

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
MISCELLANEOUS APPLICATION NO. 1 OF 2021
IN
ORIGINAL APPLICATION NO. 64 OF 2016 (W.Z.)**

Tarapur Environment Protection Society ...Applicant

In the matter of:-

Akhil Bhartiya Mangela Samaj & Ors. ...Applicants

Vs.

Maharashtra Pollution Control Board & Ors. ...Respondents

ALONG WITH

MISCELLANEOUS APPLICATION NO. 2 OF 2021

Tarapur Industrial Manufacturers Association ...Applicant

In the matter of:-

Akhil Bhartiya Mangela Samaj & Ors. ...Applicants

Vs.

Maharashtra Pollution Control Board & Ors. ...Respondents

**WRITTEN SUBMISSION ON BEHALF OF THE ORIGINAL
APPLICANTS**

1. Original Application No. 64 of 2016 came to be filed before this Hon'ble Tribunal by representatives of the Mangela fisherfolk community to challenge the severe environmental and ecological degradation of the waterbodies in the vicinity of the Tarapur MIDC which has been caused by untreated industrial effluent being discharged by the industries within Tarapur MIDC as well as unauthorised amounts of effluent being released into the Arabian Sea at Navapur and the water bodies in the vicinity of the Tarapur MIDC from the Common Effluent Treatment Plant. This has resultantly impacted the livelihood of the traditional fisherfolk and the health of the people that live around the said area.
2. By an interim order dated 9th September 2016 the NGT issued directions to the MPCB to ensure that no fresh Consent to Establish was granted to any new industries and that the generation of effluent was reduced by 40% by restricting the supply of water to industries. It also constituted a Joint Committee comprising of the District Health Officer and officials from the Fisheries Department and Women and Child Department. The Committee constituted by this Hon'ble Tribunal observed that there is an increase in skin diseases and breathing problems among the residents living around Tarapur MIDC [*Report dated 2nd December 2016*].
3. In spite of this interim order passed by the NGT in 2016, the Comprehensive Environment Pollution Index ('CEPI') assessment carried out by the CPCB has shown that between the first comprehensive assessment carried out in 2010 and the most recent assessment of 2018 the situation has deteriorated – the CEPI score as per the 2010 assessment was 72.01, while the CEPI score as per the 2018 assessment was 93.69, the highest CEPI score for any industrial cluster in the

country [*Joint Reply of the Committee to the objections filed by TIMA and TEPS dated 13th May 2021 – Pg.8*].

4. The NGT by its order dated 26th September 2019 constituted an Expert Committee comprising of experts from IIT, IIM, NEERI apart from members of the Maharashtra Pollution Control Board (MPCB) and Central Pollution Control Board (CPCB) to ascertain environmental damage cost that could be imposed on the polluters, the cost of restoration and to suggest what restoration measures ought to be taken.

5. The said Committee submitted two reports – a report dated 18th June 2020 and a second Report dated 27th July 2020 which demonstrated that TEPS and the member industries of TIMA were found to be consistently flouting environmental norms and this has led to the progressive degradation of the environment in and around the Tarapur MIDC area. The Report noted the fact that the creeks, wetlands, groundwater and the sea in the vicinity of Tarapur MIDC had been contaminated. The Report recommended certain immediate remedial measures to be taken¹. It also determined the environmental damage cost and cost of restoration to be 160 crores, which was to be paid by TEPS and the polluting industries². The NGT considered and accepted the reports submitted by this Expert Committee and by its order dated 17th September 2019 directed that the Expert Committee report be implemented and the measures as suggested be adopted.

