

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

O.A. No. 64 of 2016 (WZ)

Akhil Bhartiya Mangela Samaj Parishad Applicant

V/S.

Maharashtra Pollution Control Board & Ors Respondents

WRITTEN SUBMISSIONS OF TEPS

TEPS is a Registered Society/ S.25 Company under the Companies Act, 1956 (Non-profit making entity) which is responsible for overall management of the Common Effluent Treatment Plants (CETPs) at Tarapur MIDC.

TEPS'S ARGUMENTS

1. Importance of CETPs is highlighted by the Applicant in **Para 8 (Pg.8) of OA**
2. Applicant has also narrated roles and responsibilities of all the Respondents Nos. 1 to 7 as defined in **Para 4 on Page 5 of the OA** which show a Scheme of Environment Protection at Tarapur MIDC (Scheme). It is expected that each of the constituent members of the said Scheme perform their individual roles and responsibilities in an efficient and diligent manner, to keep the Scheme functioning as envisaged under the applicable laws.

3. TEPS heavily depends on infrastructural, administrative and regulatory support from MPCB (Respondent No.1) and MIDC (Respondent No.2) for effective implementation of the Environment Protection laws, since it does not hold statutory authority and powers to inspect, prosecute and/or close down any non-compliant industrial units and such powers are only available with the Respondent No.1 and 2.
4. TEPS has been agitating against the lackluster approach of MIDC. MIDC charges huge amounts as fees from the member industries based on their water consumption. Hence it is paramount duty of MIDC to constantly maintain and upgrade the common infrastructure, effluent carrying pipelines and collection sumps within MIDC and to control water supply in such a manner that the total effluent does not exceed CETP treating capacity, the treatment being an extremely sensitive biological process, which shall fail in case of excess load.
5. MIDC has remained absent for final argument stage and they have failed to respond to Committee Report / recommendations, despite their being specific allegations also made by the Applicant in OA (**Reference- Para 32, 37 (I), 37 (J)**) which need attention of this Hon'ble Tribunal. Any dereliction of duties by the Regulatory bodies adversely impacts the performance of TEPS-CETP. This issue needs to be addressed while adjudicating the present matter. TEPS is a non-polluting unit and is in fact involved in treatment of effluent. Hence it is humble submission TEPS states that 'Polluter Pays' principle is totally inapplicable to it and TEPS can not be imposed with any penalty as suggested by the Committee in its Report.

6. Despite all adversities, TEPS-CETP through support and funding from member industries has invested huge amounts (more than 160 Crores) to set-up an additional 50 MLD plant, thus taking the total treatment capacity to 75 MLD. However, until now MIDC has failed to complete the work of replacing the old effluent carrying pipelines with new HDPE pipelines and laying new disposal line as per approved DPR of the 50 MLD project, due to which the new CETP can not be commissioned to its full capacity. In this regard your lordship's attention is invited to the pending **M.A. No. 375 of 2017** which needs to be decided on priority in the best interest of the environment at Tarapur MIDC.
7. As regards statement made by the Applicant's counsel during the oral arguments dated 30.09.2021 that the CEPI score of Tarapur MIDC is 93 (critically polluted), attention of this Hon'ble Tribunal is drawn to M.A. No. 01 of 2021 filed by TEPS on 29.12.2020, more particularly Annexure J (Page- 217 onwards). At **Page 246 of M.A. No.01 of 2021** said MPCB Report states that CEPI score of Tarapur MIDC has gradually improved and as on Feb' 2019, it is showing CEPI score of 53.60. The same is the latest available data on MPCB website <https://mpcb.gov.in/pollution-index/tarapur> even as on today.
8. As regards action plan prepared by MPCB, Hon'ble Tribunal may please refer to **Page 247 to 250 of M.A. No.01 of 2021** and **Annexure II (Page 287 to 308) of the Committee's Joint Reply dated 13.05.2021**. TEPS-CETP has complied with most of its allocated role and responsibilities assigned by the Expert Monitoring Committee as per its Action Plan.

