** it was observed that the State has to

> *"forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore,* ***hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment.*** *Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is constitutional imperative on the Central Government, State Governments and bodies like municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the man-made environment and natural environment."*

13. *In A.P. Pollution Control Board v. Prof. M.V. Nayudu, (1999) 2 SCC 718*, at page 732, it was observed "..**Good governance is an accepted principle of international and domestic laws. .....It includes the need for the State to take the necessary "legislative, administrative and other actions" to implement the duty of prevention of environmental harm**...". In Techi Taga Tara, supra, the Hon'ble Supreme Court referred to several Committees on **need for revamping the regulatory bodies by appointing persons of outstanding ability and high reputation to the State PCBs and equipping them with laboratories and other equipment for performing statutory functions**. Apart from the Tribunal being approached under sections 14 and 15 by aggrieved parties, pointing out degradation of environment and inaction of the statutory regulators, the Hon'ble Supreme Court has required this Tribunal to monitor compliance of such statutory obligations for protecting environment. This is not possible unless the statutory regulators are effective. Significant

issues so referred by the Hon'ble Supreme Court include a) liquid waste management, (2017) 5 SCC 326, *Paryavaran Suraksha vs. Union of India* & Ors. wherein it was directed that requisite STPs, ETPs, CETPs must be set up by 31.3.2018, failing which coercive measures may be taken against concerned authorities, to enforce statutory mandate of the Water (Prevention and Control of Pollution) Act enacted in 1974, prohibiting any water pollution, making it a criminal offence. b) compliance of solid waste management rules. Vide order dated 2.9.2014 in WP 888/1996, *Almitra H. Patel Vs. Union of India & Ors.* on the file of the Supreme Court, the issue has been referred to this Tribunal for monitoring compliance of Solid Waste Management Rules. c) In (2015) 12 SCC 764, MC Mehta v. UOI, issue of rejuvenation of Ganga stands referred to this Tribunal. d) Vide order dated 24.7.2017 in WP 725/1994, 'And quite flows Yamuna', rejuvenation of Yamuna stands referred to this Tribunal. It is not necessary to refer to several other orders. Finding that statutory regulators were not effective and serious damage was continuing, the Tribunal has appointed independent monitoring Committees[3] on several issues.

In substance, monitoring of the enacted environmental laws including the Water Act, Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 and Rules framed thereunder needs to be reviewed and made effective in the interest of protection of

[3] To monitor compliances with regard to:
(i) River Ghaggar in OA No. 138/2016 (TNHRC), Stench Grips Mansa's Sacred Ghaggar River
(ii) River Sutlej in OA 916/2018, Sobha Singh v. State of Punjab & Ors.
(iii) River Yamuna in OA 06/2012, Manoj Mishra v. UOI & Ors.
(iv) River Musi in OA 426/2018, Mohammed Nayeem Pasha & Anr. v. State of Telangana & Ors.
(v) River Ganga in OA 200/2014, M.C. Mehta v. Union of India & Ors.
(vi) River Jojari in OA 329/2015, Gram Panchayat Araba v. State of Rajasthan & Ors.
(vii) CETP in Taloja District in OA 125/2018, Arvind Pundalik Mhatre v. Ministry of Environment, Forest and Climate Change & Ors.
(viii) District Environment Plan in OA 360/2018 Shree Nath Sharma v. Union of India & Ors.
(ix) 'Rat Hole' coal mining in OA 110(THC)/2012, Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya & Ors.
(x) Solid waste management rules in OA 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues.

environment and public health. This is not possible unless the regulatory bodies are duly manned and equipped and function efficiently. The report shows that it is not happening and there are huge gaps. With such gaps, it is only a dream to expect clean environment – fresh water or fresh air. Irreversible degradation of environment is bound to result in avoidable deaths and diseases and loss of scarce and good quality water, air and soil and biodiversity.

14. The findings in the report showing gaps resulting in large scale non-compliances in enforcement of environmental laws are supported by observations of this Tribunal, which include the following:

(I) OA 593/2017, *Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors.*[4], involves monitoring of liquid waste management in terms of orders of the Hon'ble Supreme Court in (2017) 5 SCC 326. We have found that as a result of continuing failure of the statutory authorities to ensure compliance, industrial as well as municipal liquid waste is being discharged **resulting in pollution of groundwater as well as surface water, including water bodies, drains, streams, rivers and coastal areas. The Tribunal has noted that as per data compiled by the CPCB, 351 river stretches are declared polluted. Comprehensive Environment Pollution Index (CEPI) prepared by the CPCB shows that 100 industrial clusters are polluted.** The Tribunal is also dealing with the remedial action for restoration of the 351 stretches in OA 673/2018[5], *In Re: News item published in "The Hindu" authored by Shri Jacob Koshy, titled "More river stretches are now critically polluted: CPCB*" for which the Tribunal has directed **preparation**

[4] Vide order dated 21.09.2020
[5] Vide order dated 21.09.2020

and execution of action plans for each of such stretches by constituting River Rejuvenation Committees (RRCs) for all States/UTs headed by Environment Secretaries which action needs to be overseen by the Chief Secretaries at the State level and by a Central Monitoring Committee (CMC) headed by Secretary, Jal Shakti alongwith NMCG and CPCB at the national level. OA 829/2019[6], *Lt. Col. Sarvadaman Singh Oberoi v. Union of India & Ors.* deals with the remedying of **coastal pollution for which directions have been issued on the same pattern for preparation and execution of action plans by the RRCs to be overseen by the Chief Secretaries at the State level and by the CMC at the national level.** The same order also deals with utilisation of treated water, being OA 148/2016, *Mahesh Chandra Saxena vs South Delhi Municipal Corporation & Ors.* and OA 325/2015[7], *Lt. Col. Sarvadaman Singh Oberoi v. Union of India & Ors.,* dealing with the issue of restoration of water bodies by removing encroachments and preventing pollution has been dealt with by this Tribunal. OA 176/2015, *Shailesh Singh v. Hotel Holiday Regency, Moradabad & Ors.*[8], the Tribunal has directed monitoring of groundwater extraction to give effect to the mandate in Hon'ble Supreme Court judgment in M.C. Mehta v. Union of India & Ors. (1997) 11 SCC 312.