¹ Pg. 88 to 89 of Expert Committee Report dated 18.06.2021

² Pg. 96 of Expert Committee Report dated 18.06.2021

6. The order dated 17th September 2020 came to be challenged by TIMA and TEPS before the Supreme Court in Civil Appeal No. 3756 of 2020 and Civil Appeal No. 3638 of 2020 respectively. The Hon'ble Supreme Court *vide* its order dated 14th December 2020 in the aforementioned Civil Appeals directed the TEPS and TIMA to file their ground-wise objections to the Expert Committee Report before the NGT within a period of 15 days. TEPS and TIMA were further directed to deposit 30% of the environmental compensation assessed by the Expert Committee Report within one month and in case of failure to do so their objections to the Committee Report would not be heard and decided (clause e of order). Directions contained in the order dated 17th September 2021 were to remain in abeyance till the decision on the objections by this Hon'ble Tribunal (clause h of order). Further, the order dated 17th September 2020 would stand modified by the order passed by the NGT in the present proceedings (clause i of order). *[Copy of the said order dated 14.12.2020 is at Annexure A-1, Pg.12 | M.A. No. 8 of 2021]*.
7. Having failed to deposit the compensation amount within the stipulated time, Miscellaneous Application Nos. 61 and 62 of 2021 were filed by TIMA and TEPS respectively in the aforementioned Civil Appeals seeking an extension of 60 day's time to deposit the compensation amount or alternatively to grant permission to furnish a Bank Guarantee equivalent to 30% of compensation amount instead of depositing the said amount.
8. The Supreme Court rejected the application seeking an extension of 60 days' time and granted a period of 30 days to TEPS and TIMA to deposit the compensation amount, i.e. until 13th February 2021. The Supreme

Court further directed that the compensation amount was to be deposited with the authority specified in Section 24 of the NGT Act, 2010 [*Copy of the said order is at Annexure A-2, Pg.17 | M.A. No. 8 of 2021*].

9. Yet another Miscellaneous Application (M.A. 380 of 2021) came to be filed by TEPS seeking a further extension of time to deposit the compensation amount as directed by the order dated 14th December 2020 and 13th January 2021. The Supreme Court passed an order dated 4th March 2021 directing that an amount of 2 crores be deposited by the end of the day as undertaken by the Counsel appearing for TEPS and granted no more than a period of one week to deposit the balance compensation amount as directed by the Supreme Court order dated 14th December 2020 [*Copy of the said order is at Annexure A-3, Pg.20 | M.A. No. 8 of 2021*].
10. The present Miscellaneous Applications have been filed by TEPS and TIMA seeking to challenge the Expert Committee Reports pursuant to the order dated 14th December 2020 passed by the Hon'ble Supreme Court in Civil Appeals 3756 and 3638 of 2020.
11. Before dealing with the objections to the Expert Committee report, it is pertinent to note that the Expert Committee has filed a Status Report dated 11th January 2021 where it has noted the continued non-compliance of TEPS and the member industries of TIMA-
 - (a) Continued non-compliance of the 25 MLD CETP – Pg. 2, Pg.48
 - (b) The CETP is unable to identify non-compliant units and units contributing to higher hydraulic load to CETP despite surveillance by CETP and MPCB teams; **continued effluent**

discharge even during voluntary shut-down of CETP – Pg. 6,
Pg. 54 (sr.no.9)

- (c) COD, TDS of both inlet and outlet far exceed the stipulated norms – COD of 47,600 mg/l was observed against the inlet norm of 3500 mg/l (sr. no. 29 – pg. 68); COD of 5400 mg/l was observed against the outlet norm of 250 mg/l (sr. no. 40 – pg. 69)
- (d) Even the newly commissioned
- (e) It recommended the closure of CETP and member industries; further supervision of the Department of Environment and Industries Department, Government of Maharashtra recommended;
- (f) The Committee noted that in spite of MPCB issuing directions, **TEPS has not identified any member unit having inadequate facilities to treat effluent**, – Pg. 46/ 47

12. Further, it must be noted, that the environmental compensation assessed by the Expert Committee is extremely conservative considering the scale of environmental degradation that has occurred over a prolonged period of time. This was partly due to lack of scientific information which may have otherwise resulted into higher damage cost and therefore the Committee has refrained from including such costs in the absence of scientific certainty.

Preliminary Objection on Maintainability:

13. Although the Hon'ble Supreme Court has remanded the Original Application No. 64 of 2016 back to the NGT to deal with the limited issue of the objections to the Expert Committee Report, in the garb of filing objections to the Report, TIMA has chosen to raise the issue of

maintainability of Original Application No. 64 of 2016 which, notably, has been disposed of by the judgment of this Hon'ble Tribunal dated 17th September 2020. Notably no reply affidavit has been filed by TIMA during the time that the matter was pending before this Hon'ble Tribunal and no preliminary objections with regard to the maintainability of the O.A. were ever raised.

