

2. The present applicants are residents of Village Luvara and Lakhigam and fishermen (undertaking 'pagariya' (traditional) fishing) who were directly affected from the major chemical accident that took place on 03.06.2020. The residents of Village Luvara and Lakhigam were evacuated after the chemical disaster took place and towards that this Hon'ble Tribunal had ordered payment of Rs 25,000/- as interim compensation vide order dated 08.06.2020 passed in OA No. 85/2020 Aryavart Foundation through its President vs. Yashashvi Rasayan Pvt Ltd. and Anr. The relevant part of the order is extracted for ready reference:

"6. While the company and other concerned have to be given due opportunity, an interim direction for compensation on the basis of available material cannot brook any delay. Interim compensation can be awarded on conservative subject to final compensation being determined later. While no compensation for death or injury or displacement may be adequate and environment is priceless, having regard to facts and circumstances and on ad hoc basis, we assess interim compensation for death to be 15 lacs each (taking into account multiplier of around 16 and loss of earning of about one lac a year, taking the minimum wage, apart from conventional sums), for grievous injury Rs. 5 lac per person, for other injuries of persons hospitalized Rs. 2.5 lac per person and for displacement at Rs. 25000/- per person. The company may make an interim deposit of Rs. 25 Crores excluding the deposit/payment already made in pursuance of order of the GPCB or otherwise or under the Workmen's Compensation Act, 1923 or any other statutory provisions or ex gratia in relation to the present incident. Disbursement may be made by preparing an appropriate plan by the District Magistrate in consultation with the District Legal Service Authority, Bharuch to be overseen by the Member Secretary, State Legal Service Authority. The amount may be deposited within 10 days from today. Disbursement may be made within one month thereafter. If the company fails to make the deposit, the State will be at liberty to recover the same by coercive methods but the disbursement may in such case be made out of the State funds within one month with right of the State to recover the amount from the company."

The Respondent No.2- Yashashvi Rasayan Pvt Ltd. approached the Hon'ble Supreme Court (CA 2629 OF 2020) challenging the interim order dated 08.06.2020 as regards to the interim compensation ordered by this Hon'ble Tribunal. The Hon'ble Supreme Court, disposed off the civil appeal vide order dated 22.06.2020 and the relevant portion of the order is extracted hereinbelow:

"After hearing the learned counsel for the appellant at length, we feel that it is a fit case in which the appellant should approach the NGT itself for modification of the order stating the fact in detail as to how many persons were displaced and for how much period.

We request the Tribunal to reassess the compensation, if necessary, in the light of the data to be placed before it. It is made clear that we have not commented on the merits of the case while passing the order.

Ten days' time is granted to make the payment. The disbursement of the amount to the displaced persons shall remain stayed till a fresh decision is taken by the NGT."

The Respondent No.2- Yashashvi Rasayan Pvt Ltd. Filed I.A. No. 237/2020 in OA 85/2020 for modification of order dated 08.06.2020 passed by this Tribunal. This Hon'ble Tribunal dismissed the IA for modification and the relevant portion of the order is extracted hereinbelow:

"6. Moreover, the applicant does not deserve any indulgence as it has not moved this Tribunal with clean hands. While availing the liberty granted to move this Tribunal, the applicant has not complied with the order of the Hon'ble Supreme Court requiring deposit of compensation in terms of order of this Tribunal within 10 days from the said order i.e. 22.06.2020. The applicant has not even moved this Tribunal during the said time. No extension of time has been sought to make the deposit after expiry of the said period. Only explanation is that disbursement of the amount was to remained stayed till fresh decision was taken by the Tribunal and therefore, it was not necessary to make the deposit even if expressly so directed. The plea is patently absurd as the order clearly and specifically required deposit even if the amount was not to be disbursed. Deposit of the amount is not a charity but clear expected amount of liability of the applicant, of course subject to further orders. Only compensation to

the heirs of the deceased, to the injured and the displaced is to be immediately disbursed and compensation for damage to the environment is to be appropriated only after thorough evaluation. Even if any amount is found to be in excess, the applicant will get it back. As already mentioned, the Tribunal has gone by conservative estimate and liability of the applicant is expected to be more than the said amount. It is against interest of justice to further delay deposit and disbursement of the amount to the victims of the tragedy as almost two months have passed from the date of the incident. In view of above, the application for modification is dismissed."