(II) Apart from water pollution, air pollution the issue air pollution has been dealt with by this Tribunal by separate order in OA 681/2018[9], *News item published in "The Times of India" Authored by Shri Vishwa*

[6] Vide order dated 21.09.2020
[7] Vide order dated 18.11.2020
[8] Vide order dated 20.07.2020
[9] Vide order dated 21.08.2020

*Mohan titled "**NCAP with multiple timelines to clean air in 102 cities to be released around August 15**"* requiring constituted **Air Quality Monitoring Committees in all States/UTs to prepare and execute action plans for control of air pollution in 122 non-attainment cities (where air quality is normally beyond the prescribed norms).**

(III) The issue of solid waste management has been dealt with by this Tribunal in OA 606/2018 in pursuance of directions of the Hon'ble Supreme Court in Writ Petition No. 888/1996, *Almitra H. Patel & Anr. v. Union of India & Ors*. In the said matter, the Chief Secretaries of all States/UTs were required to remain present before this Tribunal[10] and after interaction with them, separate orders for all States/UTs referring to the individual issues in such States/UTs,[11] particularly **issue of legacy waste dump sites and remediation of current waste on scientific basis were dealt with and the Chief Secretaries were directed to monitor compliance every month by creating a monitoring cell, directly under them, in terms of directions of the Hon'ble Supreme Court and the District Magistrates monitoring such compliances every fortnight. It has been found that there are more than 3000 dump sites where legacy waste has accumulated over the years but the remedial action has not been taken except at very few places. This is resulting in water and air pollution and soil degradation on continuous basis, to the detriment of the environment and the public health.** The statutory timelines have come to an end. Reference is made in this regard also to order dated 29.01.2021 in

[10] Vide order dated 16.01.2019
[11] Vide order dated 18.07.2019 (last such order is in respect of Jammu & Kashmir)

OA No. 519/2019, *In re: News item published in "The Times of India" Authored by Jasjeev Gandhiok & Paras Singh Titled "Below mountains of trash lie poison lakes"* and order dated 28.02.2020 in OA No. 606/2018, *Compliance of Municipal Solid Waste Management Rules, 2016*. It was directed, vide order dated 10.01.2020, that compensation will be payable for failure to comply with the requirement of taking steps mentioned in Rule 22 of the SWM Rules, 2016 at scales mentioned therein, depending on the size of local bodies, from 01.04.2020 till compliance. Compensation was also directed to be recovered at the laid down scale for delay in commencing and completing the *legacy* waste remediation measures.

(IV) With regard to **bio-medical waste,** the matter has been dealt with in OA 710/2017, *Shailesh Singh, v. Sheela Hospital & Trauma Centre, Shahjahanpur & Ors.*[12], with regard to **hazardous waste**, matter has been dealt with in OA 804/2017, *Rajiv Narayan v. Union of India & Ors.*[13], with regard to **e-waste,** matter has been dealt with in OA 512/2017, *Shailesh Singh v. State of UP*[14], with regard to **plastic waste**, matter has been dealt with in EA 13/2019 in OA 247/2017, *Central Pollution Control Board v. State of Andaman & Nicobar & Ors.*[15] for laying down liability to pay compensation for non-compliance.

15. The failure of monitoring has been found to have direct nexus to atleast 10 industrial accidents [16] which have taken place in the recent past which have been dealt with by this Tribunal.

[12] Vide order dated 18.01.2021
[13] Vide order dated 29.01.2021
[14] Vide order dated 15.01.2021
[15] Vide order dated 08.01.2021
[16]

16. Vide order dated 03.02.2021 in OA No. 22/2020, **Yashyashvi Rasayan Pvt. Ltd**., the Expert Committee, appointed to suggest means to prevent disasters, recommended strengthening the monitoring mechanism by making appointments against all vacant posts to ensure that onsite and offsite emergency plans are in place and mock drills take place, to prevent any such incidents and medical facilities are available at the nearest point in case such incident takes place to save lives of the victims. This aspect has also been dealt with vide order dated 01.02.2021 in OA No. 837/2018,

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i. Order dated 01.06.2020, relating to incident of gas leak dated 07.05.2020 in **LG Polymers India Pvt. Limited** at Vishakhapatnam, resulting in death of 11 persons and injuries to more than 100, apart from other damage (OA No. 73/2020, In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh);

ii. Order dated 03.02.2021, relating to incident dated 03.06.2020 in a chemical factory, **Yashyashvi Rasayan Pvt. Ltd**. at Dahej, District Bharuch, Gujarat resulting in deaths and injuries and other damage (OA No. 22/2020(WZ) (Earlier OA 22/2020) (WZ), Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr.);

iii. Order dated 06.08.2020, in relation to incident of **oil well blow out on 27.05.2020 at Baghjan in the Tinsukia District of Assam** resulting in deaths, injuries and damage to the environment (OA No. 43/2020(EZ), Bonani Kakkar vs. Oil India Limited & Ors.).

iv. Orders dated 06.07.2020 and 22.12.2020, relating to incident dated 30.06.2020 on account of gas leakage at **Sainor Life Sciences** factory at Parawada in industrial area on the outskirts of Vishakhapatnam (OA No. 106/2020, News item published in the local daily "Economic Times" dated 30.06.2020 titled "Another Gas Leakage at Vizag Factory kills two, critically injures four…");

v. Orders dated 08.07.2020 and 22.12.2020, dealing with the incident dated 01.07.2020 resulting in death of 6 person and injury to 17 due to blast of boiler in **M/s Neyveli Thermal Power Station** (NLCIL), Cuddalore (OA No. 108/2020, News item published in the "Indian Express" dated 01.07.2020 titled "Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured") and;

vi. Orders dated 23.07.2020 and 22.12.2020, in relation to incident of **fire engulfed the chemical plant** of **Visakha Solvents Ltd**, Vizag on 13.07.2020 at Ramky CETP Solvents building in Pharma City resulting in injuries (OA No. 134/2020, News item published on 13.07.2020 in the local daily named "India Today" titled "Massive fire engulf Vizag chemical plant, explosions heard, injuries reported").

