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BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION No. 85 / 2020
(Earlier O.A. No. 22 / 2020 (WZ))

Aryavart Foundation through its PresidentApplicant

Versus

Yashyashvi Rasayan Pvt. Ltd. & Anr. ...Respondent (s)

**Written Submission of Raj Panjwani, Sr. Advocate
on Behalf of Applicant i.e. Aryavart Foundation**

1. This Hon'ble Tribunal permitted the parties to file their written submissions. Hence the applicant is filing the written note submissions of Mr. Raj Panjwani, Sr. Advocate.
2. The applicant primarily relies upon the report submitted by the expert committee to establish the gross criminal negligence and conduct, which has resulted in avoidable tortious act, causing deaths and injuries to the workers of the Respondent No.1 and to the environment.
3. First, the applicant seeks to highlight the acts of Respondent No.1 which establishes criminal negligence on their part. Secondly, the applicant has made submissions on the quantum of compensation.

Endeavour to Avoid Payment of compensation

4. At Page 11: "It seems that the device is adopted by indicating simple hurt and minor injury with a view to avoid the payment of ₹2.5 lakhs to the person who sustained an injury. According to the latest information

71 persons sustained simple hurt and the committee is of the view that all must be paid as per order made by the Hon'ble Tribunal."

"The committee has considered the matter with regard to the compensation to the heirs of the victim. As indicated above, even the amount as directed by the Hon'ble Tribunal has not been paid to all concerned including the amount to be paid to the displaced persons. Under the circumstances, the District Collector should be asked to recover the amount in view of the order that is made by the Hon'ble Tribunal by taking appropriate actions (under the Land Revenue Code) The committee has assessed the damage to be paid to the next of kin of the deceased, the Hon'ble tribunal be please to make an appropriate order or direction for recovery of the same as deemed just and proper."

Major Accident Hazard Installation

5. **At page 21: Para 10** "The unit is engaged in hazardous process listed at serial No. 17, 80 and 29 of the 1st schedule of the Factories Act, 1948 and therefore, not only the manufacturing process is required to be carried out strictly in a scientific method, but is also required to observe certain norms very strictly as prescribed by the authorities even while receiving Hazardous Chemicals. The unit is thus classified as a MAH (Major Accident Hazard) Installation."
6. **At page 22: Para 11** "The Chemical Accidents (EPPR) Rules 1996 are applicable in view of the quantities of the hazardous chemicals stored more than the threshold quantities indicated in the Rules."

Non Submission and Incomplete Documents

7. **At page 28: Para 24** "In the register no date is mentioned for SEZ invoice. The column 'Deliver By' is also not filled in. When the tanker leaves the unit, in the column of Out Time, time is not recorded. This assumes importance as important document known as "TANKER UNLOADING CHECKLIST FOR RAW MATERIAL" (hereinafter referred as 'the Checklist') is not submitted by the unit."

8. **At page 43 & 44: Para 41** "the Safety Audit Team in the report at Annexure No VII Tanker Unloading S.O.P. It states (Taken verbatim) "6.6 A tanker unloading work permit (Tanker unloading checklist for raw material) is required for all hazardous chemical tanker shall be unloading safely in the tank farm. Tanker unloading activities shall be present by the Area operator. Tanker unloading before should be permitted checklist as per tanker unloading checklist. The tanker unloading some examples includes". However, there is neither work permit nor the check list duly signed by different persons at different stages. As these documents are not coming forward it can be said that there is a serious breach of safety norms and the authorities under the Factories Act, 1948 and the Gujarat Factories Rules, 1963 granting permission for the erection of the tank farm have not bothered to interrogate the persons properly so as to bring out the truth."

Unit Managed by Un-skilled Workers:

9. **At page 29: Para 25** "The question is whether the unit was being operating with local unskilled labourers who might not be aware about the functioning of plants dealing with hazards chemicals? Where persons are

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required to deal with hazardous chemicals, it is absolutely necessary that person should have at least ITI certificate for his efficiency in dealing with the subject. If he's a graduate with chemistry the question does the arise. In either situation the person would be competent to deal with hazardous chemicals. It does not transpire from the statements of the operators that they were qualified to operate as none said that he is either ITI AOC (Attendant Operator Chemical Plant) or Diploma holder or Graduate with Chemistry."

