

**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 ON BEHALF OF TIMA

TIMA has challenged the Committee Report dated 18/6/2020 on various grounds stated in Statements of Objections under M.A. No. 02 of 2021

1) TIMA states that the Committee has imposed Environmental Damage costs without ascertaining actual damage to the environment. The Analysis Results of the sea water samples (pp. 62-64 of the Report) do not reveal trend of elevated concentration of measured parameters. The fact that there are no pollutants beyond the prescribed standard is clear from a comparison of the Sample Results at Table no. 4.9 (pg. 63 of the Report) and the prescribed standards of TSS, COD and BOD noted in Tables 6.4 to 6.6 (pp. 81-82 of the Report). So also, baseline data available in MPCB's Reply Affidavit dated 30/06/2016 (internal Pg.12) clearly observes that DO levels for period between 2010-2016 at sea waters and creeks near Tarapur are adequate for aquatic growth of organisms and the same are within prescribed

norms as specified for SW-II standards in EP Act, 1986. TIMA states that inspite of finding no pollution in the sea water at this point of time, the Committee has chosen to impose Environmental Damage Cost of Rs. 5.9381 crores calculated from April 2011 to November 2019

2) TIMA further strongly objects to the Damage Assessment Cost of Rs. 79 Crores for the alleged damage to 'wetlands' as per the Report. The damage calculations grossly differ for sea, creek and wetlands. In its humble submission TIMA states that there are no "wetlands" or "eco-sensitive areas" notified in the surrounding areas of Tarapur MIDC. Your lordship's attention is drawn to submissions made in Para (f) on Page 52 - 56 of TIMA's Objections (Vol-I) dated 29/12/2020 in MA No. 02 of 2021. TIMA has already pointed out findings of the Report that no concrete damage to the creek is ascertained. Hence there is no concrete evidence of any 'wetlands' being damaged due to industrial activity at Tarapur.

3) TIMA also objects to imposition of compensation costs of Rs. 75 Crores under the head of Super Fund, which committee has admitted in its Joint Reply dated 13/5/2021 to be a novel concept implemented. TIMA states that the Super Fund costs 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.

4) There is no restoration plan or Scheme suggested 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.

5) TIMA objects to adopting a formula suggested by Hernandez-Sancho *et al* Paper in 2010. The 2010 Paper does not deal with assessment of cost on account of environmental damage and relates only to economic value of wastewater treatment. Spanish formula contained in the 2010 Paper has never been accepted in India by any of the statutory bodies and hence inapplicable to the present case.

6) TIMA has raised issue of duplication of damages in its statement of objections which needs to be adjudicated upon.

7) TIMA therefore vehemently denies and objects to the estimated environmental damage and restoration cost of Rs. 160.042 Crores which has been arbitrarily imposed by the Committee and recommended collection thereof in its Report.

8) Without admitting any liability, TIMA had also raised issue about Committee not applying Purchasing Power Parity (PPP) Index in their Damage Assessment and Calculations. Later on in its Joint Reply dated 13.05.2021 (Pr 2, Pg 6) Committee admits that damage costs as per PPP formula would be 27.04 Crores. In this regard reliance is also placed on CPCB Report filed in OA No. 22 of 2020, wherein a similarly constituted Expert Committee has applied PPP formula and the same has been adopted by this Hon'ble Tribunal. The said Report is already part of the Record at Page 40 to 54 of the Rejoinder Affidavit dated 29.06.2021

9) The individual grievances of the industries as stated in annexures (Vol-1 to Vol-9 of MA No. 02 of 2021) need to be separately adjudicated by granting each of them opportunity of hearing before this Hon'ble Tribunal. Objections which were common to most of the industries are highlighted in the main statements of objection which require consideration and adjudication by this Hon'ble Tribunal. The Committee in its latest Response dated 12/8/2021 has in fact worsened off cases of aggrieved individual units by unilaterally and arbitrarily changing the distribution factor and imposing even higher penalty/compensation amounts on the appealing industries, without granting them any opportunity of hearing whatsoever.

WITHOUT PREJUDICE

TIMA being an association before this Hon'ble Tribunal representing the interests of all its members in the Tarapur Industrial Area, it is submitted that the following solution may be considered.

TIMA and TEPS most humbly seek 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. 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 TIMA and TEPS 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. 9