vii. Order **dated 18.12.2020**, in relation to incident of **explosion in a plastic recycling factory at Sujapur in Malda on 1.12.2020** resulting in death of six persons, including two minors and serious injuries to four persons (OA No. 272/2020, News item published in the "Times of India" dated 20.11.2020 entitled "Six killed as blast tears through Malda Plastic recycling factory").

viii. Order dated **18.12.2020**, in relation to incident of **methane gas leak in a sugar factory** called Lokenete Bapurao Patil Agro Industries Ltd. in Mohol Taluka of Solapur District, Maharashtra on 21.11.2020 resulting in deaths and injuries and other damage (OA No. 274/2020, News item published in the "Indian Express" dated 23.11.2020 entitled "Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory").

ix. Order dated 08.01.2021, in relation **to Gas Leak in Agro Company** (O.A No. 107/2020, In RE: News item published in the local daily "Indian Express Sunday Express" dated 28.06.2020 titled "Gas Leak in Agro Company Claims life of one")

x. Order dated 18.01.2021, in relation to News item published in Navbharat Times dated 24.12.2020 titled "**Gas leaks in IFFCO Plant**, 2 Officers dead" (O.A No. 04/2020, In re : News item published in Navbharat Times dated 24.12.2020 titled "Gas leaks in IFFCO Plant, 2 Officers dead")

Sandeep Mittal v. Ministry of Environment, Forests & Climate Change & Ors. on the subject of monitoring the EC conditions.

17. As earlier observed, damage to environment is directly linked to the public health and neglecting compliance of environmental norms results in deaths and injuries. Violation of environmental norms needs to be taken as seriously as preventing crimes of homicides and assaults. It is more serious as the victims may be wide spread and unidentified. The consequences may even affect future generations. The compliance status is directly linked to effectiveness of monitoring which requires that the key office bearers of statutory regulators and oversight bodies are qualified, competent and reputed and exclusively dedicated to such work, instead of devoting part time, while simultaneously holding other positions. In this regard, the Tribunal has made observations vide order dated 02.02.2021 in OA 231/2014, *Doaba Paryavaran Samiti v. State of U.P & Ors,* finding that the Member Secretary of the PCB in UP was only devoting part-time, while holding several other positions. Adequate and well-equipped laboratories and effective machinery for implementation of "Polluter Pays" principle for assessment and collection of compensation is another important aspect of environmental governance.

18. It is seen that several State PCBs do not even have constraint of funds. Still, the requisite manpower and the equipment are not being arranged. Moreover, due application of "Polluter Pays" principle, in exercise of regulatory powers under the Air, Water and EP Acts to compensate the environment, enables them to have requisite funds for hiring experts, installing monitoring equipment and taking other remediation and restoration measures, including restoration of contaminated sites. The quality and quantity of key manpower cannot be

compromised, if environmental governance is to improve to achieve the sustainable development goals. It is well known that most of the key environmental laws have been enacted in the wake of Stockholm Conference (1972) under Entry 13 of List-I read with Article 253 of the Constitution, with a view to achieve 'sustainable development' of which the 'Precautionary' principle, "Polluter Pays" principle, Intergenerational Equity and Public Trust Doctrine principles are integral part. Sad part is that even after 47 years of Water Act and 40 years of Air Act, water and air pollution is rampant, without serious adverse action. Though there are criminal offences with minimum prescribed sentence, hardly any punishment is handed down. Hardly any compensation is recovered from the violators. Victims continue to suffer and so does the environment. This requires attention of all concerned at higher levels in governance.

19. In view of above, the recommendations in the CPCB report need to be urgently implemented by all concerned for revamping and upgrading the regulatory bodies and their equipment which needs to be a continuous exercise. The Chief Secretaries of all States/UTs, in coordination with the Secretary Environment and Chairman State PCB/PCCs in their respective jurisdiction, need to forthwith study and address the issues emerging from the report, prepare and execute their respective action plans. This will include filling up all vacant posts by competent persons and procuring the requisite equipment. The CPCB may assist and monitor all the States for compliance of these directions. It will be open to the CPCB to prepare a format which may contain qualifications, minimum eligibility criteria, required experience for the key positions and the specifications of equipment. It is suggested that if some of the State PCBs find it difficult to select/recruit suitable candidates, a designated Committee of the MoEF&CC and CPCB, in consultation with such State PCBs, may explore

possibility of the central selection mechanism so that the talent pool so selected can be made available for posting at appropriate locations, where recruitment is found to be otherwise difficult. We have noted the observations in the report that at some places administrative manpower is more than technical manpower which may not be a desirable situation. Such situation may be reviewed and remedied by the concerned States. The observations that the work of regulators should be exclusive for the incumbents appointed applies to all key positions, including Chairman/Member Secretary, Regional Officers, Engineers and Scientists of PCBs/PCCs.

20. Further, for improving monitoring and planning, authentic data needs to be compiled at all levels. Initiative will have to be taken consistent with Digital India initiatives by the MoEF/MoJS/MoUD/CPCB and based on such policy decisions, the Environment departments of all States/UTs will have to compile data in their respective jurisdiction, preferably Districtwise. On that basis District Environment Data Grid (DEDG), State Environment Data Grid (SEDG) and National Environment Data Grid (NEDG) can be set up and continuously updated. The Grid can be connected to online monitoring systems. Comprehensive Environment Pollution Index (CEPI) is being prepared limited to the Industrial Area but the Grid can cover larger areas and aspects and can be source of research and planning. It can also facilitate monitoring of and be in sync with other government initiatives such as National Mission for Clean Ganga, Swachh Bharat and Jalshakti Abhiyan etc. Based on such data, it may also be easier to study 'carrying capacity' of different areas to plan siting policy for various activities.