Absence of Appropriate In-depth Enquiry

10. **At page 36: Para 3** "There is nothing to indicate that the officers of DISH questioned any officials of the unit who were well qualified and had experience in the Chemical Industry. The officers of the DISH have not tried to verify the factual position by proper interrogation or by putting proper and essential questions to elicit the correct facts to the persons who appeared to have played any role or who did not discharge their duties which were imposed upon him or them. He ought to have questioned all persons required to sign the checklist, the drivers of the tanker and the other tankers which were there for unloading other material."

Tempering of Documents

11. **At Page 38 and 39: Para 34 and Para 35** "On reading the contents of the letter which were reproduced by the police officer in the FIR, it was difficult to accept the case as suggested in the report considering the quantity of chemicals which were stored in the tanks and the quantity of chemicals unloaded in the tanks."
"The officer gave an explanation that in the original letter addressed to the Collector on 10.06.2020, the mistake

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was committed in conveying the information and subsequently, there were corrections in the letter. Originally in the letter, it was mentioned "in the DMS storage tank, 25 tones DMS and in Nitric Acid storage tank, 18 tones Nitric Acid remain stored". At two places in the same sentence the word storage is scratched but which can be read. In the word Tank, letter R (in gujarati ર) is added so as to read Tanker at both the places. The words 'in storage tank' is changed to 'tanker' by scratching the word storage and adding letter R (in gujarati ર) to the ward 'tank' (in gujarati ડેંક). In the word tank 'ડેંક' letter "ર", is added so to read tanker ડેંકર. However, the words "storage was lying" have remained as they were which would convey that "In the storage tank acid was stored or the in the acid tank storage remained".

"If the persons who are required to look after the safety and security of the people at large are acting negligently in this manner and are making corrections in the document it becomes very difficult to rely on their function or about their words."

Oral statements of Operators Tutored

12. **Page 40: Para E** "The version given by these 2 operators with regard to joining the unit in the morning and leaving is also required to be considered. Both came to the unit at 7 AM. Shri Atal Bihari stated that soon after the disconnection of the tankers with the tanks, material loaded in the tank of DMS from the tanker of Nitric Acid, the process of unloading the chemical from the tank DMS commenced for transfer of about 18 ton Nitric Acid and 7.5 ton about DMS which was in the tank before unloading. (25 ton DMS+7.5 ton Nitric Acid= 32.5 MT)

and when that work was in process left the unit as shift time was over. This version of unloading the chemical as stated is not supported by Tank Farm Area Operator Shri Galchar. Not only that but looking to the quantity suggested it could not have been transferred. Both would have left after the shift time being over however, Shri Galchar went to the office, met the senior officials and came to the spot with them. On all important aspects both are not corroborating each other and therefore, there version is highly suspicious and becomes an acceptable.”

- 13. **At page 41: Para 37** “The version of the witnesses and the acceptance of the same by the DISH is required to be examined very minutely. Before the officers ‘Tanker Unloading Checklist for Raw Material’ was available for the tankers that unloaded DMS on 31-05-20 and Nitric Acid on 28-05-20. (Checklist attached herewith Mark collectively Annexure 21) Reading the details, many others were required to be questioned. Why ‘initial level of tank ___%’ as well as ‘Final level of tank’ are kept blank. How much time was taken for unloading 21.930 Mt Nitric Acid on 28-05-20 and how much time was taken for unloading 18.880 MT on 02-06-20 is not examined. Why? To completely unload the tanker of 21.9 MT the process of unloading commenced at 16:40 hours and the tanker was completely unloaded at 6 AM on the next day. On 2nd June, 2020 within two hours it was unloaded.”

Production Quantity Fudged

- 14. **AT Page 52:** “The committee has figures from the GPCB, MoEF&CC and DISH. Considering the figures supplied by the unit for the months of March 2020 to May 2020 to all

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the aforesaid 3 agencies are 563 MT, 541.7 MT and 591.1 MT accordingly. The said intimation in a table format is annexed here with collectively and Mark Annexure 29. Why the unit gave information to all the agencies for all the 3 months different figures of having manufactured the product? More surprisingly, on the basis of consumption overall material it appears that the unit must have produced 1137.9 MT of Dicamba. From this it is clear that unit was conveying the convenient figures to the different agencies. Considering the consumption of the raw material as per calculations production would be more than double and the same is not shown or some other chemical has been manufactured and for which no intimation is given to any authority."