14. Without prejudice to the above, it is stated that the O.A. was filed well within the period of limitation as prescribed under the NGT Act, 2010 as the nature of violations are recurring in nature. In the instant case every recorded instance of violation of the environmental regulations constituted a recurring cause of action giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation.

15. In the matter of State of Bihar v. Deokaran Nenshi & Anr. [(1972) 2 SCC 890] the Supreme Court has explained the concept of continuing offence as one where the disobedience or non-compliance occurs and recurs and has held that whenever a wrong or offence is committed and the ingredients are satisfied and repeated, it would be a case of continuing wrong or offence.

16. Each affidavit filed by the MPCB in the present matter as well as the two Expert Committee Reports dated 18.06.2020 and 27.07.2020 and the compliance affidavit filed by the CPCB dated 11.01.2021 have demonstrated the continuing non-compliance on the part of the CETP and the member industries in complying with their respective Consent to Operate and norms for industrial discharge set out under the Environment (Protection) Rules, 1986.

17. Furthermore, taking reference from Section 15(3) of the NGT Act, the Expert Committee has limited the period for which the default is to be considered to 5 years and has assessed the environmental compensation accordingly [Pg. 61 of Expert Committee Report dated 18.06.2020].

18. The objections as to the maintainability of the O.A. therefore ought to be rejected at the outset by this Hon'ble Tribunal.

Response to Objections to the Expert Committee Report by TEPS and TIMA:

19. At the outset it is submitted that an elaborate process of hearing each of the industries as well as the CETP operator was undertaken by the Expert Committee before arriving at the compensation amount, the list of defaulting units and the apportionment of liability [Pg. 59 to 64 of Expert Committee Report dated 18.06.2020]. Each of the units was given a hearing by the Committee and suitable changes were made, where required, in the number of industries and other factors. The Expert Committee Reports are therefore careful and well-reasoned. Furthermore, the Expert Committee appointed by this Hon'ble Tribunal consisted of experts from NEERI, IIT and IIM apart from representatives from MPCB and CPCB. It is not clear what the expertise or credentials of the Respondents are that would warrant rejection of the report prepared by a committee consisting of experts of the most premier institutes of this country.

Erroneous inclusion of damage to the sea:

20. Both TEPS and TIMA have contended that the inclusion of damages for pollution to the sea is erroneous since no elevated concentration of measured parameters were found. In this regard it is submitted that the Committee Report noted the fact that elevated levels of phenols were found in the sea water samples and that polluted effluent was being received from the industries³. The inclusion of damages for pollution to the sea is therefore justified.

Erroneous inclusion of damages towards pollution of wetland:

21. The Applicants have contended that the Expert Committee has erroneously included damages for pollution caused to wetlands as there are no notified wetlands in and around Tarapur MIDC. In this regard it is submitted that the Expert Committee has mapped the wetlands and mangroves in the region using remote sensing⁴. These wetlands must therefore be protected in terms of the Supreme Court order dated 8th February 2017. Furthermore the Wetland (Conservation and Management) Rules, 2017 ('Wetland Rules') define a wetland as marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters. It is submitted that the Committee was right in describing the concerned areas as wetlands and assessing the damage accordingly inasmuch as they conform to the definition of a wetland as set out under the Wetland Rules. Furthermore, the presence of wetlands such as mangroves, sand/beach and creeks in the region have been shown under the Coastal Zone Management Plan (CZMP) of Palghar

³ Pg. 53 and 91 of Expert Committee Report dated 18.06.2020

⁴ Pg. 68 of Expert Committee Report dated 18.06.2020

notified under the Coastal Regulation Zone Notification, 2011 [*Joint Reply of Expert Committee dated 15th May 2021*].

Duplication of compensation amount:

22. The Applicants have contended that there is an erroneously doubling of compensation amount as the committee has presumed that there is a discharge of 25 MLD into the sea and an identical amount of discharge into the creek. It is submitted that the said discharge of 25 MLD has an impact on both the recipient bodies i.e. sea and wetlands. Creeks and seawater are two distinct natural ecosystems with different aquatic ecology. Any impact/damage to the creek and to the seawater, even if the origin of such damage is common, will have to be ascertained and determined separately for creek and for seawater, as rightly undertaken by the Expert Committee. The industries are discharging untreated effluent/ solvent/ chemicals to the drains in and around Tarapur MIDC which are contaminated with elevated levels of various pollutants.