21. Further, there is need to study the extent of environmental loss and the contributors to the same. Though environment is priceless, normative parameters are now available to determine the compensation for the loss caused for failure to observe laid down rules and regulations such as not clearing legacy waste as per Solid Waste Management Rules, causing air/water pollution. Environment is wealth which needs protection from being plundered by law violators, for their monetary interests, by adequate monitoring and stringent vigilance. Its scientific management, including enforcement of polluter pays principle, requires study of level of pollution and contributors thereto and cost of restoration to be recovered by an efficient machinery. Such steps will advance the environmental rule of law and lead to sustainable development.

22. The directions on the subject are summed up as follows:

i. The Chief Secretaries of all States/UTs, in coordination with their respective Secretary Environment and Chairman State PCB/PCCs, need to forthwith study and address the issues emerging from the CPCB report, prepare and execute their respective action plans which will include filling up all vacant posts by competent persons and procuring the requisite equipment, including commissioning and upgradation of all laboratories and recognition under the EP Act, 1986. The CPCB may assist and monitor all the States for compliance of these directions. The steps in this regard be initiated and completed as far as possible within six months. In view of Section 33 of the NGT Act, 2010, whereunder the NGT Act has overriding powers over other statutes, any restriction placed by any administrative order will not stand in the way of carrying out this direction.

ii. We direct the CPCB to prepare a format which may contain qualifications, minimum eligibility criteria, required

experience for the key positions and the specifications of equipment. All States/UTs may act accordingly.

iii. MoEF&CC and CPCB may design a mechanism for annual performance audit of all the State PCBs/PCCs.

iv. It is suggested that if some of the State PCBs find it difficult to select/recruit suitable candidates, a designated Committee of the MoEF&CC and CPCB, in consultation with such State PCBs, may explore possibility of the central selection mechanism so that the talent pool so selected can be made available for posting at appropriate locations, where requirement is found to be otherwise difficult. A plan be prepared for continuous training of the incumbents at regional levels periodically.

v. In view of the findings in the report that at some places administrative manpower is more than technical manpower, such situation may be reviewed and remedied by the concerned States.

vi. The observations that the work of regulators should be fulltime for the incumbents appointed applies to all key positions, including Chairman/Member Secretary and Regional Officers, Engineers, Scientists of PCBs/PCCs. Such incumbents may not be given any other additional charge. Only exception can be in States where there are no significant environmental issues so as to provide the incumbents fulltime work. Such States may seek exemption in respect of this direction from CPCB, giving relevant information justifying such exemption.

vii. CPCB and State PCBs/PCCs, as directed earlier, may utilise EC funds on laboratory set up/upgradation, and on the mentioned areas in the report as well as on approved District Environment Plans. No approval of Central/State Government will be necessary in this regard in view of section 33 of the NGT Act, supra.

viii. Consistent with Digital India initiatives, MoEF&CC/MoJS/CPCB may consider setting up and periodically updating National Environment Data Grid (NEDG) linked to the State Environment Data Grids (SEDGs) DEDGs and further linked to available portals like online air/water quality, Sameer and other monitoring stations to facilitate analysis, research and planning on the subject. It may be further interlinked to initiatives like NMCG/Swachh Bharat/Jal Jeevan Mission.

ix. To assess the extent of monetary loss caused to the environment on account of violation of environmental norms by failure to scientifically manage waste, violating Water/Air/EP/Forest (Conservation) Acts and other specified Acts for fixing accountability, for improving efficiency and better enforcement of 'Polluter Pays' principle.

x. To monitor the extent of carrying capacity for particular activities at different locations for planning suitability of siting of particular activities for giving effect to 'Precautionary' and 'Sustainable Development' principles

The issue of manning and functioning of State PCBs/PCCs will stand disposed of accordingly. However, the issue of pollution in Vapi Industrial cluster which has been adjourned *sine die* will now be taken up after disposal of the matter pending in the Hon'ble Supreme Court.

All pending interlocutory/miscellaneous applications will stand disposed of with liberty to State PCBs/PCCs to point out their difficulties, if any, to the joint Committee of MoEF&CC and CPCB.

A copy of this order be forwarded to the MoEF&CC, Ministry of Jal Shakti, Ministry of Urban Development, GoI, CPCB, Chief Secretaries of all the States/UTs, all the State PCBs/PCCs by e-mail for compliance.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

February 05, 2021
Original Application No. 95/2018
(M.A. No. 1029/2018 &
I.A. No. 326/2019, I.A. No. 81/2020,
I.A. No. 183/2020 & I.A. No. 184/2020)
DV

Annexure - J

Item Nos. 05 & 06 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 95/2018
(I.A. No. 136/2022 & I.A. No. 22/2023)

Aryavart Foundation Applicant

Versus

M/s Vapi Green Enviro Ltd. & Ors. Respondent(s)

WITH

Execution Application No. 05/2023
IN
Original Application No. 95/2018

Aryavart Foundation Applicant

Versus

M/s Vapi Green Enviro Ltd. & Ors. Respondent(s)

.....

Anupam Kaul, Village Enclave,
East Extn. 1-C Trikuta Nagar,
Jammu- 180020 & Ors.: Applicants in EA

Date of hearing: 24.02.2023

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Applicant: Mr. Raj Panjwani, Senior Advocate with Mr. Ashutosh Kumar & Dr. S.S. Hooda, Advocates for Applicant in OA 95/2018

Mr. Siddhartha Iyer, Advocate for Applicant in E.A 05/2023 & I.A 22/2023

Respondent(s): Ms. Radhika Narula, Advocate for M/s Vapi Green Enviro Ltd.
Ms. Srishti Mishra, Advocate for GPCB

ORDER

The Issue

1. The question for consideration in the main matter is the remedial measures against pollution of river Daman Ganga and drain Bill Khadi in District Valsad in Gujarat on account of discharge of effluents by industries and the CETP in Vapi Industrial Cluster, operated by M/s Vapi Green Enviro Ltd. In the course of consideration of the said question, incidental but significant issue of compliance of judgement of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*, (2018) 11 SCC 734 with regard to manning and functioning of the statutory environmental regulators throughout India was also taken up.