**ILLEGAL STORAGE OF HYDROGEN & FALSE
DECLARATION**

15. **At Page 58: Para 68** "As reported two trucks carrying hydrogen cylinders were seen during and after the accident in the photographs and the same is mentioned in the panchnama drawn by the Police Authority. However, the trucks of hydrogen cylinders were not seen by the members of the committee during the visit."
16. **At Page 59: Para 71** "The PESO found 282 Hydrogen Cylinders near CO₂ bulk storage and the tires of the trucks as well as hydrogen cylinder cascades were found burnt."
17. **At Page 59: Para 72** "On behalf of the Unit it was conveyed that the unit is holding license for storage of hydrogen cylinders cascades. However, on perusal of the office records of the PESO, no license was issued to the unit for storage of hydrogen cylinder cascades."

18. **At Page 60: Para 74** "On the second visit the unit was asked to produce the license for storage of hydrogen cylinders However, the unit had no license and thus the unit was storing hydrogen Cylinders in contravention of Rule 43 of Gas Cylinder Rules, 2016."

Not An Accident

19. **AT Page 64: Para 81** "The persons sustained injuries and succumbed to the injuries. All innocent workmen sustained injuries not on account of their act of neglect or while discharging their duties came in contact with machinery or the chemicals. The unit was required to take strict measures for unloading the hazardous chemicals, but has failed in taking care while dealing with hazardous chemicals. Even after acquiring the knowledge on 2nd June, 2020 that incompatible hazardous chemicals mixed in storage tanks, the unit did not stop the process in the factory and allowed the workers to work. Even on the next day, 3rd June, 2020 as if nothing has happened the unit commenced the process as usual. This indicates that the unit without bothering for the life of a human being continued with the operation of the unit in a normal way for gain. Therefore, this being an act with the knowledge of the consequences of incompatible chemicals to explode that will result in death needs strict action. It was not an act of accident. The officials were not only highly qualified in the subject of chemical engineering, but had long experience in the manufacturing of chemicals and therefore, were aware about the consequences."

Environmental Damage Valuation

20. The Committee in its addition report on Page 665 has adopted the following parameters for evaluation:

- (i) For economic valuation, Value Transfer Method (VTM) has been used.
- (ii) For valuation of Sox and NOx, UK-Defra values have been taken for calculating the monetary value of damages.
- (iii) For Carbon dioxide, since it is GHG and can have a long term impact on environment, the social cost of carbon median values have been used as estimated by USEPA.

On the basis of the aforesaid factors and parameters the committee at Page 666 calculated the damaged cost as Under:

Pollutant	SO2	NOx	HCl	CO2	Total
Pollutant Load (MT) (a)	59.4	60.4	90.5	348.6	558.9
Damage Value per tone in Rs. Lakhs (b)	2.1989	2.1729	0.2189	0.0225	-
Damage Value in Rs. Lakhs (c=a*b)	130.6	131.2	19.8	7.8	289.5

Respondent No.1 on the other hand has submitted that the values as adopted by the Committee are on a much higher side and have suggested alternate values according to which damages come to Rs. 56,30,000/-. It is submitted that in the absence of any blatant illegality in applying the values by the Committee, the values assigned by the Committee be accepted.

Quantum of Compensation

21. The expert committee while calculating compensation for deceased persons (Annexure-35, Page-421) has deducted 50 % towards expenses. The Hon'ble Apex Court in Sarla Vs. DTC, (2009) 6 SCC 121 at para 26 has held as under,

"26. It is also very difficult for the respondents in a claim petition to produce evidence to show that the deceased was spending a considerable part of the income on himself or that he was contributing only a small part of the income on his family. Therefore, it became necessary to standardise the deductions to be made under the head of personal and living expenses of the deceased. This lead to the practice of deducting towards personal and living expenses of the deceased, one-third of the income if the deceased was married, and one-half (50%) of the income if the deceased was a bachelor. This practice was evolved out of experience, logic and convenience. In fact one-third deduction got statutory recognition under the Second Schedule to the Act, in respect of claims under Section 163-A of the Motor Vehicles Act, 1988 ("the MV Act", for short). But, such percentage of deduction is not an inflexible rule and offers merely a guideline."

All the deceased were adult males. People in the category of workers generally get married at an early age. Therefore, at least in the cases of the married deceased persons, deduction towards could not have been more than one third of the total. In the absence of any specific information, it may be presumed that workers above the age of 21 years are married or in the alternative have elderly parents or siblings dependent upon him. Hence the compensation to all the deceased above the age of 21

years may be calculated by taking the deduction at 1/3rd of the income instead of 50 percent.

The other important aspect is that some of the deceased must have died on the spot and some after treatment at the Hospital. These are two categories and can not be treated alike. The deceased who died after treatment in the hospital had undergone pain and suffering apart from the medical expenses. The pain and suffering of the deceased also cause pain and suffering to his family members who watch him suffer and support him till his last breath. Compensation must be given for the pain and suffering for the deceased persons who did not die at the spot and died after treatment in the hospital and that of his family members.