9. As regards functioning of the new CETP, **Page 320 of the Committee's Joint Reply dated 13.05.2021** be seen. As per MPCB data, the present performance of new TEPS-CETP is satisfactory. A lot of emphasis was given by the Applicant's Counsel on the Status Report dated 11.01.2021 filed by the Committee. However, the Counsel for the Applicant did not refer to Page 38 onwards of the said Status Report, which shows compliance by TEPS-CETP and steps to mitigate the environmental issues at Tarapur MIDC. This Hon'ble Tribunal would kindly appreciate the same.
10. In so far as larger issues challenging the Committee's Report dated 18/6/2021, TEPS is adopting its contentions raised in **Annex- R3/3 (Page 41 to 78) of the M.A. 01 OF 2021**, as part and parcel of these written submissions. This Hon'ble Tribunal be pleased to allow M.A. No. 01 of 2021 and grant reliefs prayed under **Para 5 (Pg 2 to 4)** of the said M.A.
11. TEPS states that environmental compensation costs as imposed by the Committee are contrary to and in violation of Scheme of sections under NGT Act, 2010, more particularly S. 15, S.17 of the Act r/w. Rules 35 to 37 of the NGT (Practices and Procedure) Rules 2011. As per the scheme of the Act, collection of environmental compensation must necessarily relate to some identified expense towards restitution of environment based upon a restitution plan, which is required to be approved and implemented, only as per express acceptance and directions of this Hon'ble Tribunal. Committee can not recommend collection of funds on presumptive costs.

12. There is no restoration plan or Scheme suggested by the Committee for approval or adjudication of this Hon'ble Tribunal which ought to form basis of expenses to be incurred in terms of Rules 35 & 37 of NGT Rules, 2011 referred above. In absence of appropriate restoration plan, the utilization of environmental compensation so deposited would be ambiguous.
13. Even otherwise, as a bonafide litigant in the present case, TEPS has duly complied with directions and has already deposited **Rs. 21,69,44,100/-** in the Environment Relief Fund in compliance with the Hon'ble Supreme Court Orders, as and by way of Security.
14. TEPS-CETP is further committed to continue playing its role as part of the larger environment protection Scheme. This Hon'ble Tribunal may consider TEPS as equal partner in environment protection Scheme and provide necessary directions to MPCB and MIDC to render all possible infrastructural and financial support to TEPS to carry out projects of environmental importance.

In view of the above and Without Prejudice to the aforesaid submissions, TEPS most humbly seeks to act as a cooperative and responsible partner along with the statutory bodies, namely, MPCB, CPCB and MIDC. To this, the following is proposed for most kind consideration of this Hon'ble Tribunal:

- A. An amount of Rs. 21,69,44,100/- (deposited by TEPS) plus Rs. 23,48,35,420/- (deposited by aggrieved member industries of TIMA) i.e. total amount of **Rs. 45,17,79,520/-** has already been deposited in the Environment Relief Fund

in the present case as a Security, in terms of the directions of the Hon'ble Supreme Court vide orders dated 14.12.2020 and 13.01.2021 and 04.03.2021 passed in Civil Appeal no. 3756 of 2020. TEPS has additionally spent Rs. **160 Crores** through funding from its member industries and by availing loan to complete the new 50 MLD CETP project which is already partially commissioned. The defaulting units were also penalised by MPCB by invoking their Bank Guarantees and/or by closing down such units till they achieved full compliance of their respective consent to operate. It is therefore now in the interest of justice that any compensation henceforth recoverable should be towards restoration of environment and therefore, a composite, sustainable restoration scheme is required to be put in place, possible expenses be laid out and then, compensation be assessed and collected.

B. To that end, and considering the bonafide of the TEPS and TIMA it is humbly suggested that this Hon'ble Tribunal may consider forming a Committee for Assessment of Restoration Costs for Tarapur Industrial Area, which Committee would comprise of environmental experts, two representatives each from MPCB, CPCB, MIDC (to be appointed by this Hon'ble Tribunal), and President & Secretary of TIMA, TEPS and the representative from Applicant with the following mandate:

- i. To lay down the restoration scheme or plan for the purposes of Rules 35 and 37 of the National Green Tribunal (Practices and Procedure) Rules, 2011 and assess the costs of such restoration and place same

before this Hon'ble Tribunal for approval and further directions.

- ii. Upon Assessment of the Restoration Costs and after adjusting the Security Money as earlier deposited to the ERF, deficit if any, to be received from the concerned stakeholders. Surplus if any in ERF to be refunded back to the paying parties as per distribution factor earlier adopted at the time of collection.
- iii. To implement the approved restoration plan and utilise such compensation collected strictly for the said purpose.
- iv. To constantly assess the effect of restoration of environment, lay down further restoration plan, and implement the same upon approval of this Hon'ble Tribunal.
- v. To file quarterly reports before this Hon'ble Tribunal for approval and appropriate directions.

FILED BY:



Date: 07.10.2021

Place: New Delhi

[AMIT AGASHE]

Advocate for Respondent No. 3