Procedural History

2. Since by this order we propose to finally dispose of this matter, we may briefly refer to the proceedings so far. Mainly, there are three orders by which matter has been earlier dealt with – Orders dated 13.5.2019, 28.8.2019 and 5.2.2021.

3. **Vide order dated 13.05.2019**, the Tribunal considered the factual report of the joint Committee dated 09.05.2019 on the issue of discharge of untreated pollutants by more than 500 industries in the Vapi Industrial cluster. The Committee specified the extent of non-compliances and failure of the CETP system and also failure of the monitoring by the State PCB. Considering the same, the Tribunal issued directions for remedial measures, payment of compensation on polluter pays principle for past violations and also directed performance audit of PCBs.

4. **Vide next order dated 28.08.2019**, this Tribunal considered the status report submitted about the remedial action in respect of CETP in

question and recovery of compensation from the erring parties as also performance reports about the PCBs/PCCs. The said reports are:

I. Report dated 14.08.2019 from CPCB in respect of performance of CETP;

II. Report dated 05.08.2019 furnished by the CPCB on behalf of the joint Committee with regard to payment of compensation by the polluting industries;

III. Report dated 10.07.2019 from the CPCB on the subject of performance audit of the State PCBs/PCCs; and

IV. Report dated 17.08.2019 from the MoEF&CC on the subject of compliance of judgment of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*[1]

5. The matter was last considered vide **order dated 05.02.2021.** The issue of performance audit of PCBs and compliance of judgment in Techi Tagi Tara (supra), reports filed by the MoEF&CC on 11.05.2020 and by the CPCB dated 30.09.2020 were considered. It was noted that there were huge gaps in infrastructure in terms of **key manpower and procurement of necessary equipment and also gaps in compliance status on key environmental issues**. There were serious deficiencies in functioning of the statutory regulators and in remedial action against violation of waste management systems. The Tribunal issued final directions on the subject. However, the issue of **pollution by the industries in the Vapi Industrial area and performance of CETP in question was deferred *sine die* in view of pendency of Civil Appeal No. 9398/2019, M/s Vapi Green Enviro Limited v. Aryavart Foundation and Ors. before the Hon'ble**

[1] (2018) 11 SCC 734

Supreme Court against order of the Tribunal dated 28.08.2019 and interim order of stay of earlier order of this Tribunal.

6. The Tribunal considered the report of the CPCB dated 30.9.2020. In view of deficiencies in functioning of statutory regulators, the Tribunal held that for compliance of 'sustainable development', 'precautionary' and 'polluter pays' and to prevent damage to the environment, recommendations in the CPCB report were required to be urgently implemented. Accordingly, directions were issued for remedial measures as follows

> *"22. The directions on the subject are summed up as follows:*
>
> *i. The Chief Secretaries of all States/UTs, in coordination with their respective Secretary Environment and Chairman State PCB/PCCs, need to forthwith study and* ***address the issues emerging from the CPCB report, prepare and execute their respective action plans which will include filling up all vacant posts by competent persons and procuring the requisite equipment, including commissioning and upgradation of all laboratories and recognition under the EP Act, 1986. The CPCB may assist and monitor all the States for compliance of these directions. The steps in this regard be initiated and completed as far as possible within six months. In view of Section 33 of the NGT Act, 2010, whereunder the NGT Act has overriding powers over other statutes, any restriction placed by any administrative order will not stand in the way of carrying out this direction****.*
>
> *ii. We direct the CPCB to prepare a format which may contain qualifications, minimum eligibility criteria, required experience for the key positions and the specifications of equipment. All States/UTs may act accordingly.*
>
> *iii. MoEF&CC and CPCB may design a mechanism for annual performance audit of all the State PCBs/PCCs.*
>
> *iv. It is suggested that if some of the State PCBs find it difficult to select/recruit suitable candidates, a designated Committee of the MoEF&CC and CPCB, in consultation with such State PCBs, may explore possibility of the central selection mechanism so that the talent pool so selected can be made available for posting at appropriate locations, where requirement is found to*

be otherwise difficult. A plan be prepared for continuous training of the incumbents at regional levels periodically.

v. *In view of the findings in the report that at some places administrative manpower is more than technical manpower, such situation may be reviewed and remedied by the concerned States.*

vi. *The observations that the work of regulators should be fulltime for the incumbents appointed applies to all key positions, including Chairman/Member Secretary and Regional Officers, Engineers, Scientists of PCBs/PCCs. Such incumbents may not be given any other additional charge. Only exception can be in States where there are no significant environmental issues so as to provide the incumbents fulltime work. Such States may seek exemption in respect of this direction from CPCB, giving relevant information justifying such exemption.*

vii. *CPCB and State PCBs/PCCs, as directed earlier, may utilise EC funds on laboratory set up/upgradation, and on the mentioned areas in the report as well as on approved District Environment Plans. No approval of Central/State Government will be necessary in this regard in view of section 33 of the NGT Act, supra.*

viii. *Consistent with Digital India initiatives, MoEF&CC/MoJS/CPCB may consider setting up and periodically updating National Environment Data Grid (NEDG) linked to the State Environment Data Grids (SEDGs) DEDGs and further linked to available portals like online air/water quality, Sameer and other monitoring stations to facilitate analysis, research and planning on the subject. It may be further interlinked to initiatives like NMCG/Swachh Bharat/Jal Jeevan Mission.*

ix. *To assess the extent of monetary loss caused to the environment on account of violation of environmental norms by failure to scientifically manage waste, violating Water/Air/EP/Forest (Conservation) Acts and other specified Acts for fixing accountability, for improving efficiency and better enforcement of 'Polluter Pays' principle.*

x. *To monitor the extent of carrying capacity for particular activities at different locations for planning suitability of siting of particular activities for giving effect to 'Precautionary' and 'Sustainable Development' principles*

The issue of manning and functioning of State PCBs/PCCs will stand disposed of accordingly. However, the issue of pollution in Vapi Industrial cluster which has been adjourned sine die will now be taken up after disposal of the matter pending in the Hon'ble Supreme Court.