Lastly, the next of kin of the deceased persons have not been given any compensation for the pain and suffering caused to them. Therefore, it is prayed that a sum of Rs. One lakh per person may be awarded for pain and suffering suffered by the deceased person and his family during his treatment before death and after his death.

Aggravated Deterrent Compensation

22. The Expert Committee has not granted any aggravated deterrent compensation in the instant case. This is a fit case where the respondent No.1 ought to be burdened with aggravated deterrent compensation. At the outset it is respectfully submitted that the word 'damages' and 'compensation' are almost interchangeable in as much as damages are but 'compensation' for the damage caused by tortious acts and 'compensation' is the amount payable to compensate for the damage caused by the tortious acts. The question which arises is when

aggravated deterrent damages may be awarded? and Whether this Hon'ble Tribunal has the power to award deterrent damages? It is submitted that the Hon'ble Tribunal has the jurisdiction to award aggravated deterrent damages and in the instant case is a fit case for awarding the same. The same would become evident in the following paragraphs.

Section 15 (1)(a) & (b) and section 2(m)((1)(b) & (c) of the NGT Act use the word 'damage' in respect of environment & property. However the word 'compensation' is used in section 15(1)(a) in relation to victims of pollution. The 'precautionary principle' enshrined in section 20 of the NGT Act 2010 empowers the Hon'ble Tribunal to take all such precautionary steps that may be required to curb pollution degradation both in the present and future. The word 'precaution' as per the Oxford Learner's dictionary means "something that is done in advance in order to prevent or avoid danger."

It is submitted that the Hon'ble apex court in Director General (Road development) National highways Authority of India V. Aam Aadmi Lok Manch & Ors 2020 SCC Online SC 572 at para 44 has held that, "The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized

Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for **'preventive'** and restorative measures in the interest of the environment."

It is submitted that the power of Hon'ble NGT to provide for 'preventive' measures as enunciated by the apex court would include the power to impose deterrent damages/compensation as a 'preventive' measure to check future mishaps as spelt out in the present case. Further keeping in view the wide jurisdiction of the Hon'ble Tribunal it can not be said that statutory obligation to apply the Precautionary Principle as stated in section 20 of the NGT Act 2010 would not include the power to direct "Preventive measures" including the imposition of deterrent compensation as a preventive deterrent measure.

The Hon'ble apex court in the case of *M.C. Mehta v. Union of India (Shriram - Oleum Gas)*, (1987) 1 SCC 395 at para 32 has held, "We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

23. It is submitted that the respondent No.1 is part and parcel of the Patel Group of Companies which has a combined turn over of Billion Dollars (<http://www.patelinfo.com>) which translates to about Rs. 7299.66 Crores. The Ld. Counsel for the respondent No. 1 Mr. Himanshu Desai during the arguments on 27.01.2021 stated that an amount of Rs.200 crores would be need to be invested to re-start the unit. Hence the respondent No.1 would squarely fall with in the direction as contained in para 32 of the M.C.Mehta case mentioned above.

The Hon'ble Supreme Court in *MCD v. Uphaar Tragedy Victims Assn.*, (2011) 14 SCC 481 has held as under:

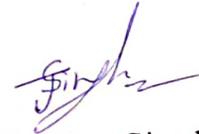
108. Several factors may gauge on a constitutional court in determining the punitive damages such as contumacious conduct of the wrongdoer, the nature of the statute, gravity of the fault committed, the circumstances, etc. Punitive damages can be awarded when the wrongdoers' conduct "shocks the conscience" or is "outrageous" or there is a wilful and "wanton disregard" for safety requirements. Normally, there must be a direct connection between the wrongdoer's conduct and the victim's injury.

24. It is respectfully submitted that the Hon'ble NGT may in the circumstances of the case award five times the award as recommended by the committee towards aggravated deterrent damages keeping in view the conduct of the respondent where-in the respondent has indulged in (i) Endeavour to Avoid Payment of compensation, (ii) Non-Submission and incomplete documents, (iii) Unit managed by unskilled workers, (iv)

Tempering of documents, (v) Tutored oral statements of operators, (vi) Fudging of production quantity, (vii) Illegal storage of hydrogen, (viii) False declaration and gross criminal negligence.

Raj Panjwani
Sr. Advocate

Through



Jitendar Singh
Advocate

Dated 01/02/2021

For Applicant Aryavart Foundation