MPCB and MIDC equally responsible for damage to environment:

23. The Applicants have further argued that no effective action has been taken against MPCB and MIDC and therefore TEPS cannot be held to be responsible for the excess effluent load being received at the CETP. It is submitted that the Expert Committee noted non-compliances by the CETP that are not attributable to the failure on the part of MIDC and MPCB and TEPS alone can be held accountable for such

transgressions⁵. The damage to the environment has occurred due to discharge of effluent occurring from the CETP and the failure to meet the prescribed CETP outlet and effluent standards (in terms of both quality and quantity). The CETP has continued to receive and discharge non-compliant effluent for decades now. The contributors to the excess effluent which does not comply with the CETP inlet effluent norms are the member units of the CETP. Therefore TEPS and TIMA alone can be held responsible for the degradation of the environment in and around Tarapur MIDC.

Compensation could not have been fixed in the absence of a restoration plan:

24. The Applicants have also argued that the compensation amount could not have been fixed before any restoration plan was prepared by the Committee and that there is no basis for the “superfund”. In this regard it is submitted that many infractions by the industries are not recorded and there is lack of information on the sub-surface hydrology. The reason the Committee has suggested the setting up of the ‘Superfund’ of Rs. 75 crores (and has not, as in the case of the punitive component of 85.042 crores, finally quantified this amount) is that: (i) the Committee does not, at present, have the benefit of material to determine the nature and extent of the damage that may have been caused⁶; and (ii) the costs towards remediation would be difficult to assess at present and may increase or decrease depending on the selected remediation option. Thus the contention that the compensation amount was inappropriately fixed before the preparation of a restoration plan is misconceived. Moreover,

⁵ Pg. 10, 11, 12 of Expert Committee Report dated 27.07.2020

⁶ Pg. 77, 92 and 96 of Expert Committee Report dated 18.06.2020

as noted by the Committee environmental damage cost of discharges by industries through drains resulting into wetlands and the sea could not be accounted by the Committee due to lack of scientific information.

Discrimination against large and medium scale industries:

25. With regard to the Applicants' contention that there has been discrimination against large and medium scale industries, it is submitted that any differentiation in the quantum of compensation ascribed to an industry was based on the scale and size of operation of the industries and the period and nature of default and therefore cannot be said to be discriminatory when there is an intelligible differentia between the 2 categories of industries⁷.

Erroneous apportionment of liability:

26. With regard to the Applicants' contention that erroneous parameters/ formula has been adopted for apportioning liability, it is submitted that the methodology recommended in "Report of the CPCB in-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" has been used by the Expert Committee. The distributed accountability of each of the 103 identified units in recovering the cost of Rs. 160 crores has been fixed based on pollution hazard, scale of operation, load factor based on the population located around industrial unit, number of days for which the violation took place and also considering deterrence for repeat/ habitual violators⁸

⁷ Pg. 79 of Expert Committee Report dated 18.06.2020

⁸ Para 7.2, Pg. 82 of Expert Committee Report dated 18.06.2020

Revised environmental damage recovery cost distribution:

27. Taking into account some of the objections by TIMA with regard to errors in date of inspection, date of compliance, name of units, closure scale and category of unit etc., the Committee examined the objections filed by 84 of the 106 identified polluting units. After taking into account the objections, the Committee re-examined the relevant data and arrived at a revised damage recovery cost. Accordingly, the damage recoverable from certain units has increased and for other it has decreased⁹.

28. Both TEPS and TIMA have filed objections to the revised apportionment on the ground that this exercise was undertaken on the basis of the information that has been provided by MPCB and that the Committee ought to have applied its own mind in arriving at this revised recovery cost. In this regard it is submitted that while the Committee may have relied on the data provided by the MPCB, it has in fact applied its own mind, corrected the errors if any, and consequently revised the environmental damage recovery cost distribution.