All pending interlocutory/ miscellaneous applications will stand disposed of with liberty to State PCBs/PCCs to point out their difficulties, if any, to the joint Committee of MoEF&CC and CPCB.

The executive summary of the CPCB report dated 30.09.2020

7. The executive summary of the CPCB report dated 30.09.2020 is quoted below for ready reference:-

"xxx ……..xxx ……xxx……
The Performance Audit of each State Pollution Control Board contained three sections. The first part shows about general information, State's potential in terms of resources, environmental factors and performance with reference to other indices. ***The second part is the summary of the audit findings mainly dealing with infrastructure, monitoring, regulatory and other actions*** *with recommendations. Third part contains information at a glance on all environmental aspects.*

Serious concerns were mentioned regarding the infrastructure in the form of manpower, laboratories and other facilities available at State Pollution Control Boards and Pollution Control Committees. *The information is collected from the States on the aspects related to infrastructure were detailed in the report.*

MANPOWER: *It has been reported from time to time that* ***shortage of manpower is the chief cause for under performance of State Pollution Control Boards. CPCB requested all SPCBs / PCCs to provide the Scientific, Technical and Administrative manpower details w.r.t. Group A, B, and C in prescribed format.***

Category	***Group A***	***Group B***	***Group C***	***Total***
Sanctioned	***1,749***	***2,629***	***5,060***	***9,438***
In Place	***1,092***	***1,591***	***2,413***	***5,096***
Vacancy	***657***	***1,038***	***2,647***	***4,342***

- ***It is evident that about 46 % posts are vacant and need to be filled up urgently.***
- *North Eastern States and UTs have skeleton staff attending urgent matters only.*
- *Six Boards namely Andaman & Nicobar (05), Arunachal Pradesh (56, including 49 Group C), Daman, Diu & Dadra and Nagar Haveli (10), Mizoram (11), Nagaland (14) and Sikkim (19) have filled all sanctioned posts.*
- *Arunachal Pradesh, Delhi, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Meghalaya, Punjab, Sikkim Board had* ***administrative staff more than Scientific & Technical manpower****.*

LABORATORIES: *The strengthening of laboratories at SPCBs is one of the major concerns and expected regular upgradation and establishment of analytical facilities to meet the regulatory and research requirements. Shortage of funds was not a reason for most*

of the Boards. Similarly, ***there are no reasons for the State Boards for not obtaining the recognition of their laboratories under E (P) Act. NABL Accreditation is recommended for all laboratories and followed up by CPCB with moderate success. The shortage of scientific manpower, procurement delays in instruments, equipment, & consumables and need for quality control are important aspects identified during the audit process****.*

- *Six Central Laboratories at SPCBs had valid recognition as Environmental Laboratories.*
- *Two applications are under process for renewal of recognition at MoEF&CC.*
- *Three regional laboratories had valid recognition as Environmental Laboratories.*
- *Five Laboratories have obtained accreditation for four major group of parameters.*
- *Eight SPCBs have accreditation for more than two groups of parameters.*
  Five SPCBs notified adequate number of Board Analysts.
- *Twelve Boards have notified more than one Analyst at Laboratories.*
- *Thirteen SPCBs / PCCs have not notified any Analysts.*

The two short comings related to recruitment and procurement need urgent attention all the SPCBs and if needed, professional services in private sector may be hired for effective and timely actions.

PERFORMANCE: *After examining the performance of SPCBs during the audit process, short-comings noted are mentioned here. Some of these shortcomings are prevailing in well-structured Boards also.*

i. *Many States / UTs have not yet felt the need for* ***state specific Environment Policy. The existing Environment Policies at other States need a review in view of new thrust areas are related to the civic issues and waste management practices***
ii. *There are many* ***SPCBs / PCCs who have not yet prepared the Environment Status Reports.*** *There is a strong need of preparing such reports regularly incorporating the inventory of wastes and management regulations revised in the year 2016.*
iii. Most of the SPCBs / PCCs (exceptions NE States and UTs such as Lakshadweep) do not have any kind of financial constraints and the budget utilization is mostly for the non-plan activities. There are many SPCBs which have built reserves funds.
iv. *A number of* ***States still do not have the industrial siting policy/criteria.*** *It is very important step in regulating industrial growth, especially for the hilly states in view of the very sensitive ecology*
v. *The Boards and Committees have not met regularly to review the functioning and provide much needed direction & vision.*
vi. ***The SPCBs / PCCs are not submitting annual reports as per the timelines specified in the various rules. This in-turn affects the timely compilation and preparation of the National Status Report by CPCB.*** *Considerable*

improvement in compliance with reference to the submissions was seen after 2018.

vii. *Many SPCBs / PCCs are yet to adopt to the practice of issuing the integrated / consolidated consents and conducting regular inspections of the industries for timely identification and action against the defaulters.*

viii. Many SPCBs having CETPs have not yet prescribed the inlet standards. This implies that the uncertainty, of the member industries discharging their effluents into the CETP not complying these standards, continues to prevail.

ix. The quantity of the hazardous waste shown as 'sent to the TSDF' pose risk in the absence of effective verification and tracking.

x. *The present implementation status of Bio-Medical Waste Management Rules 2016, is reasonably satisfactory, while the* ***compliance with reference to Batteries Management Rules, 2001 is very poor.***

xi. *The present network of the* ***Air / Water Quality Monitoring Stations provides representative Air / Water Quality of the State only for selected areas and water bodies. The Class II towns and stagnant water bodies in States need to be included in monitoring networks.***

xii. *Majority of the* ***SPCBs / PCCs are not well-equipped for the quality assurance in the analysis & data generation at their laboratories.*** *Representative analysis data is essential for the preparation of action plans for abatement and control of pollution.*

xiii. The monitoring network of coastal waters is very small and practically insignificant. The recent data from coastal districts show serious issues of sewage and solid waste management.

xiv. *Many SPCBs expressed the need for technical guidance and* ***regular professional trainings in effective discharge of their functions***

xv. *SPCBs have challenges in their working because of geographical & climatic conditions and different procedures and processes followed for implementation of Rules*