The order dated 30.07.2020 has attained finality and the report of the expert committee has not stated anything contrary as regards to computation of compensation to be paid to the residents of the affected villages and as such the amount of Rs 25,000/- is to be disbursed. Admittedly, this amount towards the compensation has not been disbursed as is evident from the interim report of Secretary, DLSA, Bharuch dated 31.07.2020.

3. The applicants in the present OA also filed IA 50/2020 in OA 85/2020-Aryavart Foundation through its President vs. Yashashvi Rasayan Pvt Ltd. and Anr. Seeking intervention wherein they have placed on record at page 9 of IA effects of chemical blast on the coastal area resulting in loss of livelihood to the fishermen which has been computed. The relevant extract of the application is reproduced herein for ready reference:-

"The R-1/ Yashashvi Rasayan Pvt Ltd. is attempting to downplay the impacts of the chemical blast and fire on the residents of the surrounding villages which are in addition to Villages of Luvara and Lakhigam and it was not a displacement of only for few hours but for few days extending up to 5 days. Due to fear of poisonous gases, the 4000 local residents of village Lakhigam and Luvara did not come back to their villages for 5 days. It is submitted that the applicants are the persons who were evacuated from their villages on 03.06.2020 and on account of the same lost on their livelihoods. The applicants in their OA have specifically averred for interim compensation arising out of evacuation and displacement but also on account of effect of the blast on the health and traditional fishing activity which has been severely impacted by the chemicals released on account of the blast. The hazardous chemicals which were released on account of the blast and

firegot washed away on account of the rains into the GIDC drain and into the Narmada estuary. Narmada estuary is the source of livelihood of thousand of fishermen such as the applicants who are engaged in traditional pagadiya fishing and fishing through use of boats. This has resulted in fish kill after the accidents near the coast, which is at a distance of 800 m from the site of the company/accident. The applicants and the fishermen who fish on the coast and the Narmada estuary have lost out on one fishing season of 9 days which has resulted on a loss of Rs 25,000 per boat for the season. There are 200 boats (licensed) of Villages Luvara and Lakhimgam and other boats that are operational in Narmada River. So approximately the compensation towards livelihood loss comes to Rs 50 Lakhs for the boat fishermen. The pagadiya fisherman (Per person) catching fish have lost 15 days fishing which fetches them Rs 700/-per day so Rs 10,500 x 492 fisherman(licensed) = Rs 51,66,000 (Rupees Fifty one lakhs sixty six thousand). So the total compensation computed towards the fishermen comes to Rs 51,66,000 +Rs 50,00,000=Rs 1,01,66,000 (Rupees One Crore one lakh sixty six thousand). Further, the applicants continue to feel the effects of chemical effects on the air, water, land environment, which is affecting the applicants and other fishermen from surrounding villages in addition to villages of Luvara and Lakhigam."

The expert committee has relied upon the report of site visit dated 29.06.2020 undertaken by 3 members of the committee (NEERI, MoEF & CC & CPCB) along with GPCB officials visited the industry and storm water drain of Dahej SEZ-II and its meeting point to the Sea near confluence of River Narmada to the Gulf of Khambhat (Cambay). It would be seen from the site visit that samples were not collected from the wastewater drain for testing and neither from the soil surrounding the plant so on what basis has it been concluded that there was no soil pollution and that the water from the storm water drain has not gone into the sea as it was blocked during the period. The relevant portion of the site report is extracted below:-

"The expert committee members inspected storm water drains inside the premises of Industry. The accumulated wastewater was found less and some portions for the drains were found dried as compare to visit on 16.06.2020 as wastewater from storm water drains inside the premises are transferred to collections tanks of ETP for sending it to Common MEE/Common Incineration facility as per permission from

GPCB for further treatment. The members also seen the hazardous waste storage shed and found that the hazardous waste was not stored properly. It is required to keep drums with labels and maintains proper distances among the stacked drums etc. The waste needs to dispose immediately to CHWTSDF for incineration.