Re: Remediating health of inhabitants around Tarapur MIDC:

29. By the order dated 17th September 2020 this Hon'ble Tribunal had directed that restoration measures will include remediating the health of the inhabitants, including providing healthcare to the affected individuals. For the purpose of implementation of the order, the NGT directed that the Joint Committee constituted will continue to function

⁹ Response of the Committee in compliance with the NGT order dated 07.08.2021 regarding revised environmental damage and recovery cost distribution dated 12.08.2021

to oversee remedial measures and the Committee may also include the District Magistrate.

30. The District Magistrate being the Nodal Officer appointed by the NGT by its order dated 17th September 2020, called for a meeting on 29th October 2020 with all the concerned individuals to discuss the implementation of the NGT orders. In this meeting the concerned medical officer had agreed to arrange medical camps in all the affected villages.

31. The Expert Committee submitted a Status Report dated 11th January 2021 with regard to compliance of the orders of the NGT. The report stated that 16 villages had been identified in Tarapur which may potentially have health impact from the activities carried out at the Tarapur MIDC (Pg.5). The report further stated that house to house surveys were conducted by the District Health Officers/ Taluka Health Officers where a number of people were identified with having skin infections, respiratory ailments, tuberculosis and suspected cancer symptoms.

32. Notably the report of the Expert Committee stated that health screening camps for the surveyed population that was supposed to be conducted during December 2020 but could not be done due to other activities of national programmes, would be arranged in the 3rd week of January 2021 (Pg.6). Thereafter specialist camps for follow up of screened/ identified patients was to be conducted in the 4th week of January or first week of February. Distribution of medicine and patient referral to tertiary healthcare centres was to be carried out with effect from February 2021.

33.However an RTI reply received by the Original Applicants dated 6th August 2021 reveals that no health camps have in fact been conducted. Although some house to house visits have been conducted thereafter (in July 2021) this was not in accordance with what was discussed in the meeting held on 29th October 2020 and further the NGT order dated 9th September 2016 and 17th September 2020 and what was stated in the Status Report dated 11th January 2021 submitted by the Joint Committee.

34.It is therefore prayed that this Hon'ble Tribunal may be pleased to-

- (a) Reject the objections filed by TEPS and TIMA in M.A. No. 1 and M.A. No. 2 respectively to the Expert Committee Report;
- (b) Direct that the amount that has been deposited in the Environmental Relief Fund by TEPS and TIMA may be used forthwith towards remediation of the environment in and around Tarapur MIDC in accordance with the Expert Committee Report¹⁰.
- (c) Direct that the outstanding 70% of the environmental compensation assessed by the Expert Committee, i.e. approximately Rs.112 crores may be directed to be deposited with the Environmental Relief Fund within a period of 4 weeks from the date of the order. The utilisation of the funds so deposited may be done under the guidance and supervision of the Expert Committee.

¹⁰ Measures required to be taken – 8.1.2 (Pg. 88 of report dated 18.06.2020); Remediation plan and implementation – 8.1.2.1 (Pg. 93 of report dated 18.06.2020)

(d) This Hon'ble Tribunal may further clarify that the 75 crores assessed by the Expert Committee towards the Super fund is only provisional¹¹. That any additional amount directed to be paid by the Expert Committee after the detailed study suggested to be undertaken, may be deposited by TEPS and TIMA within the time frame decided by the Expert Committee.

(e) Direct that a Consultant must be appointed for the preparation of the DPR which must be prepared forthwith as suggested by the Committee and for which Terms of Reference has been outlined in chapter VI of the Expert Committee Report dated 18.06.2020 (Pg. 189);

(f) Direct that the suggestion of the Expert Committee *viz.*

- i. Organise health screening camps in each of the 16 villages and any other additional villages that may be identified as being affected by the pollution caused
 - ii. Organise specialist camps for follow up of screened/ identified patients
 - iii. Organise for the distribution of medicine and patient referral to tertiary healthcare centres¹²
- should be carried out forthwith in coordination with the District Magistrate.

(g) That as recommended

¹¹ Pg. 83 of Expert Committee Report dated 18.06.2021

¹² Status Report dated 11.01.2021, Pg. 8

(h) That the Expert Committee constituted should continue to function to monitor and oversee remedial measures including measures towards the remediation of the health of the people around Tarapur MIDC that have impacted by the pollution.

A handwritten signature in blue ink, reading "M. Perparia", written diagonally across the page.

Advocate for the Original Applicants