Compliance Status: The State Boards are deploying most of the resources in consent management and finally at compliance of industrial operations. The performance of SPCBs is expected to be better in the segment of Regulatory in view of time and resources spent. During audit exercise, the compliance outcome is categorised in ***17-categories of industries, Grossly Polluting Industries (GPI), Water Polluting industries needed ETPs, Sewage Treatment Plants and CETPs****.*

Compliance	17-Cat. of industries	Grossly Polluting Industries	Industries discharging Trade Effluent	Common ETPs	Sewage Treatment Plants
Gross Total	4,359	2,747	64,001	189	1,122
Functional	3,813	2,500	62,174	189	1,114
Complying with standards	3,497	2,225	60,980	132	878
Percentage of non-	**8.3**	**11**	**1.9**	**30**	**21**

Actions taken against non-complying Industries (%)					
Show-cause notice	55	27	55	30	40
Closure	33	52	13	9	0
Legal case	2	1	1	14	5
Pending action	10	20	31	47	55

i. *There are 4,359 Industries of 17-Categories identified by the States and 546 of these were closed down on their own. The overall compliance of the industries is 91.7 %, 3,497 industries are complying with the prescribe standards. The states Tamil Nadu, Odisha, Kerala, Uttar Pradesh, Bihar, Madhya Pradesh and Haryana have shown better compliance.*

ii. *Gujarat, West Bengal, Jharkhand and Puducherry have recorded less than 80 % compliance, while Rajasthan, HP, Assam and Uttarakhand have reported less than national average compliance percentage of 91 %*

iii. The non-complying industries, 316 are mostly located in Gujarat (97), Maharashtra (40), UP (25), West Bengal (24) and Rajasthan (20).

iv. *The SPCBs generally issue Show-Cause Notices (SCNs), then closure and finally file legal cases. There were only 6 legal cases filed by States, 4 by Telangana, while 105 units were issued Closure directions and 174 were issued SCNs*

v. The water polluting industries with discharges to a water course having BOD of 100 kg/day and / or handling hazardous substances are categorised as Grossly Polluting Industries. The inventory of these units was not updated by many States.

vi. *There were 2,747 GPI units identified in the country and 247 of these were found closed on their own. Most of the operating GPIs are located in Uttar Pradesh (1,079) followed by Haryana (638) Andhra Pradesh (193) and Gujarat (178)*

vii. *The overall compliance percentage was 89 and* ***Gujarat, West Bengal, Jharkhand, Uttarakhand, Uttar Pradesh and Arunachal Pradesh have reported lesser compliance than the national average.***

viii. *The non-complying units are located in UP, Gujarat, Jharkhand and Arunachal Pradesh.* ***UP has issued closure directions to 84 units out of 143 in the country and also the state was in the process of taking required action against 39 noncomplying industries.*** *Only three legal cases are filed against the non-complying units, two in Jharkhand and one in UP.*

ix. *In the country; 64,001 industrial units were identified Generating Trade Effluents & Requiring ETPs from 32 States and UTs. Uttar Pradesh has not provided the details and there were no units reported in Manipur and Lakshadweep.*

x. *It was identified that* ***1,827 units were operating without functional ETPs. Assam has maximum of 795 units followed by J & K (212), Karnataka (156) and Gujarat (117).*** *SPCBs have issued closure directions to 804 and Show-Cause Notices (SCN) to 842 units. Legal cases were filed against 6 units, while action was pending for remaining 164 industries.*

xi. *The 60,980 industrial units having functional ETPs complied with prescribed standards and* ***the remaining 1,194 units failed to comply****. Closure directions were issued to 163 units,*

SCNs to 652, 13 legal cases filed and action was pending against 366 non-complying units. The non-complying units were located in ***Assam (237), Maharashtra (208), Punjab (143) and Rajasthan (120).***

xii. *Nineteen States have reported 189 Common Effluent Treatment Plants (CETPs) operating in the country and most of these are located in Tamil Nadu (36), Gujarat (34), Maharashtra (26) and Haryana (19).*

xiii. ***The compliance status of CETPs is very poor at 70 %,*** *mainly because of undisciplined member units. Some of the agencies involved in management of CETPs were unprofessional and found lacking required skilled manpower.*

xiv. *SPCBs have issued closure directions to five CETPs and filed legal cases against eight CETPs.* ***The non-complying CETPs were reported in Gujarat (15), Tamil Nadu (9), Rajasthan (9) and Delhi (8).***

xv. ***The sewage generation from urban population in the country was estimated as 70,089 MLD and the treatment capacity was reported as 27,240 MLD in 2018****. After 2018, the States have calculated the gap in generation and installed capacity to create additional capacity needed for treatment.*

xvi. *The total operating STPs reported in the country were 1,122 and* ***236 of these STPs were not complying with discharge standards. These STPs are located in Punjab (47), West Bengal (42), Karnataka (31), Rajasthan (30) and Uttar Pradesh (22).***

xvii. *Most of the SPCBs preferred issuing SCNs (98) to non-complying STPs and only 13 legal cases were filed. The action needed against the defaulters was delayed in 137 cases, mostly in Punjab, Rajasthan and UP.*

xviii. *As per the information furnished by SPCBs / PCCs, about* ***10.71 Million MT of hazardous waste was generated*** *during 2018-19 by 69,054 units. About 45 % of waste is utilized / recycled and about 31 % of waste is disposed through TSDFs / SLFs*

xix. *There are 42 Common HW Treatment, Storage and Disposal Facilities (TSDFs) available in 18 States / UT, which includes 18 integrated TSDFs, having both Secured Landfills and Incinerators. In remaining 17 States / UTs the generated waste is mostly stored at occupier's premises.*

xx. *About 1,050 applications for utilization of different categories of HW under Rule 9 of HOWM Rules, 2016 have been received at CPCB. Upon technical examination and evaluation followed by successful trial runs, 54 SOPs for utilization of 40 different categories of HW have been developed and circulated to all SPCBs / PCCs. Gujarat is in forefront in utilising the hazardous wastes in industrial processes*

xxi. *As per compiled information from the Annual Reports of 2018, there were 2,70,416 Health Care Facilities (HCFs) reported in the country, 97,382 of HCFs bedded and 1,73,831 non-bedded. About 41 % of HCFs, 1,10,356 HFCs have obtained authorization under BMWM Rules, 2016.*

xxii. *About 615 TPD of biomedical waste was generated by the HCFs and 534 TPD of waste is treated and disposed. There were 200 Common Biomedical Waste Treatment Facilities (CBWTFs) and 12,326 captive treatment facilities installed by HCFs for the*

treatment & disposal of biomedical waste. In addition, 28 CBWTFs were under construction.