It is observed that up to certain distance from industry the Storm Water Drain (SWD) was dried. Further, SWD drains from other directions meets and common Storm Water Drain (SWD) meets near joining of river Narmada with the Gulf of Khambat near Parikrama Jetty. Substantial quantity of water on account of rain, domestic sewage, contaminated water from the industry and stormwater from Dahej SEZ-II area, was observed in the Common SWD.

By considering the prevailing conditions and heterogenic nature of water in the common SWD, the expert committee members didn't collect samples of water from storm water drain(s). The individual pollutant contribution form M/s Yashashvi Rasayan Pvt Ltd in this SWD could not be ascertained."

It is submitted by the petitioner that chemical disaster which resulted in blast and fire at the plant of Respondent No.2- Yashashvi Rasayan Pvt Ltd. results in generation of unburnt gases which happen without proper oxygen. The unburnt gases includes both acidic and basic gases and this mixture results in a chain reaction. When water is used to douse the fire by the fire tenders some of these gases are soluble and they dissolve in the water. The un-dissolved gases are released into the environment and the gases that dissolve in the water increases its COD. It has been stated in the report of the expert committee that stormwater drain was blocked by the bund and the water did not go into the sea. In such a situation it had to be ascertained by the expert committee to as to the mode of disposal of the wastewater resulting from the firefighting that flowed into the stormwater drain.

It is contended by the applicants that all the water used by the fire tenders ultimately was washed into the sea. In order to douse the fire 40-50 tankers were used for a period of 4 hours which resulted in 400-500 KL wastewater. This huge quantity of water containing dissolved chemicals and soluble gases has not been disposed off in the CETP and has not gone into any treatment plant so it has either been absorbed into soil or washed into sea resulting in fish kill.

It has come in the report of the site visit extracted above that no sample was taken from the soil or the stormwater drain so expert committee cannot come to a conclusion that the chemical disaster resulted not resulted in soil and water pollution. The expert committee having technical members have not given a cogent explanation as to where did the water used in firefighting went. It is the contention of the applicants that the firefighting hazardous water which went into the stormwater drain was removed by way of tankers and the untreated water was disposed of into the sea and the rest percolated in the surrounding soil. This aspect has not been investigated either the GPCB or the expert committee.

4. Another aspect which has not been considered by the expert committee is dispersion of chemicals contained in a thermal plume post the chemical blast. The chemical blast results in a mixture of gases having varying densities and the mixture with the air pressure creates and raises the plume in the atmosphere. The mass of gas plus entrained moist air eventually reaches an altitude where it is no longer of lower density than the surrounding air; at this point, it disperses, drifting back down. The stabilization altitude depends strongly on the profiles of the temperature, moisture, and wind shear in the air at and above the starting altitude.

Given the atmospheric conditions on 03.06.2020 the chemicals contained in the plume spread over Dahej and the sea over a distance of 10 kms and immediately after few days there was rain and all these non-biodegradable chemicals were washed into rivers, creeks and sea. These impacts have not been adverted to by the Expert Committee as to where did the chemicals go which were contained in the plume. As per the expert committee report, the wind direction was towards the sea. It is the submission of the applicants that these chemicals were washed away into the sea resulting in coastal pollution which has not been taken into consideration by the expert committee.

5. That in view of the submission hereinabove the applicants are to be compensated for the loss of livelihood and for the evacuation from their places of residence on account of the chemical blast which is

admittedly a result of negligence on part of Yashashvi Rasayan Pvt Ltd. Further, the aspect of soil and coastal pollution needs to be investigated.

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