xxiii. *All States / UTs; except Arunachal Pradesh, Goa, Jharkhand, Kerala and Uttarakhand had granted more than 75 % authorizations to the Health Care Faculties (HCFs), applied for authorization under the Bio-Medical Waste Management Rules.*

xxiv. *Municipal Solid Waste generation in the country was reported as 1,62,836 TPD.* ***About 92 % (1,49,346 TPD) of waste is collected and 37 % (60,683 TPD) of the collected waste is treated. About 27 % (44,835 TPD) of total waste is landfilled in 3,115 dumpsites. The remaining 43,828 TPD of solid waste was unaccounted, littered and dumped in drains, canals and low-lying areas***

Overall Recommendations: *Based on the information gathered through questionnaires, visits of the Expert Teams for auditing and interactions, the following general recommendations are made:*

i. The State Governments should allow the recruitment of the staff required by the respective SPCB and if needed, comprehensive assessments may be carried out for building suitable infrastructure for effective and improved performance.

ii. Based on the information collected on manpower at SPCBs, it was observed that large number of sanctioned posts are still vacant. It is recommended that recruitment process may be outsourced availing professional services, wherever internal shortcomings were observed.

iii. The State should prepare / revisit their Environmental Policies incorporating all the current aspects concerning the sustainability of the development, conservation of the resources and the objectives of the Environment Legislation of the country.

iv. The State Environmental Status Reports should be prepared / updated by the SPCBs incorporating the aspects of environmental quality parameters.

v. The States should prepare / update their industrial siting policies / criteria and regulated strictly as per the criteria

vi. The SPCBs should ensure preparation and submission of their annual reports with complete inventory details as per the timelines specified under the rules.

vii. All the SPCBs should ensure issuing the consolidated consents & authorization from the year 2021 by processing all applications online in transparent manner.

viii. The SPCBs should prepare / update the protocols for regular inspection of the polluting industries for timely identification of & action against the defaulters.

ix. The Online CEMS data generated from the system should be used for surveillance and monitoring for identifying habitual and frequent violators.

x. The SPCBs / PCCs should prescribe the inlet standards for CETPs for compliance of member industries.

xi. The States and UTs should adopt 'Online Tracking' for all wastes from generation point to final disposal point.

A national tracking system initiated by CPCB may be shared with SPCBs.

xii. The SPCBs should ensure 100 % compliance of the Batteries Management Rules, 2001 and submission of the report to CPCB by December, 2020.

xiii. The SPCBs should develop & upgrade their laboratories and obtain the NABL Accreditation and MoEF&CC recognition on top priority by 2021.

xiv. The SPCBs should identify air & water quality monitoring locations covering the district headquarters, minor rivers, ponds, lakes and other important water bodies of the State / UT.

xv. The SPCBs / PCCs, situated along the main coastline, should establish a representative number of stations / locations for the monitoring of coastal waters in the range of 80 to 150 stations.

It is expected that the State Pollution Control Boards and Pollution Control Committees prepare comprehensive plans for strengthening the organisations and also incorporate short-term & long-term actions for abatement and control of pollution with budgetary estimates and obtain required approvals from the respective departments under State Government and UT Administration."

Consideration of the matter today for final order

8. The matter has been put up today to consider the matter further. Apart from considering final order with regard to remedial measures in respect of CETP in question, we have to consider the letter dated 26.03.2021 of Mizoram State PCB addressed to Department of Environment, Government of Mizoram for compliance and the Reports dated 08.06.2021, 10.07.2021, 03.12.2021, 14.02.2022, 02.08.2022, 28.11.2022 and 27.12.2022 filed by CPCB about the steps taken by GPCB in Vapi Industrial Area to the effect that there is improvement of functioning of CETP though further efforts are required. I.A. No. 136/2022 is to file fresh Vakalatnama by the Counsel for the applicant. I.A. No. 22/2023 is for impleadment and EA 5/2023 is for compliance of directions of the Tribunal in the matter of revamping the J&K PCC where only seven persons are working at the moment which is not adequate to enforce the Environmental Regulatory Mechanism.

9. We have considered the above issues with the assistance of learned appearing Counsel for the parties.

10. With regard to the monitoring of Vapi CETP, we take on record the CPCB reports mentioned above. On further consideration, instead of keeping the matter pending for indefinite period, we dispose of the matter treating the earlier orders as final as far as this Tribunal is concerned with direction for further action in the light of reports of CPCB mentioned above, subject to orders/further orders of Hon'ble Supreme Court with liberty to aggrieved parties to take further remedies, if necessary, in the light of orders of the Hon'ble Supreme Court or if cause of action so requires.

11. I.A. No. 136/2022 being formal to which there is no objection will stand allowed. I.A. No. 22/2023 and EA 5/2023 for revamping J&K PCC and E.A No. No. 5/2023 for strengthening J&K Pollution Control Committee are disposed of with the direction that the Chief Secretary, J&K may look into the matter and take necessary action within two months.

12. We further direct that CPCB may take follow up action in the light of order of this Tribunal dated 5.2.2021 after taking stock of compliance status by having an interaction with PCBs and PCCs within one month.

The OA and all IAs/EA stand disposed of with above directions.

A copy of this order be forwarded to Chief Secretary, J&K, GPCB, Mizoram State PCB and CPCB by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

February 24, 2023
Original Application No. 95/2018
(I.A. No. 136/2022 & I.A. No. 22/2023)
SN